DECLARATION OF JUDGE ODA

While I am in full agreement with the Court in its view 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",

I nonetheless consider that, in this instance, the Court does not need to express that view in the form of an Order. The competence of the Chamber formed under Article 26, paragraph 2, of the Statute to deal with any application to intervene is, in my view, unequivocally established by Article 62 of the Statute, read together with Article 90 of the Rules of Court which states that:

> "Proceedings before the Chambers mentioned in Article[s] 26 . . . of the Statute shall, subject to the provisions of the Statute and of these Rules relating specifically to the Chambers, be governed by the provisions of Parts I to III of these Rules applicable in contentious cases before the Court",

and by Article 27 of the Statute, which provides that "[a] judgment given by any of the chambers provided for in Article[s] 26 . . . shall be considered as rendered by the Court". "Intervention" is one of the "Incidental Proceedings" for which provision is made in Section D of Part III of the Rules of Court ("Proceedings in Contentious Cases"). Permission to intervene in a case being dealt with by a chamber can properly be requested only of that chamber; and it is in the nature of the present case that any approach made to the full Court by a third State cannot, however labelled, be seen as constituting a proper application for permission to intervene. The Court was accordingly under no obligation to ascertain the views of the Parties to the case with regard to this aspect of Nicaragua's Application. The Application for permission to intervene that Nicaragua addressed to the Registrar of the Court on 17 November 1989 could have been dealt with by the Chamber at once.

Although Nicaragua, in its Application to the full Court, undoubtedly did request permission of the Court to intervene, making it clear that it thereby meant the full Court, it also referred to "[t]he practical consequence of a favourable response to the present request", namely, "the reformation of the Chamber as presently constituted". In other words, Nicaragua contemplates the "reformation" of the Chamber seised of the present case by the Order of 8 May 1987 (as complemented by the Order of 13 December 1989). In the alternative, Nicaragua contemplates suggest-

ing that the Court should exclude from the mandate of the Chamber some of the powers with which it had previously been invested. In either event a request of this kind, addressed to the full Court by a State not party to the case, is not one which can be entertained under any of the provisions of the Statute or Rules of Court that govern the Court's procedures. Furthermore, to the extent that such "reformation" might involve a claim by the intervener, or would-be intervener, to be entitled to appoint a judge *ad hoc*, such a claim could only properly be considered by the Chamber, but not by the full Court, as is implied in Article 26, paragraph 2, of the Statute and Article 17, paragraph 2, of the Rules of Court (both of which are chiefly concerned with the initial or original constitution of a chamber), and as is apparent from the very character of intervention as an incidental proceeding. Once a chamber has been constituted, the powers of the full Court are, in my view, limited, so far as the composition of that chamber is concerned, to the filling of any vacancy in the original constitution that may arise as a result of the death, resignation or incapacity of an original member of the chamber. It would have been preferable in my view for the Court to have incorporated an explicit finding in that sense into the Order which it has found it necessary to make.

(Signed) Shigeru ODA.