

INTERNATIONAL COURT OF JUSTICE

MARITIME DELIMITATION
BETWEEN NICARAGUA AND HONDURAS
IN THE CARIBBEAN SEA

(NICARAGUA v. HONDURAS)

COUNTER-MEMORIAL
OF THE REPUBLIC OF HONDURAS

VOLUME 1

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CHAPTER 1

INTRODUCTION

I. OUTLINE OF THE HONDURAN COUNTER-MEMORIAL

1.1. This Counter-Memorial is filed by the Republic of Honduras pursuant to the Order of the Court of 21 March 2001, in respect of the proceedings commenced by Nicaragua by an Application filed with the Court on 8 December 1999. In that Application, Nicaragua requested that the Court—

“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, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary.”

1.2. Although Nicaragua chose to commence these proceedings by unilateral application without attempting to agree upon a *compromis* with Honduras, Honduras welcomes the prospect of the Court giving an authoritative determination of the boundary between the seabed and maritime spaces appertaining to the two States. Honduras agrees that the Court should determine the location of a single maritime boundary and that it should do so “in accordance with equitable principles and relevant circumstances recognized by general international law”.

1.3. In its Memorial, Nicaragua then proposes that the Court adopt what it (quite wrongly) describes as “an equitable solution based upon the bisector method”¹ which is heavily dependent on the significance of a geomorphological feature which Nicaragua describes as “the Nicaraguan Rise”. This proposed solution is advanced on the basis of a complicated chain of reasoning which almost wholly disregards the past practice of the Parties, the existing maritime delimitation treaties between the States of the region, the jurisprudence of the International Court of Justice, and the relevant rules of international law.

¹ Nicaraguan Memorial (“NM”), p 166.

1.4. Honduras invites the Court to adopt an approach which is more straightforward, which builds upon facts rather than ignoring them and which produces what is truly an equitable solution. For reasons which will be developed in this Counter-Memorial, Honduras maintains that there is a boundary between the maritime spaces of the two States 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. That boundary has traditionally been described as running along the 15th parallel. In fact, as will be explained in Chapter 2, it actually lies very slightly to the south of the 15th parallel, along the line 14 degrees, 59.8 minutes, although for the sake of simplicity, it will be referred to throughout the Counter-Memorial as the “15th parallel” or “parallel 15”.

1.5. Accordingly, Honduras will invite the Court to adjudge and declare that the single maritime boundary is a straight line drawn from the 12-mile limit of the territorial sea of the two Parties along the parallel 14 degrees, 59.8 minutes to the point at which this line intersects with the 82nd meridian, where it meets the boundary established between the Honduran and Colombian maritime spaces by the Colombia-Honduras Treaty of 1986.² Between the terminal point of the land boundary and the 12-mile limit of the territorial sea, Honduras proposes a line as described in paragraph 7.41 below.

1.6. Honduras develops its reasoning in support of this boundary line as follows. Chapter 2 of this Counter-Memorial describes the geographical setting of the dispute. Chapter 3 briefly outlines the historical setting. These chapters explain the significance of the islands, cays, reefs and banks to the north of the 15th parallel. They will also examine the history of the area during the colonial period and thereafter.

1.7. Chapter 4 sets out the view of Honduras regarding the law applicable to the present dispute and the principles in accordance with which the boundary is to be determined.

1.8. Chapter 5 considers the legacy of the colonial period and the significance of the principle *uti possidetis juris*. This Chapter will show, first, that Nicaragua can make no claim based on *uti possidetis* to any of the land, islands or maritime territory north of Cape Gracias a Dios, which Cape lies just to the south of the 15th parallel. Secondly, it will show that any title to those lands, islands and maritime territories which can be derived from the principle *uti possidetis* is vested in Honduras.

² Honduras Counter-Memorial (“HCM”), vol 2, annex 12; *infra* paras 8.11-8.13 and Plate 20.

1.9. Chapter 6 consists of a detailed description and analysis of the *effectivités* in the islands and waters to the north of the 15th parallel. This Chapter demonstrates that there is a longstanding practice, almost entirely ignored by the Nicaraguan Memorial, on the part of both Honduras and Nicaragua that Honduras exercised all powers of government and all aspects of sovereignty north of the 15th parallel and Nicaragua south of that line. This practice manifested itself in a variety of ways. In particular, it was Honduras which alone exercised governmental powers over the islands to the north of the 15th parallel and over their inhabitants, Honduras which regulated fisheries north of the 15th parallel and Honduras which granted oil and gas concessions north of the 15th parallel. By contrast, Nicaragua exercised such powers to the south of the 15th parallel but only to the south. The practice analysed in Chapter 6 both confirms the existence of a boundary along the 15th parallel derived from the principle *uti possidetis juris* and provides an independent basis for Honduran title to the north of that line.

1.10. Chapter 7 then addresses the application of the law to the facts of the present case and indicates the relevant circumstances which determine the course of the boundary. Chapter 8 sets out the conclusions of Honduras and is followed by the submissions made by Honduras.

1.11. The Counter-Memorial also includes two additional volumes. Volume 2 comprises documentary annexes, including correspondence, legislative and administrative acts, and witness statements. Volume 3 contains a set of plates, including maps and photographs. In addition, pursuant to Article 50 of the Rules of the Court, Honduras has deposited with the Registry further documents to which reference is made in the Counter-Memorial (each of which is numbered and referred to as “Document [x] deposited with the Registry”).

1.12. In setting out its arguments in this way, Honduras has sought to set before the Court the material relevant to a determination of the issues raised by the Nicaraguan Application and to address the relevant legal arguments. Unfortunately, Nicaragua’s Memorial has adopted a somewhat different approach and it is necessary, at the outset, to identify certain omissions, confusions and contradictions in the Nicaraguan argument as set forth in that Memorial. It is to that task that the second section of this introductory chapter is devoted.

II. OMISSIONS, CONFUSIONS AND CONTRADICTIONS IN THE MEMORIAL OF NICARAGUA

1.13. Honduras invites the International Court of Justice to read Nicaragua's Memorial with the degree of care and attention to detail which it deserves. With regard to the material which is included, the Memorial is noteworthy for the significant number of contradictions and misrepresentations. But the Nicaraguan Memorial is equally noteworthy for the factual and legal aspects which are not addressed, and for the material which is omitted. Both the content and the omissions underscore the fragility of Nicaragua's arguments.

1.14. One of the main, but unstated, objects addressed by Nicaragua's Memorial is to invite the Court to ignore two matters in particular: the first concerns the legal consequences of the 1906 Arbitral Award and this Court's 1960 Judgment, and the second relates to the effects for these proceedings of the numerous maritime delimitation treaties and other treaties which are relevant to this dispute and which are in force amongst the various States in the region, including Nicaragua. Moreover, Nicaragua's approach is contradictory on matters such as applicable law, ignores geography, ignores its own practice as well as that of Honduras and third States, ignores the principle of *uti possidetis juris* and Honduran *effectivités*, and makes inappropriate claims as to bad faith. Finally, its treatment of some of the material is open to question, in terms of presentation.

A. NICARAGUA IGNORES THE 1906 ARBITRAL AWARD OF THE KING OF SPAIN AND THE 1960 JUDGMENT OF THE INTERNATIONAL COURT OF JUSTICE

1.15. It is self-evident that the Arbitral Award of the King of Spain of 1906 and the Judgment of the International Court of Justice of 1960 are of particular relevance to the present dispute, since both confirmed *inter alia* that the final point of the common boundary between the two States was at Cape Gracias a Dios. Yet Nicaragua's Memorial scarcely addresses these decisions, and when it does so refers selectively to their contents.³ Particularly noteworthy omissions include Nicaragua's complete failure to refer to such matters as:

³ NM, p 13, para 27; p 21, para 3; p 24, para 9; p 27, paras 18 and 21; p 76, paras 3 to 5.

- the respective claims of the Parties, which in 1901 and 1904 led Nicaragua to request a drawing of the land boundary through a line to the west of meridian 85, and a claim to certain islands (see Plate 9);
- the law applied in the Award of 1906;
- the legal arguments and the positions adopted by the Parties; and
- the arguments relied upon by the King of Spain in his Award.

1.16. Moreover, Nicaragua makes the surprising claim that the King of Spain chose to ignore the maritime claims in his Award.⁴ In fact, a close reading of the Award indicates that the King of Spain (1) reached the conclusion he did by reference to express consideration of matters pertaining to the relevant territorial seas, and (2) referred expressly to the islands situated in the mouth of the Wanks/Coco/Segovia river,⁵ and hence included them within the scope of his Award. Nicaragua's claim to the Swan Islands was rejected. It is therefore misleading to suggest that maritime aspects played no role in the 1906 Award.

1.17. Nicaragua's approach appears to be motivated by a desire to disregard two facts of singular importance. The first is that the boundary between Honduras and Nicaragua, up to Cape Gracias a Dios, was decided in application of the principle of *uti possidetis juris*, applicable equally to the islands of both States which were adjacent to their respective coasts in the Caribbean Sea. The second was that the 1906 Arbitral Award of the King of Spain ("1906 Arbitral Award") was confirmed by the International Court of Justice in its 1960 Judgment in the *Case concerning the Arbitral Award made by the King of Spain on 23 December 1906* ("1960 Judgment"). The 1960 Judgment is binding, and its subject matter and that of the 1906 Award which it endorsed may be treated as *res judicata*.⁶

1.18. It follows that, with regard to the present dispute, the Court is bound to give effect to the following considerations, which Nicaragua seeks to disregard, namely that:

⁴ NM, p 27, para 21.

⁵ NM, p 24, para 9.

⁶ *Corfu Channel (Merits)*, ICJ Reports 1949, p 248.

- the 1906 Arbitral Award was confirmed by the 1960 Judgment;
- both decisions are *res judicata*;
- the 1906 Arbitral Award was rendered in application of the *uti possidetis juris* of 1821;
- these decisions did not recognise any degree of Nicaraguan sovereignty north of Cape Gracias a Dios, whether in relation to territorial, insular or maritime areas, and rejected all such claims to that effect; and
- the 1906 Arbitral Award held that the islands situated to the north of the main channel of navigation in the mouth of the Coco or Segovia river belonged to Honduras and those situated to the south to Nicaragua.

B. NICARAGUA IGNORES RELEVANT INTERNATIONAL CONVENTIONS

1.19. In its Memorial Nicaragua seeks to ignore the consequences of numerous international conventions which are relevant to the present dispute. In so doing it in effect invites the International Court to ignore its own treaty practice. It also invites the Court to disregard a common practice in the Caribbean region relating to the use of a method of maritime delimitation which is based on reference to parallels and meridians, especially in the American continent. These international conventions are addressed in more detail in Chapter 2 of this Counter-Memorial.⁷ For present purposes, Honduras respectfully submits that international conventions, like awards and judgments which form *res judicata*, may not be disregarded and will need to be taken into consideration and given their due effect by the Court.

C. NICARAGUA'S MEMORIAL IS CONTRADICTORY AS TO THE ISSUE OF THE APPLICABLE LAW TO BE APPLIED BY THE INTERNATIONAL COURT OF JUSTICE

1.20. On the question of the applicable law Nicaragua's approach is contradictory and even confused.⁸ This aspect is addressed in further detail in Chapter 4. For present purposes it is sufficient to note, by way of example, that while Nicaragua, on occasion, expresses the view that the

⁷ *Infra* para 2.11 *et seq.*

⁸ NM, p 63 *et seq.*

equidistance method is not appropriate in this case for achieving an equitable result,⁹ it nevertheless seeks to rely on a bisector method which it acknowledges as constituting a special manifestation of equidistance.¹⁰

1.21. A similar lack of consistency is evident in Nicaragua's approach to the role of the 1982 UN Convention on the Law of the Sea, its occasional efforts to rely upon the 1958 Convention on the Continental Shelf,¹¹ and its claim to be entitled to rely on geological and geomorphologic characteristics of the "Nicaraguan Rise",¹² notwithstanding the absence of support for that approach in the 1982 UNCLOS and the jurisprudence of the International Court of Justice.¹³

D. NICARAGUA MISREPRESENTS THE SIGNIFICANCE OF THE ISLANDS, REEFS AND BANKS SITUATED NORTH OF PARALLEL 15

1.22. Nicaragua's claim is premised in large part on its unstated invitation to the International Court of Justice to ignore entirely the islands, reefs and banks which are located north of the 15th parallel. That approach is no doubt based on Nicaragua's recognition that those islands, reefs and banks have been treated by Honduras as being part of its national territory since the 19th century. It is noteworthy that Nicaragua has provided – and can provide – no evidence that it has made any claim to these islands and reefs prior to launching these proceedings in December 1999. Indeed it is striking that Nicaragua has not put before the Court even a single official map which shows these islands and reefs as being part of Nicaragua, or any evidence to show that its national laws have ever applied to these islands, reefs and banks.

1.23. Nicaragua buttresses its approach by referring to these islands as "islets and rocks"¹⁴ and avoiding the use of the word "islands".¹⁵ These matters are addressed in more detail in Chapters 4 and 6 of this Counter-

⁹ NM, p 121, para 82.

¹⁰ NM, p 108, para 45, with reference to Prof P Weil.

¹¹ *Infra* Chapter 4.

¹² NM, p 131 *et seq*, para 14 to 21. In para 17 at p 132, Nicaragua goes to great lengths to make an irrelevant argument.

¹³ *Infra* Chapters 4 and 8.

¹⁴ NM, p 138 *et seq*, paras 31 to 43; p 166 and p 9, para 15 refers to "rocks", "reefs" and "cays".

¹⁵ Except for NM, p 139, para 32, where reference is made to those existing in the areas which the NM considers to be under Nicaraguan sovereignty.

Memorial. For present purposes Honduras respectfully submits that the islands, banks and reefs, and their historical treatment as part of Honduran territory, are relevant factors (if not the most important relevant factor) which the Court must take into account and cannot be disregarded, notwithstanding Nicaragua's efforts to the contrary.

E. NICARAGUA IGNORES THE TRADITIONAL USE BY BOTH STATES OF PARALLEL 15 AS A BOUNDARY

1.24. Nicaragua seeks a delimitation according to a line that starts at the mouth of the Wanks/Coco/Segovia River and reaches parallel 17, and perhaps even goes beyond.¹⁶ The Memorial alleges that this claim is supported by its practice during the relevant period.¹⁷ Three points may be made in response.

1.25. First, according to Nicaragua, history began with the coming to power of the Sandinista Government in 1979: Nicaragua ignores its own practice, as well as that of Honduras and third States, over nearly a century prior to that date. During that entire period it knew or ought to have known of Honduras' effective control over the area in question but it took no steps to preserve the position it now belatedly claims.

1.26. Second, if one considers that practice, in the period up to 1979 it is apparent that Nicaragua treated the 15th parallel as the boundary. This is clear from its practice, for example, in relation to oil and gas concessions, fisheries activities, and the activities of its own nationals in areas north of parallel 15 which were duly authorised by Honduras. This practice is described in detail in Chapter 6 of this Counter-Memorial.

1.27. Third, Nicaragua is highly selective in referring to its own practice. It ignores, for example, oil and gas concessions granted since the 1960's, as well as the activities of third States and international organisations which recognised the limits of Nicaraguan maritime rights as not extending northwards of parallel 15. Such practice is also addressed in Chapter 6. It too confirms that Nicaragua's claim in respect of the delimitation is recent and is unsupported by any historic practice prior to 1979. Nor is it supported by consistent practice on the part of Nicaragua (still less of Honduras and other States) since 1979.

¹⁶ It is noteworthy that prior to the Memorial Nicaragua had never previously purported to go *beyond* parallel 17.

¹⁷ NM, p 41, para 5; p 49, para 32; p 50, para 35; p 57, para 55.

F. NICARAGUA MAKES SELECTIVE USE OF HISTORICAL
MATERIAL, PARTICULARLY IN RELATION TO THE PRINCIPLE
OF *UTI POSSIDETIS JURIS*

1.28. Nicaragua's treatment of history – and historic title – is brief and rudimentary, in particular in the period prior to 1963.¹⁸ It makes limited or no reference to the origin of the territorial titles of the two States as from the date of independence from Spain (1821), or to Article II(3) of the Gámez-Bonilla Treaty of 7 October 1894,¹⁹ or to the Award of the King of Spain of 1906,²⁰ or to the principle of *uti possidetis juris*.²¹ So that where reference is made to the implications of Article 5 of the Nicaraguan Constitution of 1950,²² no reference is made to Article 4 which states in express terms that “The basis of the national territory is the *uti possidetis juris* of 1821”. It is apparent that Nicaragua recognises that it would be hopeless to base its present claim on the principle of *uti possidetis*. This is notwithstanding the fact that in application of the principle it was determined in 1962 that the terminal point of the land boundary should be the mouth of the Wanks/Coco/Segovia River at 14°59.8' north latitude and 83°8.9' west longitude.²³

1.29. The rationale for Nicaragua's approach is clear: by failing to address these and other matters it seeks to persuade the Court that the critical date, for present purposes, is 1979, when the new Sandinista Government came to power. Its approach in relation to Honduras may be contrasted to the approach taken in its Application in the proceedings which

¹⁸ NM, pp 21 to 31.

¹⁹ “It is to be understood that each Republic is owner of the territory which at the date of independence constituted, respectively, the provinces of Honduras and Nicaragua”: *Case concerning the Arbitral Award made by the King of Spain on 23 December 1906, Judgment of 18 November 1960*, ICJ Reports 1960, p 199. See also the affirmation made by the Court in this respect, *Ibid*, p 215: “In the judgment of the Court this complaint is without foundation inasmuch as the decision of the arbitrator is based on historical and legal considerations (*derecho histórico*) in accordance with paragraphs 3 and 4 of Article II”.

²⁰ See the full text of the “*Rapport de la Comisión d'examen de la question des limites entre les Républiques du Honduras et du Nicaragua, soumis à S.M. Alphonse XIII, arbitre. Le 22 juillet 1906*”, in C.I.J., 1960, *Mémoires, plaidoiries et documents. Affaire de la sentence arbitrale rendu par le Roi d'Espagne le 23 décembre 1906 (Honduras c. Nicaragua)*, Vol I, *Annexe N° 11 à la Réplique du Honduras*, p 621 *et seq.*, as well as the text of the 1906 Award in *Ibid*, *Annexe n° 12 au Mémoire du Honduras*, p 87 *et seq.*

²¹ Except for the inevitable, isolated reference in NM, p 23, para 7.

²² NM, p 28, para 23.

²³ See the text of the agreement of the bilateral Mixed Commission in the NM, vol 2, annex 1, p 10.

it filed against Colombia on 6 December 2001, in which its claim to title dates back to the events of 1821 and subsequently.²⁴ In these proceedings Nicaragua relies almost exclusively on matters such as its *Continental Shelf and Adjacent Sea Act of December 19, 1979*,²⁵ and diplomatic correspondence between the two States, all of which post-date 1979.²⁶ Original titles and Honduran *effectivités* over the maritime and insular areas now claimed by Nicaragua cannot, however, be ignored. Honduras submits that they are relevant factors, if not the most relevant circumstances or factors, which the Court must take into account and which point decisively in favour of Honduras' claims and against those of Nicaragua.

G. NICARAGUA'S ALLEGATION OF BAD FAITH BY HONDURAS IS MISCONCEIVED

1.30. Implicit in the Nicaraguan Memorial is a suggestion that Honduras has acted in bad faith. It is reflected, for example, in Nicaragua's treatment of Honduras' approach to the treatment of parallels 15°, 14°59.8' and 14°59'08" N,²⁷ (on which see Chapter 2 at paragraphs 2.25 *et seq*) and in relation to the implications of the Note from the Honduran Minister of Foreign Affairs of 3 May 1982.²⁸ Honduras firmly rejects Nicaragua's allegation. With respect to the starting point for the 1962 delimitation Honduras has always considered, and continues to consider, that the demarcation line is at parallel 14°59.8'. Any claim or suggestion to the contrary on the part of Honduras that the line should be drawn at 14°59'08" arises as a result of translation error which occurred in 1963. The 1982 Diplomatic Note is nothing more than a statement of the obvious, namely that there has not been a formal agreement between the Parties as to the maritime boundary. That is not inconsistent with the view that such a boundary is well-established by reference to historic title and the practice of the relevant States.

²⁴ Application of the Republic of Nicaragua against Colombia, 6 December 2001, at paras 2-3.

²⁵ NM, vol I, p 40, para 4.

²⁶ NM, vol I, p 39 *et seq*; see also NM, vol 2, annexes 8 *et seq*. The other party attributes this new bilateral political situation, revealing its original characteristics, to merely political causes such as the disappearance of "buddy" relationships and US policy in the region.

²⁷ NM, p 42, para 11 *et seq*, and p 77, para 7 *et seq*.

²⁸ NM, p 44, para 17.

H. NICARAGUA'S PRESENTATION AND TRANSLATION
OF CERTAIN MATERIAL IS INADEQUATE

1.31 Not less than fifteen Honduran diplomatic notes in Volume II (Annexes) of the Memorial of Nicaragua contain typographical errors and omissions. By way of example, Annex 26 not only abounds in typographical errors but fails to include a paragraph, while Annex 103 omits an important reference to the 1928 Colombia/Nicaragua Treaty. For the sake of proper translation to English, those diplomatic notes have been reproduced in Volume 2 of this Counter-Memorial.²⁹

²⁹ See HCM, vol 2, annexes 30 and 49.

CHAPTER 2

THE GEOGRAPHICAL CONTEXT OF THE DISPUTE

INTRODUCTION

2.1. The purpose of this Chapter is to present an overview of the geographical setting of the dispute before the Court. To that end:

Section 1 describes the geography of the maritime areas in question, including in particular the islands, fishing banks and reefs located to the north of the 15th parallel.

Section 2 describes the maritime boundary and other treaties which have been concluded between the States of the region and which are relevant to the dispute but have been ignored, or inadequately treated, by Nicaragua in its Memorial.

Section 3 addresses Nicaragua's unfounded reliance on the "Nicaraguan Rise".

Section 4 explains the basis for Honduras' claim that the boundary between the two countries (traditionally described as lying at the 15th parallel, a description retained in this Counter-Memorial for the sake of simplicity) is at parallel 14 degrees, 59.8 minutes (14°59.8') and explains why some documents refer to parallel 14 degrees, 59 minutes, 08 seconds (14°59'08").

I. GEOGRAPHY OF THE MARITIME AREAS, INCLUDING THE ISLANDS AND FISHING BANKS

2.2. The area now claimed by Nicaragua is located in the Caribbean Sea, off the east coasts of Honduras and Nicaragua (see Plates 1 to 4). The coastal area in question has often been referred to as the "Mosquito Coast". As described below and in Chapter 3, the islands and reefs and banks which are located in the area in dispute are known (or should have been known) to both Parties, since they have featured on admiralty charts since at least as far back as the 1830s, and on other maps dating back even further in time. In 1906 the King of Spain made an arbitral Award which identified the Wanks/Coco/Segovia river as the boundary between the two States, with a terminus at Cape Gracias a Dios. On 15 December 1962 a

Honduras/Nicaragua Mixed Commission, which was charged with verifying “the starting point of the natural boundary between the two countries at the mouth of the Coco River”, determined that the starting point was situated at 14°59.8′ north latitude and 83°08.9′ west longitude, Greenwich Meridian.

2.3. Since that time the Parties have accepted that point as being the precise co-ordinates of the starting point of the natural boundary between Honduras and Nicaragua at Cape Gracias a Dios. To the north of the 15th parallel lie four important islands which are ignored by Nicaragua, notwithstanding the fact that they also currently sustain, or have sustained, a human population, and which are of singular importance for these proceedings (see Plates 4 and 10).¹ They are:

- (1) *Savanna Cay* (which is sometimes also referred to by fishermen as Media Luna Cay and which is identified by a triangulation marker as Logwood Cay), which is located 8.2 nautical miles north of the 15th parallel and some 28 nautical miles to the east northeast of the left bank of the mouth of the River Wanks/Coco/Segovia and part of the Honduran Municipality of Villeda Morales;²
- (2) *South Cay* (also known as Cayo Sur), located approximately 5 nautical miles north of the 15th parallel, about 41 nautical miles east of the left bank of the mouth of the River Wanks/Coco/Segovia and 80 nautical miles to the east southeast of Caratasca Ridge and part of the Honduran Municipality of Puerto Lempira.³
- (3) *Bobel Cay* (also known as Cayo Bobel), located approximately 4.76 nautical miles north of the 15th parallel, 27 nautical miles east of the left bank of the mouth of the River Wanks/Coco/Segovia in the Municipality Villeda Morales, and 65 nautical miles to the east southeast of

¹ Chapter 6 *infra*.

² According to the North American Datum of 1927, the coordinates are: north latitude 15°08′23″.153 and west longitude 82°35′02″.209. These were verified by a global positioning system (GPS) device: HCM, vol 2, annex 94. The original Logwood Cay and Media Luna Cay are both now submerged.

³ According to the North American Datum of 1927, the coordinates are: north latitude 15°04′59″.238 and west longitude 82°26′38″.524. These were verified by a global positioning system (GPS) device: HCM, vol 2, annex 95.

Caratasca Ridge and part of the Honduran Municipality of Puerto Lempira.⁴

- (4) *Port Royal Cay* (Cayo Puerto Royal), which is located approximately 7 nautical miles north of the 15th parallel and 32 nautical miles east of the left bank of the mouth of the River Wanks/Coco/Segovia and part of the Honduran Municipality of Puerto Lempira.

Notwithstanding their traditional nomenclature as “cays”, each of these geographic features is an “island” within the meaning of Article 121 of the 1982 UN Convention on the Law of the Sea. Each is a “naturally formed area of land”, is “surrounded by water” and is “above water at high tide”. In addition, as elaborated in Chapter 6, each sustains or has sustained human habitation and provides a center for important economic activity, in particular in relation to fisheries. Consequently, each of these islands is entitled to its own territorial sea, Exclusive Economic Zone and continental shelf in accordance with Article 121 and the 1982 UN Convention.

2.4. The area to the north-east of Cape Gracias a Dios also includes a number of important features which are not islands, in particular fisheries banks and reefs which have been used by Honduran fishermen and other nationals duly authorised by Honduras for many decades (see Plate 14). Particularly important are:

- (1) *Middle Bank*, located some 141 nautical miles from the left bank of the mouth of River Wanks/Coco/Segovia and 74 nautical miles north of parallel 15;
- (2) *Thunder Knoll Bank*, located some 126 nautical miles from the left bank of the mouth of River Wanks/Coco/Segovia and 82 nautical miles north of parallel 15;
- (3) *Rosalind Bank*, located some 184 nautical miles from the left bank of the mouth of River Wanks/Coco/Segovia and 85 nautical miles north of parallel 15; and
- (4) *Gorda Bank*, located some 63 nautical miles from the left bank of the mouth of River Wanks/Coco/Segovia and 34 nautical miles north of parallel 15.

⁴ According to the North American Datum of 1927, the coordinates are: north latitude 15°04'54".420 and west longitude 82°40'30".922. These were verified by a global positioning system (GPS) device: HCM, vol 2, annex 96.

2.5. In its Memorial, Nicaragua has asserted that each of these islands (and presumably the fishing banks and reefs) belong to Nicaragua, notwithstanding the fact that Honduras has long treated them as being subject to its sovereignty and has been in effective control of them – and has exercised sovereignty and administrative, judicial and legislative control over them – throughout modern times.⁵ The “islets”, “rocks”, “reefs” and “cays” claimed by Nicaragua are stated to include, but not be limited to: 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.⁶

2.6. It is noteworthy that the Nicaraguan Memorial uses terms such as “islets” and “rocks”⁷ to describe the islands north of the 15th parallel that Nicaragua now seeks to claim as its own. The terminology used by Nicaragua has evidently been chosen in an attempt to diminish the juridical significance of these islands (as well as the banks and reefs), to denude them of the legal status accorded to the islands under Article 121 of the 1982 UNCLOS, and thus to limit their role as factors to be taken into account by the Court in achieving an equitable result.⁸ Indeed, Nicaragua boldly states that, for the purposes, of applying the bisector method for delimitation “[t]he islets and rocks off the mainland coasts have not been taken into consideration in the present exercise.”⁹ It is also noteworthy that some of the Honduran islands, banks and reefs Nicaragua now claims are not shown or otherwise indicated on any of the maps or figures annexed to its Memorial. It is pertinent to ask: why not? Nicaragua provides no explanation to a claim which appears almost as an afterthought in its Memorial.

