INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING TERRITORIAL AND MARITIME DISPUTE BETWEEN NICARAGUA AND HONDURAS IN THE CARIBBEAN SEA

(NICARAGUA *v.* HONDURAS)

JUDGMENT OF 8 OCTOBER 2007

2007

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DU DIFFÉREND TERRITORIAL ET MARITIME ENTRE LE NICARAGUA ET LE HONDURAS DANS LA MER DES CARAÏBES

(NICARAGUA c. HONDURAS)

ARRÊT DU 8 OCTOBRE 2007

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CASE CONCERNING TERRITORIAL AND MARITIME DISPUTE BETWEEN NICARAGUA AND HONDURAS IN THE CARIBBEAN SEA

(NICARAGUA *v.* HONDURAS)

JUDGMENT

Present: *President* Higgins; *Vice-President* Al-Khasawneh; *Judges* Ranjeva, Shi, Koroma, Parra-Aranguren, Buergenthal, Owada, Simma, Tomka, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov; *Judges* ad hoc Torres Bernárdez, Gaja; *Registrar* Couvreur.

In the case concerning territorial and maritime dispute between Nicaragua and Honduras in the Caribbean Sea,

between

the Republic of Nicaragua,

represented by

H.E. Mr. Carlos José Argüello Gómez, Ambassador of the Republic of Nicaragua to the Kingdom of the Netherlands,

as Agent, Counsel and Advocate;

H.E. Mr. Samuel Santos, Minister for Foreign Affairs of the Republic of Nicaragua;

Mr. Ian Brownlie, C.B.E., Q.C., F.B.A., member of the English Bar, Chairman of the United Nations International Law Commission, Emeritus Chichele Professor of Public International Law, University of Oxford,

member of the Institut de droit international, Distinguished Fellow, All Souls College, Oxford,
Mr. Alex Oude Elferink, Research Associate, Netherlands Institute for the Law of the Sea, Utrecht University,
Mr. Alain Pellet, Professor at the University of Paris X-Nanterre, member and former Chairman of the United Nations International Law Commission,
Mr. Antonio Remiro Brotóns, Professor of International Law, Universidad Autónoma, Madrid,

as Counsel and Advocates;

Mr. Robin Cleverly, M.A., D.Phil, C.Geol, F.G.S., Law of the Sea Consultant, Admiralty Consultancy Services,
Mr. Dick Gent, Law of the Sea Consultant, Admiralty Consultancy Services,

as Scientific and Technical Advisers;

Ms Tania Elena Pacheco Blandino, First Secretary, Embassy of the Republic of Nicaragua in the Kingdom of the Netherlands,
Ms Nadine Susani, Doctor of Public Law, Centre de droit international de Nanterre (CEDIN), University of Paris X-Nanterre,

as Assistant Advisers;

Ms Gina Hodgson, Ministry of Foreign Affairs of the Republic of Nicaragua,
Ms Ana Mogorrón Huerta,

as Assistants,

and

the Republic of Honduras,

represented by

H.E. Mr. Max Velásquez Díaz, Ambassador of the Republic of Honduras to the French Republic,
H.E. Mr. Roberto Flores Bermúdez, Ambassador of the Republic of Honduras to the United States of America,

as Agents;

H.E. Mr. Julio Rendón Barnica, Ambassador of the Republic of Honduras to the Kingdom of the Netherlands,

as Co-Agent;

Mr. Pierre-Marie Dupuy, Professor of Public International Law, University of Paris (Panthéon-Assas), and the European University Institute in Florence,
Mr. Luis Ignacio Sánchez Rodríguez, Professor of International Law, Universidad Complutense de Madrid,
Mr. Christopher Greenwood, C.M.G., Q.C., Professor of International Law, London School of Economics and Political Science,
Mr. Philippe Sands, Q.C., Professor of Law, University College London,

Mr. Jean-Pierre Quéneudec, Professor emeritus of International Law at the University of Paris I (Panthéon-Sorbonne),
Mr. David A. Colson, LeBoeuf, Lamb, Green & MacRae, L.L.P., Washing-

ton, D.C., member of the California State Bar and District of Columbia Bar,
Mr. Carlos Jiménez Piernas, Professor of International Law, Universidad de Alcalá, Madrid,
Mr. Richard Meese, avocat à la Cour d'appel de Paris,

as Counsel and Advocates;

H.E. Mr. Milton Jiménez Puerto, Minister for Foreign Affairs of the Republic of Honduras,
H.E. Mr. Eduardo Enrique Reina García, Deputy Minister for Foreign Affairs of the Republic of Honduras,
H.E. Mr. Carlos López Contreras, Ambassador, National Counsellor, Ministry of Foreign Affairs of the Republic of Honduras,
H.E. Mr. Roberto Arita Quiñónez, Ambassador, Director of the Special Bureau on Sovereignty Affairs, Ministry of Foreign Affairs of the Republic of Honduras,
H.E. Mr. José Eduardo Martell Mejía, Ambassador of the Republic of Honduras to the Kingdom of Spain,
H.E. Mr. Miguel Tosta Appel, Ambassador, Chairman of the Honduran Demarcation Commission, Ministry of Foreign Affairs of the Republic of Honduras,
H.E. Ms Patricia Licona Cubero, Ambassador, Adviser for Central American Integration Affairs, Ministry of Foreign Affairs of the Republic of Honduras,

as Advisers;

Ms Anjolie Singh, Assistant, University College London, member of the Indian Bar,
Ms Adriana Fabra, Associate Professor of International Law, Universitat Autónoma de Barcelona,
Mr. Javier Quel López, Professor of International Law, Universidad del País Vasco,
Ms Gabriela Membreño, Assistant Adviser to the Minister for Foreign Affairs of the Republic of Honduras,
Mr. Sergio Acosta, Minister Counsellor, Embassy of the Republic of Honduras in the Kingdom of the Netherlands,

as Assistant Advisers;

Mr. Scott Edmonds, Cartographer, International Mapping,
Mr. Thomas D. Frogh, Cartographer, International Mapping,

as Technical Advisers.

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 8 December 1999 the Republic of Nicaragua (hereinafter "Nicaragua") filed in the Registry of the Court an Application dated the same day, instituting proceedings against the Republic of Honduras (hereinafter "Honduras") in respect of a dispute relating to the delimitation of the maritime areas appertaining to each of those States in the Caribbean Sea.

In its Application, Nicaragua seeks to found the jurisdiction of the Court on the provisions of Article XXXI of the American Treaty on Pacific Settlement, officially designated, according to Article LX thereof, as the "Pact of Bogotá" (hereinafter referred to as such), as well as on the declarations accepting the jurisdiction of the Court made by the Parties, as provided for in Article 36, paragraph 2, of the Statute of the Court.

2. Pursuant to Article 40, paragraph 2, of the Statute, the Registrar immediately communicated a certified copy of the Application to the Government of Honduras; and pursuant to paragraph 3 of that Article, all States entitled to appear before the Court were notified of the Application.

3. Pursuant to the instructions of the Court under Article 43 of the Rules of Court, the Registrar addressed to States parties to the Pact of Bogotá the notifications provided for in Article 63, paragraph 1, of the Statute of the Court. In accordance with the provisions of Article 69, paragraph 3, of the Rules of Court, the Registrar moreover addressed to the Organization of American States (hereinafter "OAS") the notification provided for in Article 34, paragraph 3, of the Statute. The Registrar subsequently transmitted to this organization copies of the pleadings filed in the case and asked its Secretary-General to inform him whether or not it intended to present observations in writing within the meaning of Article 69, paragraph 3, of the Rules of Court. The OAS indicated that it did not intend to submit any such observations.

4. Pursuant to the instructions of the Court under Article 43 of the Rules of Court, the Registrar addressed to States parties to the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter "UNCLOS") the notifications provided for in Article 63, paragraph 1, of the Statute. In addition, the Registrar addressed to the European Union, which is also party to that Convention, the notification provided for in Article 43, paragraph 2, of the Rules of Court, as adopted on 29 September 2005, and asked that organization whether or not it intended to furnish observations under that provision. In response, the Registrar was informed that the European Union did not intend to submit observations in the case.

5. Since the Court included upon the Bench no judge of the nationality of either of the Parties, each Party proceeded to exercise its right conferred by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case. Nicaragua chose Mr. Giorgio Gaja and Honduras first chose Mr. Julio González Campos, who resigned on 17 August 2006, and subsequently Mr. Santiago Torres Bernárdez.

6. By an Order dated 21 March 2000, the President of the Court fixed 21 March 2001 and 21 March 2002, respectively, as the time-limits for the filing of the Memorial of Nicaragua and the Counter-Memorial of Honduras; those pleadings were duly filed within the time-limits so prescribed.

7. At the time of filing of the Counter-Memorial, Honduras also filed two sets of additional documents which were not produced as annexes thereto, but were, according to Honduras, provided only for informational purposes. At a meeting held by the President of the Court with the Agents of the Parties on 5 June 2002 both Parties agreed on the procedure to be followed with regard to those additional documents. In particular, it was agreed that within three weeks following that meeting, Honduras would inform the Registry which of the additional documents it intended to produce as annexes to the said Counter-Memorial under Article 50 of the Rules of Court, and that by 13 September 2002 Honduras would file those annexes in the Registry. In accordance

with the agreed procedure, by a letter of 25 June 2002, the Co-Agent of Honduras provided the Registry with a list indicating which of the additional documents were to be produced as annexes. Those additional annexes to the Counter-Memorial of Honduras were duly filed within the time-limit agreed upon.

8. By an Order of 13 June 2002, the Court authorized the submission of a Reply by Nicaragua and a Rejoinder by Honduras, and fixed 13 January 2003 and 13 August 2003 as the respective time-limits for the filing of those pleadings. The Reply of Nicaragua and the Rejoinder of Honduras were filed within the time-limits so prescribed.

9. By letter of 22 May 2001, the Government of Colombia requested to be furnished with copies of the pleadings and documents annexed thereto. Having ascertained the views of the Parties pursuant to Article 53, paragraph 1, of the Rules of Court, the Court decided to grant that request. The Registrar communicated that decision to the Government of Colombia and to the Parties by letters of 29 June 2001. By letter of 6 May 2003 the Government of Jamaica requested to be furnished with copies of the pleadings and documents annexed thereto. Having ascertained the views of the Parties pursuant to Article 53, paragraph 1, of the Rules of Court, the Court decided to grant that request. The Registrar communicated that decision to the Government of Jamaica and to the Parties by letters of 30 May 2003.

By letter of 31 August 2004, the Government of El Salvador requested to be furnished with copies of the pleadings and annexed documents in the case. Having ascertained the views of the Parties pursuant to Article 53, paragraph 1, of the Rules of Court, the Court decided that it was not appropriate to grant that request. The Registrar communicated that decision to the Government of El Salvador and to the Parties by letters dated 20 October 2004.

10. By a joint letter of 9 February 2005, the Agent of Nicaragua and the Co-Agent of Honduras communicated to the Court a document signed at Tegucigalpa on 1 February 2005, whereby the Minister for Foreign Affairs of Nicaragua and the Secretary of State for Foreign Affairs of Honduras made known to the Court the wishes of their respective Heads of State regarding the scheduling of the hearings in the case.

11. By letter of 8 September 2006, the Government of El Salvador requested once again to be furnished with copies of the pleadings and annexed documents in the case. Having ascertained the views of the Parties pursuant to Article 53, paragraph 1, of the Rules of Court, the Court decided that it was not appropriate to grant that request. The Registrar communicated that decision to the Government of El Salvador and to the Parties by letters dated 16 November 2006.

12. On 2 February 2007, the Agent of Nicaragua informed the Court that his Government wished to produce 12 new documents, namely 11 letters and one satellite image, in accordance with Article 56 of the Rules of Court. The Court, having ascertained the views of the Honduran Government, decided that as one of the documents formed part of the case file as an annex to the Reply of Nicaragua, it should not be regarded as a new document, and that the satellite image was "part of a publication readily available" pursuant to paragraph 4 of Article 56 of the Rules of Court, and as such could be referred to during the oral proceedings. The Court further decided not to authorize the production of the remaining documents. The Registrar informed the Parties accordingly by letters of 26 February 2007.

13. On 15 February 2007, the Co-Agent of Honduras informed the Court that during the oral proceedings the Honduran Government intended to present

a short video. On 5 March 2007, the Registrar informed the Parties that the Court had decided not to accede to Honduras's request.

14. In accordance with Article 53, paragraph 2, of the Rules of Court, the Court decided, after ascertaining the views of the Parties, that copies of the pleadings and documents annexed would be made available to the public as from the opening of the oral proceedings.

15. Public hearings were held between 5 March and 23 March 2007, at which the Court heard the oral arguments and replies of:

For Nicaragua: H.E. Mr. Carlos José Argüello Gómez,
Mr. Alex Oude Elferink,
Mr. Ian Brownlie,
Mr. Antonio Remiro Brotóns,
Mr. Alain Pellet.

For Honduras: H.E. Mr. Max Velásquez Díaz,
Mr. Christopher Greenwood,
Mr. Luis Ignacio Sánchez Rodríguez,
Mr. Philippe Sands,
Mr. Carlos Jiménez Piernas,
Mr. Jean-Pierre Quéneudec,
Mr. Pierre-Marie Dupuy,
Mr. David A. Colson,
H.E. Mr. Roberto Flores Bermúdez.

16. At the hearings, questions were put by Members of the Court and replies given orally and in writing, in accordance with Article 61, paragraph 4, of the Rules of Court. Honduras commented orally on the oral replies given by Nicaragua. Pursuant to Article 72 of the Rules of Court, each Party presented written observations on the written replies received from the other.

*

17. In its Application, the following requests were made by Nicaragua:

> "Accordingly, *the Court is asked to determine* the course of the single maritime boundary between the areas of territorial sea, continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Honduras, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary.
>
> This request for the determination of a single maritime boundary is subject to the power of the Court to establish different delimitations, for shelf rights and fisheries respectively, if, in the light of the evidence, this course should be necessary in order to achieve an equitable solution.
>
> Whilst the principal purpose of this Application is to obtain a declaration concerning the determination of the maritime boundary or boundaries, the Government of Nicaragua reserves the right to claim compensation for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua, found to the north of the parallel of latitude

14° 59′ 08″ claimed by Honduras to be the course of the delimitation line. Nicaragua also reserves the right to claim compensation for any natural resources that may have been extracted or may be extracted in the future to the south of the line of delimitation that will be fixed by the Judgment of the Court.

The Government of Nicaragua, further, reserves the right to supplement or to amend the present Application as well as to request the Court to indicate provisional measures which might become necessary in order to preserve the rights of Nicaragua."

18. In the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Nicaragua,

in the Memorial:

"Having regard to the considerations set forth in this Memorial and, in particular, the evidence relating to the relations of the Parties.

May it please the Court to adjudge and declare that:

The bisector of the lines representing the coastal fronts of the two parties, as applied and described in paragraphs 22 and 29, Chapter VIII above, and illustrated on the graphic, constitutes the boundary for the purposes of the delimitation of the disputed areas of the continental shelf and exclusive economic zone in the region of the Nicaraguan Rise.

The approximate median line, as described in paragraphs 27 and 29, Chapter X above, and illustrated on the graphic, constitutes the boundary for the purpose of the delimitation of the disputed areas of the territorial sea, extending to the outer limit of the territorial sea, but in the absence of a sector coterminous with the mouth of the River Coco and with the terminus of the land boundary";

in the Reply:

"In accordance with Article 49, paragraph 4, of the Rules of Court, the Government of the Republic of Nicaragua confirms the Submissions previously made in the Memorial submitted to the Court on 21 March 2001."

On behalf of the Government of Honduras,

in the Counter-Memorial:

"Having regard to the considerations set forth in this Counter-Memorial and, in particular, the evidence put to the Court by the Parties,

May it please the Court to adjudge and declare that:

1. The boundary for the purpose of the delimitation of the disputed areas of the territorial sea, and extending to the outer limit of the territorial sea, is a straight and horizontal line drawn from the current mouth of the River Coco, as agreed between the Parties, to the 12-mile limit at a point where it intersects with the 15th parallel (14° 59.8′); and

2. The boundary for the purpose of the delimitation of the disputed areas of the continental shelf and Exclusive Economic Zone in the region is a line extending from the above-mentioned point at the 12-mile limit,

eastwards along the 15th parallel (14° 59.8′) until it reaches the longitude at which the 1986 Honduras/Colombian maritime boundary begins (meridian 82); and further or in the alternative;

3. In the event that the Court decides not to adopt the line indicated above for the delimitation of the continental shelf and Exclusive Economic Zone, then the Court should declare a line extending from the 12-mile limit, eastwards down to the 15th parallel (14° 59.8′) and give due effect to the islands under Honduran sovereignty which are located immediately to the north of the 15th parallel";

in the Rejoinder:

"Having regard to the considerations set forth in the Honduran Counter-Memorial and this Rejoinder,

May it please the Court to adjudge and declare that:

1. From the point decided by the Honduras/Nicaragua Mixed Commission in 1962 at 14° 59.8′ N latitude, 83° 08.9′ W longitude to 14° 59.8′ N latitude, 83° 05.8′ W longitude, the demarcation of the fluvial boundary line and the delimitation of the maritime boundary line which divide the jurisdictions of Honduras and Nicaragua shall be the subject of negotiation between the Parties to this case which shall take into account the changing geographical characteristics of the mouth of the River Coco; and

2. East of 14° 59.8′ N latitude, 83° 05.8′ W longitude, the single maritime boundary which divides the maritime jurisdictions of Honduras and Nicaragua follows 14° 59.8′ N latitude until the jurisdiction of a third State is reached."

19. At the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Nicaragua,

At the hearing of 20 March 2007:

"Having regard to the considerations set forth in the Memorial, Reply and hearings and, in particular, the evidence relating to the relations of the Parties.

May it please the Court to adjudge and declare that:

The bisector of the lines representing the coastal fronts of the two Parties as described in the pleadings, drawn from a fixed point approximately 3 miles from the river mouth in the position 15° 02′ 00″ N and 83° 05′ 26″ W, constitutes the single maritime boundary for the purposes of the delimitation of the disputed areas of the territorial sea, exclusive economic zone and continental shelf in the region of the Nicaraguan Rise.

The starting-point of the delimitation is the thalweg of the main mouth of the River Coco such as it may be at any given moment as determined by the Award of the King of Spain of 1906.

Without prejudice to the foregoing, the Court is requested to decide the question of sovereignty over the islands and cays within the area in dispute."

On behalf of the Government of Honduras,

At the hearing of 23 March 2007:

"Having regard to the pleadings, written and oral, and to the evidence submitted by the Parties,

May it please the Court to adjudge and declare that:

1. The islands Bobel Cay, South Cay, Savanna Cay and Port Royal Cay, together with all other islands, cays, rocks, banks and reefs claimed by Nicaragua which lie north of the 15th parallel are under the sovereignty of the Republic of Honduras.
2. The starting-point of the maritime boundary to be delimited by the Court shall be a point located at 14° 59.8′ N latitude, 83° 05.8′ W longitude. The boundary from the point determined by the Mixed Commission in 1962 at 14° 59.8′ N latitude, 83° 08.9′ W longitude to the starting-point of the maritime boundary to be delimited by the Court shall be agreed between the Parties to this case on the basis of the Award of the King of Spain of 23 December 1906, which is binding upon the Parties, and taking into account the changing geographical characteristics of the mouth of the River Coco (also known as the River Segovia or Wanks).
3. East of the point at 14° 59.8′ N latitude, 83° 05.8′ W longitude, the single maritime boundary which divides the respective territorial seas, exclusive economic zones and continental shelves of Honduras and Nicaragua follows 14° 59.8′ N latitude, as the existing maritime boundary, or an adjusted equidistance line, until the jurisdiction of a third State is reached."

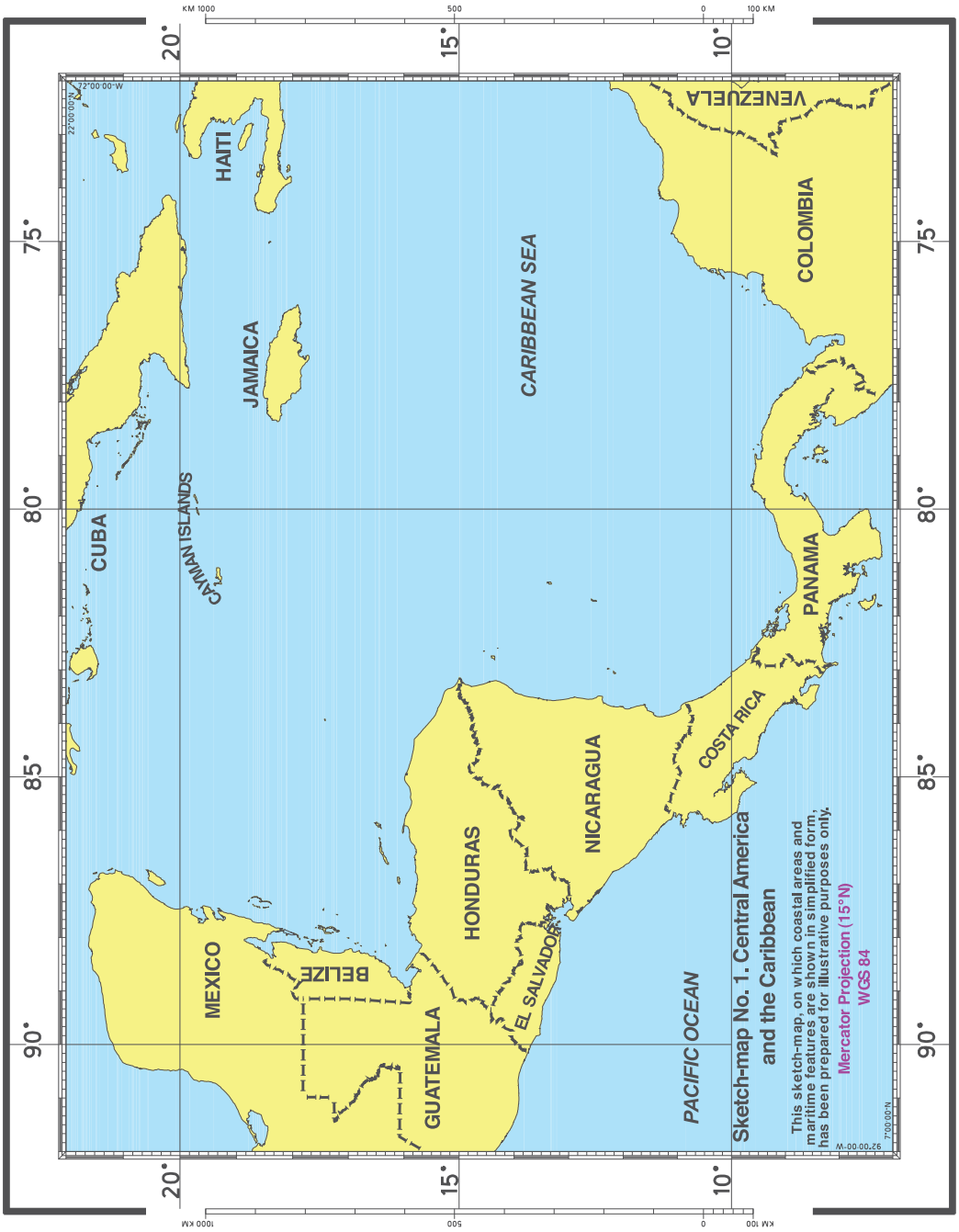
* * *

2. Geography

2.1. Configuration of the Nicaraguan and Honduran Coasts

20. The area within which the delimitation sought in the present case is to be carried out lies in the basin of the Atlantic Ocean between 9° to 22° N and 89° to 60° W, commonly known as the Caribbean Sea (for the general geography of the area, see below, p. 670, sketch-map No. 1). The Caribbean Sea embraces an area of approximately 2,754,000 square kilometres (1,063,000 square miles) and is located between the landmasses of North and South America. The Caribbean Sea is an arm of the Atlantic Ocean partially enclosed to the north and east by the islands of the West Indies, and bounded to the south and west by South and Central America.

21. The continental coasts of Venezuela, Colombia, and Panama bound the Caribbean Sea to the south and Costa Rica, Nicaragua, Honduras, Guatemala, Belize, and the Yucatán Peninsula of Mexico bound it to the west. To the north and east it is bounded by the Greater Antilles islands of Cuba, Hispaniola, Jamaica, and Puerto Rico and by the Lesser Antilles, consisting of the island arc that extends from the Virgin Islands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CARIBBEAN SEA
CUBA
CAYMAN ISLANDS
PANAMA
COSTA RICA
NICARAGUA
HONDURAS
EL SALVADOR
BELIZE
MEXICO
GUATEMALA
PACIFIC OCEAN
Sketch-map No. 1. Central America and the Caribbean
This sketch-map, on which coastal areas and maritime features are shown in simplified form, has been prepared for illustrative purposes only.
Mercator Projection (15°N)
WGS 84

in the north-east to the islands of Trinidad and Tobago, off the Venezuelan coast, in the south-east.

22. The Caribbean Sea is divided into four main submarine basins that are separated from one another by submerged ridges and rises. These are the Yucatán, Cayman, Colombian and Venezuelan basins. The northernmost Yucatán Basin is separated from the Gulf of Mexico by the Yucatán Channel, which runs between the island of Cuba and the Yucatán Peninsula of Mexico. The Cayman Basin, which is located further south, is partially separated from the Yucatán Basin by the Cayman Ridge that extends from the southern part of Cuba toward the Central American State of Guatemala and, midway, rises to the surface to form the Cayman Islands.

23. Nicaragua and Honduras are located in the south-western part of the Caribbean Sea. To the south of Nicaragua lie Costa Rica and Panama and to the east Nicaragua faces the mainland coast of Colombia. To the north-west of Honduras lie Guatemala, Belize and Mexico and to the north Honduras faces Cuba and the Cayman Islands. Finally, Jamaica is situated to the north-east of Nicaragua and Honduras. The south-western tip of the island of Jamaica is about 340 nautical miles distant from the mouth of the River Coco where the land boundary between Nicaragua and Honduras terminates on the Caribbean coast.

24. The Nicaraguan coastal front on the Caribbean Sea spans around 480 kilometres. The coast runs slightly west of south after Cape Gracias a Dios all the way to the Nicaraguan border with Costa Rica except for the eastward protrusion at Punta Gorda (14° 19′ N latitude).

25. Honduras, for its part, has a Caribbean coastal front of approximately 640 kilometres that runs generally in an east-west direction between the parallels 15° to 16° of north latitude. The Honduran segment of the Central American coast along the Caribbean continues its northward extension beyond Cape Gracias a Dios to Cape Falso (15° 14′ N latitude) where it begins to swing towards the west. At Cape Camarón (15° 59′ N latitude) the coast turns more sharply so that it runs almost due west all the way to the Honduran border with Guatemala.

26. The two coastlines roughly form a right angle that juts out to sea. The convexity of the coast is compounded by the cape formed at the mouth of the River Coco, which generally runs east as it nears the coast and meets the sea at the eastern tip of Cape Gracias a Dios. Cape Gracias a Dios marks the point of convergence of both States' coastlines. It abuts a concave coastline on its sides and has two points, one on each side of the margin of the River Coco separated by a few hundred metres.

27. The continental margin off the east coast of Nicaragua and Honduras is generally termed the "Nicaraguan Rise". It takes the form of a relatively flat triangular shaped platform, with depths around 20 metres. Approximately midway between the coast of those countries and the

coast of Jamaica, the Nicaraguan Rise terminates by deepening abruptly to depths of over 1,500 metres. Before descending to these greater depths the Rise is broken into several large banks, such as Thunder Knoll Bank and Rosalind Bank (also known as Rosalinda Bank) that are separated from the main platform by deeper channels of over 200 metres. In the shallow area of the ridge close to the mainland of Nicaragua and Honduras there are numerous reefs, some of which reach above the water surface in the form of cays.

28. Cays are small, low islands composed largely of sand derived from the physical breakdown of coral reefs by wave action and subsequent reworking by wind. Larger cays can accumulate enough sediment to allow for colonization and fixation by vegetation. The tropical shallow-water conditions of the western Caribbean are conducive for coral reef growth. Cays, and especially the smaller ones, are extremely vulnerable to tropical storms and hurricanes which occur frequently in the Caribbean.

29. The insular features present on the continental shelf in front of Cape Gracias a Dios, to the north of the 15th parallel, include Bobel Cay, Savanna Cay, Port Royal Cay and South Cay, located between 30 and 40 nautical miles east of the mouth of the River Coco.

In this Judgment, the names of the maritime features which appear in both the English and the French text and sketch-maps are those most commonly used, whether Spanish or English.

30. The area to the north-east of Cape Gracias a Dios also includes a number of important fishing banks located between 60 and 170 nautical miles from the mouth of the River Coco. Of particular importance are Middle Bank, Thunder Knoll Bank, Rosalind Bank and Gorda Bank.

