DISSENTING OPINION OF JUDGE ELIAS

I wish to dissent from the Order made by the Court because I believe that Nicaragua's Application for permission to intervene should be heard and disposed of by the full Court and not by the Chamber.

My first reason is based on the main question of the scope of chamber jurisdiction: the scope of the jurisdiction of this Chamber, or of any other chamber composed by the Court under the present Rules, is neither definitive nor final, so that one cannot regard jurisdiction as being transferable *holus bolus* from the International Court of Justice itself to its affiliate envisaged in Article 26 of the Statute, or by any other text.

My second reason is the almost absolute one that Article 27 of the Statute provides clearly that "A judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court". It must follow that the Court and all its Members are bound by the judgment of a chamber, but not necessarily by a judgment arrived at by whatever means, or in defiance of a rule of justice overlooked or misconceived, or one subsequently overruled by the Court in the long run. This is so because, even though every Member of the Court is bound by the decision of the chamber, no non-member of the chamber has the chance or indeed the right to take part or to intervene in the work of the chamber before its decision is handed down. This means that there is no opportunity for any Member to criticize, or to point out any lacunae before the case is ended by the particular chamber; nor has the Court any opportunity to intervene. Yet according to the present Statute the decision is one by which the Court must be regarded as also bound, without having had any opportunity of interference.

It is, however, inconceivable that the jurisdiction as conferred upon the Court by Article 36 of the Statute does not admit of any exception, and binds only the Court within the meaning of the law as envisaged by it. If, for any reason, a chamber exercises so-called jurisdiction which is vitiated by any rule of law or of justice, a judgment delivered by it may not be accepted in every respect as *ipso facto* binding, even though that judgment is apparently unexceptionable otherwise. It therefore follows that, unless Article 26 of the Statute itself, or the implementing Article of the Rules by which chambers are established, so define the scope and purpose of a chamber formed to deal with a particular matter referred to it, there cannot be a wholesale transfer of general jurisdiction of the Court by the assignment of a particular case to a particular chamber. It remains to be proved that a chamber is the equivalent of the Court in all respects. It may be noted that under Article 30 of the Statute the Court reserves the exclu-

sive right to frame "rules for carrying out its functions. In particular, it shall lay down rules of *procedure*" (emphasis added). This shows that the chamber is not entirely its own master, and that it is possible that certain aspects of jurisdiction are residual or exerciseable only by the Court itself.

When the chamber procedure was conceived and framed — a process which may be regarded as having been somewhat hurried — not enough attention was paid to refining and considering its full implications in the administration of justice. That this has been so can easily be shown by going through the *arcanum* of decisions so far delivered under the chamber procedure since the wholesale adoption of the chamber procedure in the case concerning *Delimitation of the Maritime Boundary in the Gulf of Maine Area.* The entire machinery of chamber procedure has been shown time and again to be in need of a thorough overhaul, especially from the point of view of its implication in the declaration of general principles of international law, like that of intervention, which is necessarily wider than the narrow issues which Article 26 envisaged as the *only* work for a chamber. The chamber cannot be asked to undertake the finding of general principles of public international law, and is therefore not given the same authority and jurisdiction as the Court, unless specific provision is made in a particular case in the establishment or provenance of the chamber.

Finally, the present Order is too narrow, and seems consumed by preoccupation with a narrow conception of intervention, a concept which in all cases is wider than the Court Order itself, or even its broader implications. The Order, in refusing to allow the request of Nicaragua to be dealt with by the Court fails to refer to the relevant consideration that it may raise problems such as the appointment of an *ad hoc* judge or other issues of the composition of the Chamber itself. If such problems were handled by the Court the matter could be dealt with by handing back the request of Nicaragua to the Chamber for disposal as appropriate. The Chamber cannot be expected to refer such matter or matters to the full Court for directions several times in succession in the course of its treatment of a single application. Clearly, a chamber of *equal* competence or jurisdiction cannot be expected to have matters referred in this way to "its" own organ within the ICJ system. The Chamber must also never be allowed to deal with such issues as appointment of an *ad hoc* judge, another problem of general international law the scope of which is too wide for the Chamber in any event.

(Signed) T. O. ELIAS.