2.7. The approach set forth in the Nicaraguan Memorial, as well as the material upon which it relies – and, still more, the material to which it fails to refer – suggests that Nicaragua has very little, if any, knowledge of the islands, banks and reefs in question. Nicaragua appears not to appreciate, for example, that some of the islands referred to in Chapter 2 are inhabited, and that most have been inhabited at one time or another.¹⁰ Nicaragua has

⁵ Chapter 6 *infra*.

⁶ NM, p 9, para 15 and p 166 (paragraph not numbered).

⁷ NM, pp 138-144, para 31 to 43; see also *ibid*, which refers to “rocks”, “reefs” and “cays.”

⁸ *Supra* para 2.3 and *infra* para 4.28.

⁹ NM, p 138, para 31.

¹⁰ *Supra*, para 2.3; see also Chapter 6 *infra*.

not protested about the longstanding application by Honduras of its laws and regulations to activities on and around the islands, a practice to which it makes no reference in its Memorial.¹¹ Moreover, several of the “cays” mentioned in Nicaragua’s Memorial are in fact now one and the same, although they are known by different names. For example, as stated above Savanna Cay is also referred to as Media Luna Cay,¹² and Serranilla Cay is actually a bank. Further, Nicaragua apparently feels able to claim sovereignty over these islands without feeling the need to provide any evidence of its legal title over any of them, either by way of historical title or effective, peaceful control.¹³

2.8. The islands, banks and reefs which have been claimed by Nicaragua are not newly discovered: Nicaragua cannot claim it has not previously known of their existence or of Honduras’ exercise of sovereignty over them. The islands, banks and reefs have been well known for more than two centuries, although their names have changed over time. They have been important in relation to natural resource activities (including turtle fishing, the harvesting of guano, and fisheries in general) since at least the early part of the 19th century.¹⁴ Nicaraguans now live and work on some of the cays claimed by Nicaragua, but duly authorized by Honduras.¹⁵

2.9. British Admiralty Charts of the Mosquito coast (“River Hueso to False Cape”) show Half Moon Cay and Reefs, Logwood Cay, Savannah Cay and Reefs, Bobel Cay, South Cay, Hall Rock and Port Royal Cay (see Plates 3 and 4).¹⁶ The islands, banks and reefs in question are also to be found on other maps from the eighteenth century on.¹⁷ Further cartographical information, including examples of Nicaragua’s own official maps which do not extend beyond the 15th parallel or do not identify some or any of the islands, banks or reefs, is set out in Chapter 3. In light of these and other maps Nicaragua cannot credibly or reasonably claim to

¹¹ Chapter 6 *infra*.

¹² *Supra*, para 2.3.

¹³ At NM, p 9, para 15 Nicaragua seeks to assert its sovereignty by stating merely that “[T]hese reefs and cays have traditionally been used as resting and fishing places by the Indian Communities in the area, in particular by the Sambo Miskito Indians of the Miskito coast of Nicaragua.”

¹⁴ See for example concession granted by the Honduran Government in 1888 to Mr. Jacob Baiz to “[...] exploit, sell and export guano, phosphate and other fertilizing substances that exist on the islands, small islands, and Keys of the Atlantic belonging to the State”, HCM, vol 2, annex 169. It is well known that Bobel Cay was rich in guano at the time.

¹⁵ Chapter 6 *infra*.

¹⁶ The earliest editions of these charts were compiled from a survey from 1803 to 1843.

¹⁷ *Infra* para 3.58 *et seq.*

have had no knowledge of the islands, banks and reefs during the 19th and early 20th centuries, once it had achieved independence.

2.10. The area north of the 15th parallel and up to the 82nd meridian has long been known as a hazard to navigation, for its “outlying dangers”, and was surveyed as such in the mid 19th century. For example, as early as 1839 a British Sailing Directory and in 1841 a Naval journal described Half Moon, Allargat Alla and Savanna Reefs, as well as Bobel Cay with its “single coconut tree”. The journal also identified Logwood and Burn Cays as small and without vegetation, and Half Moon Cay being composed of sand.¹⁸ Other historical documents also mention some of the cays in question.¹⁹

2.11. Cape Gracias a Dios has been well known to mapmakers since an even earlier period, although its exact location on the system of co-ordinates was not always agreed upon.²⁰ In 1816 the Spanish Governor of the Province of Honduras informed the President of the Council of the Indies that his Province, which included the Judicial District of Gracias a Dios, was “situated between 13 and 15 degrees, northern latitude”.²¹ This reference reflects a customary practice during the colonial era of relying on parallels to define territories and the territorial limits of the Spanish

¹⁸ J Purdy, *The Colombian Navigator*, London, 1839, p 268 *et seq.*, and R. Owen, “Description of the Mosquito Coast,” *The Nautical Magazine and Naval Chronicle*, London, (1841), p 73 *et seq.* deposited with the Registry as documents 2-01 and 2-02.

¹⁹ Bernard Neitschmann, *Between Land and Water*. Seminar Press, New York, (1973), p 118, refers to the fact that in 1917 a representative of the British government visited various Mosquito communities to legalise boundary claims. Ownership documents were drawn up for some of the off shore cays which included a Savanna Cay. The testimony of a Cayman Islander with regard to the dispute at *infra* also states that after fishing for turtles around “Old Mahegan”, south of the 15th parallel N, he “[...] went to Logwood Cay (uninhabited) [...] I remained at Logwood Cay on Sunday,” before heading back south. See document 2-03 deposited with the Registry.

²⁰ See e.g. HCM, vol 2, annex 1, being the “Description of the Province of Honduras” as appearing on pages 125 to 128 of the *Geografía Histórica, Volume IX, of America, adjoining islands, Arctic and Antarctic territories, and islands in the Seas of the North and South, by the Holy Father of the Company of Jesus, Pedro Murillo Velarde*, “in which is witnessed that the said Province reaches as far as the Gulf of Honduras and that it adjoins Yucatán”. This Annex was presented at the time as Document N.12 in the “Counter-Case of Honduras”, presented before the Honourable Special Border Limits Court by the representatives of Honduras in the city of Washington on 4 April 1932, in reply to “The Case of Guatemala”, p 222 to 225.

²¹ HCM, vol 2, annex 2, the “Report rendered by Don Juan Antonio de Tornos, Governor of the Province of Honduras, on the visit made to said Province in accordance with the Provisions of the Ordenanza of Intendentes, wherein he states, among other things, that he sent to the Universal Department of Indies a map embracing the coast of the said Province from Trujillo up to the English establishment of Valiz”. Document N.19 presented by Honduras in its arbitration with Guatemala, *Ibid.*, p 255 *et seq.*

jurisdictions in America. This reference, and many others, is also consistent with the view that Cape Gracias a Dios was chosen as a colonial limit precisely because it coincided with the 15th parallel and with the mouth of a river.²²

2.12. Moreover, the recognition that Cape Gracias a Dios, where the Wanks/Coco/Segovia River flows into the Atlantic, constituted the new limit between the new Republics of Nicaragua and Honduras is overwhelming and admits of no discussion. It was acknowledged as the limit by those third States with the greatest interests in the area. It was confirmed by the Arbitral Award of 1906, and in the *Rapport de la Commission d'examen* which followed.²³ It is appropriate to recall that the *Rapport* underlined that Cape Gracias a Dios was acknowledged as the limit by *inter alia*:

- the first Constitutions of Nicaragua and Honduras (1825-1828 and 1838);
- both States' negotiations with Great Britain, in which the Government of the United States acted as mediator;
- a Nicaraguan Decree of 28 December 1840, regarding imports and exports at the port of Coco on the river Segovia;
- the Honduran decree of 15 November 1843, authorizing the Nicaragua delegation to represent the interests of Honduras in the Mosquito territory before the British authorities;
- the diplomatic actions of Francisco Castellón, the representative of Nicaragua and Honduras, on 25 September and 23 November 1844, before the Governments of London, Paris, Brussels, Madrid, Prussia, Holland and the United States in connection with the territory of Mosquitia;
- the manifesto by the President of Nicaragua addressed on 20 March 1848, to the Governments of America on the 1848 Convention between Britain and Nicaragua with respect to the San Juan river;

²² In another Spanish hydrographical report of 23 November 1742, Pedro de Rivera Márquez, describing the coast of the Gulf of Honduras, stated: "Between the cape of Camaron and that of Gracias a Dios, situated 15°8' latitude and 292° longitude, there is a distance of 42 leagues: HCM, vol 2, annex 3 containing the *Description of the Gulf of Honduras and its coasts, as far as Gracias a Dios, by Pedro de Rivera Marquez*. This text was presented as Document N.29 in the Counter-Case of Honduras in its 1933 arbitration with Guatemala, *Ibid*, p 325 to 329.

²³ Cf. *CIJ Mémoires, Plaidoiries et Documents. Affaire de la Sentence Arbitrale rendue le 23 décembre 1906 (Honduras c. Nicaragua)*, Vol I, p 18 et seq and p 687 to 692.

- the instructions given to the Minister of Nicaragua before the Queen of Spain, José de Marcoleta, on 9 July 1850, in connection with Spain's acknowledgement of the independence of that country;
- Article II of the 1856 Convention between Her Britannic Majesty and the Government of Honduras;
- by Article IV of the 1856 Treaty between Her Britannic Majesty and the United States of North America;
- by Article II of the 1859 Treaty between Her Britannic Majesty and the Republic of Honduras, and by Article I of the 1860 Treaty between Great Britain and Nicaragua.

In short, until well into the second half of the 19th century, Nicaragua always recognized Cape of Gracias a Dios as a common border, and the subsequent disagreements were definitively resolved with the Arbitral Award of 1906 and the Court's Judgment of 1960. Nevertheless, and notwithstanding the factors and evidence described in this Chapter and Chapters 5 and 6, Nicaragua has chosen to re-open almost two centuries of settled history.

II. THE IMPORTANCE OF DELIMITATION TREATIES IN THE REGION²⁴

2.13. Nicaragua's superficial treatment of the islands it now claims is matched by its strategic decision to ignore (or minimise the importance of) the numerous international conventions which have been adopted between the States of the region and which are of relevance to these proceedings before the International Court of Justice. This approach is adopted by Nicaragua notwithstanding the Court's confirmation of the significance of delimitation agreements involving the Parties to the dispute or neighbouring States. Such conventions are an important factor to be considered in all maritime delimitations, including this one.²⁵

²⁴ *Infra* paras 4.21-4.27 set out the applicable law, and Chapter 8, paras 8.11 describe the method of delimitation which Honduras submits is the consequence.

²⁵ See *inter alia* North Sea Continental Shelf Cases, ICJ Reports 1969, the Guinea/Guinea-Bissau arbitration, ILR Vol 77, p 636, and the Tunisia/Libya case, ICJ Reports 1982.

2.14. The maritime boundaries delimited by these treaties may be seen at Plate 5.²⁶ Three treaties are especially relevant to the present proceedings:

- (1) the 1928 Nicaragua/Colombia Treaty;
- (2) the 1986 Honduras/Colombia Treaty; and
- (3) the 1993 Jamaica/Colombia Treaty of 1993.

Evidently Nicaragua would prefer not to address the implications of these treaties, since it disputes the validity of the 1986 Colombia/Honduras Treaty, ignores the 1993 Colombia/Jamaica Treaty, and carefully avoids mentioning its own 1928 Treaty with Colombia, notwithstanding that Treaty's considerable role in influencing the preparation of the other maritime delimitation treaties in the area.²⁷

(1) THE 1928 NICARAGUA/COLOMBIA TREATY²⁸

2.15. This Treaty was confirmed by an exchange of notes in 1930 and recognised the 82nd meridian as the limit for Colombian sovereignty. By this Treaty Nicaragua also recognised Colombian sovereignty over the group of islands known as San Andrés and Providencia.²⁹ For more than fifty years following its adoption the 82nd meridian was also regarded by both Parties as their maritime boundary, and following its adoption Colombia entered into other regional maritime delimitation treaties premised upon the 82nd meridian boundary. It was only in 1979, when the new Sandinista government came to power in Nicaragua, that Nicaragua challenged the validity of the treaty and unilaterally denounced it in 1980.³⁰

²⁶ These treaties include the Colombia/Nicaragua Treaty (1928); the Colombia/USA Treaty (1972); the Colombia/Panama Treaty (1976); the Colombia/Costa Rica Treaty (1977); the Costa Rica/Panama Treaty (1980); the Colombia/Honduras Treaty (1986); the Colombia/Jamaica Treaty (1993); and the Honduras/UK Treaty (2001). See also Plate 6.

²⁷ Chapter 4 *infra*.

²⁸ HCM, vol 2, annex 9.

²⁹ Article 1 of this Treaty recognizes as Colombian the islands, islets and cays to the east of the 82nd meridian, which includes among them the banks Quitasueño, Roncador and Serrana, although these had been disputed by the United States of America. Subsequently, by the Vázquez-Saccio Treaty of 8 September 1972, the United States dropped its claim to the three banks. The Treaty was ratified by the United States in 1981.

³⁰ On 4 February 1980, the Junta de Reconstrucción Nacional de Nicaragua issued a Declaration, published simultaneously with the *Libro Blanco* on the same matter, through which Nicaragua denounced this Treaty declaring it null and void. The Nicaraguan argument was rejected by the Government of Colombia by Notes of 5

(2) THE 1986 HONDURAS/COLOMBIA TREATY³¹

2.16. In 1986, Honduras and Columbia signed a treaty where the 82nd meridian was taken as a starting point, and then provides for the line allocating sovereignty over insular areas to extend eastwards along parallel 14°59'08" up to 79°56'00", at which point it proceeds northwards, and terminates at 15°58'40" and 79°56'40", thus dividing the Serranilla Bank between Honduras and Colombia.

2.17. For present purposes the significance of the treaty 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. By contrast, in its Memorial Nicaragua contends that the line of delimitation between Nicaragua and Honduras "continues up to the area of the seabed occupied by Rosalinda Bank",³² a point which lies some 90 miles *east* of the 82nd meridian. In making that claim Nicaragua is, in effect, challenging the 1986 Treaty.³³

(3) THE 1993 COLOMBIA/JAMAICA TREATY³⁴

2.18. The Nicaraguan Memorial makes no mention of the 1993 Sanin-Robertson Treaty between Colombia and Jamaica. This is notwithstanding the fact that Nicaragua's claim is inconsistent with those of its provisions which respect and confirm the validity of the 1986 Honduran/Colombian Treaty, and the identification of Serranilla Bank as the western limit of the new Joint Regime Area, established by the Treaty.

2.19. Nicaragua's decision to ignore these conventions amounts to a tacit recognition that its claim to the area north of the 15th parallel (including in particular a bisector line that goes up to the Rosalinda bank) is inconsistent

February 1980, addressed by the Foreign Minister de Colombia; see *Libro Blanco de la República de Colombia*, p 7, 43 *et seq.* and p 99 *et seq.* On 6 December 2001, Nicaragua instituted proceedings before the International Court against Colombia with regard to "legal issues subsisting" between the two States "concerning title to territory and maritime delimitation" in the western Caribbean. Nicaragua's Application asserts that the 1928 Treaty, referred to as the Bárcenas-Esguerra Treaty of 24 March 1928 cannot provide a legal basis for Colombian title to the islands of San Andrés and Providencia and the appurtenant islands and cays, and also over the Roncador, Serrana, Serranilla and Quitasueño Cays.

³¹ HCM, vol 2, annex 12.

³² NM, p 98, para 29.

³³ NM, p 60, para 68 *et seq.*

³⁴ HCM, vol 2, annex 11.

with the 1986 and 1993 conventions. It is inconsistent, in particular, with the identification of meridian 82 as the limit of Colombian and Honduran sovereignty, and with the two tri-junctions agreed by Honduras, Colombia and Jamaica (because the tri-junctions are situated south of the septentrional extreme of the bisector proposed by Nicaragua).

2.20. Honduras submits that these bilateral treaties are relevant for at least two reasons. First, because the Court is entitled to presume that the provisions of these treaties – individually and, all the more so, collectively – are reasonable. This is an approach taken by the Court in relation to maritime³⁵ and land delimitations,³⁶ notwithstanding the differences in the applicable legal regime.³⁷ Second, these treaties make use of parallels of latitude and meridians of longitude in drawing the delimitation line, an approach which is widely relied upon in the Caribbean region and elsewhere.³⁸

³⁵ See Judgment of 24 February 1982 in the *Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, ICJ Reports 1982, p 94, para 133, C.3 (resolutive part). Judgment of 21 March 1984 in the *Case concerning the Continental Shelf (Libyan Arab Jamahiriya /Malta), Application by Italy for permission to intervene*, ICJ Reports 1984, p 24-27, para 39-43; and Judgment of 3 June 1985, *Merits*, ICJ Reports 1985, p 24-26, para 20-21. The Judgment of 14 June 1993 in the *Case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, ICJ Reports 1993, p 68 (para 67) and 82 (para 94) and the Judgment of 11 June 1998 in the *Land and Maritime Boundary between Cameroon and Nigeria, Preliminary Objections*, ICJ Reports 1998, p 324-326, para 116-118.

³⁶ See Judgment of the Chamber of the Court of 22 December 1986 in the *Frontier Dispute (Burkina Faso/Republic of Mali)*, ICJ Reports 1986, p 578-580, para 48-50. Judgment of 3 February 1994 in the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, ICJ Reports 1994, p 33-34 (para 63), 38 (para 74) and 40 (para 77, resolutive part), and the Judgment of 11 June 1998, in the *Land and Maritime Boundary between Cameroon and Nigeria, Preliminary Objections*, ICJ Reports 1998, p 311-313, para 78-80.

³⁷ See e.g. the arbitral decision of 14 February 1985 in the *Case concerning the Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau*, RIAA, vol XIX, p 194, para 124; and the Judgment of the Chamber of the Court of 22 December 1986 in the *Frontier Dispute (Burkina Faso/Republic of Mali)*, ICJ Reports 1986, p 578, para 47.

³⁸ The following is in chronological order, a non-exhaustive relation of Treaties partly or completely based on this method: Declaration of Santiago of 18 August 1952 and related Agreements (see United Nations (Oficina de Asuntos Oceánicos y del Derecho del Mar), *El Derecho del Mar. Acuerdos sobre fronteras marítimas (1942-1969)*, Nueva York, 1991, p 90-93); Agreement between the Government of Colombia and the Government of Ecuador Relating to the Maritime Boundary between Colombia and Ecuador (23 August 1975) (English text in Charney and Alexander (eds), *International Maritime Boundaries*, p 809-817); Agreement between Portugal and Spain on the delimitation of the Continental Shelf (12 February 1976) (*Boletín Oficial de las Cortes*, 15 June 1976, No. 1512, p 36553-36556) See document 2-04 deposited with the Registry; Agreement between Kenya and the United Republic of Tanzania on

III. THE “NICARAGUAN RISE”

2.21. Nicaragua claims that the maritime areas in dispute “are located in an area in the Caribbean known as the Nicaraguan Rise”,³⁹ and that the areas in dispute “consist of the Nicaraguan Rise, together with adjacent areas of the continental shelf attributable to Nicaragua and Honduras respectively”.⁴⁰ Reliance on the so-called “Nicaraguan Rise”, which is claimed to be a geomorphological feature and which lies within 200 miles from the coast, is misconceived for at least two reasons (which are further elaborated in Chapter 4).⁴¹

2.22. First, the “Rise” is of dubious geomorphologic authenticity, with a nomenclature which is largely new.

2.23. Second, even if it could be said to be geomorphologically accurate, the Nicaraguan reliance on the ‘Nicaraguan Rise’ is unfounded as a matter of law. The Court has stated that, since the acceptance of the “distance principle” in the 1982 UNCLOS, geological or geomorphological features less than 200 miles from the coast have ceased to have any relevance in either verifying title or delimitation.⁴² Nicaragua appears to be well aware of the Court’s Judgment. It says, however, that Nicaragua’s argument differs from the situation addressed by the International Court in the

Delimitation of the Maritime Boundary between the Two States (9 July 1976) (in Charney and Alexander (eds), *supra*, 875-883); Treaty on the Delimitation of Marine and Submarine Areas and Associated Matters between the Republic of Panama and the Republic of Colombia (20 November 1976) (*ibid.*, 519-35); Treaty on Delimitation of Marine and Submarine Areas and Maritime Cooperation between the Republic of Colombia and the Republic of Costa Rica (17 March 1977) (*ibid.*, 463-76); Treaty on delimitation between the Government of the French Republic (Martinica y Guadalupe) and the Government of the Republic of Venezuela (17 July 1980) (Naciones Unidas, *Acuerdos sobre fronteras marítimas (1970-1984)*, Nueva York, 1988, p 130-132); Treaty of Peace and Friendship (Argentina and Chile) (29 November 1984) (34 *ILM* (1985), p 11-14) See document 2-05 deposited with the Registry; Treaty on maritime delimitation between Colombia and Honduras (2 August 1986) (HCM, vol 2, annex 12); Agreement between the Government of Great Britain and Northern Ireland and the Government of the Republic of Ireland concerning delimitation of zones of the Continental Shelf between the two States (7 November 1988) (Naciones Unidas, *Acuerdos sobre fronteras marítimas (1985-1991)*, Nueva York, 1992, p 6-13.); Agreement between the United States of America and the Union of Soviet Socialist Republics on the maritime boundary (1 June 1990) (39 *ILM* (1990), p 942) See document 2-06 deposited with the Registry; Maritime Delimitation Treaty between Jamaica and the Republic of Colombia (12 November 1993) (HCM, vol 2, annex 11).

³⁹ NM, p 3, para 8.

⁴⁰ NM, p 161, para 2.

⁴¹ *Infra.*, para 4.33 *et seq.*

⁴² ICJ Reports 1985, p 35, para 39.

Malta/Libya case, because “the Nicaraguan Rise is one single feature shared by Nicaragua and Honduras, which is characterised by the absence of any natural dividing lines”, and that the boundary proposed by Nicaragua “respects the unitary character of the Nicaraguan Rise, by dividing the Rise in approximately equal halves between Nicaragua and Honduras.”⁴³ As elaborated below in Chapter 7, this argument is entirely without merit: if Nicaragua relies on the unitary character of the feature it invokes the geophysical characteristics of the feature as a criterion for delimitation, precisely what the Court said was not to be done.⁴⁴

2.24. Moreover, Honduras has consistently objected to Nicaragua’s claim (which was only articulated for the first time in the 1990s) that there exists a “Nicaraguan Rise”. In the early 1990s Nicaragua introduced into its official map a new inset which included the “Nicaraguan Rise” (“Promontorio Nicaragüense”), including various Honduran banks and cays located north of the 15th parallel. Honduras formally objected to the new inset in 1994,⁴⁵ and again in 1995.⁴⁶ The substance of Honduras’ objections was not countered by Nicaragua then, nor have they been countered by Nicaragua in its Memorial.

IV. THE TRADITIONAL DELIMITATION LINE OF THE 15TH PARALLEL

2.25. Finally with regard to geographical aspects, Honduras wishes to clarify its position concerning the location of the traditional boundary between Honduras and Nicaragua, a matter upon which Nicaragua makes a wholly unfounded allegation of bad faith on the part of Honduras.⁴⁷ For the reasons set out in this Counter-Memorial, Honduras submits that the correct location of the traditional boundary starts at the point identified by the Honduras/Nicaragua Mixed Commission and then proceeds along a line lying just to the south of the 15th parallel, at 14°59.8’ north latitude. As will be demonstrated in the following chapters of this Counter-Memorial,

⁴³ NM, p 132, paras 17 and 21.

⁴⁴ See *infra* Chapter 7, para 7.4.

⁴⁵ Diplomatic Note of 7 April 1994, N.124-DSM: HCM, vol 2, annex 51.

⁴⁶ Note N.226-SAM-95 of 11 July 1995, affirming that the area concerned is part of the territory of Honduras: HCM, vol 2, annex 54. Amongst other matters addressed in the 1995 Diplomatic Note, reference was made to Executive Decree No 689 of 23 January 1930, approving the map of the Honduran geographer Dr. Jesús Aguilar Paz, that includes within the Honduran territory all the islands, banks and reefs lying just north of the 15th parallel, without having any protest on the part of Nicaragua.

⁴⁷ NM, p 42, para 11 *et seq.*; and p 77, para 7 *et seq.*

that line reflects the application of the relevant principles and rules of international law and longstanding practice. The exact location of the line in question, however, requires further comment.

2.26. Prior to 1962, when the Honduras/Nicaragua Mixed Commission verified its location, Cape Gracias a Dios, which had always been taken as the point of reference for the boundary, was believed to lie on the 15th parallel itself. It was not, however, until the Honduras/Nicaragua Mixed Commission was charged with verifying the point at which the land boundary terminated that the exact co-ordinates of the Cape became known. The Honduras/Nicaragua Mixed Commission had, of course, been established following the 1960 Judgment of the International Court of Justice. Its mandate was set in accordance with the Basis of Arrangement accepted by the two Governments, in March 1961. Among the powers granted to the Mixed Commission was “to verify the starting point of the natural boundary between the two countries at the mouth of the Coco River”. The Mixed Commission reached agreement on 15 December 1962, at its twelfth meeting, and the verification resulted in a point situated at 14°59.8′ north latitude and 83°08.9′ west longitude, Greenwich Meridian. That point is also referred to in the original Spanish version of the Report of the Inter-American Peace Committee of the OAS of 16 July 1963, which endorsed the 1962 Report of the Mixed Commission.

2.27. The English translation of the Report, however, described the north latitude co-ordinate of the point as 14 degrees 59′08″, rather than 14 degrees, 59.8 minutes. This appears to have been the result of an error in translation. It was this line of latitude used in the English translation which was, in practice, followed in relation to the grant of oil and gas concessions by both Honduras and Nicaragua,⁴⁸ and which informed Honduras’ references in some of its diplomatic correspondence with Nicaragua.⁴⁹

⁴⁸ See HCM, vol 2, annexes 116 and 117.

⁴⁹ See HCM, vol 2, annexes 38, 51, 53, 54, 55, 56 and 59.

2.28. It was also the line of latitude taken by the negotiators of the 1986 Honduras/Colombia Treaty. The result is a small misalignment between, for example, the line agreed with Colombia in the 1986 treaty (14 degrees 59'08") and the line of the traditional frontier with Nicaragua (14 degrees 59.8'00"). However, Honduras does not seek to change or challenge the delimitation line agreed with Colombia. This line was agreed between the two Parties, acting in good faith, and, unlike the boundary with Nicaragua, there was no long history of conduct by both Parties evidencing their common acceptance of a particular line. But, as regards Nicaragua, the Honduran claim is that the traditional boundary lies at latitude 14 degrees 59.8'00".

CHAPTER 3

THE HISTORICAL AND POLITICAL BACKGROUND TO THE PROCEEDINGS

I. INTRODUCTION

3.1. It has already been demonstrated in Chapter 1 of this Counter-Memorial that the account of the historical and geographical context of the proceedings in the Nicaraguan Memorial is wholly unsatisfactory. The purpose of the present Chapter is to set the record straight by analysing the relevant historical, political and geographical material. A detailed study of the *effectivités*, however, is reserved to Chapter 6.

3.2. The material in this Chapter is organized as follows:-

Section II considers the history during the colonial period and the nineteenth century;

Section III examines the significance of the turtle fishing dispute between Nicaragua and the United Kingdom during the nineteenth and early twentieth centuries;

Section IV discusses the period 1906-1960 (from the date of the Arbitral Award of the King of Spain to the decision of this Court upholding that award);

Section V comments on the practice of the Parties during the period 1960-1979;

Section VI considers practice since 1979;

Section VII addresses the cartographical evidence.