2.2. Geomorphology of the Mouth of the River Coco

31. The land area abutting upon the maritime areas in dispute, which is known as the Miskito or Mosquito Coast, is one of deltas, sandbars, and lagoons. It is a coast where extensive and rapid morphological changes have occurred. As a result, the coast north and south of Cape Gracias a Dios is of a typical accumulative type: the shoreline is formed by long stretching sandy barrier islands or spits. Many of those islands and spits migrate constantly and slowly enclose lagoons which eventually will be filled with fine sediment and become dry land. A collection of coastal lagoons extends from Cape Camarón in Honduras to Bluefields, a town in the south of the Nicaraguan Caribbean coast. This chain of lagoons is separated from the sea by thin sand barriers. These lagoons are more in the nature of shallow pools formed by the rivers at their mouths than inroads from the sea. Continuous sediments are deposited in them and sand barriers obstruct their entrance. The most notable effect is the rapid

accretion and inevitable advance of the coastal front due to the constant deposition of terrigenous sediments carried by the rivers to the sea. The strong erosion of the mountains in the interior, the abundant rain and the considerable flow on the rivers that drain the Caribbean slope of the region cause this deposition.

32. The River Coco is the longest river of the Central American isthmus and bears one of the largest volumes of water. From a geomorphological point of view the mouth of the River Coco is a typical delta which forms a protrusion of the coastline forming a cape: Cape Gracias a Dios. All deltas are by definition geographical accidents of an unstable nature and suffer changes in size and form in relatively short periods of time. The River Coco has been progressively projecting Cape Gracias a Dios towards the sea carrying with it huge quantities of alluvium. The sediments deposited by the River Coco are dispersed by a network of diverging and shifting river channels, a process which gives rise to a deltaic plain. The hierarchy of the river channels changes rapidly: the main channels may quickly become secondary channels and vice versa. The accumulated delta sediments are subsequently transported and redeposited along the Honduran coast by the Caribbean Current and along the Nicaraguan coast by the Colombia-Panama Gyre (a circular current running anticlockwise along the Nicaraguan coast). In sum, both the delta of the River Coco and even the coastline north and south of it show a very active morpho-dynamism. The result is that the river mouth is constantly changing its shape, and unstable islands and shoals form in the mouth where the river deposits much of its sediment.

* *

3. Historical Background

33. Both Nicaragua and Honduras, which had been under the rule of Spain, became independent States in 1821. Thereafter, Nicaragua and Honduras, together with Guatemala, El Salvador, and Costa Rica, formed the Federal Republic of Central America, also known as the United Provinces of Central America, which existed from 1823 to 1840. In 1838 Nicaragua and Honduras seceded from the Federation, each maintaining the territory it had before. The Federation disintegrated in the period between 1838 and 1840.

34. On 25 July 1850, the Republic of Nicaragua and the Queen of Spain signed a treaty recognizing Nicaragua's independence from Spain. According to the terms of this Treaty the Queen of Spain recognized as "free, sovereign and independent the Republic of Nicaragua with all its territories that now belong to it from sea to sea, or that will later belong to it" (Art. II). The Treaty also stated that the Queen of Spain relinquished

> "the sovereignty, rights and actions she holds over the American territory located between the Atlantic and the Pacific sea, with its adjacent islands, known before by the name of the province of Nicaragua, now Republic of the same name, and over the remainder of the territories that have incorporated into said Republic" (Art. I).

The names of the adjacent islands pertaining to Nicaragua were not specified in the Treaty.

35. On 15 March 1866, the Republic of Honduras and the Queen of Spain signed a treaty recognizing Honduras's independence from Spain. According to the terms of this Treaty the Queen of Spain recognized the Republic of Honduras

> "as a free, sovereign and independent state, which comprises the entire territory that was the province of that name during the period of Spanish domination, this territory being bounded in the East, Southeast and South by the Republic of Nicaragua" (Art. I).

The Treaty also stated that the Queen renounced "the sovereignty, rights and claims that she has in respect of the territory of the said Republic". The Treaty recognized Honduran territory as comprising "the adjacent islands that lie along its coasts in both oceans" without identifying these islands by name.

36. Nicaragua and Honduras later attempted to delimit their boundary by signing the Ferrer-Medina Treaty in 1869 and the Ferrer-Uriarte Treaty in 1870, but neither treaty entered into force.

37. On 7 October 1894 Nicaragua and Honduras successfully concluded a general boundary treaty known as the Gámez-Bonilla Treaty which entered into force on 26 December 1896 (*I.C.J. Reports 1960*, pp. 199-202). Article II of the Treaty, according to the principle of *uti possidetis juris*, provided that "each Republic is owner of the territory which at the date of independence constituted respectively, the provinces of Honduras and Nicaragua". Article I of the Treaty further provided for the establishment of a Mixed Boundary Commission to demarcate the boundary between Nicaragua and Honduras:

> "The Governments of Honduras and Nicaragua shall appoint representatives who, duly authorized, shall organize a Mixed Boundary Commission, whose duty it shall be to settle in a friendly manner all pending doubts and differences, and to demarcate on the spot the dividing line which is to constitute the boundary between the two Republics."

38. The Commission, which met from 1900 to 1904, fixed the boundary from the Pacific Ocean at the Gulf of Fonseca to the Portillo de Teotecacinte, which is located approximately one third of the way across the land territory, but it was unable to determine the boundary from that point to the Atlantic coast. Pursuant to the terms of Article III of the

Gámez-Bonilla Treaty, Nicaragua and Honduras subsequently submitted their dispute over the remaining portion of the boundary to the King of Spain as sole arbitrator. King Alfonso XIII of Spain handed down an Arbitral Award on 23 December 1906, which drew a boundary from the mouth of the River Coco at Cape Gracias a Dios to Portillo de Teotecacinte. The operative part of the Award stated that:

> "The extreme common boundary point on the coast of the Atlantic will be the mouth of the River Coco, Segovia or Wanks, where it flows out in the sea close to Cape Gracias a Dios, taking as the mouth of the river that of its principal arm between Hara and the Island of San Pío where said Cape is situated, leaving to Honduras the islets and shoals existing within said principal arm before reaching the harbour bar, and retaining for Nicaragua the southern shore of the said principal mouth with the said Island of San Pío, and also the bay and town of Cape Gracias a Dios and the arm or estuary called Gracias which flows to Gracias a Dios Bay, between the mainland and said Island of San Pío.
>
> Starting from the mouth of the Segovia or Coco, the frontier line will follow the *vaguada* or thalweg of this river upstream without interruption until it reaches the place of its confluence with the Poteca or Bodega, and thence said frontier line will depart from the River Segovia, continuing along the thalweg of the said Poteca or Bodega upstream until it joins the River Guineo or Namaslí.
>
> From this junction the line will follow the direction which corresponds to the demarcation of the *Sitio de Teotecacinte* in accordance with the demarcation made in 1720 to terminate at the *Portillo de Teotecacinte* in such a manner that said *Sitio* remains wholly within the jurisdiction of Nicaragua." (*Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras* v. *Nicaragua), Judgment, I.C.J. Reports 1960*, pp. 202-203.)

39. Nicaragua subsequently challenged the validity and binding character of the Arbitral Award in a Note dated 19 March 1912. After several failed attempts to settle this dispute and a number of boundary incidents in 1957, the Council of the OAS took up the issue that same year. Through the mediation of an *ad hoc* Committee established by the Council of the OAS, Nicaragua and Honduras agreed to submit their dispute to the International Court of Justice.

40. In its Application instituting proceedings, filed on 1 July 1958, Honduras requested the Court to adjudge and declare that the failure by Nicaragua to give effect to the Arbitral Award "constitut[ed] a breach of an international obligation" (*ibid.*, p. 195) and that Nicaragua was under an obligation to give effect to the Award. Nicaragua, for its part, requested the Court to adjudge and declare that the decision rendered by the King of Spain did not "possess the character of a binding arbitral award", that in any event it was "incapable of execution by reason of its omissions, contradictions and obscurities" and that Nicaragua and Honduras were

"in respect of their frontier in the same legal situation as before 23 December 1906" (*Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras* v. *Nicaragua), Judgment, I.C.J. Reports 1960*, pp. 198 and 199), the date of the Award.

41. In its Judgment, having considered the arguments of the Parties and evidence in the case file, the Court first found that "the Parties [had] followed the procedure that had been agreed upon for submitting their respective cases" to an arbitrator in accordance with the provisions of the Gámez-Bonilla Treaty. Thus the designation of King Alfonso XIII as arbitrator entrusted with the task of ruling on the boundary dispute between the two Parties was valid. The Court then examined Nicaragua's contention that the Gámez-Bonilla Treaty had lapsed before the King of Spain had agreed to act as arbitrator and found that "the Gámez-Bonilla Treaty was in force till 24 December 1906, and that the King's acceptance on 17 October 1904 of his designation as arbitrator was well within the currency of the Treaty".

42. The Court further considered that,

> "having regard to the fact that the designation of the King of Spain as arbitrator was freely agreed to by Nicaragua, that no objection was taken by Nicaragua to the jurisdiction of the King of Spain as arbitrator either on the ground of irregularity in his designation as arbitrator or on the ground that the Gámez-Bonilla Treaty had lapsed even before the King of Spain had signified his acceptance of the office of arbitrator, and that Nicaragua fully participated in the arbitral proceedings before the King, it is no longer open to Nicaragua to rely on either of these contentions as furnishing a ground for the nullity of the Award" (*ibid.*, p. 209).

43. The Court then turned to Nicaragua's allegation that the Award was "a nullity" on the grounds that it had been vitiated by *(a)* "excess of jurisdiction", *(b)* "essential error" and *(c)* "lack or inadequacy of reasons in support of the conclusions arrived at by the Arbitrator".

44. The Court stated that Nicaragua "by express declaration and by conduct, recognized the Award as valid and it [was] no longer open to Nicaragua to go back upon that recognition and to challenge the validity of the Award". Even in the absence of such recognition "the Award would, in the judgment of the Court, still have to be recognized as valid" for the following reasons.

First, the Court was unable to uphold the claim that the King of Spain had gone beyond the authority conferred upon him. Second, the Court added that it had not been able to discover in the arguments of Nicaragua any precise indication of "essential error" which would have had the effect, as alleged by Nicaragua, "of rendering the Award a nullity". In this regard, the Court observed that "[t]he instances of 'essential error' that Nicaragua [had] brought to the notice of the Court amount[ed] to no more than the evaluation of documents and of other evidence submitted

to the arbitrator". Third, the Court rejected the last ground of nullity raised by Nicaragua by concluding that

> "an examination of the Award show[ed] that it deal[t] in logical order and in some detail with all relevant considerations and that it contain[ed] ample reasoning and explanations in support of the conclusions arrived at by the arbitrator" (*Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras* v. *Nicaragua), Judgment, I.C.J. Reports 1960*, pp. 215 and 216).

45. The Court finally dealt with the argument by Nicaragua that the Award was not capable of execution by reason of its "omissions, contradictions and obscurities". In this regard, the Court noted that

> "In view of the clear directive in the operative clause [fixing the common boundary point on the coast of the Atlantic as the mouth of the river Segovia or Coco, where it flows out into the sea] and the explanations in support of it in the Award, the Court [did] not consider that the Award [was] incapable of execution by reason of any omissions, contradictions or obscurities."

46. In the operative part of its Judgment, the Court found that the Award made by the King of Spain on 23 December 1906 was valid and binding and that Nicaragua was under an obligation to give effect to it (*ibid.*, p. 217).

47. As Nicaragua and Honduras could not thereafter agree on how to implement the 1906 Arbitral Award, Nicaragua requested the intervention of the Inter-American Peace Committee. The Committee subsequently established a Mixed Commission which completed the demarcation of the boundary line with the placement of boundary markers in 1962. The Mixed Commission determined that the land boundary would begin at the mouth of the River Coco, at 14° 59.8′ N latitude and 83° 08.9′ W longitude.

48. From 1963 to 1979, Honduras and Nicaragua generally enjoyed friendly relations. The first efforts at bilateral negotiations between the Parties on matters relating to the maritime boundary in the Caribbean were initiated at the request of Nicaragua, by means of a diplomatic Note dated 11 May 1977. In this communication addressed to the Minister for Foreign Affairs of Honduras, the Ambassador of Nicaragua to Honduras noted that his "Government wish[ed] to initiate conversations leading to the determination of the definitive marine and sub-marine delimitation in the Atlantic and Caribbean Sea zone".

By a diplomatic Note of 20 May 1977 the Minister for Foreign Affairs of Honduras replied that his "Government accept[ed] with pleasure the opening of negotiations" on the maritime delimitation. However these negotiations made no progress consequent upon the Sandinista revolution that toppled the Somoza Government in July 1979. In the period that followed until 1990 (when the new Nicaraguan Government of Vio-

leta Chamorro was sworn into office), relations between Nicaragua and Honduras deteriorated.

49. On 21 September 1979, Honduras sent a diplomatic Note to Nicaragua stating that a Honduran fishing vessel had been attacked by Nicaragua 8 miles north of the 15th parallel, which, according to the Honduran Note, served "as the limit between Honduras and Nicaragua". On 24 September 1979, Nicaragua sent a diplomatic Note in reply offering assurance that an urgent investigation would be carried out regarding the "capture [of a] Honduran motor fishing vessel . . . and crew by [a] Honduran fishing vessel . . ., being used by Nicaraguan regular forces". The Nicaraguan Note made no mention of the assertion by Honduras that the 15th parallel served as the boundary line between the two countries.

50. Nicaragua, on 19 December 1979, enacted the Continental Shelf and Adjacent Sea Act. The Preamble to that Act stated that prior to 1979,

> "foreign intervention [had] not permit[ted] the full exercise by the People of Nicaragua of [the nation's] rights over the Continental Shelf and Adjacent Sea — rights which correspond[ed] to the Nicaraguan Nation by history, geography and International Law".

Article 2 of the Act provided that "[t]he sovereignty and jurisdiction of Nicaragua extends over the sea adjacent to its seacoasts for 200 nautical miles". The official map of the continental shelf of Nicaragua of 1980, and the official map of the Republic dated 1982, both included a box comprising Rosalind, Serranilla and adjacent areas up to parallel 17°.

51. Honduras promulgated a new Constitution on 11 January 1982, which provided in Article 10 that, among others, the cays of Palo de Campeche and Media Luna and the banks of Salmedina, Providencia, De Coral, Rosalind and Serranilla "and all others located in the Atlantic that historically, geographically and juridically belong to it" were Honduran. Article 11 of the 1982 Honduran Constitution further declared an exclusive economic zone of 200 nautical miles.

52. On 23 March 1982, Honduras sent a diplomatic Note to Nicaragua with regard to an incident on 21 March 1982, involving the capture of four Honduran fishing vessels to the north of the 15th parallel by two Nicaraguan coastguard vessels, which had subsequently towed the Honduran fishing vessels to a Nicaraguan port, Puerto Cabezas, lying at approximately 14° N latitude. In the Note, Honduras affirmed that the 15th parallel had been traditionally recognized as the boundary line:

> "On Sunday the 21st of this month, two coastguard launches of the Sandinista Navy penetrated as far as Bobel and Media Luna Cays, 16 miles to the North of Parallel 15, which has been tradition-

> ally recognised by both countries to be the dividing line in the Atlantic Ocean. In flagrant violation of our sovereignty in waters under Honduran jurisdiction, they proceeded to capture four Honduran fishing launches and their crews, all of Honduran nationality towing them toward Puerto Cabezas, in Nicaragua."

53. On 14 April 1982, Nicaragua sent a diplomatic Note in response to Honduras asserting that Nicaragua had never recognized any maritime boundary with Honduras in the Caribbean Sea:

> "Your Excellency refers in your Note that on Sunday, March 21st, two of our Coastguard ships 'penetrated as far as Bobel and Media Luna Cays, 16 miles North of Parallel 15. This has been traditionally recognized by both countries to be the dividing line in the Atlantic.' This affirmation, to the least, surprises us, since Nicaragua has not recognized any maritime frontier with Honduras in the Caribbean Sea, being undefined until today the maritime boundary between Honduras and Nicaragua in said sea. Nicaragua understands that in Honduras there is a criterion that aspires to establish said Parallel as the boundary line. At no time has Nicaragua recognized it as such since that would imply an attempt against the territorial integrity and national sovereignty of Nicaragua. According to the established rules of international law, territorial matters must be necessarily resolve[d] in treaties validly celebrated and in conformity with the internal dispositions of the contracting States, not having effected to date, any agreement in this regard. Therefore, Nicaragua rejects Your Excellency's affirmation in the sense that it claims to establish Parallel 15 as the boundary line between our two countries in the Caribbean Sea."

In the Note, Nicaragua further stated that it considered that negotiations on the delimitation in the Caribbean Sea "should be undertaken through mixed commissions" but that "[i]n the interest of avoiding frictions between [the] two countries" such discussions should be "postponed, in order to wait the adequate moment to proceed with negotiations".

54. By a diplomatic Note dated 3 May 1982, the Minister for Foreign Affairs of Honduras continued the exchange by proposing that, pending a resolution of the problem, a temporary line or zone be created which would be without prejudice to the maritime rights that either State might claim in the future in the Caribbean Sea:

> "I agree with Your Excellency when you affirm that the maritime border between Honduras and Nicaragua has not been legally delimited. Despite this, it cannot be denied that there exists, or at least that there used to exist, a traditionally accepted line, which is that which corresponds to the Parallel which crosses Cape Gracias a Dios.

> There is no other way of explaining why it is only since a few months ago that there have occurred, with worrying frequency, border incidents between our two countries.
>
> However, I coincide with Your Excellency that this is not the appropriate moment at which to open a discussion on maritime borders . . .
>
> From what both Your Excellency and my Government have expressed, it is clear that our two countries desire the maintenance of peace, and will abstain from introducing new points of controversy in the current circumstances. To this end, however, I consider it necessary to adopt some sort of criterion, albeit informal and transitional, in order to prevent incidents such as that which concerns us now. The temporary establishment of a line or zone might be considered which, without prejudice to the rights that the two States might claim in the future, could serve as a momentary indicator of their respective areas of jurisdiction. I am sure through the frank and cordial dialogue we have already started, we will be able to find a satisfactory solution for both Parties."

55. On 18 September 1982, Honduras sent a diplomatic Note to Nicaragua protesting an attack alleged to have been initiated by Nicaragua on that day against a Honduran fishing boat near Bobel and Media Luna cays, north of the 15th parallel.

56. By a diplomatic Note of 19 September 1982, Nicaragua rejected the Honduran proposal to create a temporary line or zone as set out in the Honduran Foreign Minister's diplomatic Note of 3 May 1982 and further contested Honduras's version of the facts concerning the attack on a fishing vessel alleged by Honduras in its Note of 18 September 1982. In particular, Nicaragua noted that

> "the Government of Nicaragua manifests its deep astonishment at certain affirmations stated by Your Excellency in your Note [of 18 September 1982], in relation to the jurisdictional zone in the Caribbean Sea. As we have pointed out in previous Notes, the maritime frontier between Honduras and Nicaragua in the Caribbean Sea is not delimited nor do there exist traditional lines of jurisdiction between our two countries in that zone. This unquestionable reality was already accepted by the Republic of Honduras, in Note No. 254 DSM dated May 3 of the current year, that His Excellency, the Minister of Foreign Affairs of that country, Doctor Edgardo Paz Barnica, addressed to the Minister of Nicaragua, Miguel D'Escoto Brockmann, that one of its parts literally expresses: 'I agree with Your Excellency when you affirm that the maritime frontier between Honduras and Nicaragua has not been legally delimited.'"

57. On 27 June 1984, Honduras sent Nicaragua a diplomatic Note in which it protested in respect of the Nicaraguan official map of 1982 and

requested the map's rectification. Honduras claimed that the map had wrongfully included the banks and cays of Rosalind and Serranilla which Honduras claimed pertained to it.

58. Accusations and counter accusations over supposed incursions in the disputed maritime area continued throughout the 1980s and the 1990s, including during periods of bilateral negotiations. Numerous incidents involving the capture and/or attack by each State of fishing vessels belonging to the other State in the vicinity of the 15th parallel were recorded in a series of diplomatic exchanges.

59. Honduras concluded a maritime boundary treaty with Colombia on 2 August 1986. On 8 September 1986, Nicaragua sent a diplomatic Note to Honduras stating that the said treaty "pretend[ed] to divide between Honduras and Colombia extensive zones that include insular territories, adjacent seas and continental shelf that historically, geographically and legally correspond to the sovereignty of Nicaragua".

60. In response, Honduras sent a diplomatic Note to Nicaragua dated 29 September 1986 stating that the treaty in question

> "constitutes the expression of the sovereign will of two States to establish their maritime boundary in areas over which Nicaragua does not exercise and has never exercised any jurisdiction whatsoever, given that it cannot provide . . . historical, geographical or legal grounds to support any claim that those areas belong to it".

Honduras further indicated in the same Note that it would be willing to enter into negotiations with the Nicaraguan Government with regard to the maritime delimitation.

61. The Parties, through a Joint Declaration of the Foreign Ministers of Honduras and Nicaragua made on 5 September 1990, established a Mixed Commission for Maritime Affairs. According to this Joint Declaration, the purpose of the Commission was "the prevention and solution of maritime problems between both countries". The Joint Declaration also stated that the Mixed Commission would "examine, as a priority, border issues in the maritime areas of the Gulf of Fonseca and the Atlantic coast, and the fisheries problems derived from the above". The Mixed Commission met for the first time on 27 May 1991.

62. In a further Joint Declaration of 29 November 1991, the Parties declared that it was "necessary to search for solutions consistent with the ideals for the integration of Central America". Nicaragua contends that:

> "The general intent of this Joint Declaration was that Nicaragua and Honduras would not make agreements with non-Central Ameri-

> can States that could prejudice either Party. The specific intention was that Honduras would not ratify the maritime delimitation Treaty she had concluded with Colombia in August 1986. Nicaragua for her part agreed to discontinue the case it had pending against Honduras in the [Central American] Court [of Justice]."

63. The Mixed Commission for Maritime Affairs held its second meeting on 5 August 1992, and was scheduled to meet again on 7 July 1993, but that meeting was postponed. On 24 March 1995, Nicaragua proposed that the Parties seek to examine again the delimitation of maritime areas in the Caribbean Sea. The Mixed Commission for Maritime Affairs was merged on 20 April 1995 with the Commission of Boundary Cooperation to form a new Bi-national Commission, which held its first meeting on 20 April 1995 whereby it was agreed to create a sub-commission in charge of delimitation issues in the Caribbean Sea and demarcation of areas already delimited in the Gulf of Fonseca. The Sub-commission was actually established at the second meeting of the Bi-national Commission held on 15 to 16 June 1995. The Sub-commission however was unable to resolve the delimitation differences in the Caribbean Sea (its last meeting scheduled for 25 April 1997 was cancelled by mutual consent).

64. On 19 April 1995 Honduras sent a diplomatic Note in protest at the capture of a Honduran fishing vessel by Nicaraguan coastguard vessels. On 5 May 1995, Nicaragua sent a diplomatic Note to Honduras in response, reiterating its claims "up to parallel 17 latitude North" that it had first advanced in a Note dated 12 December 1994. Continuing the exchange, Honduras maintained its position that the 15th parallel constituted the maritime boundary.

65. By diplomatic Notes dated 18 and 27 December 1995 sent to the Nicaraguan Minister for Foreign Affairs, Honduras protested the capture of five Honduran fishing vessels and their crew on 17 December 1995 by Nicaraguan coastguards. By Notes dated 20 December 1995 and 6 January 1996, Nicaragua, referring to the seizure of only four Honduran vessels, informed the Honduran Minister for Foreign Affairs, *inter alia*, that it "[could] not permit the exploitation by third States of its natural resources in its legitimate national maritime areas".

66. Following these incidents, an *ad hoc* Commission was constituted as a result of a meeting held between the Presidents of Nicaragua and Honduras on 14 January 1996. The *ad hoc* Commission held a special meeting on 22 January 1996 in which both the Honduran and Nicaraguan delegations stated that the purpose was to enter into an interim agreement for a provisional common fishing zone in order to avoid the recurrence of the capture of fishing boats. The *ad hoc* Commission also

met on 31 January 1996. These meetings did not produce any results and were discontinued. Honduras's proposal for a "common fishing zone . . . 'three nautical miles to the North and three nautical miles to the South of Parallel 15° 00′ 00″ Latitude North and 82° 00′ 00″ Longitude West'" was rejected by Nicaragua. Nicaragua's counter-proposal was for the creation of a common fishing zone between the 15th and 17th parallels, and was similarly rejected by Honduras.

67. On 24 September 1997, the Parties signed a Memorandum of Understanding which allowed for the revival of bilateral negotiations on the boundary issues through the constitution of a new Mixed Commission "in order to explore possible solutions to the situations existing in the Gulf of Fonseca, the Pacific Ocean and the Caribbean Sea". Honduras states that the 1997 Mixed Commission was the last effort at bilateral negotiations between the Parties. According to Nicaragua, the

> "last phase of 'negotiation' took place on November 28, 1999, when the President of the Republic of Nicaragua was unexpectedly informed of the decision of the Honduran Government to ratify four days later the Treaty of August 2, 1986 on Maritime Delimitation with Colombia".

Honduras states that

> "the significance of [the 1986 Treaty between Colombia and Honduras] lies in its recognition by Colombia that the maritime area to the north of the 15th parallel forms part of Honduras, and that the 82nd meridian is the appropriate terminus for the delimitation".

Nicaragua claims that "[f]uture negotiations became impossible once Honduras took the step of ratifying the Treaty with Colombia".

68. Nicaragua in its pleadings informed the Court of the fact that on 29 November 1999, it filed an application instituting proceedings against Honduras as well as a request for the indication of provisional measures before the Central American Court of Justice. On 30 November 1999, the Central American Court of Justice entered the case on its docket. The present Court observes that the relevant documents in the public domain, available in Spanish on the website of the Central American Court of Justice (www.ccj.org.ni), reveal the following facts.

69. In the Application, Nicaragua asked the Central American Court of Justice to declare that Honduras, by proceeding to the approval and ratification of the 1986 Treaty between Colombia and Honduras on maritime delimitation, was acting in violation of certain legal instruments of regional integration, including the Tegucigalpa Protocol to the Charter of the Organization of Central American States (that Protocol entered into force on 23 July 1992). In its request for the indication of provisional measures, Nicaragua asked the Central American Court of Justice to order Honduras to abstain from approving and ratifying the 1986 Treaty, until the sovereign interests of Nicaragua in its maritime spaces, the pat-

rimonial interests of Central America and the highest interests of the regional institutions had been "safeguarded". By Order of 30 November 1999 the Central American Court of Justice ruled that Honduras suspend the procedure of ratification of the 1986 Treaty pending the determination of the merits in the case.

Honduras and Colombia continued the ratification process and on 20 December 1999 exchanged instruments of ratification. On 7 January 2000, Nicaragua made a further request for the indication of provisional measures asking the Central American Court of Justice to declare the nullity of Honduras's process of ratification of the 1986 Treaty. By Order of 17 January 2000, the Central American Court of Justice ruled that Honduras had not complied with its Order on provisional measures dated 30 November 1999 but considered that it did not have jurisdiction to rule on the request made by Nicaragua to declare the nullity of Honduras's ratification process.

70. In its judgment on the merits, on 27 November 2001 the Central American Court of Justice confirmed the existence of a "territorial patrimony of Central America". The Central American Court of Justice further held that, by having ratified the 1986 Treaty between Colombia and Honduras on maritime delimitation, Honduras had infringed ("ha infringido") a number of provisions of the Tegucigalpa Protocol to the Charter of the Organization of Central American States, which set out, *inter alia*, the fundamental objectives and principles of the Central American Integration System, including the concept of the "territorial patrimony of Central America".

71. Throughout the 1990s several diplomatic Notes were also exchanged with regard to the Parties' publication of maps concerning the area in dispute. Among them was a Note of 7 April 1994 sent by the Honduran Minister for Foreign Affairs protesting Nicaragua's circulation of an official map of Nicaragua, displaying an area denominated the "Nicaraguan Rise". The map depicted certain banks and cays, including Serranilla, as pertaining to Nicaragua. On 14 April 1994, Nicaragua responded to Honduras's protest at said map, stating that

> "[w]ithout prejudice of the rights that correspond to Nicaragua, [the Honduran Government] will have observed that the official map of the Republic of Nicaragua, clarifies most strictly and categorically, that the maritime frontiers in the Caribbean Sea have not been legally delimited".

In 1994, Honduras published an official map of Honduras that included, among other features, Media Luna Cays, Alargado Reef, Rosalind Bank, and Serranilla Banks and Cays within the "Honduran insular possessions in the Caribbean Sea". This publication elicited a diplomatic Note from Nicaragua dated 9 June 1995, in which it protested

the 1994 Honduran map and asserted that Nicaragua possessed insular and maritime rights in the area north of the 15th parallel.

