

ICC-01/04-01/07-HNE-33

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

**CASE CONCERNING THE LAND, ISLAND AND
MARITIME FRONTIER DISPUTE**

(EL SALVADOR/HONDURAS)

APPLICATION BY NICARAGUA FOR PERMISSION
TO INTERVENE

JUDGMENT OF 13 SEPTEMBER 1990

1990

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

**AFFAIRE DU DIFFÉREND FRONTALIER
TERRESTRE, INSULAIRE ET MARITIME**

(EL SALVADOR/HONDURAS)

REQUÊTE DU NICARAGUA À FIN D'INTERVENTION

ARRÊT DU 13 SEPTEMBRE 1990

vene can only be judged *in concreto* and in relation to all the circumstances of a particular case. It is for the State seeking to intervene to identify the interest of a legal nature which it considers may be affected by the decision in the case, and to show in what way that interest may be affected; it is not for the Court itself — or in the present case the Chamber — to substitute itself for the State in that respect.

62. It needs, moreover, to be recalled in this connection that the present case raises a further problem, namely that the Parties to the case are in dispute about the interpretation of the very provision of the Special Agreement — paragraph 2 of Article 2 — which is invoked in Nicaragua's Application. This means that the legal interests of Nicaragua have to be assessed, in relation to the issues in the case, under two different possible situations: an eventual finding by the Chamber in favour of El Salvador's view of the meaning of Article 2, paragraph 2; or an eventual finding in favour of the view of Honduras. This difficulty is not only one for the Chamber in considering the present Application — for obviously, as mentioned above, it must not in any way anticipate its decision of these matters on the merits — but also for Nicaragua in framing its Application, even though it was given access to the pleadings under Article 53, paragraph 1, of the Rules of Court. Nevertheless, there needs finally to be clear identification of any legal interests that may be affected by the decision on the merits. A general apprehension is not enough. The Chamber needs to be told what interests of a legal nature might be affected by its eventual decision on the merits.

63. Nicaragua has presented a particular argument whereby it would apparently be dispensed from producing evidence of the existence of the legal interests on which it relies, by reason of the assertions of the Parties. This argument has at times been denominated "equitable estoppel" and at times "recognition"; in its clearest form it was put forward at the hearings as follows:

"In the submission of the Government of Nicaragua the assertions of fact and law on the part of El Salvador and Honduras in the course of these proceedings constitute recognition of the existence of major legal interests pertaining to Nicaragua which form an inherent part of the parcel of legal questions placed in front of the Chamber by the Special Agreement."

So far as Nicaragua relies on estoppel, the Chamber will only say that it sees no evidence of some essential elements required by estoppel: a statement or representation made by one party to another and reliance upon it by that other party to his detriment or to the advantage of the party making it. The indications to be found in the pleadings of the views of the Parties as to the existence or nature of Nicaraguan interests within or without the Gulf, no doubt amount to some evidence which the Chamber can take into account. None of these however amounts to an admission, recognition or statement that, in the view of the Party concerned, there are