INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

CASE CONCERNING THE LAND, ISLAND AND MARITIME FRONTIER DISPUTE

(EL SALVADOR/HONDURAS : NICARAGUA intervening)

VOLUME VII

Conclusion of Oral Arguments ; Correspondence

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DU DIFFÉREND FRONTALIER TERRESTRE, INSULAIRE ET MARITIME

(EL SALVADOR/HONDURAS ; NICARAGUA (intervenant))

VOLUME VII

Suite et fin de la procédure orale ; correspondance

CORRESPONDENCE

CORRESPONDANCE

1. THE REGISTRAR TO THE AGENT OF EL SALVADOR [1]

14 December 1989.

I have the honour to refer to my letter of 17 November 1989, with which I transmitted to Your Excellency a certified copy of an Application for permission to intervene, under Article 62 of the Statute of the Court, in the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, filed in the Registry on that date by the Republic of Nicaragua. In that Application, the Government of Nicaragua expresses the opinion that its request for permission to intervene is a matter exclusively within the procedural mandate of the full Court.

The Court has decided to afford the two Parties to the case the opportunity to express their views at this stage on the preliminary question thus raised (and on that question only), i.e., whether the Application for permission to intervene falls within the jurisdiction of the Chamber seised of the case, or that of the full Court. Any observations which Your Excellency's Government may wish to make on this question should reach the Registry by 15 January 1990.

The procedure for written observations on the Application itself, contemplated by Article 83, paragraph 1, of the Rules of Court, remains reserved pending settlement by the Court of this preliminary question.

A copy of the present letter is being sent to the Agent of Nicaragua.

(Signed) Eduardo VALENCIA-OSPINA.

2. THE AGENT OF EL SALVADOR TO THE REGISTRAR

8 January 1990.

I have the honour to refer to your letter of 14 December 1989, informing the Parties to the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)* that the Court has decided to afford the two Parties the opportunity to express their views, at this stage, on the preliminary question whether the application for permission to intervene filed by Nicaragua falls within the jurisdiction of the Chamber seised of the case, or that of the full Court.

The Government of El Salvador intends to oppose the Nicaraguan application to intervene, including the request for reformation of the Chamber, on ground it will develop when asked to file its observations in accordance with Article 83, paragraph 1, of the Rules of Court.

Believing that the reasons for opposing the application are equally valid before the full Court or before the Chamber, the Government of El Salvador has no observations to make on the preliminary question of whether the

[1] A letter in the same terms was sent to the Agent of Honduras.

Nicaraguan application falls within the jurisdiction of the Chamber or that of the full Court.

(Signed) Alfredo MARTÍNEZ MORENO.

3. THE ACTING REGISTRAR TO THE AGENT OF NICARAGUA

12 January 1990.

I have the honour to refer to the Registrar's letter of 14 December 1989, with which was transmitted to Your Excellency a copy of a letter sent that day to the Parties to the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*. By that letter the Parties were informed that the Court had decided to afford them the opportunity to express their views on a preliminary question raised in the Application for permission to intervene, under Article 62 of the Statute of the Court, filed in the Registry by the Republic of Nicaragua, namely, whether that Application for permission to intervene falls within the jurisdiction of the Chamber seised of the case, or that of the full Court.

I now have the honour to transmit to you herewith a copy of the observations on this question submitted by the Government of El Salvador, and of those submitted by the Government of Honduras. Should Your Excellency's Government wish to make any further observations on the question in the light of the views expressed by the two Parties, such observations should reach the Registry by 1 February 1990.

As observed in the Registrar's letter of 14 December 1989, the procedure for written observations on the Application itself, contemplated by Article 83, paragraph 1, of the Rules of Court, remains reserved pending settlement by the Court of this preliminary question.

Copies of the present letter are being sent to the Agents of the two Parties.

(Signed) H. W. A. THIRLWAY.

4. THE AGENT OF HONDURAS TO THE REGISTRAR

15 January 1990 [*sic*; received 12 January 1990].

I have the honour to refer to your letter dated 14 December 1989, requesting the views of my Government on the preliminary question of whether the request by Nicaragua to intervene in the present case between Honduras and El Salvador falls within the competence of the Chamber already constituted for that case or the full Court.