* * *

4. Positions of the Parties: A General Overview

4.1. Subject-matter of the Dispute

72. In its Application and written pleadings Nicaragua asked the Court to determine the course of the single maritime boundary between the areas of territorial sea, continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Honduras in the Caribbean Sea. Nicaragua states that it has consistently maintained the position that its maritime boundary with Honduras in the Caribbean Sea has not been delimited. During the oral proceedings, Nicaragua also made a specific request that the Court pronounce on sovereignty over islands located in the disputed area to the north of the boundary line claimed by Honduras running along 14° 59.8′ North latitude (hereinafter, for the sake of simplicity, generally referred to as the "15th parallel").

*

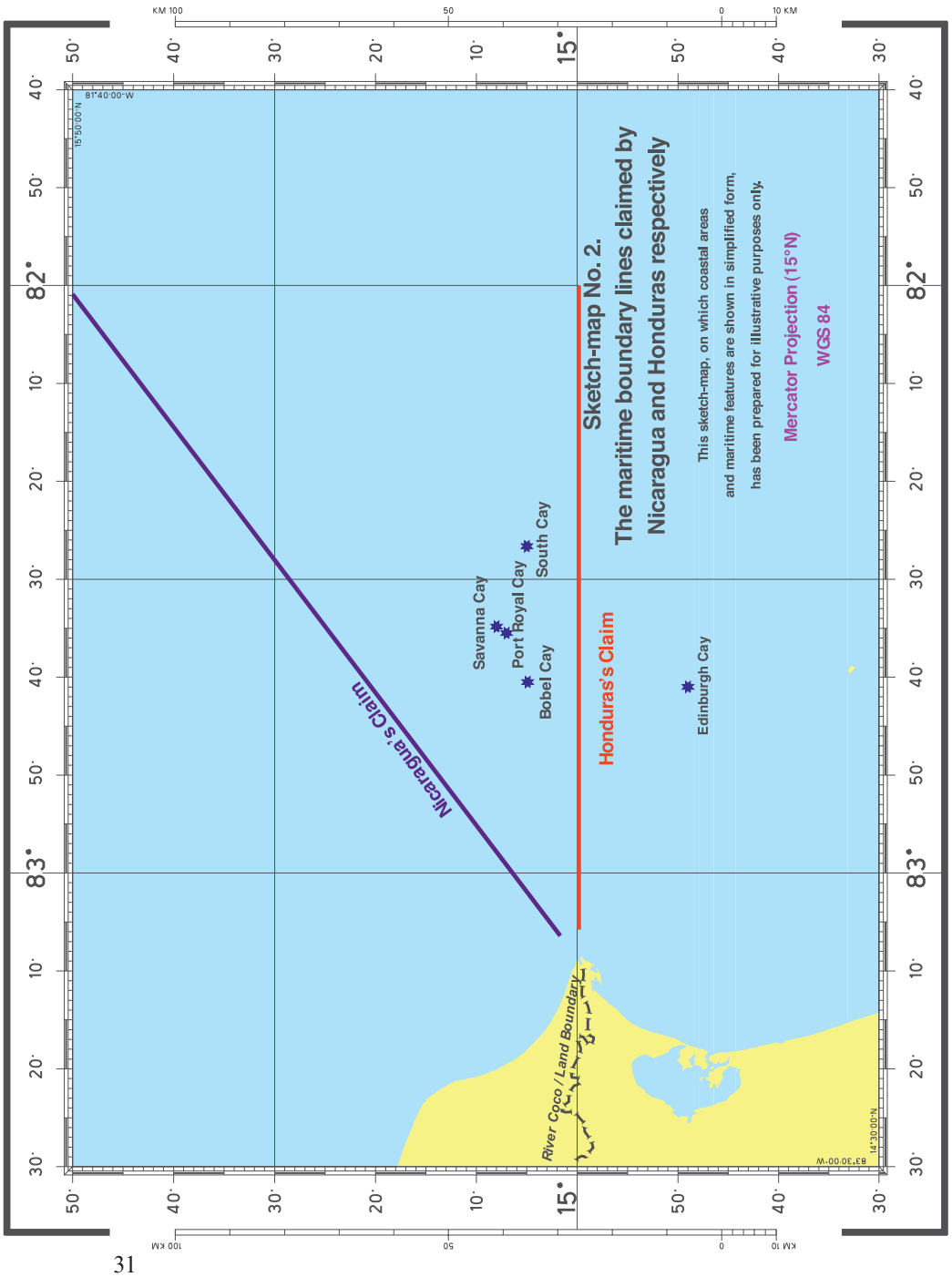
73. According to Honduras, there already exists in the Caribbean Sea a traditionally recognized boundary between the maritime spaces of Honduras and Nicaragua "which has its origins in the principle of *uti possidetis juris* and which is firmly rooted in the practice of both Honduras and Nicaragua and confirmed by the practice of third States". Honduras agrees that the Court should "determine the location of a single maritime boundary" and asks the Court to trace it following the "traditional maritime boundary" along the 15th parallel "until the jurisdiction of a third State is reached". During the oral proceedings Honduras also asked the Court to adjudge that

> "[t]he islands Bobel Cay, South Cay, Savanna Cay and Port Royal Cay, together with all other islands, cays, rocks, banks and reefs claimed by Nicaragua which lie north of the 15th parallel are under the sovereignty of the Republic of Honduras" (for the maritime boundary line claimed respectively by each Party, see below, p. 686, sketch-map No. 2).

* *

4.2. Sovereignty over the Islands in the Area in Dispute

74. Nicaragua claims sovereignty over the islands and cays in the disputed area of the Caribbean Sea to the north of the 15th parallel, including Bobel Cay, Savanna Cay, Port Royal Cay and South Cay.


Sketch-map No. 2.
The maritime boundary lines claimed by Nicaragua and Honduras respectively
This sketch-map, on which coastal areas and maritime features are shown in simplified form, has been prepared for illustrative purposes only.
Mercator Projection (15° N)
WGS 84
Nicaragua's Claim
Honduras's Claim
River Coco / Land Boundary Terminus
Savanna Cay
Port Royal Cay
South Cay
Bobel Cay
Edinburgh Cay
81°40'00"W
15°50'00"N
83°30'00"W
N.06°30'.3'1
KM 100
50
0
10 KM
100 KM
50
0
KM 10
15°
82°
83°

75. Nicaragua states that none of these islands, cays and rocks were *terra nullius* in 1821, when Nicaragua and Honduras gained independence from the Kingdom of Spain. However, according to Nicaragua, upon independence these features were not assigned to either of the Republics. Nicaragua adds that despite extensive research into the matter it is impossible to establish the *uti possidetis juris* situation of 1821 in respect of the cays in dispute. Nicaragua therefore concludes that recourse must be had to "other titles" and in particular contends that, in view of the geographical proximity of the islands to the Nicaraguan coastline, it holds original title over them under the principle of adjacency.

76. Nicaragua notes that as a matter of law *effectivités* cannot be substituted for original title. Therefore, in Nicaragua's view, the meagre *effectivités* invoked by Honduras cannot displace Nicaraguan title over the islands. Furthermore, Nicaragua argues that most of the *effectivités* alleged by Honduras occurred after the critical date (a concept that the Court will expand upon further at paragraph 117 below), which Nicaragua gives as 1977, when Honduras accepted Nicaragua's offer to hold negotiations on the maritime delimitation between the two countries in the Caribbean Sea. With regard to its own *effectivités*, Nicaragua argues that the exercise of its own sovereignty "over the maritime area in dispute including the cays, is attested to by the question of the turtle fisheries negotiations and agreements with Great Britain that began in the nineteenth century and were still ongoing in the 1960s".

77. Finally Nicaragua notes that its exercise of sovereignty and jurisdiction in the maritime area in question has been recognized by third States, and that the cartographic evidence, while not providing conclusive evidence, also supports its claim to sovereignty.

*

78. Honduras claims sovereignty over Bobel Cay, Savanna Cay, Port Royal Cay and South Cay, in addition to claiming title over other smaller islands and cays lying in the same area of the Caribbean Sea.

79. Honduras's primary argument is that it has an original title over the disputed islands derived from the doctrine of *uti possidetis juris*. Honduras concurs with Nicaragua in the belief that none of the islands and cays in dispute were *terra nullius* upon independence in 1821. However, according to Honduras at that date, Cape Gracias a Dios, lying along the 15th parallel, constituted the land and maritime boundary between the provinces of Honduras and Nicaragua. Thus on the basis of *uti possidetis juris* the islands formerly belonging to Spain north of the 15th parallel became the islands of the newly independent Republic of Honduras.

80. Honduras contends that its original title to the islands north of the

15th parallel is confirmed by many *effectivités*. In this regard Honduras, in relation to the islands, refers to the application of Honduran public and administrative legislation and laws as well as of its criminal and civil laws, the regulation of fisheries activities and immigration, the regulation by Honduras of exploration and exploitation of oil and gas, the carrying out of military and naval patrols, search and rescue operations and the participation by Honduras in public works and scientific surveys.

81. In the event that the Court finds that no State can make out a claim based on *uti possidetis juris*, Honduras argues that through its *effectivités* it has made out a superior claim compared to Nicaragua. In this regard Honduras contests Nicaragua's claim that the most of these *effectivités* occurred after the critical date as claimed by Nicaragua. Honduras does not accept Nicaragua's alleged critical date of 1977, but notes that in any event many of the acts of sovereignty over the disputed islands which it describes occurred before that date. Honduras argues that the critical date cannot be earlier than 21 March 2001, the date when Nicaragua filed its Memorial asserting for the first time that Nicaragua had title to the islands.

82. Finally, Honduras adds that a number of third States have recognized Honduran sovereignty over the islands, and that the cartographic evidence, while not of itself dispositive, supports Honduras's claim to sovereignty.

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4.3. Maritime Delimitation beyond the Territorial Sea

4.3.1. Nicaragua's line: bisector method

83. In its legal argument, Nicaragua begins with the delimitation of maritime areas beyond the territorial sea. In the circumstances of the case, Nicaragua proposes a method of delimitation consisting of "the bisector of the angle produced by constructing lines based upon the respective coastal frontages and producing extensions of these lines". Such a bisector is calculated from the general direction of the Nicaraguan coast and the general direction of the Honduran coast. These coastal fronts generate a bisector which runs from the mouth of the River Coco as a line of constant bearing (azimuth 52° 45′ 21″) until intersecting with the boundary of a third State in the vicinity of Rosalind Bank.

84. Nicaragua also states that "[b]ecause of the particular characteristics of the area in which the land boundary intersects with the coast, and for other reasons, the technical method of equidistance is not feasible" for the maritime delimitation between Nicaragua and Honduras. In particular Nicaragua refers to the fact that "the exact location where the land boundary ends is like the points of protruding needles" resulting in

a "pronounced turn in the direction of the coast precisely on the boundary line". Nicaragua argues that as a result of this geographical feature

> "the only two points that would dominate any delimitation based on median line or equidistance calculations are the two margins of the River. This remains the same even at a distance of 200 nautical miles if only the mainland coast is used."

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85. Honduras asserts that Nicaragua's proposed bisector method "is based on a flawed assessment of coastal fronts and delimitation methods". The Atlantic coast of Nicaragua is relatively linear, runs "slightly west of south" all the way from Cape Gracias a Dios to Costa Rica and faces overall "slightly south of east". Thus there is no justification based on the configuration of Nicaragua's coast for the Nicaraguan bisector line running north-east. According to Honduras, Nicaragua's angle is supposed to have been constructed by taking account of the coastal directions of the Parties. However as the two coasts are treated by Nicaragua as straight lines the angle created bears no relationship to the actual coasts.

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4.3.2. Honduras's line: "traditional boundary" along the parallel 14° 59.8′ North latitude ("the 15th parallel")

86. Honduras asks the Court to confirm what it claims is a traditional maritime boundary running along the 15th parallel between Honduras and Nicaragua in the Caribbean Sea and to continue that existing line until the jurisdiction of a third State is reached. According to Honduras this traditional line has its historical basis in the principle of *uti possidetis juris*. Honduras contends that upon independence in 1821 there was a maritime jurisdiction division aligned along the 15th parallel out to at least 6 nautical miles from Cape Gracias a Dios.

87. Honduras further claims that the Parties' conduct since independence demonstrates the existence of a tacit agreement that the 15th parallel has long been treated as the line dividing their maritime spaces. Honduras states that conduct in relation to the disputed islands and the maritime boundary are closely connected. Many of the acts expressing sovereignty over the islands also constitute conduct recognizing the 15th parallel as the maritime boundary. In this regard Honduras places particular emphasis on oil concessions, fisheries licences and naval patrols which, it contends, provide ample proof of

the acceptance by the Parties of the traditional boundary line offshore.

88. Honduras states that it was only in 1979, with the change in government in Nicaragua, that the "position and conduct of Nicaragua in relation to the establishment of the 15th parallel as the maritime boundary between the two States changed radically". Thus the critical date for the start of the controversy, in terms of the dispute between the Parties over the delimitation of their respective maritime spaces, cannot be before 1979. Honduras furthermore notes that in any event many of its examples of conduct occurred prior to that date.

89. Honduras also refers to the practice of the Parties as reflected in their diplomatic exchanges, their legislation and their cartography to demonstrate the mutually acknowledged existence of a traditional maritime boundary along the 15th parallel. In addition Honduras claims that the 15th parallel has been recognized as such a boundary by third States and international organizations.

90. While contending that the 15th parallel is a traditional line based on *uti possidetis juris* and confirmed by the subsequent conduct of the Parties showing their common acceptance of this line, Honduras also seeks to show that its line is in any event equitable in character. It compares it with the equidistance line of delimitation "constructed using standard methods", which, according to Honduras runs to the south of the 15th parallel. Honduras claims that Nicaragua would gain more maritime space with the "traditional line" than it would achieve by strict application of the equidistance line. Honduras further argues that the Honduran line does not cut-off the projection of the coastal front of Nicaragua and respects the principle of non-encroachment.

91. Were its contentions as to the 15th parallel not to be accepted by the Court, Honduras asks alternatively that the Court trace an adjusted equidistance line, until the jurisdiction of a third State is reached. Honduras maintains that the construction of a provisional equidistance line is possible and that there is therefore no reason to depart from "the practice almost universally adopted in the modern jurisprudence, both of this Court and of other tribunals, that is to begin with a provisional equidistance line".

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92. Nicaragua contends that it has consistently held that the maritime spaces between the two States in the Caribbean Sea have not been delimited.

93. Nicaragua asserts that there is "no *uti possidetis juris* of 1821 that attributes or delimits maritime areas" between the two States and that

there are no Honduran acts of sovereignty or *effectivités* to support the contention that a traditional line exists along the 15th parallel. In particular, Nicaragua maintains that

> "the concept of *uti possidetis* that was used to determine the boundaries of the administrative divisions of the colonial power that were considered to be frozen in place at the moment of independence had nothing to do with maritime matters".

94. Nicaragua further states that there "is no line dividing the maritime areas of Nicaragua and Honduras based on a tacit agreement or any form of acquiescence or recognition whatever resulting from long-established and consistent practice".

95. With regard to the maritime spaces Nicaragua focuses on three elements representing alleged *effectivités* by Honduras — oil exploration concessions, fisheries activities and naval patrols. First, Nicaragua argues that the limits of oil concessions are not relevant to fixing a boundary between two States. Moreover,

> "none of the Honduran concessions states that its southern limit coincides with the maritime boundary with Nicaragua. Similarly, none of the Nicaraguan concessions defining a northern limit specifies that the limit coincides with the maritime boundary with Honduras."

Second, according to Nicaragua neither the witness statements nor fishing licences produced by Honduras nor the FAO fisheries reports can be considered as a confirmation of the existence of a "traditional boundary" or as evidence of Nicaragua's consent to such a boundary. Third, with regard to the naval patrols, Nicaragua notes that as a matter of law, naval or air patrols on the high seas cannot be equated to an *effectivité*. Nicaragua notes furthermore that many of these supposed *effectivités* took place after the critical date, which it gives as 1977.

96. As to the diplomatic exchanges between the Parties, Nicaragua maintains that "the Honduran claim that the 15th Parallel is the boundary of maritime areas with Nicaragua was not made formally until 1982" and was immediately rejected by Nicaragua. Nicaragua argues that Honduras has not presented any evidence that in the period prior to 1977 the Parties acquiesced to the existence of a traditional maritime boundary or that there were Honduran claims to the areas in question. On the contrary, there have been countless occasions in the context of diplomatic exchanges when Nicaragua has reaffirmed that there is no maritime boundary in the Caribbean Sea that is based on tradition or on any tacit acceptance by Nicaragua.

97. For the cartographic evidence, Nicaragua asserts that none of the

maps published in Nicaragua and reproduced by Honduras indicate that a maritime boundary runs along the 15th parallel. With regard to the claim that Nicaragua failed to protest against certain official maps produced by Honduras, Nicaragua comments that the absence of protest in regard to these maps is irrelevant due to the fact that the maps have no evidentiary value.

98. Nicaragua contends that, given the significant change in the direction of the coast, the boundary line which follows a parallel of latitude "is essentially inequitable" and "transgresses the primary equitable principle prohibiting the cutting-off of a state, in this case Nicaragua, from the continental shelf or exclusive economic zone lying in front of its coasts". Moreover, there is "a glaring disproportion between the maritime spaces that Honduras attributes to herself and those she considers to be Nicaraguan, bounded by the parallel of 15° N". Nicaragua concludes that the overall result is "grossly inequitable in terms of the law of maritime delimitation".

* *

4.4. Starting-point of the Maritime Boundary

99. Nicaragua recalls that the terminus of the land boundary between Nicaragua and Honduras was established by the 1906 Arbitral Award at the mouth of the principal arm of the River Coco (see paragraph 38 above). In 1962 the Mixed Boundary Commission determined that the starting-point of the land boundary at the mouth of the River Coco was situated at 14° 59.8′ North latitude and 83° 08.9′ West longitude (see paragraph 47 above). Nicaragua further states that since 1962 the mouth of the River Coco has moved more than 1 mile north and east due to the accretion of sediments and the trend of marine streams. As a result, the point plotted by the Commission is today located approximately 1 mile landwards from the actual mouth of the River Coco. According to Nicaragua the instability and fluctuations of the river mouth will continue in the "predictable future" and will lead to changes in the co-ordinates of the terminus of the land boundary. It thus proposes that the starting-point of the maritime boundary be set "at a prudent distance", namely 3 nautical miles out at sea from the actual mouth of the River Coco on the bisector line.

100. Nicaragua initially suggested that the Parties would have to negotiate "a line representing the boundary between the point of departure of the boundary at the mouth of the River Coco and the point of departure from which the Court will have determined the [maritime] boundary line". While leaving that proposal open, Nicaragua, in its final submissions, asked the Court to confirm that: "The starting-point of the delimitation is the thalweg of the main mouth of the River Coco such as it may

be at any given moment as determined by the Award of the King of Spain of 1906."

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101. Honduras agrees that the terminal point of the land boundary between Honduras and Nicaragua fixed by the Mixed Commission in 1962, due to "the gradual movement eastwards of the actual mouth of the River Coco", "now lies well inside what would now be described as the 'mouth' in geographical terms". The instability of the mouth of the River Coco, "identified as the endpoint of the boundary" by the 1906 Award, according to Honduras, makes it undesirable to ask the Court "to determine either the location of the mouth of the river, or even the starting-point of the line immediately east of that point". While initially suggesting that the Court should be requested to "begin the line only at the outer limit of territorial waters", Honduras then, "seeking to minimise the point of difference with Nicaragua", accepted a starting-point of the boundary "at 3 miles from the terminal point adopted in 1962, rather than 12 miles from the coast, as proposed in the Counter-Memorial". However Honduras argues that the seaward fixed point should be measured from the point established by the 1962 Mixed Commission and located on the 15th parallel. The seaward fixed point should accordingly be established precisely 3 nautical miles due east from the 1962 point. Honduras also states that the Parties should negotiate an agreement covering the distance from the 1962 terminus point up to the 3-mile point seaward of the mouth of the River Coco.

4.5. Delimitation of the Territorial Sea

102. Nicaragua states that the delimitation of the territorial sea between States with adjacent coasts must be effected on the basis of the principles set out in Article 15 of UNCLOS. In the view of Nicaragua, in the present case however it is technically impossible to draw an equidistance line because it would have to be entirely drawn on the basis of the two outermost points of the mouth of the river, which are extremely unstable and continuously change position. Thus, according to Nicaragua, the bisector line should also be used for the delimitation of the territorial sea. Moreover, the bisector line in the territorial sea does not vary significantly from the "mean" equidistance line. Lastly, the segment of the line between the present terminus of the land boundary and the offshore point fixed 3 miles from the mouth of the River Coco, "allows for a harmonious, flexible and adjustable connection between the 'single line of delimitation' and [the endpoint of the land boundary]".

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103. With regard to the boundary of the territorial sea, Honduras agrees with Nicaragua that there are "special circumstances" which, under Article 15 of UNCLOS "require a delimitation by a line other than a strict median line". However, according to Honduras, while the configuration of the continental landmass may be one such "special circumstance", of far greater significance "is the established practice of the Parties in treating the 15th parallel as their boundary from the mouth of the River Coco (14° 59.8′)". Honduras also identifies as a factor of "the greatest significance . . . the gradual movement eastwards of the actual mouth of the River Coco". Honduras therefore suggests that from the fixed seaward starting-point (3 miles due east from the point fixed by the Mixed Commission in 1962) the maritime boundary in the territorial sea (just as for the areas of the exclusive economic zone and continental shelf) should follow in an eastward direction the 15th parallel.

* * *

5. Admissibility of the New Claim relating to Sovereignty over the Islands in the Area in Dispute

104. The Court recalls that in its Application, Nicaragua requested the Court to determine

> "the course of the single maritime boundary between the areas of territorial sea, continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Honduras, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary".

The Government of Nicaragua further reserved its "right to supplement or to amend" the Application.

105. In its Memorial, Nicaragua, while not putting forward a claim of sovereignty as a formal submission,

> "reserve[d] [its] sovereign rights appurtenant to all the islets and rocks claimed by Nicaragua in the disputed area. The islets and rocks concerned include but are not confined to the following:
>
> > Hall Rock, South Cay, Arrecife Alargado, Bobel Cay, Port Royal Cay, Porpoise Cay, Savanna Cay, Savanna Reefs, Cayo Media Luna, Burn Cay, Logwood Cay, Cock Rock, Arrecifes de la Media Luna, and Cayo Serranilla".

106. During the first round of the oral proceedings the Agent of Nicaragua declared that

> "so that there is no possible misunderstanding on this point — that

> is, whether the issue of sovereignty over these features [i.e. the islands in the disputed area] is in question — then as of this moment Nicaragua wishes to anticipate that in its final submissions at the end of these oral pleadings it will specifically request a decision on the question of sovereignty over these features".

107. In its final submissions at the end of the oral proceedings, Nicaragua requested the Court, without prejudice to the line of the single maritime boundary "as described in the pleadings", "to decide the question of sovereignty over the islands and cays within the area in dispute".

108. The Court notes that

> "[t]here is no doubt that it is for the Applicant, in its Application, to present to the Court the dispute with which it wishes to seise the Court and to set out the claims which it is submitting to it" (*Fisheries Jurisdiction (Spain* v. *Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, p. 447, para. 29).

Article 40, paragraph 1, of the Statute of the Court requires moreover that the "subject of the dispute" be indicated in the Application; and Article 38, paragraph 2, of the Rules of Court requires "the precise nature of the claim" to be specified in the Application. In a number of instances in the past the Court has had occasion to refer to these provisions. It has characterized them as "essential from the point of view of legal security and the good administration of justice" and, on this basis, the Court held inadmissible certain new claims, formulated during the course of proceedings, which, if they had been entertained, would have transformed the subject of the dispute originally brought before it under the terms of the Application (*Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992,* p. 267, para. 69; *Fisheries Jurisdiction (Spain* v. *Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, p. 447, para. 29; see also *Prince von Pless Administration, Order of 4 February 1933, P.C.I.J., Series A/B, No. 52*, p. 14, and *Société Commerciale de Belgique, Judgment, 1939, P.C.I.J., Series A/B, No. 78*, p. 173).

109. The Court observes that, from a formal point of view, the claim relating to sovereignty over the islands in the maritime area in dispute, as presented in the final submissions of Nicaragua, is a new claim in relation to the claims presented in the Application and in the written pleadings.

110. However, the mere fact that a claim is new is not in itself decisive for the issue of admissibility. In order to determine whether a new claim introduced during the course of the proceedings is admissible the Court will need to consider whether,

> "although formally a new claim, the claim in question can be considered as included in the original claim in substance" (*Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Prelimi-*

nary Objections, Judgment, I.C.J. Reports 1992, pp. 265-266, para. 65).

For this purpose, to find that the new claim, as a matter of substance, has been included in the original claim, it is not sufficient that there should be links between them of a general nature. Moreover,

> "[a]n additional claim must have been implicit in the application (*Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 36) or must arise 'directly out of the question which is the subject-matter of that Application' (*Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), Merits, I.C.J. Reports 1974*, p. 203, para. 72)" (*Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 266, para. 67).

111. The Court will now consider whether Nicaragua's new claim relating to sovereignty over the islands in the area in dispute is admissible in light of the above criteria.

112. The maritime area in the Caribbean Sea to be delimited comprises a number of islands which may generate territorial sea, exclusive economic zone and continental shelf and a number of rocks which may generate territorial sea. Both Parties have agreed that none of the land features in the maritime area in dispute can be regarded as *terra nullius*, but each has asserted its own sovereignty over them. According to Nicaragua, by using a bisector as a method of delimitation, sovereignty over these features could be attributed to either Party depending on the position of the feature involved with respect to the bisector line.

113. On a number of occasions, the Court has emphasized that

> "the land dominates the sea" (*North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 51, para. 96; *Aegean Sea Continental Shelf (Greece* v. *Turkey), Judgment, I.C.J. Reports 1978*, p. 36, para. 86; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 97, para. 185).

Accordingly, it is

> "the terrestrial territorial situation that must be taken as starting point for the determination of the maritime rights of a coastal State. In accordance with Article 121, paragraph 2, of the 1982 Convention on the Law of the Sea, which reflects customary international law, islands, regardless of their size, in this respect enjoy the same status, and therefore generate the same maritime rights, as other land territory." (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 97, para. 185.)

114. To draw a single maritime boundary line in an area of the Caribbean Sea where a number of islands and rocks are located the Court would have to consider what influence these maritime features might have on the course of that line. To plot that line the Court would first have to determine which State has sovereignty over the islands and rocks in the disputed area. The Court is bound to do so whether or not a formal claim has been made in this respect. Thus the claim relating to sovereignty is implicit in and arises directly out of the question which is the subject-matter of Nicaragua's Application, namely the delimitation of the disputed areas of the territorial sea, continental shelf and exclusive economic zone.

115. In the light of the foregoing, the Court concludes that the Nicaraguan claim relating to sovereignty over the islands in the maritime area in dispute is admissible as it is inherent in the original claim relating to the maritime delimitation between Nicaragua and Honduras in the Caribbean Sea.

116. In addition, the Court notes that the Respondent has contested neither the jurisdiction of the Court to entertain the Nicaraguan new claim regarding the islands, nor its admissibility. Moreover, Honduras, for its part, observed that the new Nicaraguan claim made "the nature of the task facing the Court" clearer so that the Court "is asked to decide both on title to the islands and on the maritime delimitation". Honduras further added that as the Court was faced with a dispute over land and maritime spaces, it "*must* resolve the question of sovereignty over the land *before* it turns to the maritime boundary" (emphasis in the original). In its final submissions Honduras asked the Court to adjudge and declare that:

> "The islands Bobel Cay, South Cay, Savanna Cay and Port Royal Cay, together with all other islands, cays, rocks, banks and reefs claimed by Nicaragua which lie north of the 15th parallel are under the sovereignty of the Republic of Honduras."

It is for the Court therefore to rule on the claims of the two Parties with respect to the islands in dispute.

* * *

6. The Critical Date

117. In the context of a maritime delimitation dispute or of a dispute related to sovereignty over land, the significance of a critical date lies in distinguishing between those acts performed *à titre de souverain* which are in principle relevant for the purpose of assessing and validating *effectivités*, and those acts occurring after such critical date, which are in general meaningless for that purpose, having been carried out by a State which, already having claims to assert in a legal dispute, could have taken

those actions strictly with the aim of buttressing those claims. Thus a critical date will be the dividing line after which the Parties' acts become irrelevant for the purposes of assessing the value of *effectivités*. As the Court explained in the *Indonesia/Malaysia* case,

> "it cannot take into consideration acts having taken place after the date on which the dispute between the Parties crystallized unless such acts are a normal continuation of prior acts and are not undertaken for the purpose of improving the legal position of the Party which relies on them" (*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 682, para. 135).

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118. Honduras contends that there are two disputes, albeit related: one as to whether Nicaragua or Honduras has title to the disputed islands; and the other as to whether the 15th parallel represents the current maritime frontier between the Parties. Nicaragua perceives it as a single dispute.

119. Honduras observes that in respect of the dispute concerning sovereignty over the maritime features in the disputed area there "may be more than one critical date". Thus, "[t]o the extent that the issue of title turns on the application of *uti possidetis*", the critical date would be 1821 — the date of independence of Honduras and Nicaragua from Spain. For the purposes of post-colonial *effectivités*, Honduras argues that the critical date "is obviously much later" and cannot be "earlier than the date of the filing of the Memorial — 21 March 2001 — since this was the first time that Nicaragua asserted that it had title to the islands".