II. THE HISTORY DURING THE COLONIAL PERIOD AND THE 19TH CENTURY

3.3. During the Spanish colonial period the administrative boundary between the Provinces of Honduras and Nicaragua followed the line of the River Segovia (also known as the Coco or Wanks) to its mouth at Cape

Gracias a Dios.¹ This boundary divided the areas of jurisdiction of all the authorities, civil and military. While the division of responsibility was obviously most important in relation to the main land mass (the islands being either uninhabited or very sparsely populated at that time and the extent of the territorial sea limited), it was also relevant to maritime jurisdiction, since the two provinces had separate authorities responsible for naval defence and such matters as policing maritime commerce and the fight against pirates and corsairs. In effect, the location of the land boundary also determined the division of maritime competence, with the Province of Honduras exercising authority over the islands and waters to the north of Cape Gracias a Dios, while the Province of Nicaragua exercised authority to the south.

3.4. In accordance with the principle of *uti possidetis juris* (which is considered in greater detail in Chapter 5 of this Counter-Memorial), the boundary between the two colonial Provinces became the border between the independent States of Honduras and Nicaragua following independence and the dissolution of the Central American Federation. In accordance with this principle, Cape Gracias a Dios continued to be recognised throughout the nineteenth century as the terminal point of the land boundary between the two Republics.

3.5. Although the exact coordinates given for Cape Gracias a Dios in the maps and other documents of the early 19th century did not always coincide, all the known references located it at or around the 15th parallel. There is no evidence that the exact location of the border posed any problems for the two Republics during the early years after independence. All the evidence, however, shows that they continued to treat Cape Gracias a Dios as marking the border between their respective territories and between their authority over the adjacent islands and maritime areas. Much of that evidence was provided by Nicaragua herself in the proceedings before the Court in 1960.²

¹ Chapter 5 *infra*.

² Cf. CIJ 1960, *Mémoires, Plaidoiries et Documents, Affaire de la Sentence Arbitrale rendue par le Roi d'Espagne le 23 décembre 1906 (Honduras c. Nicaragua)*, vol I, *Annexes au Contre-Mémoire du Nicaragua* nos. 52 ("Titre Royal du 23 août 1745 nommant Alonso de Heredia Gouverneur et Commandant General de la province de Nicaragua et Commandant General des Armées depuis le Cap de Gracias a Dios jusqu'à la rivière Chagres"), 53 ("Brevet Royal du 23 août 1745 nommant le Colonel Juan de Vera Gouverneur et Commandant General de la province du Honduras et Commandant General des Armées de ladite province du Honduras et de celles comprises depuis l'endroit où prend fin la juridiction du Gouverneur et Capitaine General de la province de Yucatán jusqu'au Cap de Gracias a Dios"), 54 ("Instructions Royales du 23 août 1745 au Colonel Juan de Vera"), 55 ("Avis donné par le Conseil d'Etat d'Espagne le 21 décembre 1906 au sujet de la Sentence arbitrale

3.6. For example, a Note dated 23 November 1844 from the Minister representing both Honduras and Nicaragua to Her British Majesty recognized the sovereign right of Nicaragua along the Atlantic coast “from Cape Gracias a Dios in the North to the dividing line which separates it from Costa Rica”.³ Similarly, in the “*New Instructions given by order of the sovereign States of Honduras and Nicaragua to Mr. José de Marcoleta, Minister Chargé d’ Affaires before the Government of the Republic of France and others of Europe*”⁴ of 14 October 1848, the Governments of Honduras and Nicaragua refer to the English presence in what is described as the Honduran territory of “Cape Gracias a Dios”.

3.7. The legal literature on territorial conflicts in the region⁵ demonstrates that it was not until the period 1870-1875 that disputes emerged between Honduras and Nicaragua regarding the location of the border and that they were not restricted to Cape Gracias a Dios but extended to other sectors of the common border. On 7 October 1894 Honduras and Nicaragua concluded a Treaty (“the Gámez-Bonilla Treaty”), Articles I and II of which read as follows:

“Article I. 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.

Article II. The Mixed Commission, composed of an equal number of members appointed by both parties, shall meet at one of the border towns which offers the greater conveniences for study, and shall there begin its work, adhering to the following rules:

qui devait prononcer S.M. le Roi d’Espagne sur la question des limites entre le Nicaragua et le Honduras”), et 57 (A “Instructions du 3 janvier 1747 au Maréchal Francisco Cagigal de la Vega, Capitaine General du Guatemala, décidant que Don Alonso de Heredia et Don Juan de Vera seraient placés sous ses ordres et lui seraient subordonnés”, et B “Brevet Royal du 3 janvier 1747 surbordonnant le Colonel Juan de Vera au Maréchal Francisco Cagigal de la Vega, Capitaine Général du Guatemala”), p 379-432.

³ HCM, vol 2, annex 5.

⁴ HCM, vol 2, annex 6.

⁵ See Antonio R. Vallejo, *Historia documentada de los límites entre la República de Honduras y las de Nicaragua, El Salvador y Guatemala*, T. I, New York, 1938, p 101 *et seq*, Document 3-01 deposited with the Registry; G. Ireland, *Boundaries, Possessions and Conflicts in Central and North America and the Caribbean*, Cambridge, Massachussets, Harvard University Press, 1941, p 130 *et seq*.

[...]

3. It is to be understood that *each Republic is owner of the territory which at the date of independence constituted, respectively, the provinces of Honduras and Nicaragua.*⁶

The explicit recognition of the principle of *uti possidetis juris* in this treaty is relevant to the present case, because once it has been made clear that the dividing line between the legitimate claims of the two States vis-à-vis one another was located at Cape Gracias a Dios, it followed that Nicaragua could have no claim to the adjacent islands and maritime spaces to the north of the Cape, while Honduras could have no such claim over those to the south.

3.8. That conclusion is confirmed by the *Rapport de la Commission d'examen*:

“Le 15 novembre 1843, le Gouvernement du Honduras a édicté un décret, autorisant la légation du Nicaragua à représenter le Honduras, et à soutenir et faire respecter les droits découlant dudit traité, conformément aux instructions, dans l'article 6 duquel il est dit que le ministre doit déclarer que tout le territoire Mosquito *et ses îles adjacentes* appartiennent à l'Amérique centrale, et par conséquent au Honduras et au Nicaragua (Réplique du Honduras, page 140) *conformément à leur ligne frontière.*”⁷

It was clear that Honduras and Nicaragua considered their claims to the adjacent islands and maritime spaces as following the line of the land frontier between them.

⁶ ICJ Reports 1960, p 199, emphasis added.

⁷ *Supra* note 2, *Annexes à la République du Honduras*, No 11, p 689 (emphasis added). English translation: “On 15 November 1843, the Government of Honduras issued a decree authorizing the Legation of Nicaragua to represent Honduras, and to maintain and compel respect for the rights derived from the said treaty, in accordance with the instructions, Article 6 of which states that the Minister must declare that all the Mosquito territory *and its adjacent islands* belong to Central America and consequently to Honduras and to Nicaragua (Reply of Honduras page 140) *in accordance with their borderline.*” (Unofficial translation, emphasis added).

III. THE TURTLE FISHING DISPUTE BETWEEN NICARAGUA AND THE UNITED KINGDOM (1896-1905)⁸

3.9. Also of relevance in this context is the dispute between Great Britain and Nicaragua relating to turtle fishing around the islands and cays off the Mosquito coast. A number of species of turtles migrate northwards up the coasts of Nicaragua and Honduras. These species have been identified in Nicaragua's Mosquito Cays, in the cays and islands north of parallel 15, and in the Bay Islands of Roatán and Guanaja. Beginning in the first half of the 19th century fishermen from the Cayman Islands made annual expeditions to the turtle grounds off the Mosquito coast, including the waters now claimed by Honduras and Nicaragua.⁹

3.10. In 1896 Nicaragua began levying a duty on turtle fishing on the basis of an 1869 ordinance.¹⁰ This led to a dispute with the United Kingdom as to the extent of Nicaragua's right to levy such a duty. In 1899 the Government of the United Kingdom, on behalf of the Cayman Islanders, requested a turtle fishing lease, but this was rejected by Nicaragua on the grounds that it would constitute a monopoly, which would be unconstitutional according to Nicaraguan law. By a decree adopted in 1903 the Nicaraguan Government imposed various conditions on the turtle fisheries which would, in effect, have put an end to turtle fishing by Cayman islanders. These conditions were challenged by the United Kingdom.¹¹ While negotiations were underway to modify the more oppressive conditions of the Decree, in 1904 the dispute took a more difficult turn, following the seizure by Nicaragua of several Cayman schooners and their crews.¹² During this time the United Kingdom

⁸ Documents regarding this dispute have been obtained from the Public Record Office, London, and are deposited with the Registry.

⁹ There is a surfeit of both historical and contemporary literature on the traditional fishing rights of Caymanian fishermen in the Western Caribbean. e.g. Thomas Young, *Narrative etc.*, Smith Elder & Co., London, writing at Cabo Gracias a Dios (1839), states: "The Cape is often visited by small schooners from the Grand Cayman Islands to fish for turtles [...]". "The Sailing Directions for the West Indies" London, (1883), p 293 states: "The range of cays and reefs between the Mosquito and Vivorilla Cays. [...] This neighbourhood however, is well known to the Cayman Fishermen who visit the cays in the turtling season. [...]"

¹⁰ The Ordinance stated that, "The vessels that may arrive at the isles and cays of the jurisdictional district to turtle fish [...]" were to pay a levy. The decree, however, did not specify the extent of the said "jurisdictional district". See *infra* note 16.

¹¹ See Document 3-02 deposited with the Registry. This is a memorandum of the British Foreign Office of June 1905.

¹² The Nicaraguan government maintained that the schooners were seized within Nicaraguan territorial waters whilst Cayman islanders maintained that the seizures were illegal. *Ibid.*

obtained evidence to support a claim that the Cayman Islanders had historical rights to engage in turtle fishing activities in the waters around the cays adjacent to the coast of Nicaragua.¹³ Historical research conducted by the Governor in Jamaica regarding the sovereignty of the islands in question in that dispute, resulted in the Governor being convinced that the Cayman Islanders possessed equal rights with the Mosquito Indians, and that Nicaragua derived her claim, if any, from the Indians and therefore could have no greater rights than those possessed by the Cayman Islanders.¹⁴

3.11. Throughout the negotiations between Nicaragua and Great Britain, and during the research carried out as a result of the negotiations, the Nicaraguan government made no claims regarding any islands north of the 15th parallel and which it now claims.¹⁵ Furthermore, the Nicaraguan decrees on the subject which were adopted at the time did not identify or demarcate any of the cays and islands now claimed by Nicaragua.¹⁶ Indeed, in 1904 the Nicaraguan government promised to provide an “exact list of all cays and islands over which jurisdiction was claimed” but failed to do so.¹⁷

¹³ In relation to this incident and to provide evidence of the long standing and uninterrupted use of these islands and cays by Caymanian fishermen, the Commissioner of the Cayman Islands collected the testimonies of 6 of the oldest Caymanian fishermen, who asserted that there were no marks of Nicaraguan sovereignty over the cays around the 14th parallel, i.e. Sucra Cay (Old Mahegan), let alone any cay north of the 15th parallel. *Ibid.*

¹⁴ *Ibid.*

¹⁵ Pending negotiations, in 1904 the Nicaraguan Government appears to have negotiated a concession for fisheries to a Mr. Gross and his Atlantic Coast Fisheries Co, who offered this to the Cayman Islanders in 1906. Decree dated 17 January, 1906 approved the contract between the Government and Gross, giving him a concession regarding fishing “on the Atlantic coast and adjacent islands.” See document 3-03 deposited with the Registry. A letter of May 9, 1904 sets out the cays and islands over which the concession was said to operate. The only cay north of the 15th parallel to be included is False Cape Cay which is not being claimed by the Nicaraguan government in this case. See document 3-04 deposited with the Registry.

¹⁶ The decrees refer to fishing in the “waters of the republic,” in “Nicaraguan territorial waters,” “the turtle fisheries of the Caribbean Sea belonging to Nicaragua,” “on the Atlantic Coast and adjacent islands” or those “within 3 nautical miles of Nicaraguan territorial waters and the cays, islands or land”: see document 3-03 deposited with the Registry.

¹⁷ The British Foreign Office was convinced at that time that the Nicaraguan government would be unable to provide such a list as the Nicaraguan authorities had no reliable chart or information of the area and ‘navigation of that coast was performed by the Caribs (natives of the coast of Honduras) and Cayman Islanders’. Other correspondence of the Foreign Office from 1908 to 1912 also suggests that the difficulties with arriving at an understanding stemmed from the Nicaraguan ignorance of the local conditions. According to the Foreign Office it was evident that the

3.12. In 1905 Nicaragua and Great Britain agreed to establish a Mixed Commission with the task of determining which cays were subject to Nicaragua's jurisdiction. The instructions issued to the Mixed Commission by the two Governments were based on the premise that the claim by Nicaragua extended only to the cays in and around the Miskitos Cays and Morrison Cays, all of which are south of the 15th parallel.¹⁸ The Report of the Commission, published in April 1905, identified 11 cays and banks constituting the group known as the Mosquito Cays and Morrison Cays over which Nicaragua had jurisdiction, and provided references to the latitudinal and longitudinal position of each cay and bank. None of the cays or banks claimed by Nicaragua in its Memorial in the present proceedings was claimed by it in its submissions to the Mixed Commission. The Commission did not identify any of them as being under Nicaragua's jurisdiction. Indeed, the Report of the Commission does not identify any cay north of the 15th parallel as being under the jurisdiction of Nicaragua; the northernmost Nicaraguan island mentioned is Edinburgh Cay, at 14°48' N latitude.¹⁹ Following publication of the Report the Nicaraguan Minister of Foreign Affairs supported its conclusions. He stated that the question of territorial waters would have to be settled in the light of the Report drawn up by the Mixed Commission, and after a careful examination of the rights it conferred.²⁰ This support for the finding of the Commission was reiterated in 1912. Subsequent negotiations between the governments led to the adoption of a bilateral treaty in 1916, to address turtle fishing rights of the Cayman Islanders. The treaty referred to "turtle fishing in the territorial waters of Nicaragua" and "waters and cays in the jurisdiction of Nicaragua",²¹ but did not purport to extend – and was not in practice applied – to turtle fishing north of parallel 15. This treaty formed the basis for turtle fishing by the Cayman Islanders in Nicaragua until the 1960s, when the Nicaraguan government decided not to renew the islanders' fishing privileges.

concerned minister in Nicaragua "[...] is obsessed with the idea that from the coast of the mainland as far as the outermost cay there exists a chain of islets the territorial waters of which overlap each other. For this alone could warrant their contention that from the mainland to the outermost cay should be regarded as all Nicaraguan waters, since they have never claimed a right to more than three miles of territorial jurisdiction around any island over which they exercise or maybe held to exercise sovereignty." See document 3-05 deposited with the Registry.

¹⁸ The Governor of Jamaica was opposed to the setting up of the Commission as he was of the opinion that it would give the Nicaraguans knowledge which they did not possess. *Supra* note 11.

¹⁹ Document 3-06 deposited with the Registry.

²⁰ Document 3-07 deposited with the Registry.

²¹ "Treaty for the Regulation of Turtle Fishing Industry in the Territorial Waters of Nicaragua as Regards Fishing Vessels belonging to the Cayman Islanders", 1917.

3.13. The position as at 1905 is therefore clear: despite a clear and formal opportunity to do so, Nicaragua did not claim – and was not determined by the Mixed Commission as being entitled to claim – jurisdiction over any of the islands, reefs, cays and banks north of parallel 15 which it has claimed for the first time in its Memorial of April 2000. The position articulated by Nicaragua in 1905 continued to apply through the 1960s and right up to 1979, when the Sandinista Government came to power in Nicaragua.

IV. 1906-1960

3.14. On 23 December 1906, the King of Spain rendered his Arbitral Award, the dispositive part of which reads as follows:

“I do hereby *declare* that the dividing line between the Republics of Honduras and Nicaragua *from the Atlantic* to the Portillo de Teotecacinte where the Joint Commission of Boundaries abandoned it in 1901, owing to their inability to arrive at an understanding as to its continuation at their subsequent meetings, is now fixed in the following manner:

The extreme common boundary point *of 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 arm with the said Island of San Pío, and also the bay and town of Cape Gracias a Dios and the arm of estuary called Gracias which flows to Gracias a Dios Bay, between the mainland and said Island of San Pío.”²²

The Award thus recognized the existence of a border between the two countries by virtue of the criterion established in Article II.3 of the Gámez-Bonilla Treaty of 1894, that is to say, in accordance with the pure principle of the *uti possidetis juris*. This Award fixed the exact position of Cape Gracias a Dios (the traditional limit between the provinces of Honduras and Nicaragua in the Spanish colonial period) in the mouth of the Wanks/Coco/Segovia River.

²² ICJ Reports 1960, p 202 (emphasis added).

3.15. On 16 November 1928, on the occasion of the signature of the 1928 Treaty between Nicaragua and Colombia, the Minister of Foreign Affairs of Honduras addressed diplomatic Notes to the Ministers of Foreign Affairs of Nicaragua and of Colombia. In the first Note, Honduras referred to the 1906 Arbitral Award made by the King of Spain and to Cape Gracias a Dios, whereas in the second Note, Honduras was vindicating its sovereign rights on the cays Quitasueño and Roncador.²³ In these Notes, Honduras stated the following: first, that it considered as applicable the reference of the 1906 Award to Cape Gracias a Dios and to the exact limit there established as a borderline; second, that the islands and adjacent cays situated to the north of this line were implicitly considered as Honduran, and not only with regard to her neighbour to the south, Nicaragua, but also in relation to other non-Central American countries of the area.

3.16. In its Judgment of 1960, the Court decided “that the Award made by the King of Spain on 23 December 1906 is valid and binding and that Nicaragua is under an obligation to give effect to it.”²⁴ In relation to this case, it is necessary to emphasize that the Court stated that:

“In the judgment of the Court, Nicaragua, by express declaration and by conduct, recognized the Award as valid and it is no longer open to Nicaragua to go back upon that recognition and to challenge the validity of the Award. Nicaragua’s failure to raise any question with regard to the validity of the Award for several years after the full terms of the Award had become known to it further confirms the conclusion at which the Court has arrived. The attitude of the Nicaraguan authorities during that period was in conformity with Article VII of the Gómez-Bonilla Treaty which provided that the arbitral decision whatever it might be – and this, in the view of the Court, includes the decision of the King of Spain as arbitrator – ‘shall be held as a perfect, binding and perpetual Treaty between the High Contracting Parties, and shall not be subject to appeal’.”²⁵

3.17. The Court in 1960 thus upheld the position adopted in the Award of 1906. What is more striking for the purposes of the present case is that, while Nicaragua at times during the period 1906-1960 sought (ultimately without success) to contest the land boundary determined in 1906, at no stage did it assert a claim to the islands or maritime spaces to the north of the 15th parallel, or reserve its right to make such a claim in the future. Nor

²³ HCM, vol 2, annexes 15 and 16.

²⁴ ICJ Reports 1960, p 217.

²⁵ *Ibid*, p 213-214.

did it challenge the many assertions of sovereignty (which are detailed in Chapter 6, below) by Honduras north of the 15th parallel.

V. THE CONDUCT OF THE PARTIES BETWEEN 1960 AND 1979

3.18. The same pattern persisted throughout the period between the Court's decision in 1960 and the change of government in Nicaragua in 1979. Throughout this period Honduras continuously exercised sovereign authority over the islands and waters north of the 15th parallel. It did so openly and without protest from Nicaragua. That practice is detailed in Chapter 6, below. It took such forms as the grant of oil and gas concessions, the regulation of fisheries and the exercise of criminal and civil jurisdiction.

3.19. For example, by Note No. 686 of 11 April 1972, the Minister of Foreign Affairs of Honduras informed the Ambassador of Nicaragua to Tegucigalpa that:

“[...] the Ministry of Natural Resources of my country has decided to impose a closed season on the fishing of shrimp from the tenth of April this year to the next tenth of May in the area of the jurisdictional sea between the mouth of the Patuca river and Cape Gracias a Dios, with the aim of preserving the conservation and propagation of the marine fauna of the country. In order to insure compliance with this measure, a Surveillance Committee has been appointed to patrol the area in question for the purposes of preventing the infringement of the aforementioned prohibition.

To this effect, I allow myself to request through Your Excellency the valuable cooperation of the Nicaraguan authorities in transmitting this resolution to the fishing vessels of your country which operate near to the area in question”.²⁶

²⁶ HCM, vol 2, annex 17. The text in Spanish reads as follows: “[...] el Ministerio de Recursos Naturales de mi país ha tenido a bien fijar veda para la pesca del camarón del diez de abril en curso al diez de mayo próximo en la región del mar jurisdiccional que se halla comprendida entre la desembocadura del río Patuca y el Cabo de Gracias a Dios, con el objeto de preservar la conservación y propagación de la fauna marina del país. Para el cumplimiento de tal medida se ha nombrado un Comité Vigilancia que realizará las actividades de patrullaje en la zona vedada a efecto de evitar que se infrinja la prohibición expresada. En tal virtud, por el alto intermedio de Vuestra Excelencia me permito solicitar la valiosa colaboración de las autoridades nicaragüenses en el sentido de que quieran tener a bien transmitir esta resolución a los barcos de pesca de vuestro país que operan cerca de la zona de referencia”.

There was no adverse reaction from Nicaragua.²⁷

3.20. The bilateral negotiations which took place in the late 1970s and to which the Nicaraguan Memorial (at pages 36-8) attaches so much significance, are in no way inconsistent with the general pattern of the practice of the two States and, contrary to what is suggested by Nicaragua, do not point to any uncertainty on the part of Honduras regarding her sovereignty over the islands and maritime areas north of the 15th parallel. The acceptance by Honduras of the proposal for negotiations and the opening of bilateral consultations was motivated only by an entirely understandable desire to achieve a written agreement formally and finally delimiting the single maritime boundary along what was already a line accepted and applied in practice, and fully respected by both Parties until that time.

3.21. The consistent practice of Honduras during this period shows that the Nicaraguan assertion that the Honduran claim over the islands and maritime spaces north of the 15th parallel was a "new position adopted by Honduras" in the 1980s²⁸ has no basis in fact.²⁹

VI. PRACTICE SINCE 1979

3.22. In contrast to the period before 1979, the years since then have seen a sharp dispute between Nicaragua and Honduras regarding the waters north of the 15th parallel, as a result of Nicaraguan (or Nicaraguan-sponsored) incursions. Nevertheless, throughout this period, Honduras continued its peaceful administration of the islands and maritime areas extending down to the 15th parallel by enacting pertinent legislation. The Honduran authorities always reacted vigorously and sought to put an end to all fishing in the waters north of the 15th parallel which had not been properly authorized by Honduras. Honduras continued to affirm that for the two States, the starting point of the maritime boundary remained the coordinates identified in 1962 by the Honduras-Nicaragua Mixed Commission,³⁰ and the delimitation line the one that follows the 14°59.8' parallel. Likewise, Honduras maintained its position that, in the absence of

²⁷ HCM, vol 2, annex 18 (Note of 17 April 1972).

²⁸ NM, pp 41-42, paras 7, 12, 13 and 14.

²⁹ In 1977, Nicaragua called for "determining a definite marine and submarine delimitation" in the Caribbean Sea, implying the existence of an historic maritime boundary that should be updated and made definitive in the light of the evolution of the Law of the Sea.

³⁰ Chapter 2 *supra*.

an express agreement regarding delimitation, the two States had tacitly consented to treat the 14°59.8' parallel as the maritime limit between the two countries in the Caribbean Sea. The acceptance by Honduras of formal meetings between the two States to discuss the possibility of formally incorporating the maritime delimitation into a definitive and written agreement was always premised on the assumption that they the line of delimitation that follows the 14°59.8' parallel would be fully respected. Any other assumption would have been inconsistent, for example, with the oil and gas concessions which both States had granted since the 1960s.³¹

3.23. For her part, during the same period, Nicaragua ignored her own practice for well over a century and aggressively began to advance its claims in the Caribbean Sea, with the aim of asserting, years later, a maritime area with a maximum limit extending from the mouth of the Coco River to the 17th parallel. In an attempt to achieve such a result, Nicaragua artificially created a controversy between the two countries by stopping, inspecting and capturing by force Honduran fishing vessels. This harassment effected by Nicaragua in the jurisdictional waters of Honduras north of the 15th parallel were immediately followed by the formulation of “paper claims” in an attempt to create *effectivités* or pseudo-*effectivités*, where they did not exist before 1979. Nicaragua opted for this conduct, not only to hide its definite absence of will to negotiate a written agreement on the delimitation of their maritime areas in the Caribbean Sea, but also to place herself in a better procedural position for a future international claim. Notwithstanding these efforts, even official maps produced by Nicaragua did not treat the area north of the 15th parallel as part of Nicaraguan territory.³²

3.24. For the present proceedings, Nicaragua has relied almost entirely on the product of this campaign, while ignoring well-established and well-documented Honduran practice as well as her own conduct during the much longer period before 1979. Nicaragua has annexed to her Memorial only carefully selected diplomatic correspondence concerned almost entirely with the capture of Honduran fishing vessels north of the 15th parallel since 1982. These incidents, instigated by Nicaragua, were intended to provide support to its “paper claims”, which Honduras always rejected, as is evidenced in the diplomatic correspondence submitted to the Court by the Parties. Therefore, the Nicaraguan claims are both recent and fragile.

³¹ Chapter 6 *infra*.

³² *Infra* para 3.59.

A. THE LEGISLATION OF THE PARTIES ON MARITIME AREAS

3.25. The Sandinista Revolution that overthrew the Government of Nicaragua on 19 July 1979 brought a radical change in Nicaraguan policy towards Honduras and other Central American countries.³³ It also resulted in a dramatic change in Nicaragua's policy concerning the maritime areas that traditionally appertained to Honduras and Nicaragua in the Caribbean Sea.

3.26. It was in the context of its own domestic political revolution that the Nicaraguan Government approved, on 19 December 1979, the Continental Shelf and Adjacent Sea Act.³⁴ Nicaragua also sought to make a *tabula rasa* of her relations with other countries, unilaterally declared null and void the 1928 Treaty concerning Territorial Questions at issue between Colombia and Nicaragua³⁵ (a treaty long considered as in force and duly registered at the League of Nations).

3.27. The preamble of the 1979 Act declared that "until July 19 of this Year of Liberation foreign intervention did not permit the full exercise by the People of Nicaragua of its rights over the Continental Shelf and Adjacent Sea – rights which correspond to the Nicaraguan Nation by history, geography and International Law".³⁶ Nonetheless, there was nothing to prevent Nicaragua as an independent State from asserting its rights on the continental shelf in the 1948, 1950 and 1974 Constitutions,³⁷ or approving on 20 December 1960, the Fishing Exploitation Act³⁸ and an Executive Decree on 5 April 1965, delimiting a "national fishing zone" of

³³ For an explanation of the origins of the conflict in Central America after 1978 and the position of Honduras on this regard, see *Border and transborder armed actions (Nicaragua v. Honduras) (Jurisdiction and admissibility)* case, Memorial of Honduras, vol 1, chapter 1, February 23, 1987.

³⁴ *Ley sobre Plataforma Continental y Mar Adyacente*, Decree N.205 of 19 December 1979. Published in La Gaceta N.88 of 20 December 1979. Article 2 states that "the sovereignty and jurisdiction of Nicaragua extends over the sea adjacent to its seacoasts for 200 nautical miles".

³⁵ *Declaración de la Junta de Gobierno de Reconstrucción Nacional de Nicaragua*, of 4 February 1980. See the text of the 1928 Treaty between Colombia and Nicaragua, HCM, vol 2, annex 9.

³⁶ NM, p 40, para 4.

³⁷ Article 2 of the 1948 Constitution of Nicaragua; Article 5 of the 1950 Constitution and Article 3 of the 1974 Constitution. See also NM, p 36, para 10.

³⁸ *Ley sobre explotación de la Pesca*, Decree 557 of 20 December 1960. Published in La Gaceta of 7 February 1961.