It is clear that jurisdiction in this case arises from the Special Agreement of 24 May 1986, and Article 2 of that Agreement is a request to the *Chamber* of the Court. The full Court has no jurisdiction over the case between Honduras and El Salvador, and equally could have no jurisdiction over Nicaragua on the one hand and either Honduras or El Salvador on the other in this case. Under the Court's Statute the powers of the full Court in relation to a case submitted to a Chamber are confined to matters affecting the *composition* of the Chamber,

such as establishing the original membership of the Chamber, deciding on replacements, deciding on a member's request to be excused, and agreeing to the nomination of *ad hoc* judges.

A request to intervene raises a totally different issue, it is a "procedural" matter under Chapter III of the Statute, and is described as an "incidental" proceeding under Section D of the Rules. Such an incidental procedural matter can only be decided by the body which has jurisdiction over the case as such. This would be true of all incidental proceedings, including an application for interim measures of protection. For the correct principle is believed to be that any Court or Tribunal, with competence over the merits of a case, must (within the limits of its Statute) be free to decide upon the procedures appropriate to the case, and such decision has to be taken in the light of the actual issues of substance raised in the case, not as an abstract matter. Thus, as a matter of both principle and practice, such incidental procedural matters cannot be divorced from the merits and treated by a body with no jurisdiction over the merits. This seems self-evident in a request for intervention where, as in this case, the requesting State has to prove that it has an interest of a legal nature which may be affected by the decision on the merits (Article 62 of the Statute). Whether such a legal interest exists can only be determined in the light of an understanding of the merits of the case. Yet that understanding is properly confined to the Chamber in this case, since the Chamber alone has jurisdiction over the merits. The same would be true of an application for an order of interim measures: a Court without competence over the merits could scarcely judge the factors relevant to such an application, such as the probability of jurisdiction being affirmed and the risk of irreparable harm to the interests of the applicant State.

The fact that Article 84 of the Rules states that "the Court" shall decide on applications to intervene is by no means decisive, for Article 90 makes clear that, for all the provisions in Parts I to III of the Rules, a reference to the Court shall mean a reference to a Chamber for the purposes of a proceeding before a Chamber.

Accordingly, I have to conclude, on behalf on my Government, that Nicaragua's application to intervene must be heard by the Chamber and not by the full Court.

(Signed) Carlos ROBERTO REINA.

5. THE AGENT OF NICARAGUA TO THE REGISTRAR

1 February 1990.

I have the honour to refer to the letter received from the Acting Registrar, Mr. H. W. A. Thirlway, dated 12 January 1990, to which was appended the views of the Parties to the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)* on a preliminary question, namely, whether the Application for permission to intervene presented on behalf of the Republic of Nicaragua falls within the jurisdiction of the Chamber seised of the case, or of the full Court.

In this letter the Acting Registrar indicated that my Government was at liberty to make "any further observations on the question in the light of the views of the Parties" and I now have the honour to submit the necessary observations on behalf of my Government.

The preliminary question involves the interpretation and application of the provisions of the Statute of the Court. The provisions of the Statute have a certain structure and economy within which Chambers are constituted and within which they hear and determine cases. Consequently, Chambers do not form completely autonomous units in relation to the Statute and the full Court.

The matter presently in issue can be approached, first of all, by asking what would be the position if the correct answer to the preliminary question is that the Chamber should hear the Application for permission to intervene. Such a result would evidently be incompatible with the principle of equality of the parties, given that the Chamber includes *ad hoc* judges appointed at the request of El Salvador and Honduras. It would also be in breach of elementary principles of procedural fairness.

One of the main changes introduced in the 1972 Rules of Court was in relation to the composition of *ad hoc* Chambers. As former Registrar Hambro said, the changes in the Rules "... means that the parties are free to make known exactly which individual judges they desire on the Bench for that case" [1].

In effect, Article 26, paragraph 1, of these Rules indicates that the President of the Court "shall consult the agents of the parties regarding the composition of the Chamber".

The role of the parties in organizing the *ad hoc* Chamber is further emphasized by the fact of the continuation of a member of an *ad hoc* Chamber beyond his term of office.