120. With regard to the dispute over the maritime boundary, Honduras maintains that 1979, when the Sandinista Government came to power, constitutes the critical date, as up to that date "Nicaragua never showed the slightest interest in the cays and islands north of the 15th parallel". According to Honduras, once in power in 1979 the new Government launched "a campaign of prolonged harassment against Honduran fishing vessels north of the 15th parallel".

121. For Nicaragua, the critical date is 1977, when the Parties initiated negotiations on maritime delimitation, following an exchange of letters by the two Governments. Nicaragua asserts that the dispute over the maritime boundary, by implication, encompasses the dispute over the islands within the relevant area and therefore the critical date for both disputes coincides.

122. Honduras dismisses Nicaragua's alleged critical date of 1977 for the purposes of the dispute over the islands, since the diplomatic corre-

spondence exchanged by the two countries makes no mention of those maritime features. Honduras further argues that the 1977 exchange of letters, and Honduras's acceptance of the invitation "to initiate conversations leading to a definitive marine and sub-marine delimitation between Nicaragua and Honduras in the Atlantic and Caribbean Sea zones" did not mark the "crystallization of any dispute as no conflicting claims were raised at that time".

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123. The Court considers that in cases where there exist two interrelated disputes, as in the present case, there is not necessarily a single critical date and that date may be different in the two disputes. For these reasons, the Court finds it necessary to distinguish two different critical dates which are to be applied to two different circumstances. One critical date concerns the attribution of sovereignty over the islands to one of the two contending States. The other critical date is related to the issue of delimitation of the disputed maritime area.

124. Rule by the Spanish Crown ended in 1821. An issue before the Court is any applicability of the *uti possidetis juris* principle to title to the islands and also to the establishment of a maritime boundary. This issue will be addressed, by reference to the specific circumstances of the present case, in sections 7.2 and 8.1.1. In the absence of any title based on the *uti possidetis juris* principle, the Court will seek to establish an alternative title to the islands arising out of *effectivités* in the post-colonial era. It will also seek to ascertain whether there existed a tacit agreement as to the maritime boundary during the same period. For these purposes, it will be necessary to determine critical dates by reference to the moment at which the two disputes crystallized.

125. It would be unfounded to set 1906 as the critical date on the basis that it was that year that the King of Spain delivered his Arbitral Award. It must be remembered that the Award dealt only with the land boundary between Nicaragua and Honduras. In contrast, the Court is called upon in the present case to delimit the maritime boundary between those two countries and to determine the sovereignty over the islands in dispute.

126. The Court reiterates that maritime rights derive from the coastal State's sovereignty over the land, a principle which can be summarized as "the land dominates the sea" (see paragraph 113 above). Following this approach, sovereignty over the islands needs to be determined prior to and independently from maritime delimitation.

127. As regards title to the islands in question, at the time of filing its Application, Nicaragua did not make to the Court any claim of title to the islands north of the 15th parallel. It was only in its Memorial of 21 March 2001 that Nicaragua for the first time made reference to the islands, without providing any basis for a legal claim, stating only that,

"[i]n the absence of the adoption of a bisector delimitation by the Court, Nicaragua reserves the sovereign rights appurtenant to all the islets and rocks claimed by Nicaragua in the disputed area". Yet in the submissions contained in the Nicaraguan Memorial, there is no claim to the islands in dispute. The same is true in the case of the submissions in the Nicaraguan Reply. It is only in its final submissions, at the end of the oral proceedings, that Nicaragua asks the Court "to decide the question of sovereignty over the islands and cays within the area in dispute".

128. The question of the admissibility of this late submission is dealt with above at paragraphs 104 to 116.

129. With regard to the dispute over the islands, the Court considers 2001 as the critical date, since it was only in its Memorial filed in 2001 that Nicaragua expressly reserved "the sovereign rights appurtenant to all the islets and rocks claimed by Nicaragua in the disputed area".

130. With regard to the dispute concerning the maritime delimitation, the Court finds that the exchange of letters of 1977 did not mark the point at which the dispute crystallized, according to the well-established definition of a dispute set down by the Permanent Court of International Justice, namely that "[a] dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons" (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11). No claims or counter-claims were articulated by the two Parties at the time and the suggested process of negotiations came to nought.

131. In determining the critical date for the purposes of the dispute over the delimitation line, the Court notes that on 17 March 1982, a "Honduran vessel . . . was fishing . . . in waters under Honduran jurisdiction, when it was captured by a Nicaraguan patrol boat after cannon fire, and taken . . . to a Nicaraguan port", according to an official letter from Honduras. On 21 March 1982, two Nicaraguan coast-guard vessels captured four Honduran fishing vessels in the area of Bobel and Media Luna Cays. On 23 March 1982, Honduras sent a formal protest, stating that the Nicaraguan patrols had "penetrated as far as Bobel and Media Luna Cays, 16 miles North of parallel 15", which "has been traditionally recognised by both countries to be the dividing line in the Atlantic". On 14 April 1982, Nicaragua denied the existence of such a traditional line. Honduras for its part emphasized that while indeed the frontier had not been "legally delimited", at the same time "it [could not] be denied that there exists, or at least there used to exist, a traditionally accepted line, which is that which corresponds to the parallel which crosses Cape Gracias a Dios". It added that the existence of this traditionally accepted line was the only explanation for long undisturbed relations on the border and it was only in recent times that border incidents had begun to occur. In the view of the Court, it is from the time of these two

incidents that a dispute as to the maritime delimitation could be said to exist.

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7. Sovereignty over the Islands

132. The Court will now address the question of sovereignty over maritime features in the disputed area of the Caribbean Sea.

* *

7.1. The Maritime Features in the Area in Dispute

133. It is commonly recognized that when the Central American States became independent in 1821, none of the islands adjacent to these States was *terra nullius*; the new States asserted sovereign titles over all the territories that had been under Spanish dominion. Their title was based on succession to all former Spanish colonial possessions. As explained in the decision rendered on 24 March 1922 by the Swiss Federal Council, which acted as arbitrator in the *Frontier Dispute between Colombia and Venezuela* case

> "while there might exist many regions which had never been occupied by the Spaniards and many unexplored . . ., these regions were reputed to belong in law to whichever of the Republics succeeded to the Spanish Province to which these territories were attached by virtue of the old Royal Ordinances of the Spanish mother country. These territories, although not occupied in fact, were by common consent deemed as occupied in law from the first hour by the newly created Republic . . ." (United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. I, p. 228.) *[Translation by the Registry.]*

134. But if there was to be no territory without a master, within the vast spatial expanses of the Spanish Crown not every single piece of land had a definitive identification or had been attached to a specific administrative colonial authority. In the words of an Arbitral Award rendered on 23 January 1933 by the Special Boundary Tribunal constituted by the Treaty of Arbitration between Guatemala and Honduras, this was due to "the lack of trustworthy information during colonial times" because "much of this territory was unexplored". In consequence,

> "not only had boundaries of jurisdiction not been fixed with precision by the Crown, but there were great areas in which there had been no effort to assert any semblance of administrative authority" (*RIAA*, Vol. II, p. 1325).

135. Given the dual nature of the present case — a maritime delimitation and a determination of sovereignty over islands situated in the maritime area in dispute — and taking into account the principle that the "land dominates the sea" (see paragraph 113 above), the legal nature of the land features in the disputed area must be assessed at the outset.

136. There are four relevant cays involved, Bobel Cay, Savanna Cay, Port Royal Cay and South Cay. All of these cays are located outside the territorial sea of the mainland of both Nicaragua and Honduras. They lie to the south of the bisector line advanced by the Applicant as the delimitation line, and to the north of the 15th parallel claimed by the Respondent as the delimitation line. In addition to these four main cays, there are a number of smaller islets, cays and reefs in the same area, of which the physical status (such as whether they are completely submerged below sea level, either permanently or at high tide), and consequently their legal status (for the purposes of the application of Articles 6, 13 or 121 of UNCLOS) are not clear.

137. The Court notes that the Parties do not dispute the fact that Bobel Cay, Savanna Cay, Port Royal Cay and South Cay remain above water at high tide. They thus fall within the definition and régime of islands under Article 121 of UNCLOS (to which Nicaragua and Honduras are both parties). Therefore these four features will hereinafter be referred to as islands.

The Court further notes that the Parties do not claim for these islands any maritime areas beyond the territorial sea (the question of the breadth of territorial sea around these islands will be dealt with below, see paragraph 302).

138. With the exception of these four islands, there seems to be an insufficiency in the information which the Court would require in order to identify a number of the other maritime features in the disputed area. In this regard, little assistance was provided in the written and oral procedures to define with the necessary precision the other "features" in respect of which the Parties are asking the Court to decide the question of territorial sovereignty.

139. In its final submissions, although Nicaragua requests the Court to decide the question of sovereignty over the islands and cays within the area in dispute, it does not there identify these features by name. Instead, it resorts to the use of a description in general terms, referring to "the islands and cays within the area in dispute". The Applicant does not list the islands and cays nor does it specify the legal characterization of these features. Although at moments in the past Nicaragua has laid claim to maritime areas up to the 17th parallel, in the context of the pleadings in the present case, the "area in dispute" should be understood to refer to the maritime area lying between the 15th parallel and the bisector line which Nicaragua claims as the maritime boundary (see paragraphs 19 and 83 above).

140. Honduras is more specific in its final submissions but only in that

it explicitly names the four features which it has called islands from the very beginning and over which it claims sovereignty: Bobel Cay, Savanna Cay, Port Royal Cay and South Cay. But then it uses a diffuse and indeterminate description: "together with all other islands, cays, rocks, banks and reefs claimed by Nicaragua which lie north of the 15th parallel". The problem with such a request is that, as stated above, Nicaragua does not specify in its final submissions "the islands and cays within the area in dispute" and, additionally, does not claim any "rocks, banks and reefs".

141. In this connection, the Court notes that features which are not permanently above water, and which lie outside of a State's territorial waters, should be distinguished from islands. As to the question of appropriation, in the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain)*, the Court observed that it was not

> "aware of a uniform and widespread State practice which might have given rise to a customary rule which unequivocally permits or excludes appropriation of low-tide elevations" (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 102, para. 205).

However, it added that:

> "The few existing rules do not justify a general assumption that low-tide elevations are territory in the same sense as islands. It has never been disputed that islands constitute terra firma, and are subject to the rules and principles of territorial acquisition; the difference in effects which the law of the sea attributes to islands and low-tide elevations is considerable. It is thus not established that in the absence of other rules and legal principles, low-tide elevations can, from the viewpoint of the acquisition of sovereignty, be fully assimilated with islands or other land territory." (*Ibid.*, para. 206.)

The Court also recalled "the rule that a low-tide elevation which is situated beyond the limits of the territorial sea does not have a territorial sea of its own" (*ibid.*, para. 207).

142. Additionally, in the case of those features that do not qualify as islands according to UNCLOS because they are not permanently above water at high tide, there was little further to be found in the pleadings addressing this matter.

143. During the proceedings, two other cays were mentioned: Logwood Cay (also called Palo de Campeche) and Media Luna Cay. In response to a question put by Judge *ad hoc* Gaja to the Parties in the course of the oral proceedings as to whether these cays would qualify as

islands within the meaning of Article 121, paragraph 1, of UNCLOS, the Parties have stated that Media Luna Cay is now submerged and thus that it is no longer an island. Uncertainty prevails in the case of Logwood Cay's current condition: according to Honduras it remains above water (though only slightly) at high tide; according to Nicaragua, it is completely submerged at high tide.

144. Given all these circumstances, the Court is not in a position to make a determinative finding on the maritime features in the area in dispute other than the four islands referred to in paragraph 137. The Court thus regards it as appropriate to pronounce only upon the question of sovereignty over Bobel Cay, Savanna Cay, Port Royal Cay and South Cay.

145. A claim was also made during the oral proceedings by each Party to an island in an entirely different location, namely, the island in the mouth of the River Coco. For the last century the unstable nature of the river mouth has meant that larger islands are liable to join their nearer bank and the future of smaller islands is uncertain. Because of the changing conditions of the area, the Court makes no finding as to sovereign title over islands in the mouth of the River Coco.

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7.2. The Uti Possidetis Juris *Principle and Sovereignty over the Islands in Dispute*

146. The Court observes that the principle of *uti possidetis juris* has been relied on by Honduras as the basis of sovereignty over the islands in dispute. This is contested by Nicaragua which asserts that sovereignty over the islands cannot be attributed to one or the other Party on the basis of this principle.

147. Honduras argues that the *uti possidetis juris* principle embedded in the Gámez-Bonilla Treaty and confirmed by the 1906 Award of the King of Spain and by the 1960 Judgment of the Court is applicable as between Honduras and Nicaragua, not only to their mainland territory, but also to the maritime area off the coast of the two countries which is now the subject of dispute for delimitation, together with the islands in the disputed area. Honduras adds that the line established as the line of maritime delimitation on the basis of the *uti possidetis juris* principle is the line that begins along the 15th parallel.

148. Honduras argues that because of the Royal Decree of 17 December 1760 which established that Spanish territorial waters extended for 6 nautical miles, Nicaragua and Honduras succeeded in 1821 not only to their mainland territory but also to islands and a maritime area extending 6 miles [RH, para. 3.16]. With respect to sovereignty over the islands in dispute by virtue of the principle of *uti possidetis juris*, Honduras relies in

the first place on the Royal Warrant of 23 August 1745 which established two military jurisdictions within the Captaincy-General of Guatemala, one running from the Yucatán Peninsula to Cape Gracias a Dios and the other from Cape Gracias a Dios down to but not including the Chagres River. The northern jurisdiction appertained to Honduras and the southern to Nicaragua. Honduras further refers to the Royal Decree of 20 November 1803, according to which "the Islands of San Andrés and the part of the Mosquito Coast from Cape Gracias a Dios inclusive to the Chagres River, shall be separated from the Captaincy-General of Guatemala and become dependent on the Vice Royalty of Santa Fé". Honduras contends that this Decree shows that the islands and waters north of Cape Gracias a Dios corresponded to the military and maritime jurisdiction of the Captaincy-General of Guatemala while the islands and waters south of the Cape corresponded to the Vice-Royalty of Santa Fé. Finally, Honduras maintains that before independence, the Government of Honduras exercised jurisdiction north of Cape Gracias a Dios, while the General Command of Nicaragua exercised jurisdiction south of the Cape.

149. Honduras claims that the 1850 Treaty between Spain and Nicaragua and the 1866 Treaty between Spain and Honduras respectively recognized the sovereignty of Nicaragua and Honduras over their mainland territories and adjacent islands that lie along their coasts. Honduras submits that the islands in dispute were closer to Honduras's coast than to any other part of the former Spanish empire. Honduras also notes that the existence of these islands was certainly known at the time of the independence of the Central American States, as maps dating to that period show the islands in dispute, such as, for example, an 1801 chart comprising the coasts of Yucatán, Mosquitos and Honduras.

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150. Nicaragua does not deny that the principle of *uti possidetis juris* may have relevance in establishing sovereignty over insular possessions, but it contends that the principle is not applicable in the current case, "as there is no evidence that the King of Spain attributed the dozens of Lilliputian cays, many of them not even having a name, to one or other of the provinces of the Captaincy-General of Guatemala". According to Nicaragua, the territorial sea fell at the time under the exclusive jurisdiction of the Spanish authorities in Madrid, and not under the control of the local authorities. Nicaragua argues that no documentary evidence supports the title of either Nicaragua or Honduras to the islands on the basis of the *uti possidetis juris* of 1821, which, according to Nicaragua, is unsurprising given their lack of economic or strategic significance. Nicaragua further argues that, in the absence of such evidence, the remaining consideration is "the location of the islets in dispute in relation to other territories of the states concerned". According to Nicaragua, however, at

the time of independence this principle of proximity operated not to the benefit of Honduras or Nicaragua, but rather to the benefit of the Captaincy-General of Guatemala which exercised direct jurisdiction over the settlements on the Mosquito Coast. In any event, Nicaragua claims that the islands are more proximate to Nicaragua's Edinburgh Cay than to any Honduran territory.

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151. The Court has recognized that "the principle of *uti possidetis* has kept its place among the most important legal principles" regarding territorial title and boundary delimitation at the moment of decolonization (*Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 567, para. 26). In that case, the Chamber of the Court found that it

> "cannot disregard the principle of *uti possidetis juris*, the application of which gives rise to this respect of intangibility of frontiers . . . It is a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power." (*Ibid.*, p. 565, para. 20.)

152. In that same Judgment, the Chamber of the Court examined different aspects of the *uti possidetis juris* principle. One such aspect

> "is found in the pre-eminence accorded to legal title over effective possession as a basis of sovereignty. Its purpose, at the time of the achievement of independence by the former Spanish colonies of America, was to scotch any designs which non-American colonizing powers might have on regions which had been assigned by the former metropolitan State to one division or another, but which were still uninhabited or unexplored." (*Ibid.*, p. 566, para. 23.)

153. According to the Judgment of the Chamber of the Court:

> "The essence of the principle lies in its primary aim of securing respect for the territorial boundaries at the moment when independence is achieved. Such territorial boundaries might be no more than delimitations between different administrative divisions or colonies all subject to the same sovereign. In that case, the application of the principle of *uti possidetis* resulted in administrative boundaries being transformed into international frontiers in the full sense of the term." *(Ibid.)*

154. It is beyond doubt that the *uti possidetis juris* principle is applicable to the question of territorial delimitation between Nicaragua and Honduras, both former Spanish colonial provinces. During the nine-

teenth century, negotiations aimed at determining the territorial boundary between Nicaragua and Honduras culminated in the conclusion of the Gámez-Bonilla Treaty of 7 October 1894, in which both States agreed in Article II, paragraph 3, that "each Republic [was] owner of the territory which at the date of independence constituted, respectively, the provinces of Honduras and Nicaragua". The terms of the Award of the King of Spain of 1906, based specifically on the principle of *uti possidetis juris* as established in Article II, paragraph 3, of the Gámez-Bonilla Treaty, defined the territorial boundary between the two countries with regard to the disputed portions of land, i.e. from Portillo de Teotecacinte to the Atlantic Coast. The validity and binding force of the 1906 Award have been confirmed by this Court in its 1960 Judgment and both Parties to the present dispute accept the Award as legally binding.

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155. The Court now turns from the question of territorial title settled in 1906 to the question currently before it of sovereignty over the islands.

156. The Court begins by observing that *uti possidetis juris* may, in principle, apply to offshore possessions and maritime spaces (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992*, p. 558, para. 333; p. 589, para. 386).

157. It is well established that "a key aspect of the principle [of *uti possidetis juris*] is the denial of the possibility of *terra nullius*" (*ibid.*, p. 387, para. 42). However, that dictum cannot bring within the territory of successor States islands not shown to be subject to Spanish colonial rule, nor *ipso facto* render as "attributed", islands which have no connection with the mainland coast concerned. Even if both Parties in this case agree that there is no question of the islands concerned being *res nullius*, necessary legal questions remain to be answered.

158. The Court observes that the mere invocation of the principle of *uti possidetis juris* does not of itself provide a clear answer as to sovereignty over the disputed islands. If the islands are not *terra nullius*, as both Parties acknowledge and as is generally recognized, it must be assumed that they had been under the rule of the Spanish Crown. However, it does not necessarily follow that the successor to the disputed islands could only be Honduras, being the only State formally to have claimed such status. The Court recalls that *uti possidetis juris* presupposes the existence of a delimitation of territory between the colonial provinces concerned having been effected by the central colonial authorities. Thus in order to apply the principle of *uti possidetis juris* to the islands in dispute it must be shown that the

Spanish Crown had allocated them to one or the other of its colonial provinces.

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159. The Court accordingly now turns to the issue of whether there is convincing evidence which would allow it to determine whether and to which of the colonial provinces of the former Spanish America the islands in question had been attributed, bearing in mind the fact that these islands had at that time no particular strategic, economic or military significance. If indeed any such attribution were to be established, depending on whose administrative authority the islands would have fallen under during colonial rule, the disputed islands would subsequently have come under the sovereignty of either Honduras or Nicaragua at the time they became independent States in 1821.

160. In the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, the Chamber of the Court, in its 1992 Judgment, found it necessary to consider whether it was "possible to establish the appurtenance in 1821 of each disputed island to one or the other of the various administrative units of the Spanish colonial structure in Central America". The conclusions of the Chamber are applicable to the present case:

> "In the case of the islands, there are no land titles of the kind which the Chamber has taken into account in order to reconstruct the limits of the *uti possidetis juris* on the mainland; and the legislative and administrative texts are confused and conflicting. The attribution of individual islands to the territorial administrative divisions of the Spanish colonial system, for the purposes of their allocation to the one or the other newly-independent State, may well have been a matter of some doubt and difficulty, judging by the evidence and information submitted. It should be recalled that when the principle of the *uti possidetis juris* is involved, the *jus* referred to is not international law but the constitutional or administrative law of the pre-independence sovereign, in this case Spanish colonial law; and it is perfectly possible that that law itself gave no clear and definitive answer to the appurtenance of marginal areas, or sparsely populated areas of minimal economic significance." (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992*, pp. 558-559, para. 333.)

161. The Parties have not produced documentary or other evidence from the pre-independence era which explicitly refers to the islands. The Court further observes that proximity as such is not necessarily determinative of legal title. The information provided by the Parties on the colonial administration of Central America by Spain does not allow for cer-

tainty as to whether one entity (the Captaincy-General of Guatemala), or two subordinate entities (the Government of Honduras and the General Command of Nicaragua), exercised administration over the insular territories of Honduras and Nicaragua at that time. Until 1803 Nicaragua and Honduras were part of the Captaincy-General of Guatemala. On balance, the evidence presented in this case would seem to suggest that the Captaincy-General of Guatemala probably exercised jurisdiction over the areas north and south of Cape Gracias a Dios until 1803 when the Vice-Royalty of Santa Fé gained control over the part of the Mosquito Coast running south from Cape Gracias a Dios by virtue of the Royal Decree of that year (see also *I.C.J. Pleadings, Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras* v. *Nicaragua)*, Vol. I, pp. 19-22).

162. Unlike the land territory where the administrative boundary between different provinces was more or less clearly demarcated, it is apparent that there was no clear-cut demarcation with regard to islands in general. This seems all the more so with regard to the islands in question, since they must have been scarcely inhabited, if at all, and possessed no natural resources to speak of for exploitation, except for fishing in the surrounding maritime area.

163. The Court observes that the Captaincy-General of Guatemala may well have had control over land and insular territories adjacent to coasts in order to provide security, prevent smuggling and undertake other measures to ensure the protection of the interests of the Spanish Crown. However there is no evidence to suggest that the islands in question played any role in the fulfilment of any of these strategic aims. All of those islands lie at some distance from the mouth of the River Coco. Savanna Cay is about 28 miles away, South Cay is some 41 miles, Bobel Cay is 27 miles and Port Royal Cay is 32 miles. Notwithstanding the historical and continuing importance of the *uti possidetis juris* principle, so closely associated with Latin American decolonization, it cannot in this case be said that the application of this principle to these small islands, located considerably offshore and not obviously adjacent to the mainland coast of Nicaragua or Honduras, would settle the issue of sovereignty over them.

164. With regard to the adjacency argument, the Court notes that the independence treaties concluded by Nicaragua and Honduras with Spain (see paragraphs 34 and 35 above) refer to adjacency with respect to mainland coasts rather than to offshore islands. Nicaragua's argument that the islands in dispute are closer to Edinburgh Cay, which belongs to Nicaragua, cannot therefore be accepted. While the Court does not rely on adjacency in reaching its findings, it observes that, in any event, the islands in dispute appear to be in fact closer to the coast of Honduras than to the coast of Nicaragua.

165. Having concluded that the question of sovereignty over the islands in dispute cannot be resolved on the above basis, the Court will now ascertain whether there were relevant *effectivités* during the colonial period. This test of "colonial *effectivités*" has been defined as

> "the conduct of the administrative authorities as proof of the effective exercise of territorial jurisdiction in the region during the colonial period" (*Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 586, para. 63; *Frontier Dispute (Benin/Niger), Judgment, I.C.J. Reports 2005*, p. 120, para. 47).

In the present case, information about such conduct by the colonial administrative authorities is lacking. This may be due to the fact that:

> "The territory of each Party had belonged to the Crown of Spain. The ownership of the Spanish monarch had been absolute. In fact and law, the Spanish monarch had been in possession of all the territory of each. Prior to independence, each colonial entity being simply a unit of administration in all respects subject to the Spanish King, there was no possession in fact or law, in a political sense, independent of his possession. The only possession of either colonial entity before independence was such as could be ascribed to it by virtue of the administrative authority it enjoyed. The concept of '*uti possidetis* of 1821' thus necessarily refers to an administrative control which rested on the will of the Spanish Crown. For the purpose of drawing the line of '*uti possidetis* of 1821', we must look to the existence of that administrative control . . .
>
> [P]articular difficulties are encountered in drawing the line of '*uti possidetis* of 1821', by reason of the lack of trustworthy information during colonial times with respect to a large part of the territory in dispute. Much of this territory was unexplored. Other parts which had occasionally been visited were but vaguely known. In consequence, not only had boundaries of jurisdiction not been fixed with precision by the Crown, but there were great areas in which there had been no effort to assert any semblance of administrative authority." (Arbitral Award rendered on 23 January 1933 by the Special Boundary Tribunal constituted by the Treaty of Arbitration between Guatemala and Honduras, *RIAA*, Vol. II, pp. 1324-1325.)

166. The Court considers that, given the location of the disputed islands and the lack of any particular economic or strategic significance of these islands at the time, there were no colonial *effectivités* in relation to them. Thus the Court can neither found nor confirm on this basis a title to territory over the islands in question.

167. In light of the above considerations the Court concludes that the principle of *uti possidetis* affords inadequate assistance in determining

sovereignty over these islands because nothing clearly indicates whether the islands were attributed to the colonial provinces of Nicaragua or of Honduras prior to or upon independence. Neither can such attribution be discerned in the King of Spain's Arbitral Award of 1906. Equally, the Court has been presented with no evidence as to colonial *effectivités* in respect of these islands. Thus it has not been established that either Honduras or Nicaragua had title to these islands by virtue of *uti possidetis*.

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7.3. Post-colonial Effectivités *and Sovereignty over the Disputed Islands*

168. The Court will now examine the evidence submitted on post-colonial *effectivités* in determining sovereignty over the islands in dispute.

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169. Honduras states that in the event that the Court were to reject its claim to original title to the islands derived from *uti possidetis juris* and confirmed by post-colonial *effectivités*, then the matter would have to be decided "by examining which of the two States has made out a superior claim based upon the actual exercise or display of authorities over the islands, coupled with the necessary sovereign intent". Honduras contends that in this case it is evident that through its *effectivités* it has made out a superior claim compared to Nicaragua, which has offered no evidence of *effectivités*.

170. Honduras has produced a number of arguments and evidence aimed at demonstrating the existence of such *effectivités* — including acts of legislative and administrative control, the application of Honduran civil and criminal law to the disputed islands, the regulation of immigration, fishing activities carried out from the islands, naval patrols, the oil concession practice of Honduras and public works.

171. For its part, Nicaragua states that the *effectivités* invoked by Honduras cannot displace Nicaragua's original title over the islands based on adjacency. Making reference to the case concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)*, Nicaragua maintains that it is only "[i]n the event that the *effectivité* does not co-exist with any legal title [that] it must invariably be taken into consideration" (*I.C.J. Reports 1986*, p. 587, para. 63). With regard to its own *effectivités*, Nicaragua argues that the exercise of its own sovereignty "over the maritime area in dispute including the cays, is attested to by the question of the turtle fisheries negotiations and agreements with Great Britain that began in the nineteenth century and were still ongoing in the 1960s". Nicaragua

further claims that in the 1970s "only Nicaragua was policing fishing activities in the area around the cays south of the Main Cape Channel and further to the east and north-east".

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172. A sovereign title may be inferred from the effective exercise of powers appertaining to the authority of the State over a given territory. To sustain a claim of sovereignty on that basis, a number of conditions must be proven conclusively. As described by the Permanent Court of International Justice

> "a claim to sovereignty based not upon some particular act or title such as a treaty of cession but merely upon continued display of authority, involves two elements each of which must be shown to exist: the intention and will to act as sovereign, and some actual exercise or display of such authority" (*Legal Status of Eastern Greenland, Judgment, 1933, P.C.I.J., Series A/B, No. 53*, pp. 45-46).