200 nautical miles³⁹ as a specialized competence for the purposes of conservation and exploitation of fishing and any other resources. Nor did anything prevent Nicaragua participating actively in the discussions on the continental shelf within the regional and international fora.⁴⁰ Indeed, some of these facts were recognized by Nicaragua herself in her Application before the Court instituting the present proceedings.⁴¹

3.28. The 1979 Nicaraguan Continental Shelf and Adjacent Sea Act, asserted, in generic terms, that Nicaragua exercised territorial sovereignty over islands, cays, banks and reefs located on its Continental Shelf, but did not mention their names.⁴² This pattern of imprecision and lack of identification of the islands, cays, banks and reefs is characteristic of the entire Nicaraguan legislation, from the simple mention of the terms “adjacent islands” in the Constitutions of 1948 and 1950 to the mention in the 1974 Constitution, for the very first time, of the generic terms “the cays, the promontories [and] the adjacent banks”.⁴³ The same imprecision is evident in the amended text of Article 10 of the 1987 Constitution⁴⁴ that removed the “promontories” feature from the national maritime territory. These dispositions provide no evidence whatsoever that “the cays, the promontories and the adjacent banks” referred to by Nicaragua were located north of the 15th parallel. Even the Nicaraguan geographers recognized this reality.⁴⁵

³⁹ Executive Decree N.1-L of 5 April 1965 (Delimiting the national fishing zone), Article 1 states: “In conformity with article 5 of the Constitution, in order to promote the better conservation and rational exploitation of Nicaragua’s fishing and any other resources, the waters lying between the coast and a line drawn parallel to it at a distance of 200 nautical miles seaward, both in the Atlantic and in the Pacific Oceans, shall be designated a “national fishing zone”. Published in La Gaceta N.82 of 8 April 1965.

⁴⁰ Nicaragua participated in and signed the Declaration of Montevideo of 8 May 1970, the Declaration of Lima of 8 August 1970 and the Declaration of Santo Domingo of 9 June 1972 concerning the right of States to explore, exploit and preserve the natural resources of the Continental Shelf and the sea adjacent to their coasts. Nicaragua also participated in the sessions of the Third United Nations Conference on the Law of the Sea.

⁴¹ Application of the Republic of Nicaragua of 8 December 1999, para 2.

⁴² Articles 1 and 3 *supra*, note 34.

⁴³ Article 3 of the 1974 Constitution of Nicaragua.

⁴⁴ Amended by Article 1 of the Law of Partial Reform of the Constitution of Nicaragua (*Ley de Reforma Parcial a la Constitución Política de la República de Nicaragua*, Law N.330 of 18 January 2000, published in La Gaceta N.13 of 19 January 2000).

⁴⁵ See the cartographic evidence *infra* at para 3.59 *et seq.* In addition, Professor Francisco Teran and Doctor Jaime Incer Barquero in their book “*Geografía de Nicaragua*”, (First Edition, 1964, sponsored by the Banco Central de Nicaragua) describe and locate the insular domain of Nicaragua far to the South of the 15th parallel. The authors at page 37 state:

3.29. By contrast, the legislation of the Republic of Honduras expressly identifies the islands, cays, banks, and reefs located within her maritime areas.⁴⁶ In 1950 Honduras declared a maritime area of 200 nautical miles for the protection and exploitation of its natural resources,⁴⁷ a territorial sea of 12 nautical miles in the 1965 Constitution⁴⁸ and an Exclusive Economic Zone of 200 nautical miles in the 1982 Constitution.⁴⁹ The decision to become a party to the 1982 United Nations Convention on the Law of the Sea⁵⁰ was consistent with Honduras' desire to have its sovereignty and jurisdiction over maritime areas outside the land territory clearly defined and delimited, as well as its natural resources duly protected and exploited pursuant to international law. Legislation enacted by Honduras over the

"Opposite to the bar in whose meridional point The Bluff, the outer harbour of Bluefields is located, at approximately 40 miles of the coast, there are situated *the Corn Islands, which are the only islands that Nicaragua possesses in the open sea*. The bigger Corn Island, with its beautiful bay surrounded by slender coconut palms, is changing into an attractive center for tourism. Further to the East, but forming the same geographical unit, there are the San Andres and Providencia islands, which, despite their distance, correspond to Colombia, whose sovereignty had to be recognized by Nicaragua through the Treaty Bárcenas Meneses-Esguerra, which ended its pretensions on the Nicaraguan Atlantic coast.

Islands and Cays.

Along the described littoral, numerous cays or coral islets emerge [...] such as the islets Jabón, Paloma, Iguana, Water Cay and the Misquitos Cays, in number of 76, *opposite to Puerto Cabezas*, that constitute real geographical curiosities of the tropical seas of warm waters [...]" (Emphasis added). HCM, vol 2, annex 166.

⁴⁶ Article 6 of the 1957 Constitution of Honduras stated that the following islands and cays belong to Honduras: "5. The Bay Islands, the Swan Islands, Santanilla or Santillana, Viciosas, Misteriosas and the cays: Gorda, Vivorillos, Cajones, Becerro, Cocorocuma, Caratasca, Falso, Gracias a Dios, Los Bajos, Pichones, Palo de Campeche and all others located in the Atlantic which historically and juridically belong to it". This text was reiterated in Article 5 paragraph 5 of the 1965 Constitution of Honduras. Article 10 of the 1982 Constitution of Honduras, states that, "It belongs to Honduras [...] the Bay Islands, the Swan Islands, also called Santanilla o Santillana, Viciosas, Misteriosas; and Zapotillos Cay, Cochinos, Vivorillos, Seal (Becerro), Caratasca, Cajones o Hobbies, Mayores de Cabo Falso, Cocorocuma, Palo de Campeche, Los Bajos, Pichones, Media Luna, Gorda and the banks Salmedina, Providencia, De Coral, Cabo Falso, Rosalinda and Serranilla and all others situated in the Atlantic that historically, geographically and juridically belong to it."

⁴⁷ Legislative Decree N.25 of 17 January 1951, approving Decree N.96 of 28 January 1950.

⁴⁸ Article 5 of the 1965 Constitution of the Republic of Honduras. This declaration has been reiterated in Article 11 of the 1982 Constitution and Article 2 of the 1999 Law on Maritime Areas of Honduras.

⁴⁹ Article 11 of the 1982 Constitution of the Republic of Honduras. The exclusive economic zone was also proclaimed in Article 6 of the Law on Maritime Areas of Honduras of 30 October 1999.

⁵⁰ Honduras signed the Convention on the Law of the Sea on 10 December 1982, and ratified it on 5 October 1993.

last two decades, such as the Law on Exploitation of the Natural Resources of the Sea,⁵¹ the Hydrocarbons Law,⁵² the Law on Mining⁵³ and the Law on Maritime Areas of Honduras⁵⁴ has provided an important legal framework that confirms the consistency of the Honduran purposes in accordance with the principles established in the 1982 UN Convention on the Law of the

⁵¹ *Ley de Aprovechamiento de los Recursos Naturales del Mar*, Decree N.921 of 28 April 1980. Published in La Gaceta N.23127 of 13 June 1980; Article 1 of which stated that "Without prejudice to the provisions of the Constitution and of the laws of the Republic concerning the territorial sea and the continental shelf, the State of Honduras shall have, in the exclusive economic zone extending up to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured; (a) Sovereign rights for the purpose of exploiting, exploring, conserving and managing all natural resources, whether living or non-living, of the seabed and subsoil and the superjacent waters, and over any economic exploration and exploitation of the zone, such as the production of energy from the water, currents and winds; (b) Exclusive rights and jurisdiction with regard to authorization and regulation of the construction, operation and use of artificial islands and of installations and structures of any kind, including jurisdiction with regard to customs, fiscal, health, safety and immigration regulations; (c) Jurisdiction and control in all matters relating to the regulation, authorization and conduct of marine scientific research, which shall be conducted only with the prior consent of the State of Honduras and with the participation of a representative of its Government whenever the latter deems it desirable; (ch) Jurisdiction and control for the purpose of preserving the marine environment and preventing, reducing and controlling pollution from any source; (d) Such other rights and obligations as derived from the sovereign rights over the resources of the zone."

⁵² *Ley de Hidrocarburos*, Legislative Decree N.194-84 of 25 October 1984. Published in La Gaceta N.24557 of 28 February 1985; Article 2 of which reads as follows, "The fields of oil, natural gas and other hydrocarbons are directly and inalienably owned by the State, regardless of where they are located on the soil or subsoil of the territory of the Republic, including the territorial sea, its contiguous zone, the exclusive economic zone and the continental shelf."

⁵³ *Ley General de Minería*, Legislative Decree 292-98 of 30 November 1998; Article 2 of which reads as follows, "The State of Honduras exercises eminent, inalienable and imprescriptible domain on all the mines and quarries found in the national territory, maritime continental shelf, exclusive economic zone and contiguous zone."

⁵⁴ *Ley de los Espacios Marítimos de Honduras*, Legislative Decree N.172-99 of 30 October 1999, Article 7 of which states: "1) In its exclusive economic zone, Honduras hold sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or not-living, of the water column, the seabed and its subsoil, and with regard to other activities for the economic exploitation of this zone; 2) Fishing and the extraction of any other resource from this marine environment is strictly forbidden for any foreign ships, unless otherwise agreed in an international treaty or if the State of Honduras has expressly consented thereon; and, 3) In addition, Honduras also has jurisdiction regarding: a) the creation and use of artificial islands, installations and structures for the exploration and exploitation of resources from the seabed and its subsoil; b) the scientific research of the marine environment; c) the protection and preservation of the marine environment against pollution; and, d) to punish any infringement of the Honduran regulations and laws on any of the above matters, in particular regarding fishing and the extraction of any other natural resources, marine scientific research and the prevention and fight against pollution." HCM, vol 2, annex 65.

Sea. This legislation along with the Fishing Law and the Environmental Law⁵⁵ have codified an evident group of rights and duties that Honduras has exercised and exerts on its maritime areas and insular domain in the Caribbean Sea, limited only by the freedom of navigation.

3.30. Nicaragua never protested or opposed the aforementioned Honduran legislation or the presence of Honduras north of the 15th parallel. The Nicaraguan legislation of the same period, without identifying the islands, only declared a territorial sea of 200 nautical miles in the 1979 Continental Shelf and Adjacent Sea Act and mentioned an Exclusive Economic Zone in the Law of Partial Reform of the Constitution of Nicaragua of 18 January 2000.⁵⁶ In addition, Nicaragua became a Party to the 1982 United Nations Convention on the Law of the Sea on 3 May 2000, after filing her Application in the present case.⁵⁷ This was intended to support her claims in the Caribbean Sea.

3.31. In 1982, Nicaragua, in an attempt to be consistent with its expansive and new maritime policy, published an Official Map of the Republic, which included an inset comprising islands, cays, banks, reefs and areas in the Caribbean Sea that appertain to Honduras. As described further below, this new practice was flatly inconsistent with the maps that had been produced prior to this time.⁵⁸ Hence, on 27 June 1984, the Foreign Minister of Honduras rejected the map inset as unacceptable and requested its rectification, remarking in his Note of the same date, that “the inset includes, without the pertinent clarifications, the banks and cays of Rosalinda and Serranilla located in the Continental Shelf of Honduras and appertaining to our country”.⁵⁹

3.32. In its Memorial, Nicaragua reveals that “the Official Map of the Continental Shelf of Nicaragua of 1980, and the Official Map of the Republic of 1982, included a box comprising Rosalinda, Serranilla and adjacent areas up to the 17th parallel, areas claimed as Nicaraguan in the diplomatic correspondence with Honduras”.⁶⁰ Honduras rejected this map inset on 27 June 1984, because it included the banks of Rosalinda and

⁵⁵ *Ley de Pesca*, Decree N.154 of 19 May 1959, published in La Gaceta N.16807 of 17 June 1959; *Ley de Medio Ambiente*, Decree N.104-93 of 27 May 1993, La Gaceta of 30 June 1993.

⁵⁶ *Supra* note 44. See also a 1999 summary on the legal situation of the coastal areas of Nicaragua in HCM, vol 2, annex 165.

⁵⁷ Chapter 4 *infra*.

⁵⁸ *Infra*, paras 3.58 *et seq.*

⁵⁹ HCM, vol 2, annex 37.

⁶⁰ NM, page 40, para 5.

Serranilla, but, at the time, an official claim “up to Parallel 17” was totally unknown.⁶¹

3.33. At a later stage, the Foreign Minister of Honduras, through the diplomatic Note of 7 April 1994, presented a formal protest to the Nicaraguan Government due to a new inset in the Official Map of Nicaragua, which included under the generic name “Nicaraguan Rise” (Promontorio Nicaragüense) various Honduran features located north of the 14°59.8’ parallel.⁶² The Honduran Foreign Minister reiterated the rejection of the map inset “Nicaraguan Rise”, in his Note of 11 July 1995, affirming that the area concerned was part of the territory of Honduras.⁶³

3.34. A new edition of the Official Map of Nicaragua published in 1998 included the same inset. This Map was annexed to the Memorial of Nicaragua as Figure B, Volume III (maps) arguing that it contains the following inscription: “The maritime frontiers in the Pacific Ocean and the Caribbean Sea have not been juridically delimited”.⁶⁴ This inscription does not appear on the annexed map.

3.35. Quite apart from Honduran protests at these insets in the Official Maps of Nicaragua, it is relevant to note that the Court, in the *Frontier Dispute (Burkina Faso/Republic of Mali)* case, made the following comments regarding the use of maps as a basis for assertions of title:

“Whether in frontier delimitations or in international territorial conflicts, maps merely constitute information which varies in accuracy from case to case; of themselves, and by virtue solely of their existence, they cannot constitute a territorial title, that is, a document endowed by international law with intrinsic legal force for the purpose of establishing territorial rights [...]

[...] 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[....] The

⁶¹ On 10 October 1984, the Honduran Foreign Minister addressed a Note to the Foreign Minister of Nicaragua protesting the plan for Search and Rescue operations for missing persons and/or aircraft (SAR operations) presented by Nicaragua at the 35th meeting of Directors for Civil Aeronautics of Central America. The Nicaraguan plan contained coordinates or limits for its SAR operations that were drawn over maritime jurisdiction of Honduras, that is to say, from Cape Gracias a Dios up to the coordinates 15°18’ North and 82°14’ West, following an azimuth of 21 degrees. See HCM, vol 2, annex 39.

⁶² HCM, vol 2, annex 51.

⁶³ HCM, vol 2, annex 54.

⁶⁴ NM, pp 19, para 47.

only value they possess is as evidence of an auxiliary or confirmatory kind, and this also means that they cannot be given the character of a rebuttable or *juris tantum* presumption such as to effect a reversal of the onus of proof.”⁶⁵

3.36. Honduras’ reliance on maps confirming its title is based on an effective and undisputed occupation of the area which is the subject of these proceedings, right up to 1979, and which is reflected in abundant examples of *effectivités*.⁶⁶ By contrast Nicaragua has not made available to the Court any evidence as to its occupation or *effectivités*. Indeed, prior to the Nicaraguan diplomatic Note of 9 June 1995, concerning the publication of an inset in the 1994 Official Map of Honduras, that included the Honduran Insular Possessions in the Caribbean Sea,⁶⁷ Nicaragua never protested the previous Official Maps of Honduras that depicted the same insular domain as Honduran. Nicaragua did not protest the Honduran Official Map published in 1933, that had an inset with a drawing line titled “Jurisdictional maritime line of Honduras”, re-edited in 1954 and 1978 with the line titled “Continental Shelf of Honduras”⁶⁸ which comprised all the islands and banks lying just north of the 15th parallel. In addition, Nicaragua kept silent regarding the Map of Honduras published in 1933 by the Pan-American Institute of Geography and History, that included the Honduran islands and banks situated to the north of the 15th parallel.⁶⁹

B. THE POLICY OF HARASSMENT AND INCIDENTS PROVOKED BY NICARAGUA

3.37. The enactment of the Nicaraguan Continental Shelf and Adjacent Sea Act in 1979 was a follow-up to the first incident ever provoked by Nicaraguan authorities in the area north of the 15th parallel. On 18 September 1979, the Nicaraguan Navy captured a Honduran vessel while fishing near Alagarto Reef (also known as Alargate or Alargado Reef), located about 8 miles north of the 15th parallel in Honduran waters. The vessel and the Honduran crew were captured and taken to Nicaraguan territory. This constituted the first expression of Nicaraguan force against Honduras’ peaceful administration and sovereign territories and adjacent maritime spaces.

⁶⁵ *Frontier Dispute, Judgment*, ICJ Reports 1986, pp 582-583, paras 54 *et seq.*

⁶⁶ Chapter 6 *infra*.

⁶⁷ NM, annex 79.

⁶⁸ See HCM, vol 3, Plates 23 and 25.

⁶⁹ HCM, vol 3, Plate 24.

3.38. On 21 September 1979, the Foreign Minister of Honduras, surprised by the sudden and unexpected capture of the abovementioned vessel, addressed a Note to the Nicaraguan Foreign Minister requesting in friendly terms an investigation of the incident, emphasizing that it occurred “eight miles to the north of the fifteenth parallel that serves as the limit between Honduras and Nicaragua.”⁷⁰ The response of the Acting Nicaraguan Foreign Minister was to offer “to consider this matter according to the fraternal relations that happily exist between our peoples and Governments”⁷¹ regardless of the Honduran reaffirmation of the 15th parallel as the limit between the two States. This incident was followed by others provoked by Nicaragua in the area north of the 15th parallel in Honduran waters. Regrettably, these incidents, together with the adoption of the new Nicaraguan maritime policy, began a process of deterioration in the hitherto friendly relations between the two countries.

3.39. On 23 March 1982, the Acting Minister of Foreign Affairs of Honduras presented to the Government of Nicaragua a formal protest over violations of Honduran sovereignty committed by two coastguard vessels of the Sandinista Navy which entered as far as Bobel and Savanna Cays, lying 16 miles north of the 15th parallel.⁷² Besides reiterating that the 15th parallel is the traditional line observed by both States, the Honduran Note of protest remarked that the aforesaid action “adds to a series of hostile actions which, with increasing frequency, shows an attitude on the part of the Government of Nicaragua that does not correspond to its repeatedly expressed desire to have frank and truly friendly relations with the Government of Honduras.”⁷³

3.40. On 14 April 1982, the Nicaraguan Foreign Minister responded to the above-mentioned Honduran Note, categorizing the incidents as “hypothetical” and denying the existence of a traditional line between the two States, because “according to the established rules of international law, territorial matters must be necessarily resolved 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.”⁷⁴ As will be explained in Chapter 7 of this Counter-Memorial, no rule of law requires

⁷⁰ HCM, vol 2, annex 21 for the Honduran Note dated 21 September 1979 (Communication via TRT).

⁷¹ HCM, vol 2, annex 22 for the Nicaraguan Note dated 24 September 1979 (Communication via TRT).

⁷² Note of 23 March 1982, HCM, vol 2, annex 23.

⁷³ *Ibid.*

⁷⁴ NM, annex 9.

that States should embody their existing agreement of a line which had long been respected in the practice of the two States into a formal treaty.

3.41. By Note of 3 May 1982 the Honduran Foreign Minister responded to the Nicaraguan Foreign Minister: "I agree with Your Excellency when you affirm that the maritime border between Honduras and Nicaragua has not been legally delimited".⁷⁵ The meaning of this comment, in view of the reaffirmations of Honduras over the traditional line in previous Notes, could not be other than to agree that the line was not defined in terms of a formal and written bilateral treaty. Indeed, to dispel any doubts on the existence of the traditional line, the Honduran Foreign Minister immediately remarked in his Note that,

"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 through the 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".⁷⁶

3.42. The Honduran position in this regard has always been clear and unequivocal. It was reflected in the initial conversations between Honduras and Nicaragua held on January 1979 in order to establish definitive maritime boundaries in the Caribbean Sea, during which the Honduran delegation clearly stated that the 15th parallel had been respected always by both States as the traditional boundary and consequently the object of such conversations had to be the express recognition of the parallel through a definitive agreement.⁷⁷ These negotiations were interrupted by the Nicaraguan Revolution of July 1979, but the Honduran position over the 14°59.8' parallel remained unchanged.

3.43. In his Note of 14 April 1982, the Nicaraguan Foreign Minister added a proposal in the following terms: "in the interest of avoiding frictions we propose that discussions on these problems be postponed, in order to wait the adequate moment to proceed with negotiations."⁷⁸ Consistent with the position taken by Honduras in 1979 that the

⁷⁵ NM, annex 78.

⁷⁶ *Ibid.*

⁷⁷ This meeting took place after the acceptance by Honduras of Nicaragua's proposal of 1977 to initiate conversations leading to a determination of the definitive marine and submarine delimitation in the Caribbean Sea by means of a treaty. See NM, annex 4 for the Nicaraguan Note dated 11 May 1977 and HCM, vol 2, annex 20 for the Honduran Note dated 20 May 1977.

⁷⁸ NM, annex 9.

negotiations should take place for both delimitations in the Pacific Ocean and in the Caribbean Sea, the Honduran Foreign Minister agreed with this proposal, adding in his Note of 3 May 1982, "I coincide with Your Excellency that this is not the appropriate moment at which to open a discussion on maritime borders."⁷⁹

3.44. It is clear that, given the sensitivity of the issue and the prevailing political circumstances at the time, both States manifested interest in the maintenance of peace by way of abstaining from introducing new points of controversy. To that end, "in order to prevent incidents" the Honduran Foreign Minister proposed in his Note of 3 May 1982 addressed to the Nicaraguan Foreign Minister, the establishment of a temporary line or zone which "without prejudice to the rights that the two States might claim in the future" could serve as temporary limit of their respective areas of jurisdiction.⁸⁰ At a later date, on 19 September 1982, the Ministry of Foreign Affairs of Nicaragua rejected this proposal.⁸¹

3.45. In order to clarify any misunderstanding on his proposal, the Honduran Foreign Minister in his Note of 20 September 1982 addressed to the Nicaraguan Foreign Minister recalled the importance of the 15th parallel as the traditional dividing line for the prevention of incidents between the two States, as follows:

"The current Government of Nicaragua, making use of its sovereign rights, has decided to ignore this tacit agreement that, for many years, has prevented unfortunate incidents, such as that which now concern us and which negatively affects the already

⁷⁹ NM, annex 78.

⁸⁰ *Ibid.*

⁸¹ NM, annexes 10 and 16. An early meeting between the representatives of the naval forces of Honduras and Nicaragua took place in Puerto Corinto on 9 July 1982, aimed to find among others, a solution to the problems in the Atlantic Ocean, particularly, to the capture of fishing vessels of the two States. The confidential report of 12 July 1982, addressed to the Minister of Foreign Affairs of Honduras by the Secretary of the Honduran Delegation to this meeting, Ambassador Roberto Arita Quiñonez, reads as follows: "On the problems in the Atlantic Ocean, the two delegations recognized that always respected the 14°59'08" parallel (known as the 15 parallel) as the traditional line for the maritime boundary between the two Republics, and based on this line [...] the possibility to negotiate the creation of a zone of security and tolerance of five miles to the north and five miles to the south of this parallel, aimed to reduce the possibilities of armed incidents and to guarantee fishing and security to the fishermen of both countries" See HCM, vol 2, annex 24 and annex 97 for the Deposition of 5 June 2001, signed by the members of the Honduran delegation to the same meeting. See also *Border and transborder armed actions (Nicaragua v. Honduras)(Jurisdiction and admissibility)* case: annex 8 of the Memorial of Honduras and para 35 of the Counter-Memorial of Nicaragua.

fragile relations between our countries. It was precisely in order to avoid reaching these extremes that this Ministry stated, 'the temporary establishment of a line or zone might be considered which, without pre-judging the rights that the two States might claim in the future, could serve as a momentary indicator of their respective territories'.⁸²

3.46. The statements made by the Honduran Foreign Minister in his Note of 3 May 1982 do not raise any doubts as to the existence of a traditional line between the two States; on the contrary, he reaffirmed it. Moreover, his proposal of a temporary line or zone was made only in the interest of preserving peaceful relations between the two States.

3.47. Unfortunately, new incidents provoked by Nicaragua continued in the area north of the 15th parallel. The Honduran Foreign Ministry presented several formal protests for the violation of its territorial sovereignty and the recurrent capture of Honduran fishing vessels and crew by Nicaraguan patrols. Besides protesting the numerous and aggressive incursions of Nicaragua in Honduran waters, the diplomatic Notes from the Honduran Foreign Ministry consistently rejected any rights or claims of Nicaragua over the area concerned and reaffirmed the existence of the traditional line between the two States, and Honduran sovereignty over the islands, cays and banks lying just north of the 15th parallel.⁸³

⁸² NM, annex 19.

⁸³ See, e.g., the following Honduran Notes in Volume 2 of this Counter-Memorial: notes of 21 September 1979; N.0031-DSS of 23 March 1982; N.2176 SD of 18 September 1982; N.060 of 9 February 1983; N.202 DA of 11 May 1983; N.406 DA of 17 August 1983; N.456-DA of 13 September 1983; N.479 DA of 17 October 1983; N.517 of 27 October 1983; N.546 DA of 7 November 1983; N.571 DA of 14 November 1983; N.603-DA of 12 December 1983; N.609-DA of 16 December 1983; N.408-DA of 27 June 1984; N.053-DA of 29 January 1985; N.257-DA of 18 June 1985; N.358-86-DSM of 29 September 1986; N.005-ACAYM of 30 January 1987; N.084-CAYM of 30 October 1991; N.091-CAYM of 5 December 1991; N.336-DSM of 30 June 1993; N.124-DSM of 7 April 1994; N.0-216-DSM of 19 April 1995; N.226-SAM-95 of 11 July 1995; N.465 DSM of 18 December 1995; N.363-SAM-95 of 27 December 1995; COSOF 081/97 of 7 August 1997; N.180 DSM of 19 June 1998; N.243-DSM of 8 July 1998; N.393/DSM of 18 September 1998. HCM, vol 2, annexes 21, 23, 25-35, 37, 40-43, 46-7, 49, 51, 53-56, 58-61.

See also: Honduran diplomatic Notes N.235 DSM of 19 April 1982; N.254-DSM of 3 May 1982; N.1653 of 16 July 1982; N. DSS-502 of 20 September 1982; N.228-DSM of 15 April 1983; N.243-DSM of 19 April 1983; N.245-DSM of 21 April 1983; N.426 DA of 29 August 1983; N.552-DA of 9 October 1984; N.162-DA of 19 April 1985; N.018-CAYM-89 of 5 February 1989; N.205-DGCA of 26 August 1992; N.218 of 27 August 1992; N.362-DSM of 26 October 1992; N.363-DSM of 27 October 1992; N.295 DSM of 4 June 1993; EHN-N.564/94 of 9 November 1994; N.487/DSS of 9 November 1994; EHN-N.573/94 of 16 November 1994; N.197-SAM-95 of 13 June 1995; N.001-DSM of 3 January 1996; N.115-DSM of 19 March 1999; and EHN/301/99 of 30 November

C. THE RECENT AMPLIFICATION OF THE NICARAGUAN MARITIME CLAIMS

3.48. In the 1990s, Honduras continued with its efforts to settle differences with Nicaragua by setting up on 5 September 1990 a Mixed Commission for Maritime Affairs to examine the border issues and fisheries problems in the Atlantic Ocean.⁸⁴ The Mixed Commission met in 1991 and 1992, but a third meeting scheduled for 7 July 1993, was cancelled at the request of Nicaragua.⁸⁵ Throughout all these years, Honduras maintained its position that 14°59.8' was the maritime limit between the two States.

3.49. The diplomatic correspondence exchanged between the two States in 1993 reveals that the Nicaraguan claims to the maritime areas north of the 15th parallel continued to be presented in generic and uncertain terms. The uncertainty of its claims can be observed in the diplomatic Notes of 4 January 1993 and of 25 June 25 1993, where the Nicaraguan Foreign Minister stated, "the areas under Nicaraguan sovereignty and jurisdiction in the Caribbean Sea have always historically extended to the north beyond said Parallel"⁸⁶ without claiming any extension "up to Parallel 17".

3.50. The unrealistic extension of the Nicaraguan claim was not officially known until 12 December 1994, when the Nicaraguan Foreign Minister addressed to the Honduran Foreign Minister the diplomatic Note stating that "Nicaragua has always executed jurisdictional acts in those maritime areas, up to parallel 17"⁸⁷ (and it is to be noted that Nicaragua's claim now extends *beyond* the 17th parallel) and the Note stating that "the Republic of Nicaragua, Mister Minister, has always extended its jurisdiction up to parallel 17° latitude north."⁸⁸ The Honduran Foreign Minister firmly rejected the Nicaraguan assertion of its claim north of the 15th parallel in the following terms,

"This is inadmissible since this parallel has been a border traditionally respected by both our States. This bilateral

1999. NM, vol II, annexes 101, 78, 20, 19, 21, 22, 23, 102, 28, 30, 31, 32, 33, 34, 35, 80, 81, 36, 37, 83, 40, 44 and 45.