To consider that a challenge to the formation of the Chamber, made because of the extent of the competence *ratione materiae* with which it was anointed, should be aired before the same Chamber, would certainly be a complete surrender of the sovereign will of the intervening party, to the will of the original parties as reflected in the formation of the Chamber.

It should be recalled that the principle of the equality of States is paramount in international relations. All other principles derive from this, in a sense, parent principle: the principles of consent and of reciprocity, apposite in cases of intervention, can only be understood through the principle of the sovereign equality of States.

This principle which demands respect of the sovereign equality of Nicaragua would be inevitably affected if it were decided that the only intervention possible was before the *ad hoc* Chamber. Hence, Nicaragua can only appear before the full Court if this principle is to be respected.

In so determining, no violence will be done to the principle of consent because it would be open to the full Court to determine the application of this principle to the case at hand.

When the full Court receives a request for the formation of a Chamber, the first consideration is to determine the consent of the parties, because it can only be constituted "with the approval of the parties", in the wording of Article 26 of the Statute. Article 17 of the Rules only emphasizes this obvious preliminary determination of the consent of the parties. If one of the parties questions its own consent to the *ad hoc* determination, it would become a matter for the full Court to decide and not for the Chamber.

[1] Edvard Hambro, "Will the Revised Rules of Court Lead to Greater Willingness on the Part of Prospective Clients?", in *The Future of the International Court of Justice*, p. 368 (ed. Leo Gross), 1976.

It is then clear that the consent of the parties is always, in any case, a matter for the full Court to determine. Hence, no damage to this principle will be caused if the request for intervention is heard by the full Court.

Another way of approaching this problem is by suggesting that, in face of the difficulties it involves, the procedure of intervention does not, in consequence, apply to proceedings involving Chambers. This result flies in the face of common sense. It is impossible to suppose that, when the Rules of Court were redesigned in order to enhance the Chamber procedure, a major modification of the Statute of the Court would be brought about indirectly and on the basis of silence or implication. Indeed, the presumption must be that the Statute and Rules operate in accordance with the normal standards of procedural normality and fairness.

The object of introducing the Chamber procedure in a form which allows to States parties to the Statute a significant role in determining the composition of the Court is assumed on all hands to have been to increase the attractiveness of resort to the Court. This considerable concession to the principle of choice did not extend to permitting States to exclude the possibility of intervention by the simple expedient of employing the Chamber procedure.

By parity of reasoning the enhancement of the Chamber procedure brought about in 1972 could not have been intended to have the result that a State requesting permission to intervene should be faced with a judicial setting which would be inherently unacceptable, simply because the case involved a Chamber.

There are additional indications that the full Court is the appropriate instance in respect of the request for permission to intervene. In the first place, the question of replacing an *ad hoc* judge, for example, on the death of the incumbent, is a matter that has been considered within the competence of the full Court. In relation to the Chamber constituted by the Order of 8 May 1987, the full Court decided on a replacement of Judge *ad hoc* Virally by means of the Order dated of 13 December 1989. If a question of this type is within the competence of the full Court, the issues relating to the important institution of intervention *a fortiori* must fall within that competence.

Whilst the relevant provisions of the Statute fall within the rubric of "Chapter III: Procedure", the institution of intervention notoriously involves major issues of substance and has the evident purpose of allowing justice to be done when a third State "has an interest of a legal nature which may be affected by the decision in the case". It would be astonishing if the full Court were to be involved in the replacement of *ad hoc* Judges in Chamber cases whilst being excluded from the application of the provisions of Article 62.

The same consideration applies, *mutatis mutandis*, to the ordering of written pleadings. Article 92 of the Rules of Court make it clear that the full Court orders the first round of written pleadings in a Chamber case. In the proceedings involving El Salvador and Honduras, the first procedural order (dated 27 May 1987) was made by the full Court.

A further consideration appears within this context. A request for permission to intervene may be presented at any time up to the close of the written pleadings (Rules, Article 81 (1)), and, when such a request is made, the question of intervention becomes supervenient, raising issues which are logically anterior to the merits. It must follow that the characterization of intervention as an "incidental proceeding" involves a technical classification which in no way reflects the essence of the intervention proceedings themselves.