173. An additional element established by the Permanent Court of International Justice in the *Legal Status of Eastern Greenland* case is "the extent to which sovereignty is also claimed by some other Power" (*ibid.*, p. 46). The exercise of sovereign rights must also have a certain dimension proportionate to the nature of the case. In its Judgment in the *Eastern Greenland* case, the Court stated that:

> "It is impossible to read the record of the decisions in cases as to territorial sovereignty without observing that in many cases the tribunal has been satisfied with very little in the way of the actual exercise of sovereign rights, provided that the other State could not make out a superior claim. This is particularly true in the case of claims to sovereignty over areas in thinly populated or unsettled countries." *(Ibid.)*

174. Sovereignty over minor maritime features, such as the islands in dispute between Honduras and Nicaragua, may therefore be established on the basis of a relatively modest display of State powers in terms of quality and quantity. In the *Indonesia/Malaysia* case, the Court indicated that

> "in the case of very small islands which are uninhabited or not permanently inhabited — like Ligitan and Sipadan, which have been of little economic importance (at least until recently) — *effectivités* will indeed generally be scarce" (*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 682, para. 134).

The Court further specified

> "it can only consider those acts as constituting a relevant display of authority which leave no doubt as to their specific reference to the islands in dispute as such. Regulations or administrative acts of a general nature can therefore be taken as *effectivités* with regard to Ligitan and Sipadan only if it is clear from their terms or their effects that they pertained to these two islands." (*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*), pp. 682-683, para. 136.)

175. In keeping with this approach in the *Indonesia/Malaysia* case, the Court will examine whether in the present case the activities relied on by the contending Parties show a relevant display of sovereign authority despite being "modest in number" (*ibid.*, p. 685, para. 148). It will also be important to determine in this case whether these activities "cover a considerable period of time and show a pattern revealing an intention to exercise State functions in respect of the two islands in the context of the administration of a wider range of islands" *(ibid.)*.

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176. The Court will now consider the different categories of *effectivités* presented by the Parties.

177. *Legislative and administrative control*. Honduras claims it has exercised legislative and administrative control over the islands and provides a number of arguments in support of this proposition. Nicaragua does not seek to prove its own exercise of legislative and administrative control over the islands but instead argues that Honduras's evidence is insufficient.

178. Honduras's claim is based on the text of its Constitutions and of its Agrarian Law of 1936. The three Constitutions (1957, 1965, 1982) list islands which belong to Honduras, referring by name to a number of islands located in the Atlantic, including among others the cays of Falso, Gracias a Dios, Palo de Campeche "and all others located in the Atlantic, which historically, juridically and geographically (only the 1982 Constitution uses the term geographically) belong to it". The 1982 Constitution adds, by name, the cays of Media Luna and also Rosalind and Serranilla.

179. Under the title "Right of the State", the Honduran Agrarian Law of 1936 lists a number of cays that "belong to Honduras", "including Palo de Campeche" by name, and "others situated in the Atlantic Ocean". However, none of the Constitutions nor the Agrarian Law make explicit reference to the islands and cays in dispute. Honduras nonetheless states that the reference to Palo de Campeche and the other islands in the Atlantic should be taken to include the adjacent islands in dispute.

180. Nicaragua counters the Honduran legislative evidence on the grounds that it does not make any specific mention either of the area in dispute or of any intention to regulate activity on the islands. Nicaragua states that it therefore had "had no reason to protest" as the Honduran laws

> "have no relevance to the matter of maritime delimitation, not only because of their dates (those after 1977) but because of their content, which regulates matters within areas of Honduran sovereignty and jurisdiction with no specific mention of the islands".

181. The Court, noting that there is no reference to the four islands in dispute in the various Honduran Constitutions and in the Agrarian Law, further notes that there is no evidence that Honduras applied these legal instruments to the islands in any specific manner. The Court therefore finds that the Honduran claim that it had legislative and administrative control over the islands is not convincing.

182. *Application and enforcement of criminal and civil law*. Honduras also claims that its civil law has been applied and enforced by it in the disputed area, and provides various examples. It asserts that accidents in the area, usually involving divers, have long been reported to Honduras, rather than to Nicaraguan authorities. It claims that "the Honduran courts hear those cases because the accidents are treated as having occurred in the territory of Honduras". Honduras provides excerpts from four labour complaints, of which three were filed before the Labour Court of Puerto Lempira and one was filed before a court of Roatan (Bay Islands).

183. Honduras further claims that its "criminal laws are applied and enforced before its courts in relation to acts occurring on the islands" and that a "number of cases of theft and physical assault occurring on Savanna and Bobel Cays have been dealt with by the Honduran authorities and have reached the courts of Honduras". It provides an extract from a decision of the Lower Court of Puerto Lempira, dated 17 April 1997, related to a confiscation of a fibreglass boat which was found abandoned in Half Moon Cay. It provides a criminal complaint lodged before a court of Puerto Lempira stating that six aqualung sets had been stolen in South Cay from the ship "Mercante" and naming the two potential perpetrators who are to be summoned for interrogation. Honduras also places legal significance on a 1993 drug enforcement operation in the area by Honduras authorities and the United States Drug Enforcement Administration (DEA). This operation, known as the Satellite Operation Plan, involved the "conduct [of] reconnaissance operations to identify and locate, via the taking of aerial photographs, possible targets, areas and installations used in or connected to drug trafficking on a national scale, with the aim of neutralising criminal operations involving illicit drug trafficking". The Plan also provided for "suitably equipped aircraft" to "fly

over the national air space". A list of "islets and cays" is given in the Satellite Operation Plan which includes Bobel Cay, South Cay, Half Moon Cay and Savanna Cay.

184. Nicaragua challenges the contentions of Honduras but makes no claim with regard to its own application or enforcement of criminal and civil law. Nicaragua's objection is that all the examples adduced by Honduras stem from the 1990s, well after the critical date of 1977 proposed by Nicaragua. It also argues that the cases illustrated by Honduras may have been filed in its courts because they concerned Honduran nationals, not because the incidents took place on Honduran territory.

185. The Court is of the opinion that the evidence provided by Honduras of the application and enforcement of its criminal and civil laws does have legal significance in the present case. The fact that a number of these acts occurred in the 1990s is no obstacle to their relevance as the Court has found the critical date in relation to the islands to be 2001. The criminal complaints have relevance because the criminal acts occurred on the islands in dispute in this case (South Cay and Savanna Cay). The 1993 drug enforcement operation, while not necessarily an example of the application and enforcement of Honduran criminal law, can well be considered as an authorization by Honduras to the United States Drug Enforcement Administration (DEA) granting it the right to fly over the islands mentioned in the document, which are within the disputed area. The permit extended by Honduras to the DEA to overfly the "national air space", together with the specific mention of the four islands and cays, may be understood as a sovereign act by a State, amounting to a relevant *effectivité* in the area.

186. *Regulation of immigration*. Honduras argues that it maintains immigration records relating to foreign nationals living in Honduras and that such records "routinely include information on foreigners living on the islands now claimed by Nicaragua". By way of example, there is a Note dated 31 March 1999 addressed by the Regional Agent of Migration of Puerto Lempira to the General Director of Population and Migration Policy in Tegucigalpa by which a report is provided. In it there is a description of the number of huts in the inspected location, the nationality of persons (including in the case of foreigners details of their passport number, date of birth and visa expiry date) and the expiry date of their fishing licences. The information covers Bobel Cay, Savanna Cay, Port Royal Cay, South Cay and Gorda Cay.

187. The Court notes that there appears to have been substantial activity with regard to immigration and work-permit related regulation by Honduras of persons on the islands in 1999 and 2000. There is no evidence of any such regulation before 1999. Correspondence addressed by the Director of Population and Migration Policy to the Honduran Minister for the Interior regarding immigration movements on the disputed islands is dated November and December 1999. Honduras also provides evidence aimed at showing the exercise of regulatory powers on matters of immigration. In 1999, Honduran authorities visited the four islands and recorded the details of the foreigners living in South Cay, Port Royal Cay and Savanna Cay (Bobel Cay was uninhabited at the time, though it had previously been inhabited). Honduras provides a statement by a Honduran immigration officer who visited the islands three or four times from 1997 to 1999. He also accompanied the naval forces during their patrol of the area around the islands on two occasions. According to the immigration officer, the Town Hall of Puerto Lempira issues provisional work permits to Jamaican and Nicaraguan nationals and on occasion nationals of third States living on the islands have apparently received temporary permits until they obtain legal residence. Honduras also provides a document extending the visas of three Jamaican nationals "established in" Savanna Cay and South Cay.

188. Nicaragua again objects to the evidence of immigration regulatory activity by Honduras, claiming that it only dates back to 1999, i.e. after the critical date.

189. The Court finds that legal significance is to be attached to the evidence provided by Honduras on the regulation of immigration as proof of *effectivités*, notwithstanding that it began only in the late 1990s. The issuance of work permits and visas to Jamaican and Nicaraguan nationals exhibit a regulatory power on the part of Honduras. The visits to the islands by a Honduran immigration officer entails the exercise of jurisdictional authority, even if its purpose was to monitor rather than to regulate immigration on the islands. The time span for these acts of sovereignty is rather short, but then it is only Honduras which has undertaken measures in the area that can be regarded as acts performed *à titre de souverain*. There is no contention by Nicaragua of regulation by itself of immigration on the disputed islands either before or after the 1990s.

190. *Regulation of fisheries activities*. Honduras claims that the *bitácoras* (fishing licences) granted to fishermen are evidence of acts under governmental authority. It is said that "[m]any of the fishermen who work these areas and do so pursuant to Honduran-granted licences make

use of the islands. Some of them live on the islands and others just visit . . .". Honduras further claims that "[t]o support its conduct on fisheries, Honduras put before the Court 28 witness statements. Out of those 28, 24 refer to activities on the cays in sustaining fisheries activities authorized by Honduras".

191. Honduras provides evidence that there are buildings constructed on Savanna Cay which have been authorized and licensed by the authorities in Puerto Lempira. There is a testimony of a Jamaican national, "a fisherman by profession, currently living in Savanna Cay", who states that: "We have constructed all the buildings existing in the cay. These are registered in the municipality of Puerto Lempira. All the houses have been enumerated by the municipality, which commenced to enumerate them approximately two years ago." Another Jamaican national, who states that "for most part of the year [he is] living in Savanna Cay", also attests to Jamaicans "[having] constructed all the housing existing in this cay. These houses have been legally constructed with the consent of the Honduran authorities."

192. Honduras claims that "fishing equipment is stored on South Cay on the basis of a fishing permit obtained from the local authorities". A Mr. Mario Ricardo Dominguez places on record that due to his fishing activities,

> "he makes use of the installations located in South Cay as from [1992]; the installations in question include a wooden house where he stores fishing equipment, such as fishing nets, diving equipment, a freezer and an electricity plant . . . in order to conduct his fishing equipment he applies for a fishing permit each year from the Fishing Inspector of Puerto Lempira and satisfies the appropriate tax thereon".

193. Nicaragua contends that Honduras "does not present any evidence that the regulation of fishing activities by Honduras proves a title to the islets in dispute" and that Honduras more broadly fails to distinguish between activities of relevance to maritime delimitation and to the establishment of title over the islands.

194. The Court has stated that, with regard to activities by private persons, these

> "cannot be seen as *effectivités* if they do not take place on the basis of official regulations or under governmental authority" (*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 683, para. 140).

In that regard, Honduras has presented witness statements to the effect that Honduras licenses fishing activities around the islands and cays, and

authorizes the construction of buildings on Savanna Cay. Whether the regulation of fishing activities by Honduras around the islands in dispute constituted an actual exercise or display of authority in respect of the disputed islands as such is a further question that must be determined.

195. The Court observes that all the evidence put forward by Honduras concerning fishing activities shows that these activities took place under Honduran authorization in the waters around the islands, but not that such fishing took place from the islands themselves. Instead, Honduras provides evidence that it has licensed activities on the islands which are related to fishing activities, such as the construction of buildings, or the storage of fishing boats. When looked at as a whole, the Court believes that the fishing licences, although undesignated as to areas, were known by the Honduran authorities to have been used for fishing taking place around the islands; Honduras authorized the construction of housing on the islands for purposes related to fishing activities. The Court is thus of the view that the Honduran authorities issued fishing permits with the belief that they had a legal entitlement to the maritime areas around the islands, derived from Honduran title over those islands. The evidence of Honduran-regulated fishing boats and construction on the islands is also legally relevant for the Court under the category of administrative and legislative control (see paragraphs 177-181 above).

196. The Court considers that the permits issued by the Honduran Government allowing the construction of houses in Savanna Cay and the permit for the storage of fishing equipment in the same cay provided by the municipality of Puerto Lempira may also be regarded as a display, albeit modest, of the exercise of authority, and as evidence of *effectivités* with respect to the disputed islands.

197. Nicaragua for its part contends that it has exercised jurisdiction over the islands in question in connection with its turtle fishing dispute with the United Kingdom which started in the nineteenth century and extended into the beginning of the twentieth century. Nicaragua also argues that the negotiations in the 1950s with the United Kingdom for the renewal of an earlier bilateral treaty of 1916 which remained "the basis for turtle fishing of the Cayman islanders until 1960" provide further evidence of Nicaraguan title over the islands in dispute. In this connection Nicaragua provides a 1958 map produced by the United Kingdom hydrographer Commander Kennedy, which it states "includes the islets, cays and reefs claimed by Nicaragua in the area in dispute with Honduras".

198. The Court first notes that the map does not prove that Commander Kennedy viewed these islands as clearly and unquestionably appertaining to Nicaragua. The Court observes that although the map prepared by Commander Kennedy did indeed include the islands now in

dispute between Nicaragua and Honduras, he noted that the islands "might . . . be claimed to be on the continental shelf of Honduras, depending on how the boundary across the shelf be finally agreed". Further, the map work of Commander Kennedy was not undertaken on the instructions of the United Kingdom Government. Neither does the Court find persuasive the argument that the negotiations between Nicaragua and the United Kingdom in the 1950s over renewed turtle fishing rights off the Nicaraguan coast attests to Nicaraguan sovereignty over the islands in dispute. The Court accordingly cannot grant legal significance to the turtle fishing dispute between Nicaragua and the United Kingdom for the purposes of *effectivités*.

199. *Naval patrols*. Basing itself on a number of depositions, Honduras contends that it has carried out naval and other patrols since 1976 to maintain security and to enforce Honduran laws around the islands, particularly fisheries laws and immigration laws. A Honduran immigration officer and a port supervisor at Puerto Lempira, who worked with the Honduran navy in undertaking patrols to the islands, provide their testimony. There is also "documentary evidence, in the form of patrol logbooks and other materials, showing Honduran patrols around the cays, the reefs and the banks in the areas to the north of the 15th parallel". Honduras also states that two patrol boats designated for this purpose have carried out regular operations, visiting the islands as well as Rosalind and Thunder Knoll Banks.

200. Nicaragua contests the Honduran claim by emphasizing that the military and naval patrols took place after the claimed critical date of 1977, Nicaragua also states that it undertook its own military and naval patrols around the islands.

201. The Court has already indicated that the critical date for the purposes of the issue of title to the islands is not 1977 but 2001. The evidence put forward by both Parties on naval patrolling is sparse and does not clearly entail a direct relationship between either Nicaragua or Honduras and the islands in dispute. Thus the Court does not find the evidence provided by either Party on naval patrols persuasive as to the existence of *effectivités* with respect to the islands. It cannot be deduced from this evidence that the authorities of Nicaragua or Honduras considered the islands in dispute to be under their respective sovereignty (see *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 683, para. 139). The Court will later consider the legal significance of the evidence submitted by the Parties on naval patrols in the context of the maritime dispute between them.

202. *Oil concessions*. In the written pleadings Honduras presented evidence of oil concessions as proof of title over the islands in the disputed area. However during the oral proceedings, this argument was not developed further. In its oral argument, Honduras changed its focus by contending that "[a] number of the Honduran concessions [had given] rise to sovereign activity on the islands". Thus, according to Honduras, the islands had "supported oil exploration" and had "been used as a base for oil exploration activity since the 1960s". In the oral proceedings, Honduras concentrated on the relevance of the Parties' oil concessions in connection with the claimed existence of a tacit agreement to respect the "traditional" boundary along the 15th parallel.

203. Nicaragua states that the practice of Nicaragua and Honduras regarding the issuing of oil concessions shows that it is not consistent as far as the title to the islets is concerned. In Nicaragua's view, the practice of Nicaragua and Honduras shows that there was no agreement on the existence of a line of allocation of sovereignty, and that Nicaragua considered the islets in dispute in the present case formed part of its territory.

204. The Court finds that the evidence relating to the offshore oil exploration activities of the Parties has no bearing on the islands in dispute. Therefore in its consideration of the question of *effectivités* supporting title over the islands, the Court will concentrate on the oil concession related acts on the islands under the category of public works.

205. *Public works*. Honduras offers as further evidence of *effectivités* the construction under its authorization of an antenna on Bobel Cay in 1975 to aid Union Oil. An additional piece of evidence of *effectivités* submitted by Honduras is the triangulation markers placed on Savanna Cay, South Cay and Bobel Cay in 1980 and 1981, pursuant to an agreement with the United States reached in 1976. Honduras states that there was no protest by Nicaragua to the 1976 Agreement or to the placing of the markers, nor did Nicaragua request their removal since they were placed more than 20 years ago. Nicaragua does not contest that these activities could have the character of *effectivités* but rather observes that the markers were placed after what it conceived as the critical date in 1977.

206. In the *Qatar* v. *Bahrain* case, the Court accorded legal significance to certain public works when it found that:

> "Certain types of activities invoked by Bahrain such as drilling of artisan wells would, taken by themselves, be considered controversial as acts performed *à titre de souverain*. The construction of navigational aids, on the other hand, can be legally relevant in the case of very small islands. In the present case, taking into account the size of [the island], the activities carried out by Bahrain on that island

must be considered sufficient to support Bahrain's claim that it has sovereignty over it." (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain, (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, pp. 99-100, para. 197.)

207. The Court observes that the placing on Bobel Cay in 1975 of a 10 metre long antenna by Geophysical Services Inc. for the Union Oil Company was part of a local geodetic network to assist in drilling activities in the context of oil concessions granted. Honduras claims that the construction of the antenna was an integral part of the "oil exploration activity authorized by Honduras". Reports on these activities were periodically submitted by the oil company to the Honduran authorities, in which the amount of the corresponding taxes paid was also indicated. Nicaragua claims that the placement of the antenna on Bobel Cay was a private act for which no specific governmental authorization was granted.

The Court is of the view that the antenna was erected in the context of authorized oil exploration activities. Furthermore the payment of taxes in respect of such activities in general can be considered additional evidence that the placement of the antenna (which, as noted, was part of those general activities) was done with governmental authorization.

The Court thus considers that the public works referred to by Honduras constitute *effectivités* which support Honduran sovereignty over the islands in dispute.

208. Having considered the arguments and evidence put forward by the Parties, the Court finds that the *effectivités* invoked by Honduras evidenced an "intention and will to act as sovereign" and constitute a modest but real display of authority over the four islands (*Legal Status of Eastern Greenland, Judgment, 1933, P.C.I.J., Series A/B, No. 53*, p. 46; see also *Minquiers and Ecrehos (France/United Kingdom), Judgment, I.C.J. Reports 1953*, p. 71).

Although it has not been established that the four islands are of economic or strategic importance and in spite of the scarcity of acts of State authority, Honduras has shown a sufficient overall pattern of conduct to demonstrate its intention to act as sovereign in respect of Bobel Cay, Savanna Cay, Port Royal Cay and South Cay. The Court further notes that those Honduran activities qualifying as *effectivités* which can be assumed to have come to the knowledge of Nicaragua did not elicit any protest on the part of the latter.

With regard to Nicaragua, the Court has found no proof of intention or will to act as sovereign, and no proof of any actual exercise or display of authority over the islands. Thus Nicaragua has not satisfied the criteria formulated by the Permanent Court of International

Justice in the *Legal Status of Eastern Greenland* case (see paragraph 172 above).

* *

7.4. Evidentiary Value of Maps in Confirming Sovereignty over the Disputed Islands

209. In the present case, a large number of maps were presented by the Parties to illustrate their respective arguments, but both Nicaragua and Honduras acknowledged that such collection of cartographic material did not constitute of itself a territorial title or evidence of sovereignty over the islands, or that the maps would have a substantive probative value.

210. Among them, a 1982 official map of Nicaragua exhibits a large portion of the Caribbean Sea adjacent to the coasts of Nicaragua and Honduras and includes a number of maritime features (although not the four disputed islands). There is no attribution of sovereignty of the maritime features. By the same token, Honduras provides official maps that cover parts of the Atlantic Ocean in the vicinity of Honduras and Nicaragua, but with no assignation of sovereignty to either country.

211. A 1933 map of the Republic of Honduras made by the Pan-American Institute of Geography and History conveys the impression that at least Bobel Cay, Logwood Cay, Media Luna Reef and South Cay are to be considered as belonging to Honduras. However, the map includes a general disclaimer concerning the areas in dispute.

212. The official map of the Republic of Honduras published in 1994 includes, as insular possessions of Honduras in the Caribbean Sea, a series of cays, "located in the rise geographically and historically known as 'Nicaraguan Rise'" in areas which, according to Nicaragua, are "under the complete sovereignty and jurisdiction of Nicaragua". For this publication, Nicaragua expressed "its total disagreement and protests".

213. The Court, having examined the cartographic material submitted by Nicaragua and Honduras, will now examine the extent to which it can be said to support their respective claims of sovereignty over the islands north of the 15th parallel. In undertaking this task, the Court will bear in mind that maps are

> "to be considered, although such descriptive material is of slight value when it relates to territory of which little or nothing was known and in which it does not appear that any administrative control was actually exercised" (Arbitral Award rendered on 23 January 1933 by the Special Boundary Tribunal constituted by the Treaty

of Arbitration between Guatemala and Honduras, *RIAA*, Vol. II, p. 1325).

214. In the Court's view the earlier maps do not support either of the Parties in their claims. In the present case, none of the maps submitted by the Parties which include some of the islands in dispute clearly specify which State is the one exercising sovereignty over those islands. In the *Island of Palmas* case, the Arbitral Award stated that

> "only with the greatest caution can account be taken of maps in deciding a question of sovereignty . . . Any maps which do not precisely indicate the political distribution of territories . . . clearly marked as such, must be rejected forthwith . . .
>
> The first condition required of maps that are to serve as evidence on points of law is their geographical accuracy. It must here be pointed out that not only maps of ancient date, but also modern, even official or semi-official maps seem wanting in accuracy." (*Island of Palmas (Netherlands/United States of America)*, 4 April 1928, *RIAA*, Vol. II, pp. 852-853.)

215. The Court reaffirms the position it has previously taken regarding the extremely limited scope of maps as a source of sovereign title

> "of themselves, and by virtue solely of their existence, [maps] cannot constitute a territorial title, that is, a document endowed by international law with intrinsic legal force for the purpose of establishing territorial rights" (*Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 582, para. 54).

216. The Parties have conflicting views as to the maps and the Court has pondered their probative value with great care. In the 1986 Judgment of the Chamber of the Court in the *Burkina Faso/Mali* case, it was stated *inter alia* that: "Other considerations which determine the weight of maps as evidence relate to the neutrality of their sources towards the dispute in question and the parties to that dispute." (*Ibid.*, p. 583, para. 56.)

217. In this case, the submission of cartographic material by the Parties essentially serves the purpose of buttressing their respective claims and of confirming their arguments. The Court finds that it can derive little of legal significance from the official maps submitted and the maps of geographical institutions cited; these maps will be treated with a certain reserve. Such qualification is contained in a previous pronouncement by the Chamber of the Court when it said that:

> "Since relatively distant times, judicial decisions have treated maps with a considerable degree of caution . . . maps can still have no greater legal value than that of corroborative evidence endorsing a conclusion at which a court has arrived by other means unconnected with the maps. In consequence, except when the maps are in the category of a physical expression of the will of the State, they cannot in themselves alone be treated as evidence of a frontier, since in that event they would form an irrebuttable presumption, tantamount in fact to legal title." (*Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 583, para. 56.)

218. None of the maps submitted by the Parties was part of a legal instrument in force nor more specifically part of a boundary treaty concluded between Nicaragua and Honduras.

219. The Court concludes that the cartographic material that was presented by the Parties in the written and oral proceedings cannot of itself support their respective claims to sovereignty over islands to the north of the 15th parallel.

* *

7.5. Recognition by Third States and Bilateral Treaties; the 1998 Free Trade Agreement

220. Honduras claims that a number of States have recognized Honduran sovereignty over the islands located north of the 15th parallel and jurisdiction over the maritime areas in that zone. For example, it states that this is demonstrated by Argentina's request in 1975 for authorization for its aircraft to overfly the islands in question; by Jamaica's request in 1977 to have access to Honduran waters to rescue twelve Jamaican nationals who were shipwrecked in Savanna Cay; by the installation of triangulation markers pursuant to the 1976 Honduran/United States Arrangement on Savanna Cay, South Cay and Bobel Cay in 1980 and 1981 and by drug enforcement operations carried out jointly by Honduras and the United States in 1993. Honduras also cites a 1983 Report of the United States Board on Geographic Names which "identifies *inter alia* the following as being located in Honduras: South Cay, Bobel Cay, Media Luna Cay (which is Savanna Cay), and the Arrecifes (reefs) de la Media Luna". Honduras further states that the 1995 "Sailing Directions" for the Caribbean Sea issued by the United States Defense Mapping Agency mention among the features relating to the Honduran coastline "Arrecifes de la Media Luna (Half Moon Reef), Logwood Cay, Cayo Media Luna, Bobel Cay, Hall Rock, Savanna Reefs, South Cay, Alargate Reef (Arrecife Alargado), Main Cape Shoal, and False Cape".

221. Nicaragua disputes these Honduran contentions, asserting that in

the case of the Argentine aircraft, the flight route was not located over the cays in dispute and indeed was outside of any area of territorial sea around the islands in dispute. As to the application made by Jamaica, Nicaragua maintains "it is not clear whether the Jamaican request is actually concerned with one of the islets in dispute in the present proceedings". Nicaragua also questions the importance of the 1976 Arrangement between the United States and Honduras, because it "has no relevance for the issue of sovereignty over the islets, as it includes no reference to any of them", adding that the markers were placed after its claimed critical date. As for the joint drug enforcement operation, Nicaragua states that it "only took place in 1993 and no evidence is offered of acts in the islets in dispute". Nicaragua further argues that the description of the "Sailing Directions" of the maritime area off the mainland coast of Central America in no way concerns the recognition of the Honduran position in respect of the islets in dispute.

222. According to Honduras, further recognition is provided by the conclusion of the

> "Treaties of 1986 (between Colombia and Honduras) and 1993 (between Colombia and Jamaica). Under these, both Colombia and Jamaica recognize the Honduran sovereignty and jurisdiction over the waters and islands as far as the bank of Serranilla north of the 15th parallel, i.e., west of the Joint Administration Area established by Colombia and Jamaica around that bank."

In relation to the 1986 Treaty between Colombia and Honduras on maritime delimitation, Nicaragua contends that it claimed in 1999 before the Central American Court of Justice that, by ratifying that Treaty, Honduras had breached the Central American community rules and principles (see paragraphs 69-70 above).

As for the 1993 Treaty between Colombia and Jamaica on maritime delimitation, Nicaragua asserts that it was concluded after the dispute between Nicaragua and Honduras arose and that it has no relevance to the present case because the maritime boundary proposed by Nicaragua does not encroach upon any rights to maritime zones Jamaica may have.

223. As to recognition by third States of Nicaragua's sovereignty over the islands in dispute, Nicaragua claims that during negotiations with Jamaica on the delimitation of a maritime boundary in 1996 and 1997 a "Jamaican proposal for the delimitation of the maritime boundary recognized Media Luna Cay as part of the territory of Nicaragua".

Honduras however states that Jamaica has provided Honduras with

an *aide-memoire* dated 9 April 2003 stating that, having reviewed the documents introduced by Nicaragua in its Reply,

> "[t]he Government of Jamaica has examined its records of the above-mentioned documents, and can confirm that these documents do not in any way indicate that Jamaica has ever expressed support for Nicaraguan maritime claims against Honduras.
>
> The Government of Jamaica has not in any way expressed support for the claims of either party in this dispute.
>
> The view of the Government of Jamaica has always been that this is a dispute between two sovereign States, which is being adjudicated by the International Court of Justice, and it has therefore adopted a position of complete neutrality in the dispute, while maintaining continued friendly relations with both parties."

224. In the Court's view there is no evidence to support any of the contentions made by the Parties with respect to recognition by third States that sovereignty over the disputed islands is vested in Honduras or in Nicaragua. Some of the evidence offered by the Parties shows episodic incidents that are neither consistent nor consecutive. It is obvious that they do not signify an explicit acknowledgment of sovereignty, nor were they meant to imply any such acknowledgment.

225. The Court observes that bilateral treaties of Colombia, one with Honduras and one with Jamaica, have been invoked by Honduras as proof of recognition of sovereignty over the disputed islands (see paragraph 222 above). The Court notes that in relation to these treaties Nicaragua never acquiesced in any understanding that Honduras had sovereignty over the disputed islands. The Court does not find these bilateral treaties relevant as regards recognition by a third party of title over the disputed islands.