⁸⁴ NM, annex 84, the Joint Declaration of 5 September 1990.

⁸⁵ NM, annexes 85, 88 and 90.

⁸⁶ NM, annexes 65, 66 and 73.

⁸⁷ NM, annex 49.

⁸⁸ NM, annex 50. The same claim has been reiterated in the Notes of 5 May 1995 and of 9 June 1995 (annexes 53 and 79 of the Memorial of Nicaragua).

recognition is demonstrated beyond any doubt by documentary proofs and *effectivités*.

For the above mentioned reasons, my Government rejects the assertion expressed by Your Excellency, that the areas mentioned to the north of the said parallel, have been under Nicaraguan sovereignty and jurisdiction, since Honduras presently exercises effective control within those maritime spaces.”⁸⁹

3.51. On 24 March 1995, Nicaragua proposed to Honduras to study the delimitation of maritime areas in the Caribbean Sea.⁹⁰ This resulted in the setting up of a bi-national Commission of Honduras and Nicaragua, which held its first meeting in Managua on 20 April 1995 and created a sub-commission in charge of delimitation issues in the Caribbean Sea.⁹¹ On 5 May 1995, Nicaragua sent a diplomatic Note to Honduras reiterating its claims “up to parallel 17 latitude north.”⁹² This note was in response to the Honduran Note of protest of 19 April 1995, presented after the capture of a Honduran vessel on 9 April while fishing at latitude 15°00’, longitude 82°20’.⁹³ Regrettably, this event along with the new claims by Nicaragua, weighed heavily against the work of the second meeting of the bi-national Commission at Tegucigalpa on 15-16 June 1995. Aside from the installation of the sub-commission for delimitation issues in the Caribbean Sea, nothing came out of this meeting.⁹⁴ Contrary to the affirmations made by Nicaragua in the sense that the negotiations “failed”, such negotiations in reality did not start at all. Meanwhile, Honduras remained faithful to its position that the 14°59.8’ parallel constituted the boundary between the two States.

3.52. The Honduran diplomatic Note of 11 July 1995, further illustrates the position of Honduras.⁹⁵ This Note, which Nicaragua ignores, deserves close examination. First of all, the Note recalls that the Republic of Honduras by Executive Decree No. 689 of 23 January 1930, approved the map of the Honduran geographer Dr. Jesús Aguilar Paz, that includes within the Honduran territory all the islands, banks and reefs lying just north of the 14°59.8’ parallel, without any protest on the part of Nicaragua.

⁸⁹ See NM, annex 83 for the Honduran Note of June 13, 1995.

⁹⁰ HCM, vol 2, annex 52 (Nicaraguan Note of 24 March 1995).

⁹¹ NM, annex 91.

⁹² NM, annex 53. (Nicaraguan Note N.950184 of 5 May 1995).

⁹³ HCM, vol 2, annex 53.

⁹⁴ NM, annex 92.

⁹⁵ HCM, vol 2, annex 54 in reply to the Nicaraguan Note of 9 June 1995 (NM, annex 79).

The Note also recalls that Nicaragua kept silent when the Constitutions of Honduras mentioned all the geographic features located in this area as part of the Honduran territory. It adds that Nicaragua never exercised any jurisdiction or sovereignty in the area north of this parallel and rejects the Nicaraguan claims up to the 17th parallel and over the “Nicaraguan Rise” which is a new name given to a geographical accident. The Note affirms that the name does not produce by itself any juridical title over the area, which in fact was previously known under the name “Mosquitia Hondureña” and as a prolongation of the land and continental shelf of the Honduran Department of Gracias a Dios. The Note also recalls that petroleum exploration and exploitation concessions granted by Honduras and Nicaragua in the Caribbean Sea, recognized and respected the limit of the 14°59’08” parallel. The Note ends with an expression of willingness on the part of Honduras to prove, if necessary, that there existed juridical, historic, geographic, geological, political and administrative grounds as well as special circumstances that support the Honduran rights to include within its territory, the geographic features lying north of the 15th parallel.

3.53. There were other incidents. On 17 December 1995, Nicaraguan coastguards captured five Honduran fishing vessels and crew in Honduran territorial waters, north of the 15th parallel. Honduras protested the incident in Notes of 18 December 1995 and of 27 December 1995 addressed to the Foreign Minister of Nicaragua.⁹⁶ Following this incident, created by Nicaragua in an attempt to reinforce its juridical position through the expedient of a “paper claim”,⁹⁷ the *Ad-Hoc* Commission of Honduras and Nicaragua held a special meeting in Managua on 22 January 1996 in which both delegations agreed that the purpose of the meeting was to look for an interim agreement, or provisional scheme, that would avoid the recurrence of incidents by establishing “a common fishing zone” for the fishing vessels of both countries.⁹⁸ In the second meeting of the *Ad-Hoc* Commission held in Tegucigalpa on 31 January 1996, the Honduran delegation, faithful to its traditional position that the 15th parallel constituted the maritime boundary between the two countries, reiterated its proposal for “a common fishing zone of 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.”⁹⁹ This proposal was not accepted by Nicaragua

⁹⁶ HCM, vol 2, annexes 55 and 56.

⁹⁷ NM, p 56, para 51.

⁹⁸ NM, annex 93. Minutes of the Special Meeting of the Ad-Hoc Commission of the delegations of the Republics of Honduras and Nicaragua held on 22 January 1996.

⁹⁹ NM, annex 94. Minutes of the second meeting of the Ad-Hoc Commission of the delegations of the Republics of Honduras and Nicaragua held on 31 January 1996.

whose counter-proposal was to establish the entire common fishing zone between the 15th and 17th parallels, that is to say, in Honduran waters. Failing an agreement on the issue, Nicaragua continued with its policy of harassment and incidents north of the same parallel.

3.54. Following the signature in New York by the Foreign Ministers of a Memorandum of Understanding on 24 September 1997,¹⁰⁰ with a view to exploring “possible solutions to the situations existing in the Gulf of Fonseca, in the Pacific Ocean and the Caribbean Sea”, a new Mixed Commission of Honduras and Nicaragua met in Guatemala from 1 to 2 October 1997.¹⁰¹ During the meeting, the Head of the Honduran delegation made comprehensive and balanced proposals, for achieving an overall solution to all outstanding questions, in a comprehensive treaty. In the Caribbean Sea, Honduras proposed the definition of the maritime boundary for the territorial sea and contiguous zone along parallel 14°59.8′ north and the submission of the delimitation of the Exclusive Economic Zone to the International Court of Justice or arbitration.¹⁰² The Nicaraguan Delegation failed to address the maritime delimitations in the Caribbean Sea and in the Pacific Ocean. This was the last negotiation effort promoted by Honduras to resolve pending maritime delimitation questions with Nicaragua. However, incidents north of the 15th parallel continued to be instigated by Nicaragua, notwithstanding its disposition expressed in the Joint Memorandum of Understanding to arrive at a solution of the disputes in the Caribbean Sea.¹⁰³ Meanwhile, Honduras remained faithful to its position that the 15th parallel constituted the traditional maritime boundary between the two States.

3.55. In conclusion, the diplomatic Notes exchanged between Honduras and Nicaragua since 1979 confirm beyond doubt the continuous and consistent Honduran position on the existence of a traditional maritime boundary between the two States, which is parallel 14°59.8′, as well as the repeated assertion of Honduran sovereignty and jurisdiction over the maritime areas, islands and banks lying just north of this parallel. The diplomatic correspondence also demonstrates the absence of peaceful occupation and control by Nicaragua of the waters north of the 15th parallel despite its policy of harassment of Honduran fishing vessels and fishermen. Finally, the diplomatic Notes reveal the lack of any foundation for the Nicaraguan claims “up to Parallel 17”.

¹⁰⁰ NM, annex 95.

¹⁰¹ NM, annex 96.

¹⁰² HCM, vol 2, annex 98, Statement, with notarial certification, of Dr Carlos Roberto Reina, former President of Honduras.

¹⁰³ NM, annex 98.

3.56. None of the Honduran diplomatic Notes can serve as a basis for the erroneous affirmation of Nicaragua that Honduras wished by its diplomatic action during this period to change the terminal point of the land boundary identified in 1962. The bilateral diplomatic correspondence confirms the existence of a historic or traditional maritime delimitation line on the 14°59.8' parallel, which Nicaragua has attempted in vain to move towards the 17th parallel, progressively and in several steps since 1979.

3.57. The conduct of Honduras concerning legislation on maritime areas and its assertion of sovereignty over its natural resources during this period, was consistent with evolving international law of the sea. By contrast, the conduct of Nicaragua was designed to undermine the traditional line of maritime delimitation, creating a policy of “papers claims”.

VII. CARTOGRAPHIC EVIDENCE

3.58. Early maps of Honduras – both official and unofficial – show one or more of the islands and cays in question as being part of Honduras. By way of example, the “Mapa de la República de Honduras” by AT Byrne (Ingeniero Civil Del Gobierno de Honduras, Colton & Co), of 1886, 1888 and 1900 clearly shows, amongst others, Media Luna Cay and Bobel Cay (which appears under the name of Babilonia) as being part of Honduras.¹⁰⁴

3.59. In contrast, official and unofficial maps of Nicaragua from the same period do not show any of the islands which Nicaragua now claims as falling within its territory. For example, none of the islands and cays claimed by Nicaragua in its Memorial in these proceedings is to be found on an Official Map of Nicaragua dated 1898, compiled by order of President Zelaya (but not referred to in Nicaragua’s Memorial).¹⁰⁵ Similarly, maps of 1965¹⁰⁶ and 1982,¹⁰⁷ along with a set of official maps showing political and hydrographic features of Nicaragua, dated 1993,¹⁰⁸

¹⁰⁴ See Plate 8.

¹⁰⁵ Document 3-08 deposited with the Registry. A photocopy of this map exists in the Library of Congress map collection.

¹⁰⁶ HCM, vol 3, Plate 29. See also *República de Nicaragua, Ministerio de Fomento Dirección General de Cartografía, Mapa Político* (1966), Document 3-09 deposited with the Registry.

¹⁰⁷ HCM, vol 3, Plate 28.

¹⁰⁸ See *República de Nicaragua, Mapa escolar orográfico e hidrográfico, preparado y publicado por el Instituto Nicaragüense de Estudios Territoriales con el financiamiento del Banco Central de Nicaragua. Managua 1993* and *República de Nicaragua, Mapa escolar político-administrativo, preparado y publicado por el Instituto Nicaragüense de*

do not include any of the islands and cays which Nicaragua now claims as being located within Nicaraguan territory. The claim set forth in Nicaragua's Memorial ignores its own cartography, both historical and present day. The omissions become even clearer when it is noted that all of these maps do include the islands and cays which lie *south* of the 15th parallel over which Nicaraguan sovereignty is claimed and recognized. Indeed, it is noteworthy that the Nicaraguan Memorial includes not a single historical map to confirm the Nicaraguan claim to the islands in question. For the most part, the cartographical evidence upon which Nicaragua relies is recent and self-serving and has been prepared by Nicaragua for the purpose of these proceedings, and much of it post-dates the filing of Nicaragua's Application. Nicaragua's treatment of its own cartographical history is easily explained: its own maps do not support its claim to the islands and the area north of the 15th parallel.

CHAPTER 4

THE APPLICABLE LAW

4.1. The question of what constitutes the law applicable to the delimitation of the maritime boundary in the present case ought to be (and, in the view of Honduras, is) straightforward. Unfortunately, the treatment of this question in the Nicaraguan Memorial is confusing and internally inconsistent. Accordingly, it is necessary to reassess the whole issue in a clear and systematic way.

4.2. Three points need to be clarified at the outset: first, the applicability of the 1982 UN Convention on the Law of the Sea to the facts of the case (which is dealt with in paragraphs 4.5 to 4.9, below); second, the identification of the relevant legal principles applicable to the case (paragraphs 4.10 to 4.17) and, third, the place and role of equity (paragraphs 4.18 to 4.27).

4.3. It is then necessary to examine in greater detail two matters. First, there is the legal definition of islands and the application of that definition to the different islands, islets and cays which lie to the north of the 15th parallel (paragraphs 4.28 to 4.32). The presence of these islands, which are part of the territory of Honduras (see Chapters 2 and 6 of this Counter-Memorial), is of obvious importance in determining the location of the maritime boundary, something which Nicaragua attempts to distort in its Memorial. Second, there is the Nicaraguan argument regarding the alleged significance of the geomorphological feature referred to as the “Nicaraguan Rise”, where again Nicaragua misstates the applicable law (paragraphs 4.33 to 4.35).

4.4. The application of these relevant legal principles to the facts of the present case will then be addressed in Chapter 7.

I. THE APPLICABILITY OF THE 1982 UN CONVENTION ON THE LAW OF THE SEA

4.5. Honduras, for its part, has no difficulty in applying this Convention, to which it has been a party since 5 October 1993. As for Nicaragua, it was not a party to the 1982 Convention when it filed its Application to the Court in the present case. Nicaragua only became a party on 3 May 2000, before it filed its Memorial. This may mean, applying a formalistic view,

that the 1982 UNCLOS might not – *per se* – be applicable to the present case.

4.6. Nicaragua is aware of this situation. In order to demonstrate that the Convention is nevertheless to be applied by the Court, Nicaragua embarks upon a lengthy series of quotations from various cases. It begins with some where the subject matter was the establishment of the jurisdiction of the Court on the basis of a certain convention, (e.g., the *Mavromatis Palestine Concessions Case*¹), a situation which, clearly, differs from the present one, in which there is no problem of jurisdiction. Whatever the situation may be, the rather tortuous line of argument followed in the Nicaraguan Memorial ends up with the conclusion that the very point of the applicability of the 1982 Convention “is of limited importance, since [...] the principles laid down by the 1982 Convention in cases of maritime delimitation between States with opposite or adjacent coastlines have now acquired customary value and form part of general international law”.²

4.7. This was already, for Honduras, an obvious point, since as the Court said in the *Case concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta)*:

“many of the relevant elements of customary law are incorporated in the provisions of the Convention”.³

This is, in particular, the case for Article 15, dealing with the delimitation of the territorial sea between States, as well as for Articles 74, 76 and 83, referring to the delimitation of the Exclusive Economic Zone, the definition of the Continental Shelf and its delimitation between States. It is also true of Article 121, dealing with the legal regime of islands, a subject which Nicaragua carefully avoids.

4.8. Nevertheless, the fact is that 1982 Convention has now entered into force between the two Parties. The law applicable to the case is, therefore, the positive customary international law of the sea, as reflected by the practice of States, the relevant articles of the 1982 Convention, and the international case law, beginning with the judgments of the International Court of Justice.

¹ NM, p 66, para 8.

² NM, p 68, para 14.

³ ICJ Reports 1985, p 30, § 27, quoted in NM, p 69, para 16.

4.9. What is clear beyond any doubt is that the 1958 Geneva Conventions on the Law of the Sea, including the Convention on the Continental Shelf, are *not* applicable to the present case. Neither Nicaragua nor Honduras were parties to this last Convention, the content of which does not reflect the contemporary customary law of the sea. Nicaragua itself appears to accept, in principle, that the 1958 Convention is not applicable.⁴ Nevertheless, having accepted that it is not applicable to the case, Nicaragua then attempts to make a theoretical argument on geomorphology, based on the existence of a feature referred to as the “Nicaraguan Rise” in which it attempts to resurrect concepts contained in that Convention but no longer applicable in customary international law and having no place in the 1982 UNCLOS. That argument is considered and rejected in paragraphs 4.33 to 4.35 below.

II. THE LEGAL PRINCIPLES APPLICABLE TO THE CASE

A. THE ARGUMENTS OF NICARAGUA

4.10. Chapter VI, Section B of the Nicaraguan Memorial deals with “the applicable principles of general international law”. Unfortunately, the *exposé* is confused and inconsistent. It would have been logical to start by recalling that the fundamental norm of customary international law is that the “delimitation is to be effected by the application of equitable criteria and by the use of practical methods capable of ensuring, with regard to the geographic configuration of the area and other relevant circumstances, an equitable result”.⁵ Instead, the Nicaraguan Memorial begins by quoting in full Article 15 of the 1982 UN Convention on the Law of the Sea on the “delimitation of the territorial sea between States with opposite or adjacent coasts”. That provision lays down, in particular, the purely methodological rule according to which “neither of the two States is entitled [...] to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured”.

4.11. Some paragraphs later, the Nicaraguan Memorial again briefly alludes to “the equidistance-special circumstances rules embodied in Article 15 of the 1982 Law of the Sea Convention” before returning to the

⁴ NM, p 64, para 4.

⁵ *Case concerning the Delimitation of the Maritime Boundary in the Gulf of Maine Area*, ICJ Reports 1984, pp 299-300, para 112, cited in the NM, p 72, para 20. This rule is recognised later in the course of its argument, at para 23 of the same chapter.

“fundamental norm” governing maritime delimitation. In other words, at this stage of its reasoning, the Memorial jumps, without transition, from the method of delimitation, with which it starts, to the result to be achieved by that delimitation (something which, self-evidently, ought to come first). In this way, Nicaragua seems to suggest that the right way to achieve an equitable result is to use the equidistance-special circumstances rule, taken from Article 15. Although that provision is concerned only with the delimitation of the territorial sea, the way in which it is presented in the Nicaraguan Memorial suggests that its use is to be extended to the areas situated further or beneath, namely the Exclusive Economic Zone and the Continental Shelf.⁶ In fact, however, Articles 74 and 83, which deal with delimitation of the exclusive economic zone and the continental shelf respectively, make no reference to any “equidistance/special circumstances” principle.

4.12. Further confusion is then caused, immediately after this argument, when Nicaragua abruptly recognizes that the objective of the delimitation prevails over any other consideration, may it be the method or even the equitable principles. Nicaragua quotes the Court in the *Tunisia/Libya case* stating that:

“It is [...] the result which is predominant; the principles are subordinate to the goal”.⁷

Then, in the course of its compilation of quotations from the jurisprudence, the Nicaraguan Memorial quotes the observation made by the Court in the *Gulf of Maine Case*:

“each specific case is, in the final analysis, different from all the others”.⁸

4.13. It is, therefore somewhat difficult to follow the trajectory or logic of Nicaragua’s argument. Starting with an homage to the equidistance method before enunciating the golden rule of the equitable result, then suggesting that the first satisfy the second, Nicaragua further recognizes that principles and methods are to be chosen in consideration of the specificities of each

⁶ One could point, at this stage, to this surprising extension of the use to be made, according to Nicaragua, of the concept “special circumstances”, where it is well known that the present general international law of the sea delimitation, including international jurisprudence, most evidently favours the notion of “relevant circumstances”, which is both more larger in scope and more flexible.

⁷ *Case concerning the Delimitation of the Continental Shelf* (Tunisia/Libyan Arab Jamahiriya), ICJ Reports 1982, p 59, para 70 quoted in the NM, p 73, para 24.

⁸ *Case concerning the Delimitation of the Maritime Boundary in the Gulf of Maine Area*, ICJ Reports 1984, p 290, para 81, quoted in the NM, p 72, para 25.

situation. Finally, in presenting the method which she considers to be the appropriate method, Nicaragua concludes that “because 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”.⁹ Apparently favoured at one point, the equidistance method is, then, finally banished. But this apparently clear cut final assertion is made to support the application of “the Bisector Method”,¹⁰ which, it transpires, is nothing more than a variation of the same equidistance method!

B. THE POSITION OF HONDURAS

4.14. Honduras, by contrast, has no such difficulties in identifying the legal principles applicable to the case. This Court said, in the *Case concerning Maritime Delimitation in the Area Between Greenland and Jan Mayen*, when commenting on Articles 74, paragraph 1 and Article 83, paragraph 1 of the 1982 UN Convention on the Law of the Sea:

“that statement of an ‘equitable solution’ as the aim of any delimitation process reflects the requirements of customary law as regards the delimitation both for the continental shelf and of the exclusive economic zone”.¹¹

4.15. There is, indeed, an obvious hierarchy between the objective and the method. The objective is to achieve an equitable result in the delimitation of every maritime area to be delimited (whether it is the Exclusive Economic Zone or the continental shelf).

4.16. As to the methods of delimitation, they are to be chosen in consideration of the equitable principles appropriate to the case and the “relevant circumstances” characterizing the situation and, notably, the geography of the area in dispute. To recall what the Court said in 1969, “there is no legal limit to the considerations which States may take account of for the purpose of making sure that they apply equitable procedures”.¹²

4.17. That being said, in its 1969 Judgment already referred to, the Court expressed very clearly what was to be meant by recourse to equity and equitable principles. In comparison with the Nicaraguan conception, the meaning and scope of equity must then be briefly recalled.

⁹ NM, p 121, para 82.

¹⁰ NM, p 122, para 83.

¹¹ ICJ Reports 1993, p 59, para 48.

¹² *North Sea Continental Shelf Cases*, ICJ Reports 1969, p 50, para 93.

III. THE PLACE AND ROLE OF EQUITY

4.18. As stated by the Court in 1969 in the North Sea Continental Shelf Cases:

“[...] it is not a question of applying equity simply as a matter of abstract justice, but of applying a rule of law which itself requires the application of equitable principles[....]”¹³

In the same decision, this Court insisted that:

“[...] when mention is made of a court dispensing justice or declaring the law, what is meant is that the decision finds its objective justification in considerations lying not outside but within the rules, and in this field it is precisely a rule of law that calls for the application of equitable principles. There is consequently no question in this case of any decision *ex aequo et bono*, such as would only be possible under the considerations prescribed by Article 38, paragraph 2, of the Court’s Statute.”¹⁴

4.19. This clearly means that reference to equity in maritime delimitation cannot override those relevant circumstances of a legal nature which also characterize the concrete case to be settled. Moreover, the Court has always made clear that *all* of these circumstances must be taken into account. As the Court stated in the *Libya/Malta* case:

“Judicial decisions are at one [...] in holding that the delimitation of a continental shelf boundary must be effected by the application of equitable principles *in all the relevant circumstances* in order to achieve an equitable result.”¹⁵

4.20. In the present case, there are several circumstances which are plainly relevant (although they are ignored or played down by Nicaragua):-

- (1) the historic root of title in the principle *uti possidetis juris* (which is developed in Chapter 5 of this Counter-Memorial). That root of title is particularly important in relation to the islands and their adjacent maritime spaces;
- (2) the *effectivités*, extending over several decades and more, on the part of Honduras in the islands and waters north of the 15th parallel (which are set out in detail in Chapter 6 of this

¹³ ICJ Reports 1969, p 47, para 85.

¹⁴ *Ibid*, p 48, para 88.

¹⁵ *Libya/Malta case*, ICJ Reports 1985, p 38, para 45 (emphasis added).

Counter-Memorial) and which include the regulation of fisheries north of the 15th parallel and the grant of oil and gas concessions there;

- (3) Honduran sovereignty and exercise of jurisdiction over the islands and surrounding waters north of the 15th parallel (the status of which is considered below);
- (4) the acquiescence on the part of Nicaragua in the exercise of sovereignty and jurisdiction by Honduras in the islands and maritime spaces north of the 15th parallel;¹⁶ and
- (5) the treaties resolving territorial questions and maritime delimitations in the region.¹⁷

4.21. The last relevant circumstance was addressed in Chapter 2¹⁸ and is further considered in Chapter 7.¹⁹ It is, however, necessary to say something at this stage regarding the importance of one of these treaties.

4.22. It is striking that Nicaragua carefully avoids dealing in any detail with the 1928 Nicaragua/Colombia Treaty. This agreement established the 82nd meridian as the limit of sovereignty between Nicaraguan and Colombian possessions.²⁰ Since the entry into force of this treaty, the 82nd meridian has been regarded by Colombia as a maritime boundary.²¹ It is Nicaragua which, acting unilaterally, denounced the treaty in 1980. This treaty, of a territorial nature, cannot be ignored by Honduras. It features as one of the most relevant circumstances in the present case. It has a direct impact on the drawing of the maritime delimitation established in the 1986 Honduras/Colombia Treaty. The delimitation line agreed in the 1986 Honduras/Colombia Treaty uses the 82nd meridian as a starting point, drawing a line east of that point. It could, then, scarcely be argued that this agreement is purely *res inter alios acta*, and of no concern for the settlement of the present dispute.

¹⁶ *Norwegian Fisheries Case*, ICJ Reports 1951, p 116 *et seq.*

¹⁷ See Chapter 2, *supra*.

¹⁸ Paras 2.13-2.20 *supra*.

¹⁹ Paras 7.29 -7.37 *infra*.

²⁰ Thus confirming Colombian sovereignty over the group of islands, the *Intendencia de San Andrés and Providencia*.

²¹ The treaty came into force on 5 May 1930 with the exchange of ratifications. It was registered by the League of Nations on 16 August 1930 under Registration number 2426. HCM, vol 2, annex 9.

4.23. A case dealing with the law of maritime delimitation cannot be envisaged exclusively within this specific branch of public international law. Quite evidently, it is also to be settled in conformity with any other pertinent rule of international law.

4.24. Under the applicable international law of treaties, there are very strict conditions for a State to unilaterally denounce a treaty. They are, in particular, set out in Articles 56, 59, 60, 61 and 62 of the 1969 Vienna Convention on the Law of Treaties which essentially are articles codifying general international law rules.

4.25. The recent jurisprudence of this Court has confirmed how strict and exceptional are the situations enabling a State to denounce unilaterally a treaty. But, at least, in the Gabčíkovo-Nagymaros Project Case (Hungary/Slovakia), Hungary tried systematically to legally justify its unilateral suspension and, then, termination of the 1977 Treaty (Hungary/Czechoslovakia) at stake in that case; it presented five arguments in support of the lawfulness of its termination of this Treaty.²² Nicaragua does nothing of this kind. It simply behaves and argues as if the 1928 Treaty by which the 82nd meridian has been established as a maritime boundary did not exist. It is, nevertheless, evident that Nicaragua in the present proceedings must explain and try to justify in law why it denounced unilaterally a treaty which is one of the most relevant circumstances to be taken into account in the present case. But there are also three other treaties of maritime delimitation directly affecting the region, which are ignored by the Nicaraguan Memorial, namely the 1972 United States/Colombia Treaty (Vasquez-Saccio), the 1986 Honduras/Colombia Treaty and the 1993 Colombia/Jamaica Treaty.

4.26. From a more general point of view, as will be further seen in Chapter 7 of this Counter-Memorial, when considering the relevant circumstances in this case, the achievement of an equitable result in the maritime delimitation cannot be reached by picking and choosing arbitrarily some circumstances and leaving out without motivation some others. The Nicaraguan approach hardly meets this legal requirement. In particular, the conduct of the Parties, a circumstance considered by the Court in the *Tunisia/Libya Case*, which present striking similarities with the present one, “to be highly relevant”,²³ has been completely ignored.

²² These were the existence of a state of necessity; the impossibility of performance of the Treaty; the occurrence of a fundamental change of circumstances; the material breach of the Treaty by Czechoslovakia; and, finally, the development of new norms of international law. See ICJ Reports 1997, para 92 *et seq.*

²³ ICJ Reports 1982, pp 83-4, paras 117-118.

Nicaragua itself shows that, prior to 1980, it readily accepted the traditional maritime boundary along the 15th parallel. No mention is made by Nicaragua, for example, of the oil and gas concessions which provide compelling evidence of a *de facto* boundary respected by both States until the present day. In the same vein, nothing about the fishing practice or the naval and aerial patrols is written. It is for Nicaragua to demonstrate that ignoring such self-evidently relevant circumstances is reconcilable with the achievement of an equitable result.

4.27. Last but not least, an equitable result may only be reached, either by countries entering into negotiations for delimitation, or by any court or tribunal, on the basis of each State taking a reasonable position. For its part, Honduras maintains a reasonable position, as it does not primarily ask for the line which would give to each and every island under its sovereignty the full maritime zones to which it is legally entitled.²⁴ Rather, Honduras seeks the traditional line of delimitation, consolidated by a long standing state practice, situated along the 15th parallel.