The category of "incidental proceedings" also includes interim protection, preliminary objections, and counter-claims, and in the Honduran observations it is argued that all such matters should be decided by the Tribunal "with competence

over the merits of the case". This statement may be acceptable in many situations but, as the Honduran observations state, "such decision has to be taken in the light of the actual issues of substance raised in the case".

Thus what is involved is the application of the Statute and Rules in the particular context. More especially in the application of the Rules as such, the Court (in this context, the full Court) must be presumed to have the power to apply the Rules in such a way as to ensure compatibility with normal standards of common sense and procedural fairness.

Even though the Statute or the Rules of Court do not have a clear cut answer on whether it is the Chamber or the full Court that can adjudicate on requests of intervention in matters that are submitted by means of an special agreement, it is certain that the full Court is the repository of all the powers and duties that have not been conferred to the Chambers, expressly or by necessary implication. That is how the institutional conception of the Court as a judicial organ — and not one of arbitration — is best reflected, and the principles of consent and equality — which do not exist only for the parties to the case to the detriment of the State requesting the intervention — are best respected. The rule is the full Court (Article 25 of the Statute); the exception is the Chamber.

Parties do not have the "right" to demand the formation of an *ad hoc* Chamber. This is a privilege of the Court that "may" form Chambers according to Article 26 of the Statute, which is as clear as Article 65 in the matter of advisory jurisdiction. Exceptions and privileges have to be interpreted restrictively.

It is interesting to ponder on the reason why Article 92, paragraph 1, of the Rules indicates that the full Court shall fix the time limits for the pleadings in cases before all type of Chambers. What is more, if the Court is not sitting — even if the Chamber has already been constituted — it is the President of the full Court that does the fixing. It is interesting to recall that when Honduras and El Salvador requested a postponement for filing their Memorials, the full Court fixed the time-limits, even though the Chamber had been in place for quite a while.

This article, prior to the 1972 change in the Rules, referred only to the Chambers of summary procedure envisioned in Article 29 of the Statute and left the fixing to the Chamber or its President. Upon being made applicable to all chambers, the Court found it necessary to take this faculty away from the Chamber. Hence, it was not a left-over from some mutilated article but was an *ad hoc* addition.

Furthermore, when these Rules were revised there was very strong opposition to the whole question of *ad hoc* Chambers. One of the main questions then under discussion was precisely the amount of control the full Court should have over the *ad hoc* Chamber proceedings. All this tends to make it more difficult to simply brush off this question as an inadvertence or as being supererogatory.

Article 92 (originally Article 72 of the 1946 Rules), as indicated previously, referred exclusively to Chambers of summary procedure. That is why, among other things, it limited the written pleadings to one for each party. When it was made applicable to all Chambers, undoubtedly one of the intentions was that these cases be handled in the most expeditious manner. This limitation to one set of written pleadings, coupled to the fact that it was left to the full Court to fix the time table for these pleadings, holds one of the keys to the solution of the apparent lacuna on intervention.

Another key lies in Article 17 of the Rules, which — with the changes brought about in 1972 — limits the time in which the parties may request the formation of a chamber until the closure of the written proceedings. This sort of auto-limitation made by the Court of the ample mandate it has in Article 26,

paragraph 2, of the Statute, to form a chamber for dealing with a particular case *at any time*, is particularly interesting because, as is well known, what was uppermost in the mind of the reforming Court was precisely the *ad hoc* chambers.

The final key that explains away the apparent puzzle is contained in Article 81 of the present Rules. This article — also reborn in this new fashion in 1972 — advanced the time-limit for introducing an application to intervene to not later than the closure of the written proceedings. Previously it had been possible to do so until the date of the commencement of the oral proceedings.

The fairly obvious conclusion we can reach is that since the full Court intended to maintain the hold on the reins until the presumed end of the written pleadings this new limitation to the time period for intervening is explained. Any such request for intervention would be made when the full Court still had plenty of overt jurisdiction on the case.

The right of intervention authorized by Article 62 of the Statute was not customary in previous forms of international adjudication[2].