*

226. The Court recalls that during the oral proceedings it was apprised of the negotiating history of a Central America-Dominican Republic Free Trade Agreement which was signed on 16 April 1998 in Santo Domingo by Nicaragua, Honduras, Costa Rica, Guatemala, El Salvador and the Dominican Republic, and which entered into force on different dates for each State (for Honduras on 19 December 2001; and for Nicaragua on 3 September 2002). According to Honduras, the original text of the Agreement, which was signed by the President of Nicaragua, included an Annex to Article 2.01 giving a definition of the territory of Honduras, which referred *inter alia* to Palo de Campeche and Media Luna Cays. This was the text ratified by Honduras. Honduras claims that the term "Media Luna" was "frequently used to refer to the entire group of

islands and cays" in the area in dispute. Nicaragua points out that during the ratification process, its National Assembly approved a revised text of the Free Trade Agreement which had been agreed by the signatory States, and which did not contain the Annex to Article 2.01.

The Court has obtained the text of the above-mentioned Annex. It observes that the four islands in dispute are not mentioned by name in the Annex. Moreover, the Court notes that it has not been presented with any convincing evidence that the term "Media Luna" has the meaning advanced by Honduras. In these circumstances the Court finds that it need not further examine arguments relating to this Treaty nor its status for the purposes of these proceedings.

* *

7.6. Decision as to Sovereignty over the Islands

227. The Court, having examined all of the evidence related to the claims of the Parties as to sovereignty over the islands of Bobel Cay, Savanna Cay, Port Royal Cay and South Cay, including the issue of the evidentiary value of maps and the question of recognition by third States, concludes that Honduras has sovereignty over these islands on the basis of post-colonial *effectivités*.

* * *

8. Delimitation of Maritime Areas

228. The question of sovereignty over the four islands in the area in dispute having been resolved, the Court turns now to the delimitation of maritime areas between Nicaragua and Honduras in the Caribbean Sea. The geography of the region, so critical to the delimitation, is described in detail at paragraphs 20 to 32.

8.1. Traditional Maritime Boundary Line Claimed by Honduras

8.1.1. The principle of uti possidetis juris

229. As mentioned earlier in this judgment (see paragraph 147 above), Honduras maintains that the *uti possidetis juris* principle referred to in the Gámez-Bonilla Treaty and the 1906 Award of the King of Spain is applicable to the maritime area off the coasts of Honduras and Nicaragua, and that the line of 15th parallel constitutes the line of maritime delimitation resulting from that application. It asserts that Nicaragua

and Honduras succeeded in 1821, *inter alia*, to a maritime area extending 6 miles (see paragraphs 86 and 148 above) and that *uti possidetis juris* "gives rise to a presumption of Honduran title to the continental shelf and EEZ north of the 15th parallel".

230. Honduras argues that prior to the independence of Nicaragua and Honduras in 1821, Cape Gracias a Dios separated the jurisdictional areas of the different colonial authorities which exercised authority over the maritime areas off the coasts of present day Nicaragua and Honduras. Honduras asserts that the Royal Order of 23 August 1745 initially divided the military jurisdiction of the maritime area between the Government of Honduras and the General Command of Nicaragua, with Cape Gracias a Dios marking the separation between the two military jurisdictions. Moreover, Honduras contends that the 15th parallel marked the traditional maritime boundary between Nicaragua and Honduras because the propensity of the Spanish Empire to use parallels and meridians to identify jurisdictional divisions makes it inconceivable that the Royal Decree of 1803 would have created a maritime division along a line other than the 15th parallel.

231. In response to Honduras, Nicaragua claims that jurisdiction over the territorial sea fell to Spanish authorities in Madrid, not to local authorities, including Captaincy-Generals. Nicaragua argues that the Spanish Crown's claim to a 6-mile territorial sea "tells [us] nothing with regard to the *limit* of this territorial sea between the Provinces of Honduras and Nicaragua" (emphasis in the original). Finally, Nicaragua argues that it would be inappropriate for the Court to rely upon *uti possidetis* to establish title to the exclusive economic zone and to the continental shelf which are distinctly modern legal concepts.

232. The Court observes that the *uti possidetis juris* principle might in certain circumstances, such as in connection with historic bays and territorial seas, play a role in a maritime delimitation. However, in the present case, were the Court to accept Honduras's claim that Cape Gracias a Dios marked the separation of the respective maritime jurisdiction of the colonial provinces of Honduras and Nicaragua, no persuasive case has been made by Honduras as to why the maritime boundary should then extend from the Cape along the 15th parallel. It merely asserts that the Spanish Crown tended to use parallels and meridians to draw jurisdictional divisions, without presenting any evidence that the colonial Power did so in this particular case.

233. The Court thus cannot uphold Honduras's assertion that the *uti possidetis juris* principle provided for a maritime division along the 15th parallel "to at least six nautical miles from Cape Gracias a Dios" nor that the territorial sovereignty over the islands to the north of the 15th parallel on the basis of the *uti possidetis juris* principle "provides the traditional line which separates these Honduran islands from the Nicaraguan islands to the south" with "a rich historical basis

that contributes to its legal foundation".

234. The Court further observes that Nicaragua and Honduras as new independent States were entitled by virtue of the *uti possidetis juris* principle to such mainland and insular territories and territorial seas which constituted their provinces at independence. The Court, however, has already found that it is not possible to determine sovereignty over the islands in question on the basis of the *uti possidetis juris* principle (see paragraph 158 above). Nor has it been shown that the Spanish Crown divided its maritime jurisdiction between the colonial provinces of Nicaragua and Honduras even within the limits of the territorial sea. Although it may be accepted that all States gained their independence with an entitlement to a territorial sea, that legal fact does not determine where the maritime boundary between adjacent seas of neighbouring States will run. In the circumstances of the present case, the *uti possidetis juris* principle cannot be said to have provided a basis for a maritime division along the 15th parallel.

235. The Court notes that the 1906 Arbitral Award, which indeed was based on the *uti possidetis juris* principle, did not deal with the maritime delimitation between Nicaragua and Honduras and that it does not confirm a maritime boundary between them along the 15th parallel. First, the Award fixed "the extreme boundary points on the coast of the Atlantic" and from that point indicated the land boundary line westwards. Second, there is no indication in the Award that the 15th parallel was perceived as the boundary line.

236. The Court thus finds that the contention of Honduras that the *uti possidetis juris* principle provides a basis for an alleged "traditional" maritime boundary along the 15th parallel cannot be sustained.

* *

8.1.2. Tacit agreement

237. In addition to its claim based on *uti possidetis juris* Honduras points to a variety of elements, having come into existence both before and after the Sandinista revolution in 1979, that, according to it, demonstrate that there was a "*de facto* boundary based on the tacit agreement of the Parties" at the 15th parallel (14° 59′ 48″ N). Honduras further argues that this tacit understanding constituted an "agreement" under Articles 15, 74, and 83 of UNCLOS legally delimiting a single maritime boundary.

238. Honduras further asserts that this "traditional" arrangement has its roots in the King of Spain's rejection in his 1906 Award of Nicaragua's land and maritime claims north of the 15th parallel. Honduras concedes that there is no "formal and written bilateral treaty" governing the delimitation, but argues that ever since the Award was rendered, the

Parties' oil concession practice in respect of the 15th parallel has coincided and has even been co-ordinated along that parallel and that this evinces a tacit agreement. Honduras relies on the Court's recent statement in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening*) that oil concessions "may . . . be taken into account" if they are "based on express or tacit agreement between the parties" (*Judgment, I.C.J. Reports 2002*, p. 448, para. 304). In this regard, Honduras points to a series of oil concessions it granted as far south as the 15th parallel which elicited no protest from Nicaragua, as well as to a series of concessions granted by Nicaragua that extended as far north as the 15th parallel. Honduras maintains that even those Nicaraguan concessions which did not explicitly identify their northern limit, nonetheless "recognized and gave effect" to that limit because the configuration and size (in hectares) of the concession area corresponded to the northern limit of the 15th parallel.

239. Honduras argues specifically that Coco Marina, a joint venture oil well straddling the 15th parallel, provides "conclusive" evidence of agreement over the boundary that was "expressly recognized" as such by Nicaragua. Honduras explains that this was a joint venture between Union Oil Company of Honduras and Union Oil Company of Central America (based in Nicaragua) that had been approved by both the Nicaraguan and Honduran Governments: the costs were to be shared equally by the two companies.

240. Honduras further contends that fishing activities in the disputed area suggest that there was a tacit agreement between the Parties on the 15th parallel as the maritime boundary. Honduras points in this regard to fishing activities it licensed in areas as far south as the 15th parallel as well as to a fishing licence initially granted in 1986 by Nicaragua covering areas north of the 15th parallel but which was revoked in 1987 after protest by Honduras. Honduras maintains that it has treated the 15th parallel as the maritime boundary for purposes of regulating and enforcing its fisheries policies and that Nicaragua has done the same. In particular, it refers to a situation in 2000 when a Honduran vessel allegedly caught fishing illegally south of the 15th parallel was apprehended by a Nicaraguan patrol, escorted to a point on the 15th parallel whereupon it was released.

241. Honduras maintains that ever since the establishment of the Honduran navy in 1976, Honduran naval patrols have carried out a number of functions north of the 15th parallel, including the enforcement of fisheries and immigration laws, in addition to maintaining Honduras's security. Honduras argues that by contrast, Nicaragua has not produced evidence to demonstrate that its naval patrols have

sought to regulate or enforce Nicaraguan laws north of the 15th parallel.

242. Honduras also contends that the practice of third Parties confirm "the existence of a tacitly agreed boundary" along the 15th parallel. Honduras presented evidence of third State recognition of its claims, stressing that many such acts of recognition support both its claim to sovereignty over the islands and its maritime claim. For example, it refers to the request by Jamaica in 1977 to access Honduran waters to rescue 12 Jamaican nationals who were shipwrecked in Savanna Cay and the formal request by Argentina in 1975 for one of its aircraft to overfly Honduras by a route of 15° 17′ N 82° E. Honduras further mentions the *Gazetteer of Geographic Features* prepared by the United States National Imagery and Mapping Agency in October 2000, which identifies the northernmost insular feature attributed to Nicaragua at 14° 59′ N. Honduras argues that the practice of international organizations, such as the Food and Agriculture Organization (FAO), the United Nations Development Programme (UNDP) and the Inter-American Development Bank shows a comparable recognition of the 15th parallel. It also points to the fact that various third States (specifically, Jamaica and the United States) and international organizations, such as the FAO, have considered fish caught in the disputed area as Honduran catches.

243. Honduras also produces sworn statements by a number of fishermen attesting to their belief that the 15th parallel represented and continues to represent the maritime boundary.

244. The Court notes, as to that latter category of evidence, that witness statements produced in the form of affidavits should be treated with caution. In assessing such affidavits the Court must take into account a number of factors. These would include whether they were made by State officials or by private persons not interested in the outcome of the proceedings and whether a particular affidavit attests to the existence of facts or represents only an opinion as regards certain events. The Court notes that in some cases evidence which is contemporaneous with the period concerned may be of special value. Affidavits sworn later by a State official for purposes of litigation as to earlier facts will carry less weight than affidavits sworn at the time when the relevant facts occurred. In other circumstances, where there would have been no reason for private persons to offer testimony earlier, affidavits prepared even for the purposes of litigation will be scrutinized by the Court both to see whether what has been testified to has been influenced by those taking the deposition and for the utility of what is said. Thus, the Court will not find it inappropriate as such to receive affidavits produced for the purposes of a litigation if they attest to personal knowledge of facts by a particular individual. The Court will also take into account a witness's capacity to attest

to certain facts, for example, a statement of a competent governmental official with regard to the boundary lines may have greater weight than sworn statements of a private person.

245. In the current case sworn statements of fishermen produced by Honduras attested to a variety of issues; for example, that Honduran vessels fished north of the 15th parallel and Nicaraguan vessels south of that parallel; that Nicaraguan patrol boats crossed the 15th parallel and captured Honduran fishing boats; others testify as to a general knowledge that the offshore border has always been aligned along the 15th parallel; that licences and permits were issued by Nicaragua south of the 15th parallel and by Honduras to the north of that parallel; that Nicaraguan patrol activity north of the 15th parallel began in the 1980s or even more recently.

Although all the affidavits were made for the purposes of the case, the Court does not put into question their credibility. However, having examined their content the Court finds that none of them can be considered as proof of the existence of a "traditional" maritime boundary along the 15th parallel recognized by Nicaragua and Honduras.

Occasional references in the affidavits to the boundary running along the 15th parallel is of the nature of a personal opinion rather than the knowledge of a fact. In this regard the Court recalls previous dicta of relevance to this question:

> "The Court has not treated as evidence any part of the testimony given which was not a statement of fact, but a mere expression of opinion as to the probability or otherwise of the existence of such facts, not directly known to the witness. Testimony of this kind, which may be highly subjective, cannot take the place of evidence. An opinion expressed by a witness is a mere personal and subjective evaluation of a possibility, which has yet to be shown to correspond to a fact; it may, in conjunction with other material, assist the Court in determining a question of fact, but is not proof in itself. Nor is testimony of matters not within the direct knowledge of the witness, but known to him only from hearsay, of much weight . . ." (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986,* p. 42, para. 68.)

246. Honduras also argues that there is a regional practice of using lines of latitude and longitude as maritime boundaries and, specifically, that the 1928, 1986 and 1993 bilateral treaties concluded separately with Colombia, while *res inter alios acta* between Nicaragua and Honduras, nonetheless confirm the 15th parallel as the maritime boundary between

Honduras and Nicaragua. Honduras suggests that the 1928 Barcenas-Esguerra Treaty between Nicaragua and Colombia set the maritime boundary between them along with 82nd meridian up to the 15th parallel. Honduras also points to the 1986 Treaty on maritime delimitation it concluded with Colombia, which, although setting the boundary along 14° 59′ 08″ N rather than 14° 59.08′ N (owing to "an error in translation"), constitutes "recognition by Colombia that the maritime area to the north of the 15th parallel forms part of Honduras . . .". Honduras asserts that the 1993 Treaty between Colombia and Jamaica, delimiting a joint economic régime area abutting a different part of the line established by the 1986 Treaty between Colombia and Honduras, is further evidence that the line claimed to be established by the 1986 Treaty is receiving wider and more general international recognition.

247. Nicaragua denies that it ever accepted or recognized the 15th parallel as the maritime boundary with Honduras. It argues that the existence of what Honduras calls a "traditional" maritime boundary is belied by the fact that Nicaragua occupied Honduran territory north of the 15th parallel until this Court in 1960 affirmed the validity and binding character of the King of Spain's 1906 Award. Nicaragua maintains that the oil concession practice similarly fails to show a settled boundary since Nicaragua actually reserved its position as to the boundary by specifying in the contracts that the northern limit would be "the border line with the Republic of Honduras [which has not been determined]". With regard to the alleged inference of a northern boundary at the 15th parallel from the specification in these agreements of an area in hectares that corresponded with a northern limit at the 15th parallel, Nicaragua responds that some concessions (for example, Union Oil) also included language specifying that they covered the "conventional area" and that the concessions would be revised and modified "following the date when the borderline is determined".

248. Nicaragua further maintains that the fact that the Coco Marina project required a joint venture arrangement between Union Oil Company of Honduras and Union Oil Company of Central America (Nicaragua), and could not be carried out by one or the other of the companies alone, indicates that there was no agreement over the boundary. If an agreement had been in effect, there would have been no need for multinational co-operation since the project could have been handled wholly by the company operating in the country with rights in the Coco Marina area. According to Nicaragua, this was at best an agreement between two Union Oil subsidiaries (to be administered, in fact, from Nicaragua), rather than between the Governments of Nicaragua and Honduras, and thus carries little if any evidentiary weight.

249. As to the third party practice proffered by Honduras to show

general recognition of a boundary at the 15th parallel, Nicaragua argues that this is self-serving and of doubtful relevance or credibility. The FAO report cited by Honduras contains a disclaimer to the effect that the report is not meant to express any opinion about maritime delimitation or boundaries. Nicaragua further contends that its negotiations with Jamaica concerning the delimitation of a maritime boundary north of the 15th parallel undermine the argument that Jamaica recognized this parallel as Nicaragua's northern maritime limit. Nicaragua also asserts that it was involved in an armed conflict with, *inter alia*, Honduras and the United States after the 1979 Sandinista revolution and that the attitude of the United States in this matter should thus be discounted.

250. Finally Nicaragua contends that Honduras only began taking an interest in areas north of the 15th parallel in 1982, when Honduran forces initiated a series of attacks on "Nicaraguan positions in the area in dispute". It also refers to a series of diplomatic correspondence in which Nicaragua protested the incursion by Honduras into Nicaraguan waters.

251. As regards the treaties cited by Honduras as evidence of an internationally recognized traditional line, Nicaragua draws attention to the fact that it is challenging the validity and interpretation of its 1928 Treaty with Colombia in a separate case pending before this Court. Nicaragua argues that, if anything, this Treaty concerned the attribution of sovereignty over various small islands (in particular the Archipelago of San Andrés and Providencia) near the 82nd meridian and that in neither letter nor spirit did the Treaty delimit a maritime boundary. The Treaty moreover could not have set a maritime boundary along the 15th parallel more than 80 miles from their shores in 1928, when maritime boundaries so far out at sea were not accepted under international law. Nicaragua also challenges the legal relevance in this regard of the 1986 Treaty between Colombia and Honduras on maritime delimitation. Nicaragua maintains that it has protested against this Treaty repeatedly since it was concluded and taken steps to challenge its legality (see paragraphs 69-70 above). With regard to the 1993 Treaty between Colombia and Jamaica on maritime delimitation, Nicaragua states that it "is concerned with insular territories and maritime areas which are part of the case between Nicaragua and Colombia before this Court". According to Nicaragua, this treaty "has no relevance for the present proceedings" as the maritime boundary with Honduras proposed by Nicaragua does not affect any right "to maritime zones Jamaica may have to the north of the maritime boundary Jamaica agreed with Colombia in 1993".

252. Nicaragua also argues that Honduras understood that no legal delimitation had been effected between the two countries. Nicaragua points in particular to an incident in 1982 arising from the capture by the Nicaraguan coastguard of four Honduran vessels fishing approximately

16 miles north of the 15th parallel in the vicinity of Bobel Cay and Media Luna Cay. This incident resulted in a diplomatic exchange in which a Note dated 23 March 1982 from the Honduran Foreign Ministry identified the 15th parallel as a delimitation line "traditionally recognised by both countries" and thus protested against what it saw as a "flagrant violation of [Honduran] sovereignty". The reply by the Foreign Minister of Nicaragua, dated 14 April 1982, rejected the 15th parallel as the boundary line and asserted that "[a]t no time has Nicaragua recognised it as such since that would imply an attempt against the territorial integrity and national sovereignty of Nicaragua". The Honduran Foreign Minister responded to this by way of a Note of 3 May 1982 in which he reasserted that there was a "traditionally accepted line", but

> "agree[d] . . . that the maritime border between Honduras and Nicaragua [had] not been legally delimited" *("Coincido . . . que la frontera marítima entre Honduras y Nicaragua no ha sido jurídicamente delimitada") [original Spanish; translation into English provided by the Parties]*.

He further proposed "[t]he temporary establishment of a line or zone . . . which, without prejudice to the rights that the two States might claim in the future, could serve as momentary indicator of their respective areas of jurisdiction". Nicaragua thus concludes that, whatever else the 15th parallel may have represented historically and in State practice, it was not regarded by either of the Parties as having actual legal value. According to Nicaragua, from the Somoza Government which ended in 1979 until the current Government of Mr. Ortega, the official position of all successive Nicaraguan administrations has been that no line of delimitation in the Caribbean Sea has existed between Nicaragua and Honduras.

253. The Court has already indicated that there was no boundary established by reference to *uti possidetis juris* (see paragraph 236 above). The Court must now determine whether there was a tacit agreement sufficient to establish a boundary. Evidence of a tacit legal agreement must be compelling. The establishment of a permanent maritime boundary is a matter of grave importance and agreement is not easily to be presumed. A *de facto* line might in certain circumstances correspond to the existence of an agreed legal boundary or might be more in the nature of a provisional line or of a line for a specific, limited purpose, such as sharing a scarce resource. Even if there had been a provisional line found convenient for a period of time, this is to be distinguished from an international boundary.

254. As regards the evidence of oil concessions proffered by Honduras, the Court considers that Nicaragua, by leaving open the northern limit to its concessions or by abstaining from mentioning the boundary with Honduras in that connection, reserved its position concerning its

maritime boundary with Honduras. As the Court has pointed out with respect to oil concession limits:

> "These limits may have been simply the manifestation of the caution exercised by the Parties in granting their concessions. This caution was all the more natural in the present case because negotiations were to commence soon afterwards between Indonesia and Malaysia with a view to delimiting the continental shelf." (*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 664, para. 79.)

Moreover, the Court observes that the Nicaraguan concessions provisionally extending up to the 15th parallel were all given after Honduras had granted its concessions extending southwards to the 15th parallel.

255. The Court recalls that Nicaragua has maintained its persistent objections to the 1986 Treaty between Colombia and Honduras and the 1993 Treaty between Colombia and Jamaica. In the 1986 Treaty the parallel 14° 59′ 08″ (see paragraph 246 above) to the east of the 82nd meridian serves as the boundary line between Honduras and Colombia. As already mentioned, according to Honduras the 1993 Treaty proceeds from a recognition of the validity of the 1986 Treaty between Colombia and Honduras, thereby recognizing Honduran jurisdiction over the waters and islands to the north of the 15th parallel (see paragraphs 222 and 246 above).

256. The Court has noted that at periods in time, as the evidence shows, the 15th parallel appears to have had some relevance in the conduct of the Parties. This evidence relates to the period after 1961 when Nicaragua left areas to the north of Cape Gracias a Dios following the rendering of the Court's Judgment on the validity of the 1906 Arbitral Award and until 1977 when Nicaragua proposed negotiations with Honduras with the purpose of delimiting maritime areas in the Caribbean Sea. The Court observes that during this period several oil concessions were granted by the Parties which indicated that their northern and southern limits lay respectively at 14° 59.8′. Furthermore, regulation of fishing in the area at times seemed to suggest an understanding that the 15th parallel divided the respective fishing areas of the two States; and in addition the 15th parallel was also perceived by some fishermen as a line dividing maritime areas under the jurisdiction of Nicaragua and Honduras. However, these events, spanning a short period of time, are not sufficient for the Court to conclude that there was a legally established international maritime boundary between the two States.

257. The Court observes that the Note of the Honduran Minister for Foreign Affairs dated 3 May 1982 (see paragraph 56 above) is somewhat uncertain regarding the existence of an acknowledged boundary along

the 15th parallel. Although Honduras had agreed in an exchange of Notes in 1977 to initiate "the preliminary stages of the conversation" about "the definitive marine and sub-marine delimitation in the Caribbean Sea zone", the dispute may be said to have "crystallized" through the various incidents leading to the above-mentioned Note of 3 May 1982. In that Note, the Foreign Minister of Honduras concurred with the Nicaraguan Foreign Ministry that "the maritime border between Honduras and Nicaragua has not been legally delimited" and proposed that the Parties at least come to a "temporary" arrangement about the boundary so as to avoid further boundary incidents. The acknowledgment that there was then no legal delimitation "was not a proposal or a concession made during negotiations, but a statement of facts transmitted to the Foreign [Ministry, which] did not express any reservation in respect thereof" and should thus be taken "as evidence of the [Honduran] official view at that time" (*Minquiers and Ecrehos, Judgment, I.C.J. Reports 1953*, p. 71).

258. Having reviewed all of this practice including the diplomatic exchanges referred to in paragraphs 252 and 257, the Court concludes that there was no tacit agreement in effect between the Parties in 1982 — nor *a fortiori* at any subsequent date — of a nature to establish a legally binding maritime boundary.

* *

8.2. Determination of the Maritime Boundary

259. The Court, having found that there is no traditional boundary line along the 15th parallel, proceeds now to the maritime delimitation between Nicaragua and Honduras.

*

260. In its final submissions, Nicaragua requests the Court to adjudge and declare that:

> "The bisector of the lines representing the coastal fronts of the two Parties as described in the pleadings, drawn from a fixed point approximately 3 miles from the river mouth in the position 15° 02′ 00″ N and 83° 05′ 26″ W, constitutes the single maritime boundary for the purposes of the delimitation of the disputed areas of the territorial sea, exclusive economic zone and continental shelf in the region of the Nicaraguan Rise";

and that:

> "The starting-point of the delimitation is the thalweg of the main mouth of the River Coco such as it may be at any given moment as determined by the Award of the King of Spain of 1906."

The second and third final submissions of Honduras request the Court to adjudge and declare that:

> "2. The starting-point of the maritime boundary to be delimited by the Court shall be a point located at 14° 59.8′ N latitude, 83° 05.8′ W longitude. The boundary from the point determined by the Mixed Commission in 1962 at 14° 59.8′ N latitude, 83° 08.9′ W longitude to the starting-point of the maritime boundary to be delimited by the Court shall be agreed between the Parties to this case on the basis of the Award of the King of Spain of 23 December 1906, which is binding upon the Parties, and taking into account the changing geographical characteristics of the mouth of the River Coco (also known as the River Segovia or Wanks).
>
> 3. East of the point at 14° 59.8′ N latitude, 83° 05.8′ W longitude, the single maritime boundary which divides the respective territorial seas, exclusive economic zones and continental shelves of Honduras and Nicaragua follows 14° 59.8′ N latitude, as the existing maritime boundary, or an adjusted equidistance line, until the jurisdiction of a third State is reached."

*

8.2.1. Applicable law

261. Both Parties in their final submissions asked the Court to draw a "single maritime boundary" delimiting their respective territorial seas, exclusive economic zones, and continental shelves in the disputed area. Although Nicaragua was not party to UNCLOS at the time it filed the Application in this case, the Parties are in agreement that UNCLOS is now in force between them and that its relevant articles are applicable between them in this dispute (UNCLOS entered into force on 16 November 1994; Nicaragua ratified it on 3 May 2000 and Honduras on 5 October 1993).

*

8.2.2. Areas to be delimited and methodology

262. The "single maritime boundary" in this case will be the result of the delimitation of the various areas of jurisdiction spanning the maritime zone from the Nicaragua-Honduras mainland out to at least the 82nd meridian, where third-State interests may become relevant. In the western reaches of the area to be delimited the Parties' mainland coasts are adjacent; thus, for some distance the boundary will delimit exclusively their territorial seas (UNCLOS, Art. 2, para. 1). Both Parties also accept that the four islands in dispute north of the 15th parallel (Bobel

Cay, Savanna Cay, Port Royal Cay and South Cay), which have been attributed to Honduras (see paragraph 227 above), as well as Nicaragua's Edinburgh Cay south of the 15th parallel, are entitled to generate their own territorial seas for the coastal State. The Court recalls that as regards the islands in dispute no claim has been made by either Party for maritime areas other than the territorial sea.

263. As to the breadth of the territorial sea around the four disputed islands, Nicaragua, in response to a question put by Judge Keith, stated that if Bobel Cay, Savanna Cay, Port Royal Cay and South Cay "were to be attributed to Honduras and were thus to be located within Nicaraguan territory", then the position of Nicaragua would be that those islands "should be enclaved within a territorial sea of 3 miles". Honduras, for its part, contended that, as the breadth of the territorial sea of both Parties is 12 nautical miles, there is "no justification . . . for employing a different standard with regard to the islands".

264. The Court notes that, while the Parties disagree as to the appropriate breadth of these islands' territorial seas, according to Article 3 of UNCLOS, a State's territorial sea cannot extend beyond 12 nautical miles. These islands are all indisputably located within 24 miles of each other but more than 24 miles from the mainland that lies to the west. Thus the single maritime boundary might also include segments delimiting overlapping areas of the islands' opposite-facing territorial seas as well as segments delimiting the continental shelf and exclusive economic zones around them.

265. As regards the general task and methodology of drawing a single maritime boundary to delimit these various maritime zones, the Court observed in the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain)* that:

> "the concept of a single maritime boundary does not stem from multilateral treaty law but from State practice, and that it finds its explanation in the wish of States to establish one uninterrupted boundary line delimiting the various — partially coincident — zones of maritime jurisdiction appertaining to them. In the case of coincident jurisdictional zones, the determination of a single boundary for the different objects of delimitation
>
> > 'can only be carried out by the application of a criterion, or combination of criteria, which does not give preferential treatment to one of these . . . objects to the detriment of the other, and at the same time is such as to be equally suitable to the division of either of them',
>
> as was stated by the Chamber of the Court in the *Gulf of Maine* case (*Judgment, I.C.J. Reports 1984*, p. 327, para. 194). In that case, the Chamber was asked to draw a single line which

would delimit both the continental shelf and the superjacent water column.

Delimitation of territorial seas does not present comparable problems, since the rights of the coastal State in the area concerned are not functional but territorial, and entail sovereignty over the sea-bed and the superjacent waters and air column. Therefore, when carrying out that part of its task, the Court has to apply first and foremost the principles and rules of international customary law which refer to the delimitation of the territorial sea, while taking into account that its ultimate task is to draw a single maritime boundary that serves other purposes as well." (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 93, paras. 173-174.)

266. The Court considers these observations pertinent for the present case as well.

267. For the delimitation of the territorial seas, Article 15 of UNCLOS, which is binding as a treaty between the Parties, provides:

> "Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest point on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith."