IV. THE LEGAL DEFINITION AND TREATMENT OF ISLANDS

4.28. The Nicaraguan Memorial, in the title of one of the sections of its Chapter IX, declares: “The Method Treats the Islets and Rocks off the Mainland Coasts on Their Merits”.²⁵

4.29. In reality, when speaking of “islets and rocks”, Nicaragua tries to establish a calculated legal disqualification of true islands, in the sense given to this expression in Article 121 of the 1982 Law of the Sea Convention. The intention is to suggest to the Court that it should simply ignore the presence of inhabited islands belonging to Honduras lying to the north of the 15th parallel. As stated by the Court in its recent judgment in the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, of 16 March 2001:

“[...] the legal definition of an island is “a naturally formed area of land, surrounded by water, which is above water at high tide” (1958 Convention on the Territorial Sea and Contiguous Zone, Art. 10, para. 1; 1982 Convention on the Law of the Sea, Art. 121, para. 1).”

²⁴ *Supra* para 2.3. A claim which would produce a dividing line much more inclined towards the South East.

²⁵ NM, p 138, para 31 *et seq.*

4.30. All relevant islands situated north of parallel 15, all of them placed under Honduran sovereignty, meet this definition of islands. In particular, it should be noted, from the point of view of the law applicable to the case, that several are inhabited by fisher folk.²⁶ Furthermore, under a 1976 Agreement between the USA and Honduras, triangulation points were placed on Bobel Cay, Savanna Cay, and South Cay, to aid accurate mapping.²⁷

4.31. Now, if it is the intention of Nicaragua to depart from the definition of islands given by Article 121 of the 1982 UN Convention on the Law of the Sea and applied by international jurisprudence, it is for her to explain why.

4.32. In reality, the way in which Nicaragua considers the Bisector Method as treating the islands “on their merits” is extraordinary. While simply ignoring the Honduran islands, which are treated as “islets or rocks”, Nicaragua claims, at the same time, sovereignty over all “islets and rocks” situated to the south of its bisector line. Thus, by surreptitiously attempting to transform a delimitation case into a litigation on the attribution of sovereignty over insular territories, the Nicaraguan Memorial goes even as far as listing all those “islets and rocks” which it claims in the same area.²⁸

V. THE NICARAGUAN GEOMORPHOLOGICAL ARGUMENT²⁹

4.33. In its Memorial, Nicaragua makes much of the alleged significance of the geographical feature which it refers to as “the Nicaraguan Rise”. Here again, the Nicaraguan argument seems contrived. It recognizes that “this Court has rejected the view that geological or geomorphological discontinuities of the seabed can be used to establish the location of maritime boundaries within the 200 nautical mile limit”.³⁰ Nicaragua then tries to argue that her point is to rely on the fact that there is “one single feature shared by Nicaragua and Honduras, which is characterized by the

²⁶ *Infra* paras 6.52 and 6.54.

²⁷ *Infra* paras 6.65 and 6.70.

²⁸ NM, page 166, “Islets and Rocks Claimed by Nicaragua”. It is to be noted that this section has the appearance of an afterthought, placed as it is after Nicaragua has presented its main arguments, and in a form without paragraph numbering.

²⁹ *Supra* paras 2.21-2.24.

³⁰ NM, p 132, para 17.

absence of any natural dividing line”.³¹ Nicaragua even illustrates that argument in Figure II annexed to its Memorial.³²

4.34. But, in essence, this argument remains a purely geomorphological one; precisely one of the type which has become unacceptable since the new definition of the Continental Shelf in Article 76 of the 1982 Convention on the Law of the Sea. The change in the concept and legal definition of the Continental Shelf was reflected in the Court’s jurisprudence as early as 1985. In its decision on the Continental Shelf Case between the Libyan Arab Jamahiriya and Malta, the Court said:

“[...] where the continental margin does not extend as far as 200 miles from the shore, natural prolongation, which in spite of its physical origins has throughout its history become more and more a complex and juridical concept, is in part defined by distance from the shore, irrespective of the physical nature of the intervening sea-bed and subsoil.”³³

In so saying, the Court was commenting on Article 76 of the 1982 Convention of the Law of the Sea which actually reflected the new consensus among States on the definition of the Continental Shelf, a definition which has since been consolidated by State practice.

4.35. Quite apart from the fact that the Nicaraguan argument is geographically unsound, the attempt to build an argument on the geomorphology of the “Nicaraguan Rise” has no legal foundation. The Court has been quite clear, as Nicaragua is obliged to recognize, that arguments of this kind have no basis in the law since the 1982 Law of the Sea Convention. In advancing this argument, Nicaragua is harking back to the language of the 1958 Convention on the Continental Shelf, even while it recognizes the inapplicability of the same Convention to the present Case.³⁴ The argument cannot succeed.

³¹ *Ibid.*

³² This figure shows in particular that the continental shelf does not extend as far as 200 nautical miles.

³³ ICJ Reports 1985, p 33, para 34.

³⁴ The fact that neither Honduras nor Nicaragua is party to the 1958 Convention distinguishes this case from the *Jan Mayen* case, in which both Denmark and Norway were bound by the 1958 Convention.

CHAPTER 5

THE *UTI POSSIDETIS JURIS*

I. THE SIGNIFICANCE OF *UTI POSSIDETIS JURIS* FOR THE PRESENT PROCEEDINGS

5.1. One of the most established principles of international law is that the boundaries between the South and Central American States which achieved independence in the early nineteenth century are to be determined by application of the principle of *uti possidetis juris*. This provides that the international boundaries of these States are to follow the line of the administrative boundaries between the divisions of the Spanish Empire which were their predecessors.

5.2. The application of the principle cannot be in doubt between Honduras and Nicaragua. It was the basis of the Gámez-Bonilla Treaty of 1894 between the two States, of the Arbitral Award of the King of Spain of 1906 (and its confirmation by this Court in the 1960 proceedings), and of the 1992 decision of the Chamber of the Court in the *Gulf of Fonseca case*.

5.3. This Chapter explains the significance of the principle of *uti possidetis juris* for the present proceedings, applying as it does to land and maritime areas and establishing Honduran title to the territorial sea and its sea-bed and the islands north of the 15th parallel. In its Memorial Nicaragua has not invoked the principle to support its claim.

II. THE APPLICATION OF THE *UTI POSSIDETIS JURIS* IN THE REGION CONCERNED: THE EXISTENCE OF AN EFFECTIVE BOUNDARY INHERITED FROM THE COLONIZATION

5.4. The records of the colonial period show that Cape Gracias a Dios was accepted by the end of the eighteenth century as the dividing point between the provinces of Nicaragua and Honduras.

5.5. The most authoritative proof of this fact is to be found in the Arbitral Award of 1906, which is based on the application of the Spanish *uti possidetis*. Such proof is also evident in the “*Rapport de la Commission*

d'examen de la question des limites entre les Républiques du Honduras et du Nicaragua, soumis à S.M. Alphonse XIII, Arbitre, le 22 juillet 1906".¹ This Report, which served as the basis for the King of Spain's decision, confirms that (a) during the 16th century, Nicaragua had no access to the Caribbean Sea and no ports there,² and (b) the traditional limit of the Republic of Honduras in the Caribbean Sea was Cape Gracias a Dios from the 16th century until independence.³ The Report's conclusions were founded on an abundant source of legislative and other documents from the Spanish colonial age.

5.6. Nicaragua now persists in ignoring the maritime and insular consequences of the 1906 Arbitral Award. The written proceedings in the *Honduras v. Nicaragua* case provide an abundant source of legislative and other materials confirming the *uti possidetis juris* of 1821. These materials establish that during the colonial period Honduras' southern limit on the Atlantic coast of the Caribbean Sea was at Cape Gracias a Dios. This is further confirmed by *inter alia* Annexes 49 to 55, 57 to 61 and 65 attached to the Counter-Memorial submitted by the Government of the Republic of Nicaragua in those earlier proceedings.⁴

5.7. The limits stipulated by the Spanish Crown during the period of colonial domination related to the mainland and to the adjacent maritime and insular areas. For these latter areas the limits defined the respective areas of jurisdictional competence of the military authorities, including naval authorities engaged in defence and the control of trade and smuggling by sea.

5.8. Two aspects of the Arbitral Award of 1906 are to be emphasized. First, when the dividing line was drawn at the mouth of the Wanks/Coco/Segovia river, the arbitrator carefully attributed the islands situated to the north of the delimited point as part of Honduras, whereas the islands situated to the south of that point were part of Nicaragua:

"The extreme common boundary *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 its principal arm between Hara and the Island on San Pío

¹ See the complete text in *CIJ Mémoires, Plaidoiries et Documents. Affaire de la Sentence Arbitrale rendue le 23 décembre 1906 (Honduras c. Nicaragua), Vol I, Réplique soumise par le Gouvernement de la République du Honduras, Annexe XI, p 621 et seq.*

² *Ibid*, pp 654, 655, 656, 660 and 674.

³ *Ibid*, pp 655, 674, 676, 679, 680, 681, 682, 683, 686 and 687.

⁴ *Ibid*, note 1, pp 354 to 425, 429 to 450 and 458 to 461.

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 of estuary called Gracias which flows to Gracias a Dios Bay, between the mainland and said Island of San Pío.”⁵

5.9. Second, many of the texts on which the Award is based include references to the territories situated to the north and to the south of Cape Gracias a Dios. The former are treated as part of Honduras, the latter form part of the territorial sovereignty of Nicaragua.⁶ This necessarily implies that taking Cape Gracias a Dios as the basis for a west-east projection places all areas to the north within Honduras and all areas to the south to Nicaragua. Although concerned with the territorial limits, the King of Spain could not ignore the islands adjacent to the coast, which were well-known in the cartography of the eighteenth and nineteenth centuries.⁷ The Award on the limits of the continental territory necessarily had to have effects on the Spanish islands adjacent to the continent, which were attributed before independence to one or another provincial administration.

5.10. The Arbitral Award of 1906 rejected Nicaragua’s claim to delimit the territory by “the meridian which passes by Cape Camarón and following this meridian up to the coast”.⁸ Faced with a choice between a meridian (the meridian that passes by Cape Camarón) and a parallel (15th parallel, that passes by Cape Gracias a Dios), and giving full effect to the overwhelming evidence, the King of Spain chose the latter. Indeed, the use of meridians and parallels coincident with well-known geographical accidents for the delimitation of the administrative limits of the Spanish Crown was a technique used frequently during the colonial period.⁹

⁵ *Ibid*, emphasis added.

⁶ See *Case concerning the Arbitral Award made by the King of Spain on 23 December 1906*, vol 1, p 18 *et seq* (Preambular paras 4, 10, 14, 15, 17, 18, 21 and 26).

⁷ See, e.g., Plates 3, 4 and 7. See also paras 2.9 and 2.11 *supra*.

⁸ As expressly mentioned in the same Award and in the cited “Rapport de la Comisión d’examen”.

⁹ Likewise, it should not be forgotten that Cape Gracias a Dios was accidentally named during the course of Christopher Columbus’ fourth voyage, during which he discovered the Central American region. “*Gracias a Dios que dejamos estas honduras*” (“Thank God that we have left these depths”), the discoverer is said to have exclaimed when he crossed the Cape towards the south and felt relief at the abatement of a severe storm after several days. The mention by Columbus of the word “honduras” subsequently gave rise to the name of the State, and the invocation of God gave the name to Cape Gracias a Dios.

5.11. It is obvious that the Nicaraguan claim before the King of Spain, based as it was on meridian 85, implied a claim of Nicaraguan sovereignty over the islands situated to the north and to the East of said meridian, including (expressly) the Swan Islands and (impliedly) the Honduran islands which Nicaragua now claims.¹⁰ This claim was not accepted by the King of Spain. This is significant in relation to the principle of *res judicata*. It means that Nicaragua cannot now aspire to sovereignty and jurisdiction over maritime spaces and islands situated to the north of Cape Gracias a Dios which formed part of its earlier – rejected – claim.

5.12. The Arbitral Award of 1906 attributes islands to the north of the boundary to Honduras, and islands to the south to Nicaragua. Had the ruling accepted the Nicaraguan meridian claim, all the islands lying eastward of it would have been presumed *res judicata*, that same principle being applicable against a re-opening of any claim by Honduras.

5.13. In assessing the legacy of the colonial era, it is also relevant to note that the Captaincies-General constituted the backbone of the military and naval system. Cape Gracias a Dios was traditionally used as the limit separating the jurisdiction of the Captaincy-General of Guatemala from other Spanish Captaincies-General during the colonial period. The *Rapport de la Commission d'examen*, mentioned above, includes many references to documents issued by colonial military authorities and the Captain-General of Guatemala, in which it is stated that Cape Gracias a Dios constituted the limit of Honduras on the Atlantic Ocean and therefore, of the Captaincy-General of Guatemala.¹¹ From this *Rapport* it is appropriate to point out the following:

“Le Roi – principalement pour des raisons de surveillance et de défense des côtes comprises dans le territoire appelé par les Anglais «Spanish Main», c'est-à-dire les plages de l'Atlantique à partir du Yucatán jusqu'à l'isthme de Panama – a jugé de bon de créer, par ce brevet royal [de 23 août 1745], deux juridictions militaires: l'une du Yucatán au cap de Gracias a Dios, et l'autre du cap de Gracias a Dios jusqu'au Río Chagres, cette rivière non comprise.

Dans la première juridiction étaient par conséquent comprises les côtes de Guatemala, de la province du Honduras ou Comayagua à partir du Río Motagua jusqu'à Trujillo ou un peu plus à l'Est, et de la Mairie supérieure de Tegucigalpa, quelle que fût l'étendue de

¹⁰ Para 2.3 *supra*.

¹¹ *Supra* note 1, pp 679 to 682.

ces côtes (qu'elle abati, d'après les déclarations de Díez Navarro lui-même), la limite Est *de cette juridiction militaire étant fixée au cap de Gracias a Dios*.

Dans la seconde juridiction étaient comprises les côtes du Nicaragua sur l'Atlantique, *à partir du cap Gracias a Dios vers le Sud*, quelle que fût leur étendue, les côtes de Costa Rica et de Veragua jusqu'au Río Chagres.

Le colonel d'infanterie Juan de Vera fut nommé pour la première juridiction militaire; pour la seconde, on nomma le général de brigade Alonso de Heredia. Vera était nommé gouverneur de la province du Honduras. Heredia, gouverneur de la province du Nicaragua.

Vera fut nommé commandant général des Armées royales de la province du Honduras et celles de l'évêché de Comayagua, du canton et du district de la Mairie supérieure de Tegucigalpa, ainsi que de tous les territoires compris depuis l'endroit où prend fin la juridiction du gouverneur et du capitaine général de la province de Yucatán, jusqu'au cap de Gracias a Dios.

Heredia fut nommé commandant général des Armées royales du Nicaragua, de la province de Costa Rica, du district du Realejo, et des Mairies supérieures de Subtiara, Nicoya et de tous les autres territoires compris entre le cap de Gracias a Dios et de la rivière Chagres, celle-ci non comprise."¹²

In other words, Cape Gracias a Dios also expressly constituted a limit separating the areas of jurisdiction of the military authorities for the exercise of their competences in the land and maritime areas for guarding the coasts. This constitutes an important expression of the maritime *uti possidetis juris* in the colonial period under Spain.

5.14. In even more specific terms, the Royal Order of 23 August 1745 contains an express mandate of the Spanish monarch for the "prévention et la répression du commerce illicite" (smuggling) which was carried out by the English from sea to land.¹³ Moreover, the Royal Order of 23 August 1745 referred specifically to the "forces de terre et de mer" of the English

¹² *Ibid.*, pp 681-682, emphasis added.

¹³ *Supra* note 1, Annexe 53, p 382 to 384, Brevet Royal du 23 août 1745 nommant le Colonel Juan de Vera Gouverneur et Commandant Général de la Province du Honduras et Commandant Général des Armées de ladite Province du Honduras et de celles comprises depuis l'endroit où prend fin la juridiction du Gouverneur et Capitaine Général de la Province de Yucatan jusqu'au Cap de Gracias a Dios.

within his jurisdiction and the need to avoid illegal trade.¹⁴ The military and smuggling activities of the English ships in the area – except in the territories under direct domination – were invariably carried out using warships, and it was the English navy which endangered the interests of the Spanish crown in the Caribbean Sea. As a result, the Kings of Spain sought to take steps in the maritime areas in which the enemy fleets were operating when it came to setting the limits of the military jurisdictions. These steps aimed to be effective not only on land but also at sea.

5.15. The exercise of Spanish authority in the maritime areas off the coast is confirmed by other important, contemporaneous documents issued by the King of Spain. Examples include the Royal Instructions of 3 January 1747, which refers expressly to the “guerre et au commerce illicite”,¹⁵ and the Royal Order of 3 January 1747, which refers to “la surveillance et la suppression de commerce illicite”, which had its greatest scenario in the maritime sphere.¹⁶

5.16. Against this background, the choice of Cape Gracias a Dios as the limit between two civil and military jurisdictions indicates a point of separation between maritime areas as well as continental territories. It is notable that Cape Gracias a Dios, like all capes, projects towards the sea. As stated in 1906: “le Monarque a choisi comme limite commune des juridictions de Vera et de Heredia le cap de Gracias a Dios. Il s’agissait et il s’agit encore d’un point très saillant, et qui semble être placé par la nature elle-même pour servir de limite géographique.”¹⁷

5.17. The Royal Order of 20 November 1803, issued by the King of Spain, provides further confirmation as to the role of Cape Gracias a Dios as the limit – both maritime and continental – separating Nicaragua and Honduras. The Royal Order was sent to the Viceroy of Santa Fé and the President of Guatemala just eighteen years before the declaration of independence by the new Republics of Central America. It states:

“Your Excellency: The King has resolved that the Islands of San Andrés and the part of the Mosquito coast from Cape Gracias a

¹⁴ *Supra* note 1, *Annexe 54*, p 385 to 391, at p 386 and 388 (“éviter le commerce illicite”).

¹⁵ *Supra* note 1, *Annexe 57.A*, p 429 to 431, at 430, *Instructions Royales du 3 janvier 1747 au Maréchal Francisco Cagigal de la Vega, Capitaine Général du Guatemala, décidant que Don Alonso de Heredia et Don Juan de Vera seraient placés sous ses ordres et lui seraient subordonnés*.

¹⁶ *Supra* note 1, *Annexe 57.B*, p 431 and 432, *Brevet Royal du 3 janvier 1747 subordonnant le Colonel Juan de Vera au Maréchal Francisco Cagigal de la Vega, Capitaine Général de Guatemala*.

¹⁷ *Loc cit* in note 46, p 683.

Dios inclusive to the Chagres river, shall be segregated from the Captaincy-General of Guatemala and become dependent on the Viceroyalty of Santa Fé, and it has pleased H.M. to grant the Governor of the said islands Mr. Tomás O’Neille a salary of two thousand pieces of eight per annum, instead of the one thousand two hundred he enjoys currently. I hereby inform Your Excellency of the same by Royal Order so that the corresponding orders from your office may be issued to comply with this sovereign resolution. May the Lord save Your Excellency for many years. San Lorenzo, 30 November 1803.”¹⁸

This Royal Order clearly expresses the will of the Spanish Crown to treat Cape Gracias a Dios, in the early 19th century and before independence, as the limit between the Captaincies-General of Guatemala (including Honduras) and that of Santa Fé (including Nicaragua) in the south.

5.18. The Royal Order of 20 November 1803 has other juridical consequences. By this Order the King of Spain transferred jurisdiction over the Archipelago of San Andrés and the Mosquito Coast (from Cape Gracias a Dios to Chagres River) away from the Captaincy-General of Guatemala and to the Viceroyalty of Santa Fe or Nueva Granada. This is why Nicaragua and Colombia agreed in 1928, in application of the *uti possidetis juris*, to put an end to reciprocal claims in the Bárcenas Meneses-Esguerra Treaty.¹⁹ In accordance with its provisions, Colombia relinquished its rights on the Mosquito Coast in exchange for Nicaraguan recognition of its sovereignty on the Archipelago of San Andrés and Providencia. Accordingly, Nicaragua’s sovereign title on the Atlantic coast was obtained through a cession from Colombia. Nicaragua thereby succeeded Colombia in her sovereign rights on the Mosquito Coast, without receiving more rights than those Colombia had in accordance with the *uti possidetis juris*. Moreover, in 1930, and by a decision of the Nicaraguan Congress, the limit of the meridian 82° between the sovereignties of both States in the Caribbean Sea, was included in the Protocol of Exchange of

¹⁸ HCM, vol 2, annex 4. The text in Spanish reads as follows: “Excelentísimo Señor: El Rey ha resuelto que las islas de San Andrés y la parte de la Costa de Mosquitos, desde el Cabo de Gracias a Dios inclusive hacia el Río Chagres, queden segregados de la Capitanía General de Guatemala y dependientes del Virreynato de Santa Fé, y se ha servido S.M. conceder al Gobernador de las expresadas islas don Tomás O’Neille el sueldo de dos mil pesos fuertes anuales, en lugar de los mil y doscientos que actualmente disfruta. Lo aviso a V.E. de real orden a fin de que por el Ministerio de su cargo se expidan las que corresponden al cumplimiento de esta soberana resolución, la que traslado a V. De orden de Su Majestad para su debido cumplimiento. Dios guarde a V. muchos años. San Lorenzo, 30 de noviembre de 1803.”

¹⁹ *Supra*, para 2.15; *infra*, paras 7.32-7.34.

Ratifications of the 1928 Treaty. On the basis of this approach Colombia delimited its maritime areas with Honduras in 1986.²⁰ It follows that Nicaragua cannot have any right to claim a greater continental or insular territory or maritime spaces than that granted by the treaty with Colombia, since at the time of the colonial succession Nicaragua possessed no coast on the Caribbean Sea, and hence could have no sovereignty over the adjacent islands.

III. THE FUNCTION OF THE *UTI POSSIDETIS JURIS* IN THE PRESENT CASE: ESTABLISHMENT OF AN INITIAL LEGAL TITLE

5.19. The *uti possidetis juris* is a legal title. As this Court has said, “the concept of title may also, and more generally, comprehend both any evidence which may establish the existence of a right, and the actual source of that right”.²¹ The first date of legal relevance in this dispute is 1821, when both Parties achieved independence from their colonial status under the Spanish Crown. On this date they succeeded Spain in the sovereignty and jurisdiction over the islands and maritime areas it had previously controlled. It follows that the original legal title of both Parties necessarily dates back to this time. Honduras submits that the original and initial legal title of both Parties is to be found in the *uti possidetis juris*, and that all of the events following 1821 confirm or continue the initial title in area north of parallel 15.

5.20. That title is particularly important in respect of the islands north of the 15th parallel. The application of the principle of *uti possidetis juris* to islands adjacent to a coast was emphasised by the Chamber of the Court in the *Land, Island and Maritime Frontier Dispute Case (El Salvador/Honduras: Nicaragua intervening)*, with regard to the disputed islands in the Gulf of Fonseca. Four aspects of the decision require comment.

5.21. First, the Chamber said that:

“The Chamber has no doubt that the starting-point for the determination of sovereignty over the islands must be the *uti possidetis juris* of 1821. The islands of the Gulf of Fonseca were discovered in 1522 by Spain, and remained under the sovereignty

²⁰ *Supra*, paras 2.16-2.18; *infra*, paras 7.35-7.36.

²¹ *Case concerning the Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment, ICJ Reports 1986, p 564, para 18.

of the Spanish Crown for three centuries. When the Central American States became independent in 1821, none of the islands were *terra nullius*; sovereignty over the islands could not therefore be acquired by occupation of territory. The matter was one of the succession of the newly-independent States to all former Spanish islands in the Gulf. The Chamber will therefore consider whether it is 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. For this purpose, it may have regard not only to legislative and administrative texts of the colonial period, but also to 'colonial *effectivités*' as defined by the Chamber in the *Frontier Dispute* case (see paragraph 45 above)[....] 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 definite answer to the appurtenance of marginal areas, or sparsely populated areas of minimal economic significance. For this reason, it is particularly appropriate to examine the conduct of the new States in relation to the islands during the period immediately after independence. Claims then made, and the reaction – or lack of reaction – to them may throw light on the contemporary appreciation of what the situation in 1821 had been, or should be taken to have been.²²

This passage perfectly expresses the position of Honduras in the present case. As set out below, the legislative texts, administrative documents and *de facto* colonial events, as well as the conduct of the Parties during the Republican period (i.e., immediately after the achievement of independence) confirm the applicability of the *uti possidetis juris* to the insular area now in dispute.

5.22. Second, with regard to the conduct of the parties after achieving independence, the 1992 Judgment re-affirmed that:

“The Chamber must therefore proceed, as indicated in paragraph 333 above, to consider the conduct of the Parties in the period following independence, as indicative of the then view of what must have been the 1821 position. This may further be supplemented by considerations independent of the *uti possidetis juris* principle, in particular the possible significance of the same

²² *Judgment of 11 September 1992*, ICJ Reports 1992, pp 558-559, para 333.

conduct, or the conduct of the Parties in more recent years, as possibly constituting acquiescence.”²³

5.23. Third, and with particular regard to the Central American context, the Court recalled in its 1992 Judgment that:

“Shortly after independence in 1821, the newly independent Central American States were united by the Constitution of 1824 in the Federal Republic of Central America, successor of Spain in the sovereignty over, *inter alia*, the islands. Uninhabited or sparsely inhabited, the islands were left dormant for some years, since the economic value of their exploitation was little. The problem of their appurtenance to one or other of the riparian States thus did not raise any interest or inspire any dispute until the break-up of the Federal Republic and the years nearing the mid-19th century.”²⁴

5.24. Finally, in order to underline the importance of the post-colonial conduct of the Parties with regard to the island situation, in the case of a lack of decisive colonial documents, the Chamber of the Court concluded that:

“Thus it was not until a number of years after the independence of the two States that the question of the appurtenance of the islands of the Gulf to the one or the other became significant import. What then occurred appears to the Chamber to be highly material. The islands were not *terra nullius*, and in legal theory each island already appertained to one of the three States surrounding the Gulf as heir to the appropriate part of the Spanish colonial possessions, so that *acquisition* of territory by occupation was not possible; but the effective possession by one of the Gulf States of any island of the Gulf could constitute an *effectivité*, though a post-colonial one, throwing light on the contemporary appreciation of the legal situation. Possession backed by the exercise of sovereignty may be taken as evidence confirming the *uti possidetis juris* title. The Chamber does not find it necessary to decide whether such possession could be recognized even in contradiction of such a title, but in the case of the islands, where the historical material of colonial times is confused and contradictory, and the accession to independence was not immediately followed by unambiguous acts of sovereignty, this is practically the only way in which the *uti*

²³ *Judgment of 11 September 1992*, ICJ Reports 1992, p 563, para 341.

²⁴ *Ibid.*, p 565, para 346.

possidetis juris could find formal expression so as to be judicially recognized and determined.”²⁵

In other words, the *uti possidetis juris* implies a legal title of sovereignty over the islands that can be confirmed or corroborated by the reciprocal conduct of the Parties after 1821. Such confirmation and corroboration is amply demonstrated by the material presented in Chapter 6.

5.25. The relationship between the original title derived from *uti possidetis* and the subsequent practice of the parties is demonstrated by another passage from the decision of the Chamber in 1992 concerning title to islands in the Gulf of Fonseca. The Chamber held that:

“Thus the conclusion of the Chamber concerning Meanguera is that, while the *uti possidetis juris* position in 1821 cannot be satisfactorily ascertained on the basis of colonial titles and *effectivités*, the fact that El Salvador asserted a claim to the island of Meanguera in 1854, and was thereafter in effective possession and control of the island, justifies the conclusion that El Salvador may be regarded as sovereign over the island. If there remained any doubt, its position in respect of Meanguera is made definitive by the acquiescence of Honduras in its exercise of sovereignty in the island since the later years of the last century. As regards Meanguerita the Chamber does not consider it possible, in the absence of evidence on the point, that the legal position of that island could have been other than identical with that of Meanguera.”²⁶

5.26. On the other hand, and of particular relevance for present purposes, the Chamber of the Court concluded that:

“Under the final sentence of Article 26, the Chamber is however entitled to consider both the effective interpretation of the *uti possidetis juris* by the Parties, in the years following independence, as throwing light on the application of the principle and the evidence of effective possession and control of an island by one Party without protest by the other, as pointing to acquiescence. The evidence as to possession and control, and the display and exercise of sovereignty, by Honduras over El Tigre and by El Salvador over Meanguera (to which Meanguerita is an appendage), coupled in each case with the attitude of the other Party, clearly shows however, in the view of the Chamber, that

²⁵ *Ibid*, p 566, para 347.