The reason for this absence is fairly simple. An arbitration procedure could be safely ignored. Not so a decision that will eventually become a decision of the Court as a whole (Article 27 of the Statute).

If it were a case of dealing with an opinion or decision to be delivered by a tribunal integrated by *ad hoc* judges of the parties (arbitrators), Nicaragua could safely ignore it and the tribunal. Nevertheless, by law it will be considered a decision delivered by the Court as a whole even if it is an *ad hoc* Chamber integrated of necessity and by definition in its totality by *ad hoc* judges selected with the approval of the parties and obviously with no participation by Nicaragua.

As former Registrar Hambro pointed out in an article commenting upon the revised Rules of Court (the 1972 revision), there is a great difference between a judgment rendered by an arbitration court and one given by a Chamber of the ICJ. His comment centred on the then ongoing:

> ". . . Beagle Channel Arbitration Court [which] consists of five members individually appointed. They happen all to be members of the International Court of Justice, but the judgment they render will not be a judgment of the Court, as a judgment of a Chamber would have been. And this is much more than a difference of mere form. It means among other things that the possibility of enforcement measures organized by the Security Council under Article 94 of the Charter does not exist in cases like the *Beagle Channel* case, as would be the case if the tribunal had been a Chamber under Article 26 of the Statute . . . The difference will also mean that the acts and documents will be published as Court publications in the one case but not in the other."[3]

Finally, it cannot be said that the effect on the defence of the rights of Italy in the *Continental Shelf* case were negligible even if its request to intervene was denied. It was not necessary to await the eventual decision on the merits to

[2] One of the exceptions to this was the *Venezuelan Preferential Claims* of 1904 since in that instance the *compromis* provided that other States with claims could "join as a party in the arbitration". This privilege was exercised by several States, see Hudson, *International Tribunals, Past and Future*, 67, 98 (1944).

[3] Edvard Hambro, "Will the Revised Rules of Court Lead to Greater Willingness on the Part of Prospective Clients?", in *The Future of the International Court of Justice*, p. 368 (ed. Leo Gross), 1976.

arrive at this conclusion. The Court was careful to reassure Italy that its legal interests would be taken into account.

If Nicaragua's request for intervention on an equal footing with the Parties is opposed — as El Salvador has anticipated — and the necessary consent relating to the mode in which the Chamber could proceed is not reached, then at the very least, Nicaragua has the right that the full Court — and not a Chamber — should say something about Nicaragua's rights in the same way that the full Court referred to the Italian rights and guaranteed their respect. It is undeniable that the final judgment in the case concerning the *Continental Shelf (Lybian Arab Jamahiriyal Malta)* in which Italy did not participate was "more limited in scope between the parties themselves, and subject to more caveats and reservations in favour of third States, than it might otherwise have been had Italy been present". If Nicaragua is not allowed to intervene on an equal footing, this is the result it seeks, and it can only be obtained by a decision from the full Court on the limits of the competence *ratione materiae* of the *ad hoc* Chamber.

The Honduran reply reflects a misconception of the essence of the International Court of Justice, a misconception that is born with the *compromis* itself.

The *compromis* does not petition the ICJ but addresses itself directly to a non-existent "Sala" (Chamber). Paragraph 1 of Article 1 studiously avoids addressing the full Court.

Perhaps what gives the game away even more clearly is paragraph 1 of Article 3 of the *compromis.* In Section *(a)* the parties agree to request the "Sala" to fix the time-table for their respective Memorials. Obviously, the drafters didn't ignore the existence of Article 92 of the Rules of Court, what they were very clearly trying to do was to ignore the full Court.

And so with the Honduran reply. This is careful to point out — in case we had missed the point — that the Special Agreement ". . . is a request to the *Chamber*, of the Court. The full Court has no jurisdiction over the case between Honduras and El Salvador . . .".

Essentially, what the Court has to decide in this case is whether it retains responsibility over the Chambers it creates or if it can be by-passed by parties who want their very own Chamber, and if possible, that it be brought to life in a virgin birth.

In the context of the preliminary question now in issue, in the respectful submission of my Government, the full Court has the competence to decide the issue raised by the Application for permission to intervene and, in the circumstances of this case should decide in favour of exercising that competence.