As already indicated, the Court has determined that there is no existing "historic" or traditional line along the 15th parallel.

268. As this Court has observed with respect to implementing the provisions of Article 15 of UNCLOS:

> "The most logical and widely practised approach is first to draw provisionally an equidistance line and then to consider whether that line must be adjusted in the light of the existence of special circumstances." (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 94, para. 176.)

269. The methods governing territorial sea delimitations have needed to be, and are, more clearly articulated in international law than those used for the other, more functional maritime areas. Article 15 of UNCLOS, like Article 12, paragraph 1, of the 1958 Convention on the Territorial Sea and the Contiguous Zone before it, refers specifically and expressly to the equidistance/special circumstances approach for delimiting the territorial sea. The Court noted in the cases concerning *North Sea Continental Shelf*, that

> "the distorting effects of lateral equidistance lines under certain conditions of coastal configuration are nevertheless comparatively small within the limits of territorial waters, but produce their maximum effect in the localities where the main continental shelf areas lie further out" (*Judgment, I.C.J. Reports 1969*, p. 37, para. 59).

270. For the exclusive economic zone and the continental shelf, Articles 74, paragraph 1, and 83, paragraph 1, of UNCLOS provide that they are to be delimited by "agreement on the basis of international law" to "achieve an equitable solution".

271. As to the plotting of a single maritime boundary the Court has on various occasions made it clear that, when a line covering several zones of coincident jurisdictions is to be determined, the so-called equitable principles/relevant circumstances method may usefully be applied, as in these maritime zones this method is also suited to achieving an equitable result:

> "This method, which is very similar to the equidistance/special circumstances method applicable in delimitation of the territorial sea, involves first drawing an equidistance line, then considering whether there are factors calling for the adjustment or shifting of that line in order to achieve an 'equitable result'." (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 441, para. 288.)

272. The jurisprudence of the Court sets out the reasons why the equidistance method is widely used in the practice of maritime delimitation: it has a certain intrinsic value because of its scientific character and the relative ease with which it can be applied. However, the equidistance method does not automatically have priority over other methods of delimitation and, in particular circumstances, there may be factors which make the application of the equidistance method inappropriate.

273. Nicaragua contends that the current case is not one in which the equidistance/special circumstances approach would be appropriate for the delimitation to be effected. Nicaragua asserts that the instability of the mouth of the River Coco at the Nicaragua-Honduras land boundary terminus, combined with the small and uncertain nature of the offshore islands and cays north and south of the 15th parallel, would make fixing base points and using them to construct a provisional equidistance line unduly problematic. Nicaragua urges the Court instead to account for the coastal geography by constructing the entire single maritime boundary from "the bisector of two lines representing the entire coastal front of both states", which would run as a line of constant bearing 52° 45′ 21″.

274. Honduras's principal argument with respect to the delimitation is that there was a tacit agreement on the 15th parallel as the single mari-

time boundary. Honduras has acknowledged that "geometrical methods of delimitation, such as perpendiculars and bisectors, are methods that may produce equitable delimitations in some circumstances". As regards equidistance, Honduras agrees that the mouth of the River Coco "shifts considerably, even from year to year", making it "necessary to adopt a technique so that the maritime boundary need not change as the mouth of the river changes". Honduras asserts, moreover, that the 15th parallel accurately reflects the eastward facing coastal fronts of the two countries such that it represents "both an adjustment and simplification of the equidistance line".

275. Thus neither Party has as its main argument a call for a provisional equidistance line as the most suitable method of delimitation.

276. Honduras initially referred to its version of a provisional equidistance line constructed by using the islands as base points in its Rejoinder. At the end of its oral argument, Honduras presented a provisional equidistance line (azimuth 78° 48′) constructed from one pair of base points fixed at the low-water line of the apparent easternmost endpoint of the mainland Honduran and Nicaraguan coasts at Cape Gracias a Dios, as identified from a recent satellite photograph. Honduras did not use the islands north and south of the 15th parallel as base points for constructing this line but did adjust the line both to allow a full 12-mile territorial sea for these islands where possible and to follow a median line where their opposite-facing territorial seas overlap (mostly to the south of the 15th parallel) (see also paragraph 285 below).

277. The Court observes at the outset that both Parties have raised a number of geographical and legal considerations with regard to the method to be followed by the Court for the maritime delimitation. Cape Gracias a Dios, where the Nicaragua-Honduras land boundary ends, is a sharply convex territorial projection abutting a concave coastline on either side to the north and south-west. Taking into account Article 15 of UNCLOS and given the geographical configuration described above, the pair of base points to be identified on either bank of the River Coco at the tip of the Cape would assume a considerable dominance in constructing an equidistance line, especially as it travels out from the coast. Given the close proximity of these base points to each other, any variation or error in situating them would become disproportionately magnified in the resulting equidistance line. The Parties agree, moreover, that the sediment carried to and deposited at sea by the River Coco have caused its delta, as well as the coastline to the north and south of the Cape, to exhibit a very active morpho-dynamism. Thus continued accretion at the Cape might render any equidistance line so constructed today arbitrary and unreasonable in the near future.

278. These geographical and geological difficulties are further exacerbated by the absence of viable base points claimed or accepted by the Parties themselves at Cape Gracias a Dios. In accordance with Article 16 of UNCLOS, Honduras has deposited with the Secretary-General of the United Nations a list of geographical co-ordinates for its baselines for measuring the breadth of its territorial sea (see Honduran Executive Decree No. PCM 007-2000 of 21 March 2000 (published in the *Law of the Sea Bulletin*, No. 43; also available at http://www.un.org/Depts/los/doalos_publications/LOSBulletins/bulletinpdf/bulletinE43.pdf)). The Honduran Executive Decree identifies one of the points used for its territorial sea baselines, "Point 17", as having co-ordinates 14° 59.8′ N and 83° 08.9′ W. These are the exact co-ordinates the Mixed Commission identified in 1962 as being the thalweg of the River Coco at the mouth of its main branch. This point, even if it can be said to appertain to Honduras, is no longer in the mouth of the River Coco and cannot be properly used as a base point (see UNCLOS, Art. 5.) Nicaragua has not yet deposited the geographical co-ordinates of its base points and baselines.

279. This difficulty in identifying reliable base points is compounded by the differences, addressed more fully, *infra*, that apparently still remain between the Parties as to the interpretation and application of the King of Spain's 1906 Arbitral Award in respect of sovereignty over the islets formed near the mouth of the River Coco and the establishment of "[t]he extreme common boundary point on the coast of the Atlantic" (*Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras* v. *Nicaragua), Judgment, I.C.J. Reports 1960*, p. 202). The Court notes that in the case concerning *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, the "main reason" for the Chamber's objections to using equidistance in the first segment of the delimitation was that the Special Agreement's choice of Point A as the beginning of the line deprived the Court of an equidistance point, "derived from two basepoints of which one is in the unchallenged possession of the United States and the other in that of Canada" (*Judgment, I.C.J. Reports 1984*, p. 332, para. 211).

280. Given the set of circumstances in the current case it is impossible for the Court to identify base points and construct a provisional equidistance line for the single maritime boundary delimiting maritime areas off the Parties' mainland coasts. Even if the particular features already indicated make it impossible to draw an equidistance line as the single maritime frontier, the Court must nonetheless see if it would be possible to start the frontier line across the territorial seas as an equidistance line, as envisaged in Article 15 of UNCLOS. It may be argued that the problems associated with distortion, if the protrusions either side of Cape Gracias a Dios were used as base points, are less severe close to the coast

(*North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, pp. 17-18).

However, the Court notes first that the Parties are in disagreement as to title over the unstable islands having formed in the mouth of the River Coco, islands which the Parties suggested during the oral proceedings could be used as base points. It is recalled that because of the changing conditions of the area the Court has made no finding as to sovereignty over these islands (see paragraph 145 above). Moreover, whatever base points would be used for the drawing of an equidistance line, the configuration and unstable nature of the relevant coasts, including the disputed islands formed in the mouth of the River Coco, would make these base points (whether at Cape Gracias a Dios or elsewhere) uncertain within a short period of time.

Article 15 of UNCLOS itself envisages an exception to the drawing of a median line, namely "where it is necessary by reason of historic title or special circumstances . . .". Nothing in the wording of Article 15 suggests that geomorphological problems are *per se* precluded from being "special circumstances" within the meaning of the exception, nor that such "special circumstances" may only be used as a corrective element to a line already drawn. Indeed, the latter suggestion is plainly inconsistent with the wording of the exception described in Article 15. It is recalled that Article 15 of UNCLOS, which was adopted without any discussion as to the method of delimitation of the territorial sea, is virtually identical (save for minor editorial changes) to the text of Article 12, paragraph 1, of the 1958 Convention on the Territorial Sea and the Contiguous Zone.

The genesis of the text of Article 12 of the 1958 Convention on the Territorial Sea and the Contiguous Zone shows that it was indeed envisaged that a special configuration of the coast might require a different method of delimitation (see *Yearbook of the International Law Commission (YILC)*, 1952, Vol. II, p. 38, commentary, para. 4). Furthermore, the consideration of this matter in 1956 does not indicate otherwise. The terms of the exception to the general rule remained the same (*YILC*, 1956, Vol. I, p. 284; Vol. II, pp. 271, 272, and p. 300 where the Commentary to the draft Articles dealing with the continental shelf noted that "as in the case of the boundaries of the territorial sea, provision must be made for departures necessitated by any exceptional configuration of the coast . . ."). Additionally, the jurisprudence of the Court does not reveal an interpretation that is at variance with the ordinary meaning of the terms of Article 15 of UNCLOS. This matter has not previously been directly in issue. The Court notes however that on occasion the median line in delimiting the territorial sea has not been used, either for very par-

ticular reasons (see *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 85, para. 121, where the Court worked backwards from a line of convergence of the concessions granted by each Party and reflected this in a line drawn from a defined point offshore to the endpoint of the land frontier) or because of the adverse effect of coastal configurations (see *Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau, International Law Reports*, Vol. 77, p. 682, para. 104. *[English translation of French original]*).

281. For all of the above reasons, the Court finds itself within the exception provided for in Article 15 of UNCLOS, namely facing special circumstances in which it cannot apply the equidistance principle. At the same time equidistance remains the general rule.

282. The Court observes that in this case the Parties have each envisaged methods for delimiting the territorial sea other than the drawing of an equidistance line.

* *

8.2.3. Construction of a bisector line

283. Having reached the conclusion that the construction of an equidistance line from the mainland is not feasible, the Court must consider the applicability of the alternative methods put forward by the Parties.

284. Nicaragua's primary argument is that a "bisector of two lines representing the entire coastal front of both States" should be used to effect the delimitation from the mainland, while sovereignty over the maritime features in the area in dispute "could be attributed to either Party depending on the position of the feature involved with respect to the bisector line".

285. Honduras "does not deny that geometrical methods of delimitation, such as perpendiculars and bisectors, are methods that may produce equitable delimitations in some circumstances", but it disagrees with Nicaragua's construction of the angle to be bisected. Honduras, as already explained, advocates a line along the 15th parallel, no adjustment of which would be necessary in relation to the islands. In the Rejoinder, Honduras, in order to demonstrate the equitable character of its proposed boundary along the 15th parallel, refers to a provisional equidistance line constructed by using islands to the north and south of the 15th parallel as base points. In addition, during the oral proceedings, Honduras referred to a provisional equidistance line drawn from a single pair of purported mainland base points without using any of the islands as base points. The islands would be dealt with separately by overlaying on this equidistance line the 12-mile territorial seas of the islands north and south of the 15th parallel. Honduras also argues with respect to this alternative that where the islands'

territorial seas overlap an equidistance line should be drawn between them.

286. The Court notes that in Honduras's final submissions it requested the Court to declare that the single maritime boundary between Honduras and Nicaragua "follows 14° 59.8′ N latitude, as the existing maritime boundary, or an adjusted equidistance line, until the jurisdiction of a third State is reached". During the oral proceedings, Honduras explained that, "if the Court rejects its submission — that the 15th parallel is the existing maritime boundary between Honduras and Nicaragua — then an adjusted equidistance line provides the basis for an alternative boundary". The Court recalls that both of Honduras's proposals (the main one based on tacit agreement as to the 15th parallel representing the maritime frontier and the other on the use of an adjusted equidistance line) have not been accepted by the Court.

287. Thus the Court will consider whether in principle some form of bisector of the angle created by lines representing the relevant mainland coasts could be a basis for the delimitation. The Court will then consider the impact of the territorial seas of the islands. The use of a bisector — the line formed by bisecting the angle created by the linear approximations of coastlines — has proved to be a viable substitute method in certain circumstances where equidistance is not possible or appropriate. The justification for the application of the bisector method in maritime delimitation lies in the configuration of and relationship between the relevant coastal fronts and the maritime areas to be delimited. In instances where, as in the present case, any base points that could be determined by the Court are inherently unstable, the bisector method may be seen as an approximation of the equidistance method. Like equidistance, the bisector method is a geometrical approach that can be used to give legal effect to the

> "criterion long held to be as equitable as it is simple, namely that in principle, while having regard to the special circumstances of the case, one should aim at an equal division of areas where the maritime projections of the coasts of the States . . . converge and overlap" (*Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 327, para. 195).

288. This was the situation in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, where equidistance could not be used for the second segment of the delimitation because the segment was to begin at a point not on any possible equidistance line. The Court there used a bisector to approximate the northerly change in direction of the Tunisian coast beginning in the Gulf of Gabes (*I.C.J. Reports 1982*, p. 94, para. 133 C (3)). The Chamber of the Court in the *Gulf of Maine*

case also used a bisector of the Gulf-facing mainland because it deemed the small islands in the Gulf unsuitable for use as base points and because the first segment of the delimitation was to begin at "Point A", which was also off any equidistance line. The Arbitral Tribunal in the 1985 *Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau* case drew a perpendicular (the bisector of a 180° angle) to a line drawn from Almadies Point (Senegal) to Cape Shilling (Sierra Leone) to approximate the general direction of the coast of "the whole of West Africa". The Tribunal considered this approach, rather than equidistance, necessary in order to effect an equitable delimitation that had to be "integrated into the present or future delimitations of the region as a whole" (*International Law Reports*, Vol. 77, pp. 683-684, para. 108).

289. If it is to "be faithful to the actual geographical situation" (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 45, para. 57), the method of delimitation should seek a solution by reference first to the States' "relevant coasts" (see *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Judgment, I.C.J. Reports 2001*, p. 94 para. 178; see also the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), I.C.J. Reports 2002*, p. 442, para. 90)). Identifying the relevant coastal geography calls for the exercise of judgment in assessing the actual coastal geography. The equidistance method approximates the relationship between two Parties' relevant coasts by taking account of the relationships between designated pairs of base points. The bisector method comparably seeks to approximate the relevant coastal relationships, but does so on the basis of the macro-geography of a coastline as represented by a line drawn between two points on the coast. Thus, where the bisector method is to be applied, care must be taken to avoid "completely refashioning nature" (*North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 49, para. 91).

290. In light of the foregoing, the Court notes that Nicaragua advanced a variety of reasons to justify the bisector method (see paragraphs 83-84 and 102 above). According to Nicaragua, the equitable character of the bisector method is confirmed by the independent criteria of an equitable result: *(a)* the method produces an effective reflection of the coastal relationships; *(b)* the bisector produces a result which constitutes an expression of the principle of equal division of the areas in dispute; *(c)* the bisector method has the virtue of compliance with the principle of non-encroachment; *(d)* it also prevents, as far as possible, any cut-off of the seaward projection of the coast of either of the States concerned; and *(e)* the bisector method ensures "the exercise of the right to development of the Parties".

291. To demonstrate the equitable character of its own proposed bisector line Nicaragua also refers to a number of relevant circumstances

and argues that the bisector method produces an equitable result in terms of the incidence of natural resources; satisfies the criterion of equitable access to the natural resources; respects the unitary character of the Nicaraguan Rise as a single geological and geomorphological feature by dividing it in approximately equal halves; in terms of security considerations produces an alignment which effectively ensures "that each State controls the maritime territories situated opposite to its coasts and in their vicinity" and ensures equitable access to the main navigable channel in the adjacent coastal areas.

292. The Court is not persuaded in the present case as to the pertinence of these factors and does not find them legally determinative for the purposes of the delimitation to be effected. Rather, the key elements are the geographical configuration of the coast, and the geomorphological features of the area where the endpoint of the land boundary is located.

293. The Parties have presented the Court with their differing versions of the relevant mainland coast for the purposes of the delimitation to be effected. Nicaragua argues that the relevant coast of each Party is its entire Caribbean coast: thus in the case of Honduras this would be a line running from Cape Gracias a Dios north and west to its land border with Guatemala, while in the case of Nicaragua it would run from the Cape south to its land border with Costa Rica. Nicaragua has also acknowledged that other coastal fronts might be considered, variously suggesting relevant coastal fronts for Honduras extending to Cape Camerón or Cape Falso, and for Nicaragua to Punta de Perlas or Punta Gorda, respectively. Honduras sees the relevant coastal front as running from Cape Falso in the north, south-easterly to Cape Gracias a Dios, and then south-westerly to Laguna Wano in a configuration that focuses exclusively on the nearly symmetrical projection of Cape Gracias a Dios.

294. The Court considers for present purposes that it will be most convenient to use the point fixed in 1962 by the Mixed Commission at Cape Gracias a Dios as the point where the Parties' coastal fronts meet. The Court adds that the co-ordinates of the endpoints of the chosen coastal fronts need not at this juncture be specified with exactitude for present purposes; one of the practical advantages of the bisector method is that a minor deviation in the exact position of endpoints, which are at a reasonable distance from the shared point, will have only a relatively minor influence on the course of the entire coastal front line. If necessary in the circumstances, the Court could adjust the line so as to achieve an equitable result (see UNCLOS, Arts. 74, para. 1, and 83, para. 1).

295. The Court will now consider the various possibilities for the other coastal fronts that could be used to define these linear approximations of

the relevant geography. Nicaragua's primary proposal for the coastal fronts, as running from Cape Gracias a Dios to the Guatemalan border for Honduras and to the Costa Rican border for Nicaragua, would cut off a significant portion of Honduran territory falling north of this line and thus would give significant weight to Honduran territory that is far removed from the area to be delimited. This would seem to present an exaggeratedly acute angle to bisect.

296. In selecting the relevant coastal fronts, the Court has considered the Cape Falso-Punta Gorda coast (generating a bisector with an azimuth of 70° 54′), which certainly faces the disputed area, but it is quite a short façade (some 100 kilometres) from which to reflect a coastal front more than 100 nautical miles out to sea, especially taking into account how quickly to the northwest the Honduran coast turns away from the area to be delimited after Cape Falso, as it continues past Punta Patuca and up to Cape Camerón. Indeed, Cape Falso is identified by Honduras as the most relevant "turn" in the mainland coastline.

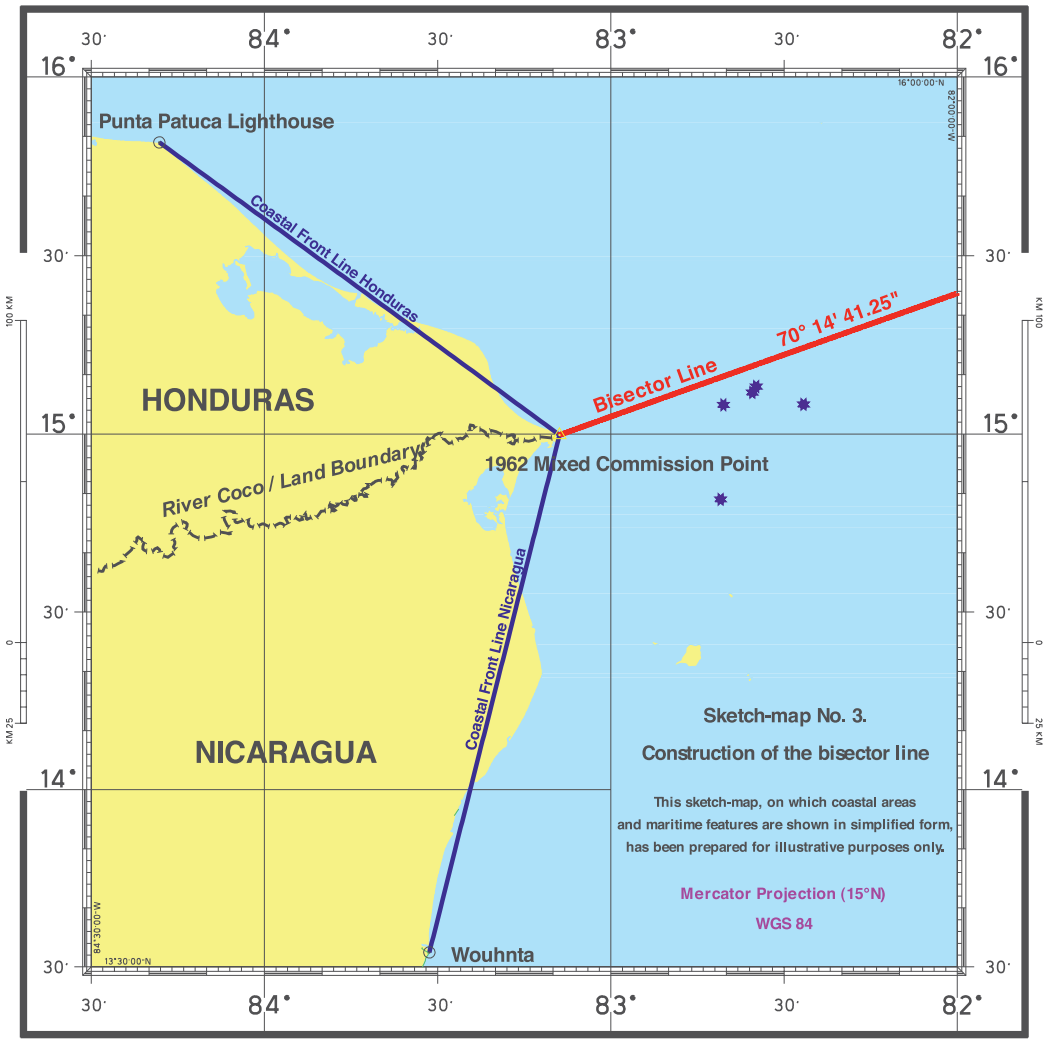
297. A coastal front extending from Cape Camerón to Rio Grande (generating a bisector with an azimuth of 64° 02′) would, like the original Nicaraguan proposal, also overcompensate in this regard since the line would run entirely over the Honduran mainland and thus would deprive the significant Honduran land mass lying between the sea and the line of any effect on the delimitation.

298. The front that extends from Punta Patuca to Wouhnta, would avoid the problem of cutting off Honduran territory and at the same time provide a coastal façade of sufficient length to account properly for the coastal configuration in the disputed area. Thus, a Honduran coastal front running to Punta Patuca and a Nicaraguan coastal front running to Wouhnta are in the Court's view the relevant coasts for purposes of drawing the bisector. This resulting bisector line has an azimuth of 70° 14′ 41.25″ (for the construction of the bisector line, see below, p. 750, sketch-map No. 3).

* *

8.2.4. Delimitation around the islands

299. The Court, having settled on the appropriate method and procedures for the delimitation from the mainland, can now turn to the separate task of delimiting the waters around and between islands north and south of the 15th parallel. Thus the Court leaves behind it the delimitation line based on the relevant mainland coast and turns to maritime delimitation between opposite-facing islands. As the Court has noted above, the Parties agree that the four islands in dispute north of the 15th parallel, as well as Edinburgh Cay south of the 15th parallel, generate territorial seas. It thus may be necessary for the Court to take


Punta Patuca Lighthouse
Coastal Front Line Honduras
HONDURAS
Bisector Line
70° 14' 41.25"
River Coco / Land Boundary
1962 Mixed Commission Point
Coastal Front Line Nicaragua
NICARAGUA
Wouhnta
Sketch-map No. 3.
Construction of the bisector line
This sketch-map, on which coastal areas and maritime features are shown in simplified form, has been prepared for illustrative purposes only.
Mercator Projection (15°N)
WGS 84
84°
83°
82°
16°
15°
14°
30'

account of equidistance and the principles of territorial sea delimitation for this portion of the area in dispute as well. The Court must consider the different solutions proposed by the Parties for delimiting this area in the light of the findings above (i) that the four islands in dispute belong to Honduras and (ii) that there was no traditional line running along the 15th parallel based on *uti possidetis juris* nor any tacit agreement according to which the 15th parallel constituted the maritime boundary.

300. Honduras argues that these islands should be recognized as having a full 12-mile territorial sea, except where this would overlap with the territorial sea of the other Party. Nicaragua does not dispute that these islands could generate a territorial sea of up to 12 nautical miles but argues that, were they to be "attributed to Honduras and were thus to be located within Nicaraguan territory", their "size" and "instability" would act as "equitable criteria" justifying their being enclaved within only a 3-mile territorial sea because, as stated in response to a question put by Judge Simma in the course of the oral proceedings regarding the reasons for the indication of a reduced territorial sea, a "full 12-mile territorial sea . . . would result in giving a disproportionate amount of the maritime areas in dispute to Honduras".

301. The Court observes that the consequence of this latter proposal is that there would be no overlapping territorial seas to delimit in this area. Thus it must determine the breadth of the territorial sea to be attributed to these islands so as to have a clear appreciation of its delimitation task in this area.

302. The Court notes that by virtue of Article 3 of UNCLOS Honduras has the right to establish the breadth of its territorial sea up to a limit of 12 nautical miles be that for its mainland or for islands under its sovereignty. In the current proceedings Honduras claims for the four islands in question a territorial sea of 12 nautical miles. The Court thus finds that, subject to any overlap between the territorial sea around Honduran islands and the territorial sea around Nicaraguan islands in the vicinity, Bobel Cay, Savanna Cay, Port Royal Cay and South Cay shall be accorded a territorial sea of 12 nautical miles.

303. As a 12-mile breadth of territorial sea has been accorded to these islands, it becomes apparent that the territorial seas attributed to the islands of Bobel Cay, Savanna Cay, Port Royal Cay and South Cay (Honduras) and Edinburgh Cay (Nicaragua) would lead to an overlap in the territorial sea of Nicaragua and Honduras in this area, both to the south and to the north of the 15th parallel. Here again, the Court would repeat its observation as to method that:

> "The most logical and widely practised approach is first to draw provisionally an equidistance line and then to consider whether that line must be adjusted in the light of the existence of special circum-

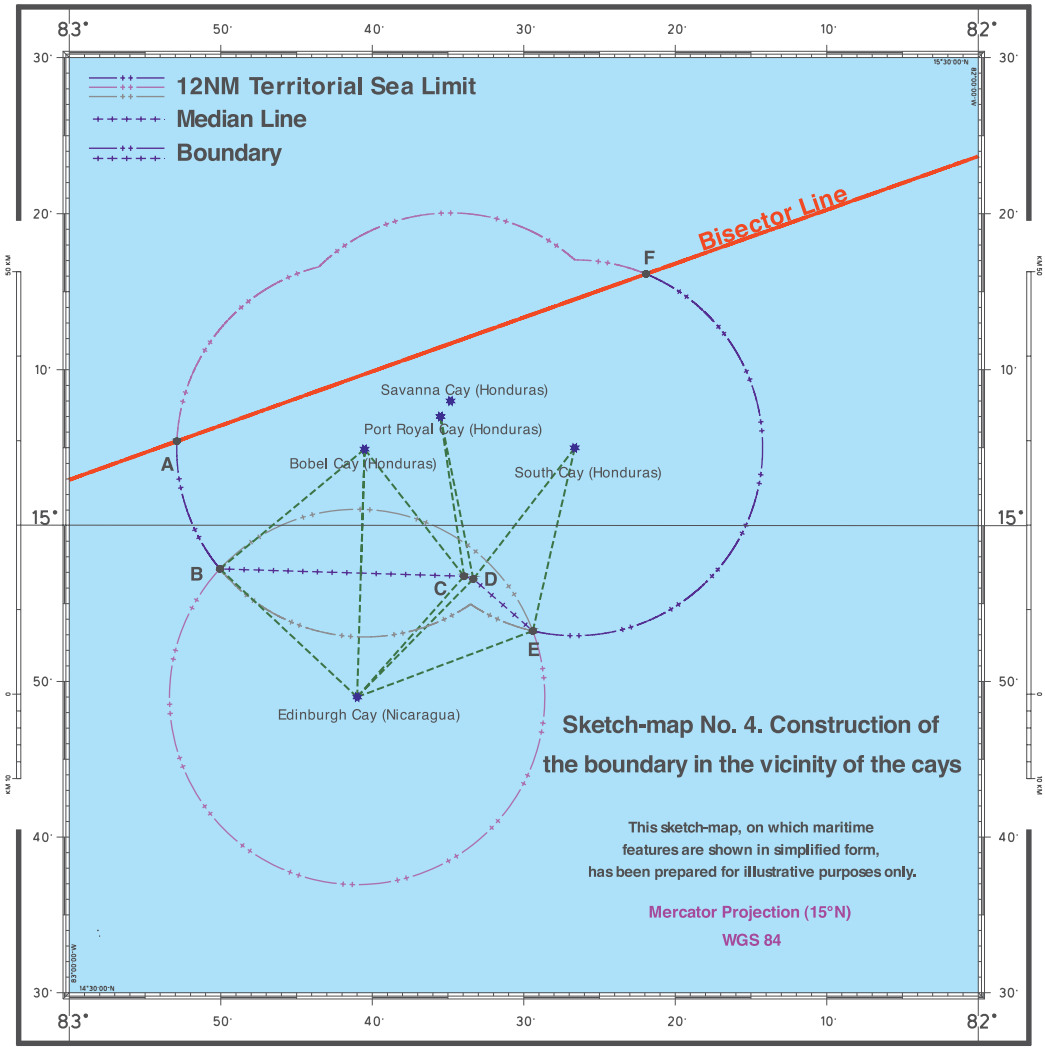
stances." (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 94, para. 176.)