²⁶ *Ibid*, p 579, para 367.

Honduras was treated as having succeeded to Spanish sovereignty over El Tigre, and El Salvador to Spanish sovereignty over Meanguera and Meanguerita.”²⁷

5.27. The Chamber’s 1992 Judgment is perfectly clear and definitive with regard to the *uti possidetis juris* of the islands between two Central American countries which have succeeded to the rights of the Spanish Crown. The principle set forth in the Judgment encompasses islands which are not *terra nullius* (or no man’s land) and that are not located in an isolated manner at great distances from the coast, but close or moderately close to the coastline. The relevance of the Judgment for the present proceedings is underscored by the fact that it applied to Meanguerita, which was uninhabited and sustained no economic activity. In contrast, Savanna Cay and South Cay are inhabited, Bobel Cay was previously inhabited, and the islands collectively sustain – and have long sustained – important fisheries activities regulated by Honduras.²⁸

5.28. The 1992 Judgment of the Chamber is of great significance to these proceedings, by reason of the following points:

- the islands in the Gulf of Fonseca and north of parallel 15 belonged to the Spanish Crown immediately prior to the emancipation of the colonies which took place in Central America in 1821;
- these islands were not *terra nullius*, i.e. susceptible to occupation;
- Spain’s sovereignty over these islands was initially assumed by the new independent republics (Honduras and El Salvador in the 1992 case, and Honduras and Nicaragua in the present case) and, from 1824, the Federal Republic of Central America;
- the islands in question were not necessarily populated or endowed with great economic activity or interest;
- the islands were not “isolated”, i.e. located at a great distance from any inhabited land but were close or moderately close to the mainland coasts;
- there were no concurrent claims for sovereignty by third parties over the same islands.

²⁷ *Ibid*, p 579, para 368.

²⁸ *Infra*, paras 6.52-6.54.

5.29. In the present case, as Chapter 6 demonstrates, there is no discrepancy between the legal titles supporting the application of the principle of the *uti possidetis* and subsequent *effectivités*. In effect, there is a legal title favourable to Honduras over the mainland and island coasts located to the north of the 15th parallel based on the *uti possidetis juris* of 1821, and another benefiting Nicaragua over the mainland and island coasts located to the south of it. The post-colonial *effectivités* coincide perfectly with this original title, and merely confirm it.

5.30. It is also clear that there has never been and there is not now any evidence of Nicaraguan *effectivités* to the north of parallel 15, whether on the mainland coasts or islands, or over the adjacent maritime areas. Consequently, if the legal title and the *effectivités* coincide for the benefit of Honduras, the present claims by Nicaragua to the north of Cape Gracias a Dios cannot be legally justified. There is nothing in the law which supports Nicaragua's claim regarding the coasts or maritime areas located north of parallel 15.

5.31. Indeed, it is pertinent to note that in the present case Nicaragua makes no claim based on *uti possidetis juris* in respect of the islands or maritime areas to the north of the 15th parallel. By contrast, in her Application of 6 December 2001 before the Court, instituting proceedings against Colombia, Nicaragua makes much of the principle of *uti possidetis* (even though the Application is historically misrepresentative by omitting any reference to the Royal Order of 1803 and its consequences for the colonial succession). The Application in that case states that:

“The remedies sought by Nicaragua relate, in the first place, to the questions of title to certain islands in the western Caribbean.

In 1821, date of Independence from Spain, the Provinces that formed the Captaincy General of Guatemala became the Federation of Central American States and sovereignty over all islands appurtenant to this territory devolved on the newly independent States by virtue of an original title in the Colonial era, confirmed by the principle of *uti possidetis juris*. The group of islands and keys of San Andres and Providencia pertain to those groups of islands and keys that in 1821 became part of the newly formed Federation of Central American States and, after the dissolution of the Federation in 1838, these islands and keys came to be part of the sovereign territory of Nicaragua. In connection with the issue of title [...]”.

5.32. For present purposes this passage is significant for several reasons. First, Nicaragua accepts the application of the *uti possidetis juris* in its insular and maritime dimension. Second, the Spanish islands and cays in

the Caribbean Sea were transferred after 1821 to the Federation of Central American States or to Colombia, which implies, for our purposes, that they were Honduran, Nicaraguan or Colombian after the dissolution of the mentioned Federation. Third, the Spanish General-Captaincies had precise limits, for their insular and maritime competences. And fourth, the cited principle had a projection from the continental mass in a West-East direction (towards San Andrés and Providencia), the same indicated by Cape Gracias a Dios and the traditional 15th parallel.

5.33. Consequently, Honduras maintains that it has an original title to the islands north of the 15th parallel on the basis of *uti possidetis juris*.

5.34. With regard to the maritime spaces themselves, in 1821 the Spanish Crown held territorial waters along all its coasts, whether metropolitan or colonial, and these measured 6 nautical miles since 1768. Therefore, the new Republics of the Americas succeeded not only to Spain's sovereignty over the territory but also to that over the territorial waters, with a breadth that they were free to maintain or vary, as they wished. The subsequent evolution of the law of the sea, however, explains the emergence of new maritime areas of differing breadth, where the coastal countries also held different competences. These areas were already partially considered in the 1948 Constitution of Nicaragua and in the 1957 Constitution of Honduras.²⁹

5.35. As a result of the then unforeseeable expansions of national maritime areas, the *uti possidetis juris* of 1821 takes on the character of an initial title that is in itself insufficient to explain its application *in extenso* to areas such as the continental shelf or the exclusive economic zone, all the more so when the 1982 UN Convention on the Law of the Sea generally allows these areas to extend to 200 nautical miles measured from the baseline. Hence on this point, it becomes a necessity, due to the insufficiency of the application of the *uti possidetis juris*, to confirm the initial legal title, its continuity and its subsequent space extension over the maritime areas on the foundation of postcolonial or republican Honduran *effectivités*. Therefore, the maritime *effectivités* here are significant in explaining how the original title, initially applicable to land, islands and their territorial waters, extended in the course of the middle of the 20th century towards these new emerging areas, by means of the practice and reciprocal conduct of both countries, mainly by their respective constitutional and domestic legislations.³⁰

²⁹ NM, p 28, paras 22 and 23.

³⁰ As we are reminded in the NM, p 28, paras 21, 22 and 23.

5.36. Chapter 6 provides a detailed analysis of the Honduran *effectivités* over the maritime areas north of the 15th parallel. It demonstrates the effective control that Honduras has traditionally exercised over these waters, and shows also the absence of any concurrent claim or activity by Nicaragua for more than a century and a half, until 1979/1980. Indeed, from 1821 to 1979/1980 there has never been any maritime dispute between these countries, much less an insular dispute. Nor was there ever any problem with third party countries, as indicated by the 1986 treaty delimiting the borders between Honduras and Colombia. It only remains to be asked what are the legal consequences of such conduct with regard to the maritime areas now the subject of these proceedings.

5.37. The delimitation of the exclusive economic zone and the continental shelf between States with adjacent coasts “will be effected by agreement between the Parties on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to reach an equitable solution”, pursuant to Articles 74 and 83, respectively, of the 1982 U.N. Convention on the Law of the Sea. For present purposes two points must be highlighted. First, the aforementioned rules of the law of the sea require “agreement” and not a treaty. Such agreement may be manifested in the form of reciprocal conduct which may show the existence of acquiescence or some other form of tacit consent, capable of generating and/or modifying rights and obligations between the parties. Second, it must be recalled that a Chamber of this Court has stated that the *uti possidetis juris* is “a firmly established principle of international law where decolonisation is concerned”³¹ and “a principle of customary international law” or “a rule of general scope”,³² and that it is “among the most important legal principles” and “classic principles”.³³ Therefore, this principle is the basis of the agreement referred to in Articles 74 and 83 of the 1982 Convention on the Law of the Sea.

³¹ ICJ Reports 1986, p 565, para 20.

³² *Ibid*, p 565, para 21.

³³ *Ibid*, p 567, para 26.

IV. CONCLUSION

5.38. In summary, the principle *uti possidetis juris* is legally significant for these proceedings because:

- (1) it applies to both land and maritime areas;
- (2) it is the basis of Honduran title to the territorial sea and the seabed thereof north of the 15th parallel;
- (3) it establishes the basis of initial title to the islands, which, in their turn, are entitled to their own territorial sea and seabed thereof, continental shelf and Exclusive Economic Zone; and
- (4) it gives rise to a presumption of Honduran title to the continental shelf and EEZ north of the 15th parallel.

Nicaragua has not invoked the application of the principle to support its claim against Honduras. The historical material available provides no support for any such claim by Nicaragua. Honduras' initial legal title is fully consistent with its subsequent peaceful and effective control over the areas north of the 15th parallel. These *effectivités* confirm Honduras' title, and Honduras' sovereign rights and jurisdiction north of the 15th parallel and Nicaragua's sovereign rights and jurisdiction south of the 15th parallel. These *effectivités* are addressed in Chapter 6.

CHAPTER 6

EFFECTIVITÉS AND THE EXERCISE OF HONDURAN SOVEREIGNTY AND JURISDICTION OVER THE ISLANDS AND SURROUNDING WATERS NORTH OF THE 15TH PARALLEL

I. INTRODUCTION

6.1. In its Memorial Nicaragua makes a claim to the waters and “all islets and rocks” in the disputed area north of the 15th parallel (14°59.8’).¹ The claim is significant in a number of respects (not least for the way in which it appears almost as an afterthought in the Memorial, being presented in an unnumbered paragraph on the final page of the Memorial, immediately before the Submissions). First, the Memorial constitutes the only time that Nicaragua has ever made a formal claim to all of these “islets and rocks”, which have not figured on official maps of Nicaragua, notwithstanding the fact that Nicaragua must have known of their existence since the middle of the 19th century. Second, Nicaragua provides no evidence whatsoever in its Memorial to support its claim or any part of it.² Third, the claim fails to recognise that the “islets and rocks” in question include a number of islands which sustain human habitation (by Honduran nationals and nationals of third States duly authorised by Honduras to live on the islands) and which provide the focal point for well-established fisheries activities which have been long-regulated by Honduras. And fourth, the Nicaraguan claim makes no effort whatsoever to address the fact that Honduras has long exercised full and effective sovereignty over the islands and jurisdiction over surrounding waters, which sovereignty has been recognised by third States.

¹ The islets, rocks, reefs and cays claimed by Nicaragua are stated to include, but not be limited to: 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: see NM, p 166 (paragraph not numbered), and p 9, para 15. Note that “Cayo Serranilla” is actually a bank.

² The only argument made by Nicaragua – unsupported by evidence – is that “[t]hese reefs and cays have traditionally been used as resting and fishing places by the Indian Communities in the area, in particular by the Sambo Miskito Indians of the Miskito Coast of Nicaragua”: NM, p 9, para 15.

6.2. In this Chapter Honduras demonstrates its historical, uninterrupted and unchallenged exercise of sovereignty and jurisdiction over the islands and waters which lie north of the 15th parallel. There can be no doubt that Honduras now displays – and has always displayed – power and authority over the islands through the exercise of jurisdiction and state functions. This is not a case, such as the situation described by the Arbitral Tribunal in the dispute between Eritrea and Yemen, of a “chequered and frequently changing situation in which the fortunes and interests of the Parties constantly ebb and flow with the passage of the years”.³ Honduras’ exercise of jurisdiction and state functions has been continuous and uninterrupted and, until the change of Government in Nicaragua in 1979, peaceful.

6.3. In its Memorial Nicaragua has provided *no* evidence of the exercise by it of jurisdiction or State functions in respect of any of the areas, including the islands, which it now claims. Nicaragua is asking the Court to delimit a maritime boundary in disregard of the facts. The evidence of Honduran sovereignty and jurisdiction, including its recognition by third States (including Nicaragua), is substantial, as the material set out in this Counter-Memorial indicates. Nicaragua has provided no material to challenge that evidence.

6.4. The object of this Chapter is not to prove Honduran title to the islands, but rather to demonstrate that the maritime boundary proposed by Nicaragua is inconsistent with Honduras’ continuous and peaceful exercise of sovereignty and jurisdiction over the islands, cays, reefs, banks and maritime areas north of the 15th parallel. That exercise of sovereignty and jurisdiction constitutes a relevant factor of prime importance for the purposes of delimiting the boundary – if not the most important relevant factor.⁴ The evidence tendered by Honduras confirms what has previously been recognised by both Parties to these proceedings (in the case of Nicaragua until 1980) as well as by third States, international organisations and corporations and other private actors, namely that the 15th parallel

³ Award of the Arbitration Tribunal 9 October 1998 in the Eritrea-Yemen Arbitration, para 456. With regard to the standard to be applied the Arbitration Tribunal stated: “The modern international law of the acquisition (or attribution) of territory generally requires that there be: an intentional display of power and authority over the territory, by the exercise of jurisdiction and state functions, on a continuous and peaceful basis” (Award, para 239). <http://www.pca-cpa.org/RPC/ch7ER-4E.htm> and <http://www.pca-cpa.org/RPC/CH10ER-4E.htm>.

⁴ *Infra* para 7.15, *et seq.*

constitutes, and has long constituted, the maritime boundary between Honduras and Nicaragua.⁵

6.5. The geographical and historical context of the present case was described in Chapters 2 and 3 of this Counter-Memorial. The present Chapter describes the evidence which confirms Honduran sovereignty and jurisdiction over the islands and waters north of the 15th parallel in more recent times, in particular by reference to fisheries and oil and gas activities authorised by Honduras, as well as other indicators of State and State-supported activity which is typically associated with the exercise of sovereignty and jurisdiction. Honduras considers that each element of this evidence, taken alone would be sufficient to establish sovereignty; taken together the cumulative evidence presents an overwhelming expression of long-established Honduran sovereignty and jurisdiction which Nicaragua cannot – and has not sought to – displace.

II. THE INDICIA OF HONDURAN EXERCISE OF SOVEREIGNTY

6.6. As set out above in Chapters 3 and 5 Honduras submits that there exists a continuum between its acquisition of initial title in 1821 and the subsequent exercise by it of sovereignty over the areas now claimed by Nicaragua. Honduras' effective administration of the area (including the islands and cays) is additional to the *uti possidetis juris*, and accordingly the role of *effectivités* serves to confirm the exercise of the right derived from its legal title.⁶ But even if this is a case in which legal title is not capable of showing exactly the territorial expanse to which it relates, the International Court has recognised that “*effectivités* can then play an essential role in showing how the title is interpreted in practice”.⁷

6.7. In this case the evidence of the exercise by Honduras of sovereignty over the islands and the surrounding waters north of the 15th parallel is compelling, and it is longstanding. By contrast Nicaragua has never exercised effective control over the area it now claims or any part of it. The factual situation confirming Honduran *effectivités* is succinctly summarized in the deposition of a Honduran fisherman who has been fishing around the cays for more than forty years:

“All my life I have been at sea, steering a fishing vessel. I have been coming to this area (Savanna Cay) during approximately 40

⁵ See *infra* paras 6.68 to 6.75.

⁶ *Frontier Dispute (Burkina Faso/Mali)*, ICJ Reports 1986, p 554 at 587.

⁷ *Ibid.*

years. I have 40 years personal experience in this area. The first island that I visited here was Bobel Cay, followed by the other islands, such as Savanna Cay, Port Royal Cay, South Cay. When I first came here 40 years ago, I learnt that north of Parallel 15 was Honduras. The Nicaraguan waters commence south of Parallel 15. That is what Christopher Columbus left us – parallel 15 as the divisional border between Honduras and Nicaragua. Thus everything that is found north of Parallel 15, including all the islands, belongs to Honduras, as the whole fishing community knows. The elders in the fishing community have always told us that this is Honduras. Everybody that I know have always told me that these islands belong to Honduras, and nobody knows any other different sovereignty. Likewise, my parents, who also formed part of the fishing community, knew that these islands belong to Honduras. I have never had any contact with the Nicaraguan fishermen or Nicaraguan authorities. The only occasions that I went south of Parallel 15 was to fish lobster, and I rapidly returned north. I have never seen a Nicaraguan patrol vessel in this area, except once, about 15 or 16 years ago when I saw one along the length of the beach in Raya.”⁸

6.8. Honduras’ effective administration of the area north of the 15th parallel is reflected in the long-standing application and enforcement of its laws and regulations and the regulation of economic activities in the area (principally oil and gas exploitation and fisheries activities). Specifically within the area Honduras:

- exercises administrative control over, and applies Honduran public and administrative legislation and laws (Section A) (paras 6.9 to 6.17);
- applies and enforces its criminal and civil laws in the area (Section B) (paras 6.18 to 6.23);
- regulates the exploration and exploitation of oil and gas activities (Section C) (paras 6.24 to 6.28);
- regulates fisheries activities (Section D) (paras 6.29 to 6.50);
- regulates immigration (Section E) (paras 6.51 to 6.59);
- carries out military and naval patrols and search and rescue operations (Section F) (paras 6.60 to 6.63); and

⁸ Statement of Selvin McKenlly Johnson, HCM, vol 2, annex 68.

- engages in public works and scientific surveys in the area (Section G) (paras 6.64 to 6.67).

Moreover, States and other third parties (including Nicaragua) have long recognised or not objected to Honduran sovereignty and jurisdiction over the area north of parallel 15 ((Section H), paras 6.68 to 6.75), and Honduras has consistently objected to any claims which have been recently asserted by Nicaragua to the area north of parallel 15 ((Section I), para 6.76).

A. HONDURAS EXERCISES ADMINISTRATIVE CONTROL OVER, AND APPLIES HONDURAN PUBLIC AND ADMINISTRATIVE LEGISLATION AND LAWS TO THE AREA

6.9. The islands and maritime area now claimed by Nicaragua have long been treated by Honduras as falling within its territory and being subject to its legislative, regulatory and other administrative control. As described in Chapter 3, above, official maps of Honduras dating back to the later 19th and early 20th century show *inter alia* Bobel Cay, Savanna Cay and South Cay as part of the territory of Honduras.⁹ The area falls within the Department of Gracias a Dios, one of the departments into which Honduras is divided for administrative purposes (see Plate 10). The administrative laws and provisions of the Department of Gracias a Dios apply to all of the islands and cays and to activities carried out in and around them, in all areas claimed by Nicaragua. The Honduran Constitution (Article 340) and the General Law on Administration are applicable and have been and are applied to the islands and cays and the surrounding waters, including the fishing banks.¹⁰

6.10. As described in further detail below, economic activities on and around the islands have long been regulated by Honduras, particularly in relation to fisheries and the exploration for and exploitation of oil and gas.¹¹ Article 5 of the Law of 1927 on the Use of National Waters confirmed the State's ownership of "islands and cays already formed and that are formed in the maritime zone",¹² and that provision has long been recognised as encompassing Bobel Cay, South Cay, Port Royal Cay, and Savanna Cay. In relation to exploitation of oil and gas, Articles 619 and 621 of the Civil Code (as amended in 1950) is applicable to the area, and recognises the

⁹ *Supra*, paras 3.58 to 3.59.

¹⁰ See *infra* para 6.15.

¹¹ See *infra* paras 6.24 to 6.28 and 6.29 to 6.50.

¹² Decree No. 137 of 9 April 1927, Gazette No. 7375 of 3 August 1927.

ownership by the State of “all natural wealth that exists or can exist in its submarine continental shelf and insular zones” over which Honduras has sovereignty.¹³ Also applicable to activities in the area are the Petroleum Law of 1962,¹⁴ the Mining Code of 1968,¹⁵ the Hydrocarbon Law of 1984¹⁶ and the General Law of Mining of 1998.¹⁷ Fisheries activities in the area are governed by the Fishing Law of 1959,¹⁸ which provides *inter alia* for the grant of licences, including in and around the area now claimed by Nicaragua. In 1980 Honduras adopted a Law on the Exploitation of the Natural Resources of the Sea.¹⁹ This proclaimed an Exclusive Economic Zone in addition to rights claimed in relation to the territorial sea and the continental shelf, and confirmed Honduran legislative, regulatory and administrative jurisdiction over that zone. Moreover, as described in detail in the following sections, Honduran immigration laws are also applied to the area (see below at paras 6.51 to 6.58), as are Honduran fisheries laws (see below at paras 6.29 to 6.50). Honduran administrative laws have also long been applied, including in respect of matters pertaining to customs and maritime requirements. And, pursuant to Honduran employment laws, work permits have been granted to Honduran and foreign nationals, including Nicaraguan nationals, to fish around the islands north of the 15th parallel, including Savanna Cay.²⁰

6.11. Honduran customs laws are being – and have long been – applied to the islands and waters north of the 15th parallel. The current Customs Supervisor for the Department of Gracias a Dios describes the manner in which his office issues permits allowing Honduran and Jamaican citizens to export (to Jamaica and elsewhere outside Honduras) fish which have been caught in the fisheries grounds around *inter alia* South Cay, Bobel Cay and Savanna Cay.²¹ He confirms from his own knowledge that “this type of exports have been made since 1970”.²² The Customs Supervisor further

¹³ Arts. 619 and 621 of the Civil Code were amended by Decree No. 104 of 7 March 1950, Gazette No. 145055 of 16 March 1950.

¹⁴ Decree No. 4, 25 October 1962, Gazette No. 17836, 17837 and 17838 of 27, 28 and 29 November 1962.

¹⁵ Decree No. 143, 26 October 1968, Gazette No. 20118, 20119, and 20120 of 8, 9 and 10 July 1970.

¹⁶ Decree No. 194-84, 25 October 1984, Gazette No. 24557 of 28 February 1985.

¹⁷ Decree 292-98, 30 November 1998, Gazette No. 28785 of 6 February 1999.

¹⁸ Decree No. 154 of 19 May 1959, Gazette No. 16807 of 17 June 1959.

¹⁹ Decree No. 921, 28 April 1980, Gazette No. 23127 of 13 June 1980.

²⁰ See *infra*, paras 6.53 and 6.54.

²¹ See Statement of Mr Eugenio Chirinos Mejia, HCM, vol 2, annex 69.

²² *Ibid.*

confirms that Honduran fisheries “exports have been taking place since 1940”.²³

6.12. In his deposition the Port Supervisor of Puerto Lempira explains the system for the registration of motor boats which are used for fishing in and around the islands:

“concerning the motorboats of the persons who operate in the Cays, some of them have come in person to the Port in order to register them but in other occasions they have had to go to the cays to register them; most of these traditional fishing vessels are registered at the Port’s Authority; the registration of these vessels is just for one year and then is subject to renewal; in order to register those motorboats in question an import license is required when they are manufactured abroad; he also represents that in the visits made to the Cays he has not found any occupants with permits or documents from Nicaragua as they have always acknowledged the jurisdiction of Honduras; these fishermen from the Cays carry out their activity in the nearby fishing banks of the Cays known as Savanna, Bobel, Gorda Cay and South Cay”.²⁴

6.13. Individuals resident on Savanna Cay (and the other islands) are also required to register their motor boats. The annexes to this Counter-Memorial include examples of motor boat registration documents requested by and granted to residents of Savanna Cay, including confirmation of payment of registration fees and taxes (in relation to imports). These are directed to or originate from the *Dirección General de la Marina Mercante* of the Republic of Honduras and apply to boats brought in by Jamaicans who are living on Savanna Cay.²⁵

6.14. Similarly, the Mayor of the Municipality of Ramon Villeda Morales, who is responsible for the collection of municipal taxes, confirms that taxes are payable in respect of economic activities carried out on the islands and cays north of the 15th parallel (even if they are not always paid!).²⁶ Relatedly, the Municipality of Puerto Lempira has taken steps to

²³ *Ibid.*

²⁴ See Statement of Fabián Flores Ramirez, HCM, vol 2, annex 73

²⁵ See e.g. Application for Renewal of Registration of a Small Vessel N.V-244, Submitted on 21 July 1997 to the General Directorate of the Merchant Marine of Honduras by Mr. Donald Moxan, a Resident of Savanna Cay, HCM, vol 2, annex 128; Application for Registration of a Small Vessel N.V-310, Submitted on 26 March 1997 to the General Directorate of the Merchant Marine of Honduras by Mr. Victor V. Vasell, a Resident of Savanna Cay, HCM, vol 2, annex 127.

²⁶ Statement of Santos Calderon Morales, HCM, vol 2, annex 78.

ensure that the buildings which have been constructed on Savanna Cay are “all numbered and registered with the municipality at Puerto Lempira”.²⁷ According to an official report of the Directorate General on Population, by 1999 a total of 38 buildings had been identified in Savanna Cay, South Cay, Gorda Cay and Port Royal Cay.²⁸

6.15. Honduran fisheries conservation laws apply to the waters immediately north of the 15th parallel. For example, a Resolution adopted in 2000 by the Ministry of Agriculture and Livestock and the Directorate-General on Fisheries, provides that “all fishing boats that fish north of the 15th parallel up to the limit of Honduras’ maritime jurisdiction shall be decommissioned and their fishing licences suspended”.²⁹ The Resolution includes a map which clearly shows that the Resolution shall apply to the waters around the cays, as well as the fishing banks in the area. The Resolution extends an earlier resolution dating back to 1999, and is based on Article 340 of the Honduran Constitution, Article 116 of the General Law on Administration, and Article 43 of the Law of Fisheries.

6.16. By contrast, Nicaragua has provided no evidence to the International Court of Justice which indicates that before 1980 it treated the area it now claims as being subject to its sovereignty and jurisdiction. And even after 1980 the claim comprises nothing more than a general assertion of entitlement which is unsupported by any evidence. Nicaragua considers it unnecessary to provide any maps – whether historical or otherwise – showing the islands and maritime space as falling within its territorial sovereignty, or any laws – whether criminal, civil, administrative or other – which purport to be applicable to persons on, or activities located in, those islands or areas. No evidence is before the Court to show that any Nicaraguan laws – customs, immigration, fisheries, municipal or other – have ever been applied to the islands and maritime spaces. Moreover, Nicaragua has provided no evidence to indicate that, prior to the mid-1990’s, it ever objected to the publication of official Honduran maps showing the islands and the maritime area as being a part of Honduras. Nor has it provided any evidence that it has ever objected to the prescription and

²⁷ See Statement of Maurice Gowe, HCM, vol 2, annex 67. He goes on to explain:

“All these houses are enumerated and registered in the municipality of Puerto Lempira. The municipality enumerated them approximately two years ago, given that the fishing official wanted to know how many people live in the cay.”

See also Statement of Everton Anthony, HCM, vol 2, annex 66.

²⁸ Note DG Addressed by the Director of Population And Migratory Policy of Honduras to the Vice-Minister of Foreign Affairs on 30 November 1999, HCM, vol 2, annex 148.

²⁹ Annex “E” Resolution N.06-2000 to Operations Order N.21-2000, HCM, vol 2, annex 142.

application by Honduras of its fisheries, immigration, customs, municipal or other laws, whether civil or criminal laws, to the area in question.

6.17. To the contrary, as described below Nicaragua's practice confirms that the area north of the 15th parallel is properly to be treated as part of Honduras. Examples of such practice may be found in Nicaraguan oil and gas concessions (which treat the 15th parallel as the boundary and northern limit of Nicaraguan continental shelf)³⁰ and the policing by Nicaragua of fisheries activities in its waters (see, for example, the practice of Nicaraguan coastguards of escorting Honduran ships alleged to be fishing illegally up to the 15th parallel where they are then released).³¹ Nicaraguan environmental and conservation laws applicable to maritime areas (for example establishing biological reserves) apply to the areas south of the 15th parallel;³² there is no evidence before the Court that any such laws have been applied north of the 15th parallel. Similarly, a 1999 report prepared by the Ministry of Environment and Natural Resources of Nicaragua relating to the management of coastal areas in Nicaragua includes a Government-prepared map (dated 1997) showing the delimitation and zoning of coastal zones in Nicaragua's Atlantic coast: the map shows that the northernmost limit of Nicaraguan insular and coastal interests lies south of the 15th parallel, and does not include any of the islands and cays now claimed by Nicaragua.³³

B. HONDURAS APPLIES AND ENFORCES ITS CRIMINAL AND CIVIL LAWS IN THE AREA NORTH OF PARALLEL 15

6.18. The civil and criminal laws of Honduras have been applied to – and enforced in – the area, including the islands, in a continuous and uninterrupted manner for many decades.