(Signed) Carlos ARGÜELLO GÓMEZ.

6. THE AGENT OF EL SALVADOR TO THE REGISTRAR

9 April 1991.

I wish to respectfully inform you that in addition to the persons that compose the Delegation of the Republic of El Salvador in the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, before the Chamber of the International Court of Justice, my Delegation will introduce a witness during the oral proceedings that are to take place, as of April 15, 1991.

The witness is Mr. Jorge Avilés Domínguez, a Salvadorean citizen, of age, a native and of the actual domicile of the Island of Meanguera, Department of La Unión, El Salvador, and during his deposition he will be assisted by our Counselor, Professor Keith Highet and Dr. Francisco José Chavarría, who on this occasion will act as an interpreter. Mr. Avilés Domínguez will present his deposition on my country's territorial rights in the Gulf of Fonseca.

7. L'AGENT DU HONDURAS AU GREFFIER

7 mai 1991.

Me référant à l'article 57 du Règlement de la Cour qui établit que la communication adressée à la Cour sur les moyens de preuve, que les parties entendent invoquer, contient: «liste des noms, prénoms, nationalités, *qualités* et domicile des témoins», j'ai l'honneur de vous demander de bien vouloir m'informer sur les qualités de Monsieur Jorge Avilés Domínguez appelé comme témoin par El Salvador pour présenter: «his deposition on my country's territorial rights in the Gulf of Fonseca» comme dit la lettre de Monsieur l'Agent d'El Salvador du 9 mai 1991.

(Signé) Ramón VALLADARES SOTO.

8. THE AGENT OF EL SALVADOR TO THE REGISTRAR

22 May 1991.

I have the honour to refer to your letter of 7 May 1991, by which you conveyed the request of the Agent of Honduras that, in accordance with Article 57 of the Rules of the Court, we supply the *"qualités"* ("description") of the witness that El Salvador has indicated that it intends to call, Señor Heriberto Avilés Dominguez.

We had thought that we had supplied all information required under the Rules but, in order most fully to reply to the request of the Agent of Honduras, we hereby indicate in addition that Señor Avilés is a private citizen of Salvadoran nationality and a life-long resident of the Township of Meanguera del Golfo, Department of La Unión, Republic of El Salvador. Sr. Avilés has served over the years as a governmental official, primarily in the judicial branch. He has served as Justice of the Peace for Meanguera del Golfo from 1969 to 1977 and in 1988, and as Secretary of the Justice of the Peace from 1977 to 1987. Most recently (until 30 April 1991) he was employed as the Secretario Municipal (Municipal Secretary) of Meanguera del Golfo. He also served as Member of the Municipal Electoral Council, and as Mayor of Meanguera del Golfo, in 1966.

In addition, clarification of the language contained in my letter of 9 May 1991, that Sr. Avilés is to "present his deposition on [his] country's territorial

rights in the Gulf of Fonseca", should be made inasmuch as the points to which Sr. Avilés's evidence will be directed are the peaceful exercise of sovereignty and control in the islands of Meanguera and Meanguerita and the realities of life and the human occupation of these islands, on the basis of his personal knowledge and experience.

In his testimony, Sr. Avilés will make reference to certain documents substantiating his appointments to the aforementioned positions and related matters. In accordance with Article 56 of the Rules of the Court, certified copies of those documents will be presented to the Registrar, together with the required number of copies, before the appearance of Sr. Avilés as witness.

In the course of the examination of Sr. Avilés and in argument of Counsel for El Salvador, reference will be made for the information of the Chamber to a set of colour photographs of Meanguera and its inhabitants taken by Sr. Avilés or in his presence in March and April of this year, and to a set of aerial photographs showing the general geography and layout of the islands in the Gulf of Fonseca taken by El Salvador authorities in 1988 (with particular focus on Meanguera and Meanguerita). These photographs should be considered as illustrative elements of pleading in support of the arguments and testimony to be presented next week, and not as "documents" within the meaning of Article 56. Albums of these photographs will be filed as soon as possible with the Registrar, together with the requisite number of copies.