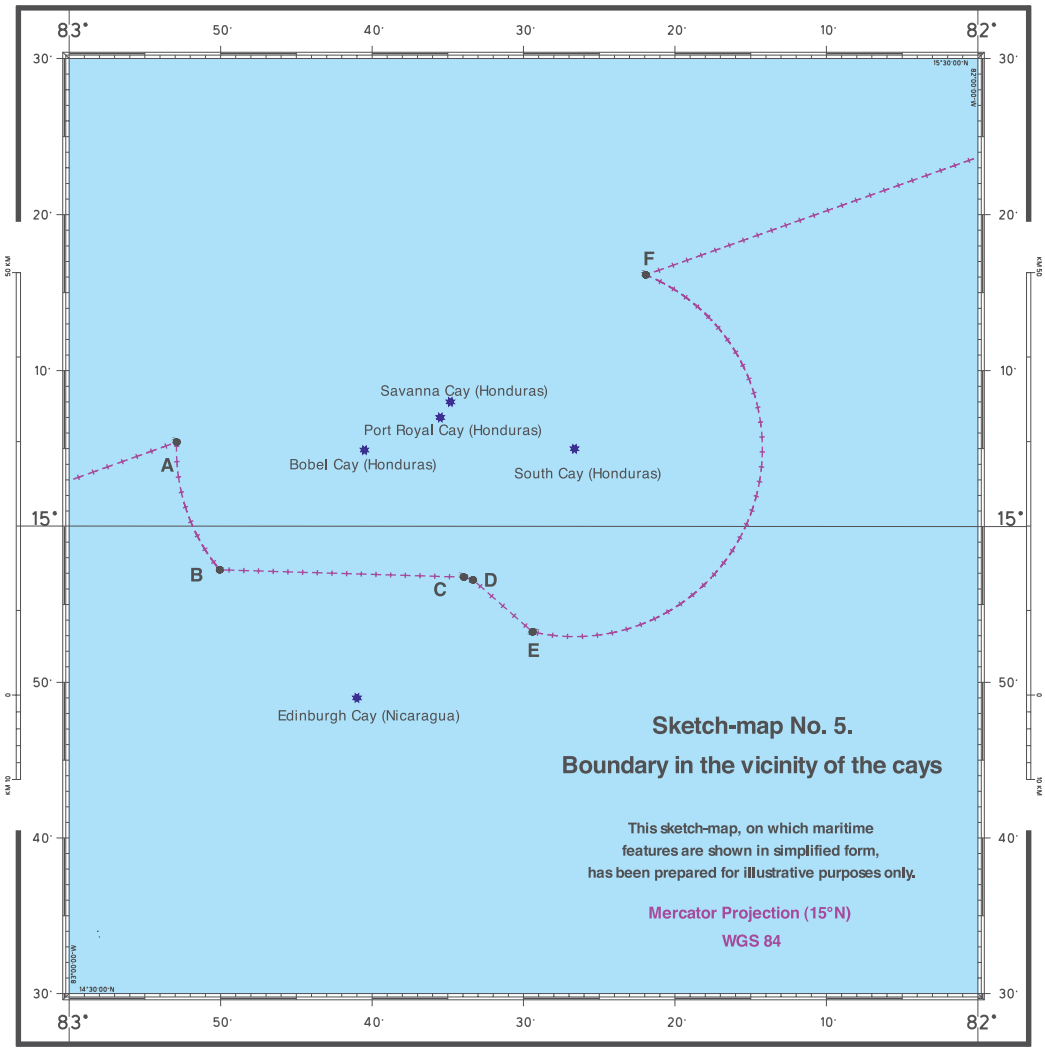
304. Drawing a provisional equidistance line for this territorial sea delimitation between the opposite-facing islands does not present the problems that would an equidistance line from the mainland. The Parties have provided the Court with co-ordinates for the four islands in dispute north of the 15th parallel and for Edinburgh Cay to the south. Delimitation of this relatively small area can be satisfactorily accomplished by drawing a provisional equidistance line, using co-ordinates for the above islands as the base points for their territorial seas, in the overlapping areas between the territorial seas of Bobel Cay, Port Royal Cay and South Cay (Honduras), and the territorial sea of Edinburgh Cay (Nicaragua), respectively. The territorial sea of Savanna Cay (Honduras) does not overlap with the territorial sea of Edinburgh Cay. The Court does not consider there to be any legally relevant "special circumstances" in this area that would warrant adjusting this provisional line.

305. The maritime boundary between Nicaragua and Honduras in the vicinity of Bobel Cay, Savanna Cay, Port Royal Cay and South Cay (Honduras) and Edinburgh Cay (Nicaragua) will thus follow the line as described below.

From the intersection of the bisector line with the 12-mile arc of the territorial sea of Bobel Cay at point A (with co-ordinates 15° 05′ 25″ N and 82° 52′ 54″ W) the boundary line follows the 12-mile arc of the territorial sea of Bobel Cay in a southerly direction until its intersection with the 12-mile arc of the territorial sea of Edinburgh Cay at point B (with co-ordinates 14° 57′ 13″ N and 82° 50′ 03″ W). From point B the boundary line continues along the median line, which is formed by the points of equidistance between Bobel Cay, Port Royal Cay and South Cay (Honduras) and Edinburgh Cay (Nicaragua), through points C (with co-ordinates 14° 56′ 45″ N and 82° 33′ 56″ W) and D (with co-ordinates 14° 56′ 35″ N and 82° 33′ 20″ W), until it meets the point of intersection of the 12-mile arcs of the territorial seas of South Cay (Honduras) and Edinburgh Cay (Nicaragua) at point E (with co-ordinates 14° 53′ 15″ N and 82° 29′ 24″ W). From point E the boundary line follows the 12-mile arc of the territorial sea of South Cay in a northerly direction until it intersects the bisector line at point F (with co-ordinates 15° 16′ 08″ N and 82° 21′ 56″ W) (see below, pp. 753-754, sketch-maps Nos. 4 and 5).

* *


12NM Territorial Sea Limit
Median Line
Boundary
Bisector Line
A
B
C
D
E
F
Savanna Cay (Honduras)
Port Royal Cay (Honduras)
Bobel Cay (Honduras)
South Cay (Honduras)
Edinburgh Cay (Nicaragua)
Sketch-map No. 4. Construction of the boundary in the vicinity of the cays
This sketch-map, on which maritime features are shown in simplified form, has been prepared for illustrative purposes only.
Mercator Projection (15°N)
WGS 84


83°
50'
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10'
82°
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20'
10'
15°
50'
40'
30'
15°30'00"N
14°30'00"N
A
B
C
D
E
F
Savanna Cay (Honduras)
Port Royal Cay (Honduras)
Bobel Cay (Honduras)
South Cay (Honduras)
Edinburgh Cay (Nicaragua)
Sketch-map No. 5.
Boundary in the vicinity of the cays
This sketch-map, on which maritime features are shown in simplified form, has been prepared for illustrative purposes only.
Mercator Projection (15°N)
WGS 84

8.2.5. Starting-point and endpoint of the maritime boundary

306. Having decided upon a delimitation method and its application for the mainland and for the islands, the Court must now consider two remaining matters with respect to the course of the single maritime boundary: the starting-point and the endpoint.

307. The Parties in their written pleadings agreed that the appropriate starting-point for the boundary line between them should be located some distance from the mainland coast, but disagreed on exactly where. To account for the continuing eastward accretion of Cape Gracias a Dios as a result of alluvial deposits by the River Coco, both Parties in their written pleadings expressed a preference for situating the starting-point 3 nautical miles seaward from the "mouth" of the River Coco. Both Parties agreed that for the first 3 miles a negotiated solution should be found. But two differences remained between them: (i) from where on the River Coco these 3 miles should be measured; and (ii) in what direction.

308. As regards the first of these differences, Honduras proposes a starting-point situated 3 nautical miles due east of the point identified as the mouth of the River Coco (14° 59.8′ N, 83° 08.9′ W) by the Mixed Commission in 1962. The 1906 Award set the "mouth of the main branch of the Coco River" as the "extreme common boundary point on the coast of the Atlantic" between Nicaragua and Honduras. Nicaragua, for its part, contended throughout its written pleadings that the site of the "mouth" of the river should be adjusted to better reflect what it claims is the current reality and proposes a seaward starting-point fixed at a distance of 3 miles from that site along the line of its proposed bisector.

309. In oral argument and in its final submissions Nicaragua, while leaving its suggestion made in the written pleadings open, advocates a starting-point located at the current mouth of the River Coco "such as it may be at any given moment as determined by the Award of the King of Spain of 1906" without measuring any distance out to sea (see paragraph 99 above). Nicaragua thus does not now specify the current geographical co-ordinates of the mouth. According to Nicaragua, this starting-point, wherever it may be located on any given day, would then be connected by a straight-line single maritime boundary to the start of its proposed bisector line (at "a fixed point approximately 3 miles from the river mouth in the position 15° 02′ 00″ N, 83° 05′ 26″ W").

Honduras continues to maintain that a distance measuring 3 miles from the point fixed by the Mixed Commission in 1962 should be used and that the Parties should seek a diplomatic solution for this undelimited area.

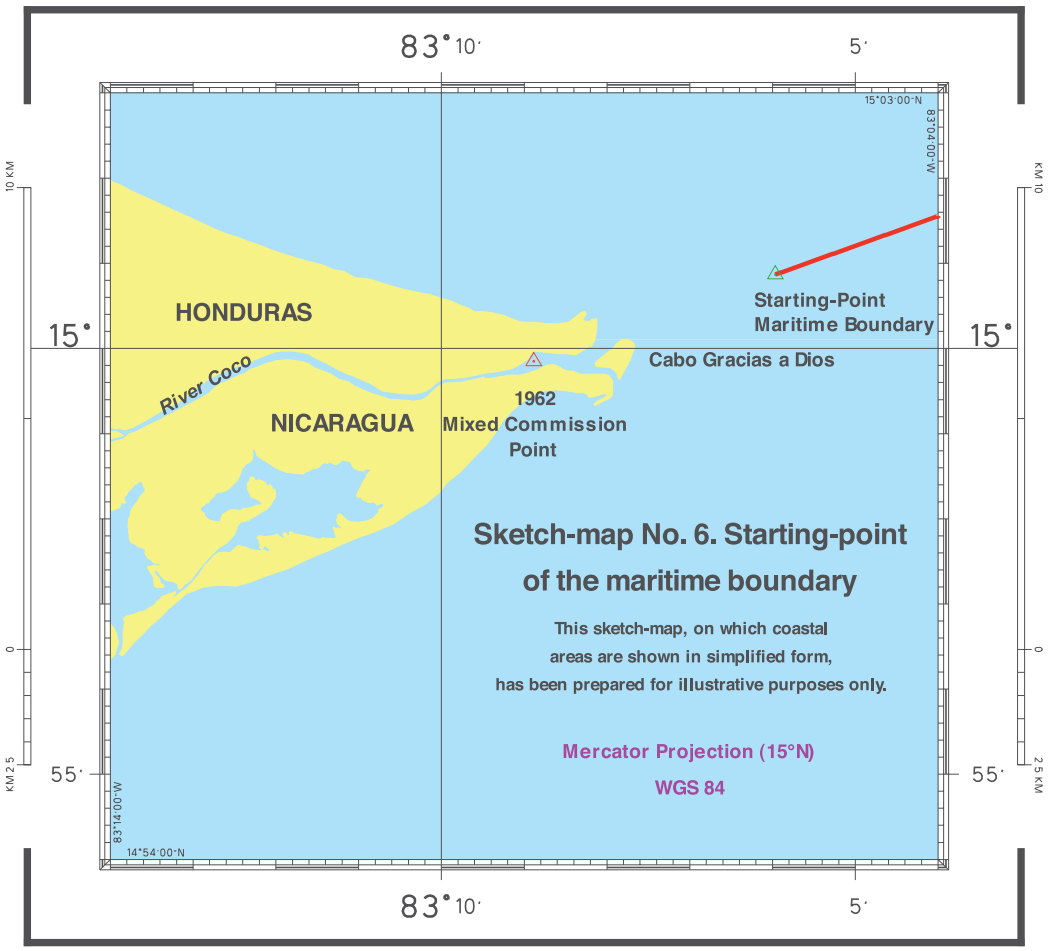
310. The Parties are now in dispute as to which of the small islands

having formed in the mouth of the River Coco belong to which country and where the actual mouth is currently situated. A starting-point at the terminus of the land boundary (as determined "at any given moment" or by reference to the point fixed in 1962 by the Mixed Commission) might cut across these contested small islands, with the attendant risk that the island might later attach itself to the mainland of one of the Parties. The Parties are in the best position to monitor the situation as the shape of Cape Gracias a Dios evolves and to arrange a solution in accordance with the 1906 Arbitral Award, which remains *res judicata* for the land boundary.

311. The Court observes that it is apparent that Nicaragua's proposal in its final submission (see paragraph 309) is problematic in certain respects and its initial suggestion to start the line some distance out to sea appears a more judicious solution. That a delimitation may begin at some distance out at sea has found support in judicial practice in cases where there is an uncertain land boundary terminus (see, for example, *Delimitation of the maritime boundary between Guinea and Guinea-Bissau*, Award of 14 February 1985). The Court considers it appropriate to uphold Honduras's submission in this regard. The Court thus sets the starting-point 3 miles out to sea (15° 00′ 52″ N and 83° 05′ 58″ W) from the point already identified by the Mixed Commission in 1962 along the azimuth of the bisector as described below (see below, p. 757, sketch-map No. 6). The Parties are to agree on a line which links the end of the land boundary as fixed by the 1906 Award and the point of departure of the maritime delimitation in accordance with this Judgment.

312. As for the endpoint, neither Nicaragua nor Honduras in each of their submissions specifies a precise seaward end to the boundary between them. The Court will not rule on an issue when in order to do so the rights of a third party that is not before it, have first to be determined (see *Monetary Gold Removed from Rome in 1943, Judgment, I.C.J. Reports 1954*, p. 19). Accordingly, it is usual in a judicial delimitation for the precise endpoint to be left undefined in order to refrain from prejudicing the rights of third States. (See for example *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 91, para. 130; *Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, p. 27, and *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, pp. 26-28, paras. 21-23; and *Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, paras. 238, 245 and 307.)

313. Nicaragua draws its bisector "up to the area of seabed occupied by Rosalinda Bank, in which area the claims of third states come into play". Honduras in its final submissions asks the Court to draw the boundary "until the jurisdiction of a third State is reached". Honduras in


83° 10′
5′
15° 03′ 00″ N
83° 04′ 00″ W
10 KM
0
KM 2.5
15°
55′
HONDURAS
River Coco
NICARAGUA
Starting-Point
Maritime Boundary
Cabo Gracias a Dios
1962
Mixed Commission
Point
Sketch-map No. 6. Starting-point
of the maritime boundary
This sketch-map, on which coastal
areas are shown in simplified form,
has been prepared for illustrative purposes only.
Mercator Projection (15°N)
WGS 84
83° 14′ 00″ W
14° 54′ 00″ N

its pleadings suggests that Colombia has interests under various treaties that would be affected by a delimitation continuing beyond the 82nd meridian and, indeed, all of the maps produced by Honduras seem to take the 82nd meridian as the implied endpoint to the delimitation.

314. The Court observes that there are three possibilities open to it: it could say nothing about the endpoint of the line, stating only that the line continues until the jurisdiction of a third State is reached; it could decide that the line does not extend beyond the 82nd meridian; or it could indicate that the alleged third-State rights said to exist east of the 82nd meridian do not lie in the area being delimited and thus present no obstacle to deciding that the line continues beyond that meridian.

315. In order better to understand these choices, it is necessary to analyse the potential third-State interests. Honduras contends that the 1928 Barcenas-Esguerra Treaty between Nicaragua and Colombia delimits a maritime boundary between Nicaragua and Colombia running along the 82nd meridian from approximately the 11th parallel to the 15th parallel, where it would presumably intersect with the traditional maritime boundary line along the 15th parallel (14° 59.8′ N) claimed by Honduras and thus mark the endpoint of the traditional boundary. This interpretation of the 1928 Treaty and its very validity are being challenged by Nicaragua in a separate case pending before this Court (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*) and the Court will avoid prejudicing those proceedings by its decision here. However, even if Honduras's interpretation of the 1928 Treaty is correct, Honduras maintains only that, at most, the line set by this Treaty continues along the 82nd meridian up to the 15th parallel. The delimitation line described above will lie well north of the 15th parallel when it reaches the 82nd meridian. Thus, contrary to Honduras's argument, the line drawn above would not cross the 1928 Treaty line and therefore could not affect Colombia's rights.

316. The Court recalls that Honduras also cites the potential third-State claim of Colombia pursuant to the 1986 Treaty between Colombia and Honduras on maritime delimitation. This Treaty purports to establish a maritime boundary commencing at the 82nd meridian and running due east along 14° 59′ 08″ N past the 80th meridian after which it eventually veers north. Thus, it might be argued, any extension of the delimitation line in this case past the 82nd meridian could be interpreted as indicating that Honduras negotiated a treaty involving maritime areas that did not actually appertain to it and could thereby prejudice Colombia's rights under that treaty. The Court places no reliance on the 1986 Treaty to establish an appropriate endpoint for the maritime delimitation between Nicaragua and Honduras. The Court nevertheless observes that any delimitation between Honduras and Nicaragua extending east

beyond the 82nd meridian and north of the 15th parallel (as the bisector adopted by the Court would do) would not actually prejudice Colombia's rights because Colombia's rights under this Treaty do not extend north of the 15th parallel.

317. Another possible source of third-State interests, is the joint jurisdictional régime established by Jamaica and Colombia in an area south of Rosalind Bank near the 80th meridian pursuant to their 1993 bilateral Treaty on maritime delimitation. The Court will not draw a delimitation line that would intersect with this line because of the possible prejudice to the rights of both Parties to that Treaty.

318. The Court has thus considered certain interests of third States which result from some bilateral treaties between countries in the region and which may be of possible relevance to the limits to the maritime boundary drawn between Nicaragua and Honduras. The Court adds that its consideration of these interests is without prejudice to any other legitimate third party interests which may also exist in the area.

319. The Court may accordingly, without specifying a precise endpoint, delimit the maritime boundary and state that it extends beyond the 82nd meridian without affecting third-State rights. It should also be noted in this regard that in no case may the line be interpreted as extending more than 200 nautical miles from the baselines from which the breadth of the territorial sea is measured; any claim of continental shelf rights beyond 200 miles must be in accordance with Article 76 of UNCLOS and reviewed by the Commission on the Limits of the Continental Shelf established thereunder.

* *

8.2.6. Course of the maritime boundary

320. The line of delimitation is to begin at the starting-point 3 nautical miles offshore on the bisector (see paragraph 311 above). From there it continues along the bisector until it reaches the outer limit of the 12-nautical-mile territorial sea of Bobel Cay. It then traces this territorial sea round to the south until it reaches the median line in the overlapping territorial seas of Bobel Cay, Port Royal Cay and South Cay (Honduras) and Edinburgh Cay (Nicaragua). The delimitation line continues along this median line until it reaches the territorial sea of South Cay, which for the most part does not overlap with the territorial sea of Edinburgh Cay. The line then traces the arc of the outer limit of the 12-nautical-mile territorial sea of South Cay round to the north until it again connects with the bisector, whereafter the line continues along that azimuth until it reaches the area where the rights of certain

third States may be affected (see below, pp. 761-762, sketch-maps Nos. 7 and 8).

* * *

9. Operative Clause

321. For these reasons,

THE COURT,

(1) Unanimously,

Finds that the Republic of Honduras has sovereignty over Bobel Cay, Savanna Cay, Port Royal Cay and South Cay;

(2) By fifteen votes to two,

Decides that the starting-point of the single maritime boundary that divides the territorial sea, continental shelf and exclusive economic zones of the Republic of Nicaragua and the Republic of Honduras shall be located at a point with the co-ordinates 15° 00′ 52″ N and 83° 05′ 58″ W;

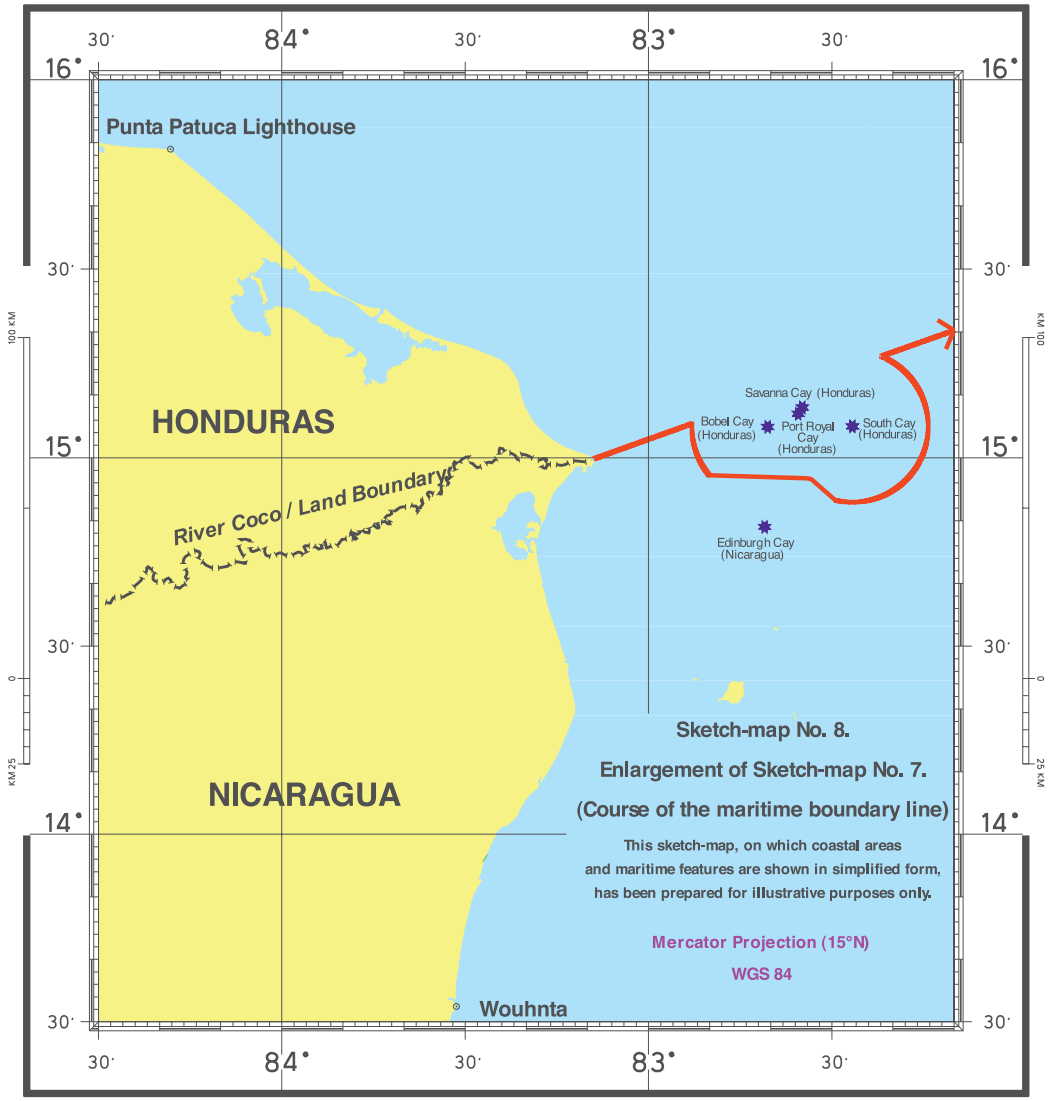
IN FAVOUR: *President* Higgins; *Vice-President* Al-Khasawneh; *Judges* Ranjeva, Shi, Koroma, Buergenthal, Owada, Simma, Tomka, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov; *Judge* ad hoc Gaja;

AGAINST: *Judge* Parra-Aranguren, *Judge* ad hoc Torres Bernárdez;

(3) By fourteen votes to three,

Decides that starting from the point with the co-ordinates 15° 00′ 52″ N and 83° 05′ 58″ W the line of the single maritime boundary shall follow the azimuth 70° 14′ 41.25″ until its intersection with the 12-nautical-mile arc of the territorial sea of Bobel Cay at point A (with co-ordinates 15° 05′ 25″ N and 82° 52′ 54″ W). From point A the boundary line shall follow the 12-nautical-mile arc of the territorial sea of Bobel Cay in a southerly direction until its intersection with the 12-nautical-mile arc of the territorial sea of Edinburgh Cay at point B (with co-ordinates 14° 57′ 13″ N and 82° 50′ 03″ W). From point B the boundary line shall continue along the median line which is formed by the points of equidistance between Bobel Cay, Port Royal Cay and South Cay (Honduras) and Edinburgh Cay (Nicaragua), through point C (with co-ordinates 14° 56′ 45″ N and 82° 33′ 56″ W) and D (with co-ordinates 14° 56′ 35″ N and 82° 33′ 20″ W), until it meets the point of intersection of the 12-nautical-mile arcs of the territorial seas of South Cay (Honduras) and Edinburgh Cay (Nicaragua) at point E (with co-ordinates 14° 53′ 15″ N and 82° 29′ 24″ W). From point E the boundary line shall follow the 12-nautical-mile arc of the territorial sea of South Cay in a northerly direction until it meets the line of the azimuth at point F (with co-ordinates


Sketch-map No. 7. Course of the maritime boundary line
This sketch-map, on which coastal areas and maritime features are shown in simplified form, has been prepared for illustrative purposes only.
Mercator Projection (15°N)
WGS 84
JAMAICA
HONDURAS
NICARAGUA
EL SALVADOR
BELIZE
15°
80°
85°


30'
84°
30'
83°
30'
16°
15°
14°
Punta Patuca Lighthouse
HONDURAS
NICARAGUA
River Coco / Land Boundary
Savanna Cay (Honduras)
Bobel Cay (Honduras)
Port Royal Cay (Honduras)
South Cay (Honduras)
Edinburgh Cay (Nicaragua)
Wouhnta
100 KM
0
KM 25
KM 100
25 KM
Sketch-map No. 8.
Enlargement of Sketch-map No. 7.
(Course of the maritime boundary line)
This sketch-map, on which coastal areas and maritime features are shown in simplified form, has been prepared for illustrative purposes only.
Mercator Projection (15°N)
WGS 84

15° 16′ 08″ N and 82° 21′ 56″ W). From point F, it shall continue along the line having the azimuth of 70° 14′ 41.25″ until it reaches the area where the rights of third States may be affected;

IN FAVOUR: *President* Higgins; *Vice-President* Al-Khasawneh; *Judges* Shi, Koroma, Buergenthal, Owada, Simma, Tomka, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov; *Judge* ad hoc Gaja;

AGAINST: *Judges* Ranjeva, Parra-Aranguren, *Judge* ad hoc Torres Bernárdez;

(4) By sixteen votes to one,

Finds that the Parties must negotiate in good faith with a view to agreeing on the course of the delimitation line of that portion of the territorial sea located between the endpoint of the land boundary as established by the 1906 Arbitral Award and the starting-point of the single maritime boundary determined by the Court to be located at the point with the co-ordinates 15° 00′ 52″ N and 83° 05′ 58″ W.

IN FAVOUR: *President* Higgins; *Vice-President* Al-Khasawneh; *Judges* Ranjeva, Shi, Koroma, Buergenthal, Owada, Simma, Tomka, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov; *Judges* ad hoc Torres Bernárdez, Gaja;

AGAINST: *Judge* Parra-Aranguren.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this eighth day of October, two thousand and seven, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Nicaragua and the Government of the Republic of Honduras, respectively.

(Signed) Rosalyn HIGGINS,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge RANJEVA appends a separate opinion to the Judgment of the Court; Judge KOROMA appends a separate opinion to the Judgment of the Court; Judge PARRA-ARANGUREN appends a declaration to the Judgment of the Court; Judge *ad hoc* TORRES BERNÁRDEZ appends a dissent-

ing opinion to the Judgment of the Court; Judge *ad hoc* GAJA appends a declaration to the Judgment of the Court.

(Initialled) R.H.

(Initialled) Ph.C.