9. THE AGENT OF EL SALVADOR TO THE REGISTRAR

22 May 1991.

In accordance with Article 57 of the Rules of the Court, I have the honour to transmit herewith a certificate of marriage of Joaquín Avilés and Paula de Jesús Domínguez, the parents of Heriberto Avilés Domínguez, who has been indicated in these proceedings as being a witness to be called by El Salvador, and to which he will refer in his testimony, together with a certified translation thereof into the English language, and a photocopy of the Birth Entry into the Birth Record Book of the Civil Registry of the Municipality of La Unión, Republic of El Salvador, of Joaquín Avilés, father of the aforesaid witness, also with a translation thereof into the English language. The marriage took place in the Township of Choluteca, and was performed by the Municipal Mayor and Secretary thereof, at that time, the 23rd of August of 1930, and the birth took place in Meanguera del Golfo, Department of La Unión, Republic of El Salvador, the 31st of August of 1903. The first certificate was issued by the Mayor and Municipal Secretary of the municipality of Choluteca, Republic of Honduras on January 23, 1980, and the second one is contained in the original Birth Records Book of the Civil Register of the Municipality of La Unión, Department of La Unión, Republic of El Salvador. Both certificates[1] have been certified by the undersigned.

[1] Not reproduced.

10. THE AGENT OF HONDURAS TO THE REGISTRAR

7 June 1991.

I kindly request to transmit to the President of the Chamber, the text of the following note of protest:

The Delegation of the Republic of Honduras reiterates its express reservations against all arguments developed by the Agent of the Republic of Nicaragua in relation with delimitation problems.

It then considers as irreceivable all the comments made during more than an hour this morning on the so-called virtual sea delimitation between Honduras and El Salvador.

In order not to make the task of the Chamber more difficult, the Republic of Honduras only rejects those irreceivable arguments by way of this written note, but it reserves its rights to ask the floor for an oral protest if the attitude of Nicaragua should persist.

11. THE DEPUTY-REGISTRAR TO THE AGENT OF HONDURAS

12 September 1991.

I have the honour to transmit to Your Excellency herewith copies of two letters received in the Registry on 5 September 1991 from, respectively, the Co-Agent[1] and the Agent of El Salvador in the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, concerning the submission of documents to the Chamber formed to deal with that case. Two sets of these documents were received in the Registry with these letters.

The President of the Chamber, while noting that the submission of further documents to the Court after the close of the written proceedings is not a normal part of the procedure, takes the view that in the present case, in view of the fact that the Agent and counsel for El Salvador repeatedly indicated during the oral proceedings that in certain circumstances El Salvador might seek to submit these documents, it is appropriate to apply to them, by extension and *mutatis mutandis*, the provisions of Article 56 of the Rules of Court.

I am accordingly transmitting to you herewith a set of copies of the documents, and should be grateful if you would inform me as soon as possible whether the Government of Honduras has any objection to their production, and if it does not so object, whether it desires to exercise the right conferred by paragraph 3 of Article 56 of the Rules of Court to comment on the documents produced.

I am writing in similar terms to the Agent of El Salvador.

(Signed) Bernard NOBLE.

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[1] Not reproduced.

THE AGENT OF EL SALVADOR TO THE REGISTRAR

30 September [*sic*; received on 5 September] 1991.

I have the honour to refer to my statement made to the Honourable Judges of the Chamber in the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras : Nicaragua intervening)* at the public sitting held on Friday, 18 June 1991, at 10 a.m. at the Peace Palace, Judge Sette-Camara, President of the Chamber, presiding, by which, amongst other matters therein contained, I declared that El Salvador would have to prepare complete copies of all the additional documents referred to in the Meanguera Dossier filed by my Government before the Registry of the Court, inasmuch Honduras is apparently not prepared to agree that the said certifications are correct and that those documents do in fact exist.

In that respect I am submitting to the Chamber a complete set of certified copies of all the additional documents referred to, as I said before, in the Meanguera Dossier, subject to Article 56 of the Rules of Court, solely for the purpose of completing the record and setting things straight.

12. L'AGENT DU HONDURAS AU GREFFIER ADJOINT

24 septembre 1991.

J'ai l'honneur d'accuser réception de votre aimable Note 85386 en date du 12 septembre 1991 à laquelle vous avez bien voulu joindre les copies de deux lettres du Co-Agent et Agent d'El Salvador, portant date du 5 et 30 *(sic)* septembre 1991, dans l'affaire du *Différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras)*, relatives à la présentation par El Salvador de nouveaux documents devant la Chambre de la Cour.

A ce sujet, et sur la base des articles 43 du Statut et 56 et 51 du Règlement, la République du Honduras s'oppose à l'admissibilité de la preuve présentée par El Salvador et, bien que naturellement elle n'a pas l'intention de présenter des observations au sujet des 2 702 documents distribués en sept volumes, elle tient toutefois à souligner que le volume I, spécialement, contient, outre des documents, des commentaires, des exposés et des arguments qui, de l'avis du Honduras, auraient dû être allégués lors de la procédure écrite ou orale.

La présentation de ces documents aujourd'hui, trois mois après la clôture de la procédure orale, bien qu'annoncée par l'Agent d'El Salvador le 14 juin et non pas le 18 comme il est dit dans sa lettre, est contraire au Statut et Règlement de la Cour, surtout si l'on considère que tous les documents originaux de ces éléments de preuve se trouvent dans les archives d'El Salvador et par conséquent auraient pu être présentés en temps utile au cours de ces quatre dernières années de procédure.

En outre et contrairement à ce qui est stipulé à l'article 51, paragraphes 1 et 3, on n'accompagne pas la traduction certifiée conforme à l'une des deux langues officielles de la Cour des textes aujourd'hui déposés devant la Chambre.

Le Honduras ne fait que se ratifier dans sa déclaration du 12 juin (CR 91/47) lorsque l'Agent qui souscrit déclara s'opposer à l'admissibilité du dossier Meanguera.

13. THE DEPUTY-REGISTRAR TO THE AGENT OF HONDURAS

25 September 1991.

I have the honour to acknowledge receipt of Your Excellency's letter of 24 September 1991 concerning the documents which the Government of El Salvador wishes to submit to the Chamber formed to deal with the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, and to inform you that the President of the Chamber will lay the question whether these documents should be admitted before the Chamber for decision.

14. THE REGISTRAR TO THE AGENT OF EL SALVADOR [1]

10 December 1991.

I have the honour to refer to the Deputy-Registrar's letter of 25 September 1991, by which Your Excellency was informed that the President of the Chamber formed to deal with the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* would be laying before the Chamber the question whether the documents submitted by Your Excellency's Government on 5 September 1991 should be admitted as evidence in the case.

The Chamber has now examined that question in the light of the provisions of Article 56 of the Rules of Court which, as indicated in the Deputy-Registrar's letter of 12 September 1991, the President of the Chamber considered should be applied to the documents.

Examination of the volumes delivered by El Salvador has shown that they contain, in addition to copies *in extenso* of existing documents, extracts from memoranda prepared by the Historical Investigator of El Salvador which amount to commentary or argument on the documents themselves. In the view of the Chamber, material of this kind cannot be admitted under the terms of Article 56 of the Rules of Court.

So far as the documents themselves are concerned, Article 56 provides that the Court may authorize the production of a new document "if it considers the document necessary". The Chamber notes that, as was explained by counsel for El Salvador, the original "Meanguera Dossier" already before the Chamber contains a few representative documents of each of the types of documents relied on by El Salvador, together with a certification of the existence of similar documentation, given by the Chief Archivist of El Salvador (CR 91/35, p. 29); that the submission of further documents was announced if Honduras did not formally admit the existence of the additional documents, as it was urged by El Salvador to do; and that the documents now submitted are presented, according to Your Excellency's statement at the final hearing (CR 91/50, p. 17), and your letter of 30 August 1991, "solely for the purpose of completing the record and setting things straight".

[1] A letter in similar terms was sent to the Agent of Honduras.

The Chamber takes the view that the fact that Honduras did not formally admit the existence of the documents referred to in the Chief Archivist's certificate does not, in the circumstances, render the production of these documents "necessary" for the purposes of Article 36, paragraph 2, of the Rules of Court. The decision of the Chamber is therefore that it does not authorize such production.

I am writing in similar terms to the Agent of Honduras.