³⁰ See *infra* para 6.24 *et seq.*

³¹ See Statement of Bob Ward McNab Bodden, HCM, vol 2, annex 86:

“[...] he remembers an incident last year when he had a problem with a fishing boat of Mr. Henry Jackson registered in Nicaragua which he brought to Honduras in order to have it repaired in French Harbor; the boat was being tugged together with a recreational boat with an Honduran flag and he was escorted by a Nicaraguan patrol from Puerto Cabezas until they reached Parallel 15° when the patrol returned.”

³² See e.g. Nicaraguan Declaration of the Marine Biological Reserve “Cayos Miskitos y Franja Costera Inmediata”. Decree N.43-91 of 31 October 1991, Published in the Official Gazette of Nicaragua N.207 of 4 November 1991, HCM, vol 2, annex 164.

³³ Project for Improving the Capacity to Organize the Natural Resources of the Caribbean Coast CEPNET/BID. Ministry of Environment and Natural Resources of Nicaragua (MARENA) and UNEP- CEP/RCU, 1999, HCM, vol 2, annex 165.

6.19. Beyond the application of laws and regulations relating to fisheries, oil and gas activities and the environment, there is also extensive evidence of the applications of general civil and criminal laws to the area, including for example South Cay.³⁴ Accidents in the area have long been – and continue to be – systematically reported to authorities in Puerto Lempira and elsewhere in Honduras, not in Nicaragua.³⁵

(1) Criminal Law

6.20. Generally, Honduran criminal law has been applied to criminal acts occurring on the islands and cays. For example, a 1996 case involved the theft of diving tanks on South Cay. The Honduran Court of First Instance (Juzgado de Letras Departamental) in Puerto Lempira took jurisdiction over the case and initiated and carried out a formal investigation, including the calling of witnesses.³⁶ Other cases have involved the theft of an abandoned boat which was found on Savanna Cay³⁷ and assault and theft in relation to a dispute over ownership of a boat around Savanna and Bobel cays.³⁸

6.21. More specifically, Honduras has long prescribed and applied its drug laws in the area, in collaboration with other States, in particular the United States. For example, a 1993 Project by the Honduran authorities (involving the Public Security Force, the Air Force and the Navy) targeted narco-production and trafficking activity in the territory of Honduras. The Project, known as Plan de Operaciones “Satélite”, was carried out jointly with the United States Drug Enforcement Administration. The Project document refers expressly to *inter alia* South Cay, Bobel Cay and Savanna Cay as falling within the scope of the activity.³⁹

³⁴ See Statement of Fabián Flores Ramirez, Port Supervisor, on enforcement of fisheries laws and of criminal law, HCM, vol 2, annex 73.

³⁵ Statement of Edgar Henry Haylock Arrechevala, HCM, vol 2, annex 74.

³⁶ Criminal Complaint (File no. 245-96): Order Issued by the Lower Court of Puerto Lempira, Department of Gracias a Dios on 1 April 1996. (Complaint Brought against Mr. Silvano Teleth Lucan and Mr. Antonio Pita), HCM, vol 2, annex 104.

³⁷ Application Concerning the Finding of a Motor Vessel (File no. 2302-97); Communication Issued by the Lower Court of Puerto Lempira, Department of Gracias a Dios on 7 April 1997. (Application brought by Mr. Pleny Gibson Hyde), HCM, vol 2, annex 105.

³⁸ See witness statements taken by the judge in Puerto Lempira on 17 August 1998, and 8 and 16 October 1998, HCM, vol 2, annex 106.

³⁹ “Satellite Operations Plan”, 1993, HCM, vol 2, annex 156.

(2) Civil Law

6.22. Where accidents have occurred on and around the cays and banks, usually involving divers, Honduran tort laws arising out of labour contracts has applied. There are numerous decisions of local Honduran courts which make awards of compensation. In these cases accidents taking place in and around the cays are treated as occurring in Honduras. For example, in June 1990 Arnulfo Briones Martinez Sambola was diving for marine snails in Middle Bank when he got divers "bends" and permanently lost the use of his legs. He claimed and obtained from the local court an order freezing the assets of the ship-owner who had employed him, and subsequently was awarded compensation under the Honduran Labour Code.⁴⁰ Other cases have involved similar accidents at Middle Bank,⁴¹ Rosalind Bank⁴² and at fishing bank "Tres-Nueve",⁴³ both treated by Honduran courts as being located within Honduran territory.

6.23. By contrast, Nicaragua has provided no evidence to the International Court of Justice which indicates that Nicaraguan civil or criminal laws are intended to apply in the area, or that they have been enforced in the area.

⁴⁰ HCM, vol 2, annex 101.

⁴¹ Labour Complaint (File no. 4-91) before the Lower Court of Labour of Puerto Lempira, Department of Gracias a Dios (Submitted by Mr. Bertin Williams Gómez), regarding accident in Middle Bank, HCM, vol 2, annex 100.

⁴² See e.g. Labour Complaint (File no. 13): Attestation by the Lower Court of Labour of Puerto Lempira, Department of Gracias a Dios issued on 13 February 1992 (Case of Mr. Medina Websta Andares), HCM, vol 2, annex 102. See also Labour Complaint (File no. 238) before the Lower Court of Labour of Roatán, Bay Islands (Submitted by Rubio Maly Gómez on 13 December 1993), Document 6-01 deposited with the Registry.

⁴³ See e.g. Excerpt from a Labour Complaint (File no. 16.295) before the Lower Court of Labour of Puerto Lempira, Department of Gracias a Dios (Submitted by Moisés Leonardo Tomson), Document 6-02 deposited with the Registry; Excerpt from a Labour Complaint (File no. 16.297) before the Lower Court of Labour of Puerto Lempira, Department of Gracias a Dios (Submitted by Erasmo Granuel Díaz), Document 6-03 deposited with the Registry; Excerpt from a Labour Complaint (File no. 14) before the Lower Court of Labour of Puerto Lempira, Department of Gracias a Dios (Submitted by Marvin Trapp), Document 6-04 deposited with the Registry; Excerpt from a Labour Complaint (File no. 11) before the Lower Court of Labour of Puerto Lempira, Department of Gracias a Dios (Submitted by Delio Reyes Deveth), Document 6-05 deposited with the Registry; Excerpt from a Labour Complaint (File no. 266-94) before the Lower Court of Labour of Roatán, Bay Islands (Submitted by Eliseo Sierra Alvarez, on 3 February 1994), Document 6-06 deposited with the Registry; Excerpt from a Labour Complaint (File no. 2351-97) before the Lower Court of Labour of Puerto Lempira, Department of Gracias a Dios (Submitted by Walterio Méndez Green), Document 6-07 deposited with the Registry.

C. HONDURAS REGULATES THE EXPLORATION AND EXPLOITATION OF OIL AND GAS ACTIVITIES IN THE AREA

6.24. Honduras and Nicaragua have long treated the 15th parallel (14°59.8') as, respectively, the southern and northern boundaries of their national territory for the purpose of licensing activities related to the exploration for, and the exploitation of, oil and gas. This limit has also been systematically recognised by professionals in the field, most particularly by specialised journals and handbooks. Examples of the numerous diagrams and maps clearly identifying the 15th parallel as the limit for Honduran and Nicaraguan oil development concessions are set out in the Annexes to the Counter-Memorial.⁴⁴

6.25. The evidence comprises three sets of practices. First, concessions granted by Honduras which treat the 15th parallel as the southern boundary of Honduras. Secondly, concessions granted by Nicaragua which treat the 15th parallel as the northernmost boundary of Nicaragua. Thirdly, concessions granted jointly by Honduras and Nicaragua, in relation to potentially straddling oil and gas fields, which treat the 15th parallel as the boundary between the two States.

6.26. Honduras granted a series of oil concessions for the exploration and/or exploitation of oil and gas within the territory of Honduras, in the area north of the 15th parallel (Plate 11).⁴⁵ Each of these concessions (and their extensions) treats the 15th parallel as the southernmost line of the territory of Honduras. Many of the concessions were granted to third State companies. The details of each of these concessions was published in '*La Gaceta*', the Official Journal of the Republic of Honduras. The first concession was granted in 1955.⁴⁶ Other concessions have been granted

⁴⁴ See e.g. L. Sass and C.H. Neff. 1962. Developments in South America and Caribbean Area, Bulletin of the American Association of Petroleum Geologists 46 (II):1125 (map of Honduras); Neff, C.H. 1962. Developments in South America and Caribbean Area, Bulletin of the American Association of Petroleum Geologists 54/7:1380, 1383; Petroleum Concession Handbook. Supplement 6, Barrows 1972 (map of Nicaragua); P. Jacobsen, Jr. and C.H. Neff. 1972. Developments in South America and Caribbean Area, Bulletin of the American Association of Petroleum Geologists 56/9:1653-54 (maps of Honduras and of Nicaragua); Hatfield, L.E., B.A. Tator and C.H. Neff. 1975. Developments in South America and Caribbean Area, Bulletin of the American Association of Petroleum Geologists 59 (10):1806, 1808 (maps of Honduras and of Nicaragua). All diagrams in HCM, vol 2, annex 118.

⁴⁵ And HCM, vol 3, Plate 21.

⁴⁶ Resolution Concerning an Oil Concession, Published in the Official Gazette of Honduras N.15.510 of 3 February 1955, Document 6-08 deposited with the Registry.

more recently.⁴⁷ Applications by oil companies for concessions north of the 15th parallel have always been submitted to Honduran authorities.⁴⁸ At least 21 concessions have been granted.⁴⁹ Nicaragua has never objected to any of these concessions.

⁴⁷ Permit for surface recognition of hydrocarbons granted to "Aracca Petroleum Corporation", Published in the Official Gazette of Honduras No. 23.958 of 11 March 1983, Document 6-09 deposited with the Registry.

⁴⁸ See Resolution Concerning an Application for an Oil Concession Submitted by "Republic Oil and Gas, S.A. de C.V.", Official Gazette of Honduras N.20.330 of 19 March 1971, HCM, vol 2, annex 113. See also Application for an Oil Concession submitted by "Petrolera Hondureña S.A", Published in the Official Gazette of Honduras No. 17.566 of 2 January 1962, Document 6-10 deposited with the Registry; Application for an Oil Concession submitted by "Signal Exploration (Honduras) Company", Published in the Official Gazette of Honduras No. 19.175 of 29 May 1967, Document 6-11 deposited with the Registry; Application for an Oil Concession submitted by "Signal Exploration (Honduras) Company", Published in the Official Gazette of Honduras No. 19.184 of 8 June 1967, Document 6-12 deposited with the Registry; Application for an Oil Concession submitted by "Phillips Petroleum Company of the Americas", Published in the Official Gazette of Honduras No. 21.380 of 6 September 1974, Document 6-13 deposited with the Registry; Application for an Oil Concession submitted by "Cambridge Resources Corporation", Published in the Official Gazette of Honduras No. 23.992 of 25 April 1983, Document 6-14 deposited with the Registry.

⁴⁹ See e.g. oil Concession, granted to "Pure Oil Company of Honduras, Inc.", Official Gazette of Honduras No. 18.673 of 22 September 1965, HCM, vol 2, annex 107; Oil concession Granted to "Signal Exploration (Honduras) Company", Published in the Official Gazette of Honduras N.19.111 of 9 March 1967, HCM, vol 2, annex 108. See also Resolution Concerning an Oil Concession Granted to "Central American Mining and Oil Inc", Published in the Official Gazette of Honduras No. 18.000 of 15 June 1963, Document 6-15 deposited with the Registry; Resolution Concerning an Oil Concession Granted to "Pacific Inland Oil Corporation", Published in the Official Gazette of Honduras No. 19.022 of 23 November 1966, Document 6-16 deposited with the Registry; Resolution Concerning an Oil Concession Granted to "International Geophysical Explorations, Inc.", Published in the Official Gazette of Honduras No. 19.045 of 20 December 1966, Document 6-17 deposited with the Registry; Resolution Concerning an Oil Concession Granted to "Pure Oil Company of Honduras, Inc.", Published in the Official Gazette of Honduras No. 19.140 of 17 April 1967, Document 6-18 deposited with the Registry; Resolution Concerning an Oil Concession Granted to "Compañía Petrolera Chevron Honduras", Published in the Official Gazette of Honduras No. 19.320 of 18 November 1967, Document 6-19 deposited with the Registry; Resolution Concerning an Oil Concession Granted to "Lloyd Honduras, Inc.", Published in the Official Gazette of Honduras No. 19.668 of 11 January 1969, Document 6-20 deposited with the Registry; Resolution Concerning an Oil Concession Granted to "LLE Honduras, Inc.", Published in the Official Gazette of Honduras No. 19.912 of 1 November 1969, Document 6-21 deposited with the Registry; Resolution Concerning an Oil Concession Granted to "Mobil Exploration Honduras, Inc.", Published in the Official Gazette of Honduras No. 19.913 of 3 November 1969, Document 6-22 deposited with the Registry; Resolution Concerning an Oil Concession Granted to "Compañía Petrolera Chevron Honduras", Published in the Official Gazette of Honduras No. 19.999 of 13 February 1970, Document 6-23 deposited with the Registry; Resolution Concerning the extension of an Oil Concession Granted to "Union Oil Company of Honduras, Inc.", Published in the Official Gazette of Honduras No.

6.27. Similarly, Nicaragua has granted a series of oil concessions for the exploration and/or exploitation of oil and gas within the territory of Nicaragua, in the area south of the 15th parallel (Plate 12).⁵⁰ Each of these concessions (and their extensions) treats the 15th parallel as the northernmost limit of the territory of Nicaragua, in the sense that none of the concessions reaches north of that parallel. Taken together, the Honduran and Nicaraguan concessions show graphically the treatment by both States of the 15th parallel as their maritime boundary (Plate 13). Many of the concessions were granted to third State companies. All requests for concessions south of the 15th parallel were always submitted to the Nicaraguan authorities, at times by companies “sister” to those carrying out oil development activities north of the 15th parallel, all of them belonging to the same foreign corporate group. Several oil concessions granted by Nicaragua explicitly established parallel 14°59’08” as the northernmost boundary of the concession.⁵¹ On one occasion such limit was corrected at the request of the company concerned in order to modify the original limit

20.960 of 23 April 1973, Document 6-24 deposited with the Registry; Resolution Concerning an Oil Concession Granted to “Searidge Petroleum, Ltd.”, Published in the Official Gazette of Honduras No. 21.444 of 22 November 1974, Document 6-25 deposited with the Registry; Resolution Concerning an Oil Concession Granted to “Phillips Petroleum Company Honduras”, Published in the Official Gazette of Honduras No. 21.444 of 22 November 1974, Document 6-26 deposited with the Registry; Resolution Concerning the extension of an Oil Concession Granted to “Union Oil Company of Honduras”, Published in the Official Gazette of Honduras No. 21.610 of 12 June 1975, Document 6-27 deposited with the Registry; Resolution Concerning a Permit for Surface Recognition of Hydrocarbons Granted to “Texaco Caribbean, Inc.”, Published in the Official Gazette of Honduras No. 22.313 of 4 October 1977, Document 6-28 deposited with the Registry; Resolution Concerning a Permit for Surface Recognition of Hydrocarbons Granted to “Texaco Caribbean, Inc.”, Published in the Official Gazette of Honduras No. 22.315 of 6 October 1977, Document 6-29 deposited with the Registry; Resolution Concerning a Permit for Surface Recognition of Hydrocarbons Granted to “Texaco Caribbean Inc”, Published in the Official Gazette of Honduras No. 22.324 of 18 October 1977, Document 6-30 deposited with the Registry.

⁵⁰ And HCM, vol 3, Plate 22.

⁵¹ See e.g. Certification of Decree Concerning an Oil Concession granted to “Western Caribbean Petroleum Company” and “Occidental of Nicaragua, Inc.”, Official Gazette of Nicaragua No. 272 of 28 November 1974 (“Block No. I), HCM, vol 2, annex 117. See also Resolution Concerning an Oil Concession Granted to “Mobil Exploration Corporation”, Decree 38 DRN of 3 May 1966, Published in the Official Gazette of Nicaragua No. 202 of 4 September 1968, Document 6-31 deposited with the Registry; Resolution Concerning an Oil Concession Granted to “Western Caribbean Petroleum Company”, Decree N.46-DRN, Published in the Official Gazette of Nicaragua No. 117 of 29 May 1967, Document 6-32 deposited with the Registry; Resolution Concerning Renewal of petroleum concession to “Western Caribbean Petroleum Company”, Decree N.129-DRN, Published in the Official Gazette of Nicaragua No. 72 of 4 April 1970, Document 6-33 deposited with the Registry; Resolution Concerning Renewal of petroleum concession to “Western Caribbean Petroleum Company” and to “Occidental of Nicaragua, Inc.”, Decree No. 132-DRN, Published in the Official Gazette of Nicaragua No. 140 of 23 June 1976, Document 6-34 deposited with the Registry.

of 14°59', established in the first concession, to the limit of 14°59'08" by means of a new Decree of the President of the Republic.⁵² The details of each of these concessions was published in '*La Gaceta*', the Official Journal of the Republic of Nicaragua. The first concession was granted in 1968.⁵³ The most recent concession appears to have been granted in 1975.⁵⁴

6.28. One oil field which straddles the 15th parallel was explored jointly by Nicaraguan and Honduran concerns ("Operación Conjunta Coco Marina"). Two oil concessions were granted, one in Honduras (Block 8), granted to Union Oil Company of Honduras, and one in Nicaragua (Union III), granted to its sister corporation Union Oil Company of Central

⁵² Certification of Decree Concerning an Oil Concession granted to "Western Caribbean Petroleum Company", Official Gazette of Nicaragua N.161 of 18 July 1968 ("Block No. I), HCM, vol 2, annex 115; Certification of Decree Concerning an Oil Concession granted to "Western Caribbean Petroleum Company" and "Occidental of Nicaragua, Inc." (Clarification of Decree 86-DRN [and others]), Official Gazette of Nicaragua No. 206 of 9 September 1970, HCM, vol 2, annex 116.

⁵³ Resolution Concerning an Oil Concession Granted to "Pure Oil of Central America Inc", Published in the Official Gazette of Nicaragua No. 204 of 6 September 1968, Document 6-35 deposited with the Registry.

⁵⁴ Resolution Concerning an Oil Concession Granted to "Western Caribbean Petroleum Company" and to "Occidental of Nicaragua Inc.", Published in the Official Gazette of Nicaragua No. 259 of 14 November 1975, Document 6-36 deposited with the Registry. Other concessions granted by Nicaragua: "Pure Oil of Central America Inc", Gazette No. 204, 6 September 1968 (Request for such concession in Published in the Official Gazette of Nicaragua No. 200, 2 September 1963), Document 6-37 deposited with the Registry; Resolution Concerning an Oil Concession Granted to "Union Oil Company of Central America", Published in the Official Gazette of Nicaragua No. 137 of 20 June 1972, Document 6-38 deposited with the Registry; Resolution Concerning extension of oil concession to "Union Oil Company of Central America", Published in the Official Gazette of Nicaragua No. 190 of 22 August 1975, Document 6-39 deposited with the Registry; Resolution Concerning an Oil Concession Granted to "Union Oil Company of Central America", Decree 25-DRN, Published in the Official Gazette of Nicaragua No. 130 of 12 June 1974, Document 6-40 deposited with the Registry; Resolution Concerning an Oil Concession Granted to "Union Oil Company of Central America", Decree N.73-DRN, Published in the Official Gazette of Nicaragua No. 22 of 27 January 1975, Document 6-41 deposited with the Registry; Resolution Concerning an Oil Concession Granted to "Texaco Caribbean Inc", Published in the Official Gazette of Nicaragua No. 154 of 10 July 1975, Document 6-42 deposited with the Registry; Resolution Concerning an Extension of Oil Concession Granted to "Union Oil Company of Central America", Decree no 170-DRN, Published in the Official Gazette of Nicaragua No. 108 of 18 May 1977, Document 6-43 deposited with the Registry; Resolution Concerning an Extension of Oil Concession Granted to "Union Oil Company of Central America", Decree No. 190-DRN, Published in the Official Gazette of Nicaragua No. 291 of 22 December 1977, Document 6-44 deposited with the Registry; Resolution Concerning an Oil Concession Granted to "Union Oil Company of Central America", Decree no 206-DRN, Published in the Official Gazette of Nicaragua No. 172 of 3 August 1978, Document 6-45 deposited with the Registry.

America. The joint initiative was agreed privately by both corporations but approved by the Governments of Honduras and Nicaragua. Operation expenses were shared equally between partners. The actual well was dug in 1969 at a point located at 15°00'00"N 82°43'30"W, but covered areas of both concessions. As reported by Union Oil Company of Honduras to the Honduran Ministry of Natural Resources, the precise location of the well was conditioned by the seismic studies.⁵⁵ A legal opinion issued by the Honduran government on the matter stated that the maritime boundary with Nicaragua was at 14°59'08", that all concessions granted by Hondurans reached this limit, and that all information concerning activities north of this boundary had to be reported exclusively to the Honduran Government.⁵⁶

D. HONDURAS REGULATES FISHERIES ACTIVITIES IN THE AREA

6.29. The area north of the 15th parallel over which Honduras exercises sovereignty and jurisdiction and which is now claimed by Nicaragua includes a number of productive, significant and well-established fisheries grounds. During the 19th century the area was an important turtle fishery.⁵⁷ More recently and today the fisheries resources include lobster, grouper and red snapper. As described in the previous section, the Honduran islands claimed by Nicaragua have long served – and continue to serve today – as bases used by the fishing community to carry out their activities.

6.30. The area claimed by Nicaragua has been subject to Honduran-regulated fisheries activity and jurisdiction for many decades, in an arc linking the area north of the 15th parallel with the islands of Roatán and Guanaja (Plate 14). There is no evidence that Nicaragua has ever regulated, or even sought to regulate, fisheries activity in this area. At least since the 1930s Honduran-registered fishing boats from Roatán and Guanaja (the Bay Islands of Honduras) were active around Savanna Cay, Bobel Cay and Rosalinda Bank. As described below, throughout the period

⁵⁵ Report from "Union Oil Company of Honduras" to the Ministry of Natural Resources of Honduras of 20 February 1969 on Joint Drilling Operations "Coco Marina". ("The Union Oil Company of Honduras allows itself to clarify that the point picked out for the drilling of the well was set at that place to explore the common structure that was defined with the seismic survey and covers concession areas in Honduras and Nicaragua [...]"; HCM, vol 2, annex 110.

⁵⁶ Opinion of the Interstate Study Commission [undated], HCM, vol 2, annex 109; Preliminary Report on the Drilling Operations of "Coco Marina N.1" oil well, submitted to the General Director of Mines and Hydrocarbons of the Ministry of Natural Resources of Honduras on 26 May 1969, HCM, vol 2, annex 111.

⁵⁷ See *supra* paras 3.9-3.13.

it is apparent that the area has been treated as part of Honduras, and that the area has not been used by Nicaraguan fishing vessels.

6.31. Such recognition is reflected also in the activities of third States, dating back more than 50 years. In 1943 the Fish and Wildlife Service of the US Department of the Interior and the US Office of the Coordinator of Inter-American Affairs prepared a Report on "The Fisheries and Fishery Resources of Honduras".⁵⁸ The Report describes the potential fishing area in Honduras offshore from Cape Gracias a Dios as

"a great expanse of shallow water with many cays, reefs and shoals. The 100-fathom line is about 90 miles off Cape Gracias a Dios and about 15 miles off Point Patuca. A number of important banks occur in this section. They include Gorda Bank, Rosalind Bank, Serranilla Bank, Thunder Knoll and others."⁵⁹

6.32. This area, which is precisely that now claimed by Nicaragua, has also been the subject of various studies funded by the United Nations and the FAO Regional Central America Fishery Development Project, which treat the area as falling within the territory of Honduras. In 1971 the UN and FAO published a biological study aimed at research on spiny lobster and coastal shrimp in the Western Caribbean. To conduct such research, the scientific team undertook in 1970 several cruises in the area, three in Honduras and one in Nicaragua. As reported in the study, two of the cruises in Honduras were completed between 16°00'N and 80°50'/82°10'W, and between 15°00'N and 16°00'N, respectively. Research in Nicaragua was performed in the area between 13°50'N and 14°15'N, i.e. south of the 15th parallel.⁶⁰

6.33. In the 1980s the FAO, in collaboration with the United Nations Development Programme and the Inter-American Development Bank supported further fisheries studies in Honduras, including in the area now claimed by Nicaragua. The studies were initiated by a proposal from the Honduran Government's Corporación Nacional de Inversiones (National Investment Corporation) to the Inter-American Development Bank, requesting financial assistance to examine the potential for fisheries in the northern area of Honduras, including specifically around the fisheries banks

⁵⁸ HCM, vol 2, annex 162.

⁵⁹ *Ibid*, p 2. Each of these banks falls within the area now claimed by Nicaragua.

⁶⁰ "Exploratory and Simulated Commercial Fishing Operations in the Western Caribbean Sea. R/V "CANOPUS", May to November 1970" by Marcel Giudicelli, CCDO-FAO-UNDP, San Salvador 1971, HCM, vol 2, annex 163.

of Rosalinda and Thunder Knoll, as well as the Media Luna reefs.⁶¹ In 1985 the FAO published a Report establishing a Programme on “Investigation and Commercial Evaluation of the Main Maritime Fishing Capacities of Honduras in the Northern Zone”,⁶² including research activities north of parallel 15°05’ and including Media Luna reef and the fisheries banks of Thunderknoll, Del Medio, Rosalinda and Serranilla. Later reports published by the FAO pursuant to this Programme also refer to this area, treating it as falling within the territory of Honduras.⁶³

6.34. Pursuant to its legislation, Honduras has long granted fisheries licences to its nationals and to nationals of third States (including Nicaraguan nationals) to fish in the area north of the 15th parallel.⁶⁴ In his deposition the Director of the Regional Department of Fisheries in Gracias a Dios states:

“As fishing officials they verify that all persons involved in fishing activities hold the required documentation, that is, that they hold a permit or licence; during his office as Inspector, that is as from February 1999, he has visited the Cays once, and in that visit he determined that the Cays are mostly occupied by Jamaicans and two or three Nicaraguans who have received traditional fishing permits; the families of the Jamaicans and Nicaraguans live in the

⁶¹ HCM, vol 2, annex 161.

⁶² HCM, vol 2, annex 158.

⁶³ See Project HON/82/010. Results of the Fishing Program Effected by the B/I “LAMATRA” in the Honduran Atlantic (May 1985-April 1986), June 1986, HCM, vol 2, annex 159; Investigation and Commercial Evaluation of the Main Maritime Fishing Capacity of Honduras in the Northern Zone. Results and Recommendations of the Project. United Nations Development Program. FAO, Rome 1987, HCM, vol 2, annex 160.

⁶⁴ Statement of Edgar Henry Haylock Arrechavala, HCM, vol 2, annex 74 (“during all the time he has been in charge of fishing boats [30 years], Honduras has regulated the fishing activities [...] he represents that the fishing permits were obtained in Tegucigalpa”; Statement of Mario Domínguez, HCM, vol 2, annex 80 (“to his knowledge since he occupied Cayo Sur, the Jamaicans have been fishing in Cayo Savana with permits issued by the Honduran authorities and they only capture fish”); Statement of Angela Green de Johnson, vol 2, annex 77 (“as far as she is aware the Jamaicans have been in those cays since the year one thousand nine hundred and seventy two and have been granted work permits by the Honduran authorities”); Statement of Robert Richard Gough, vol 2, annex 84 (“the fishing permits were issued by the Natural Resources Ministry and it was the Honduran authorities who provided documents to the seamen”). Similarly, sea captains from the Bay Islands report that Honduran authorities have granted fishing licenses since the 1960s: Arturo Parchmont Wood, vol 2, annex 92; Austin Larrabee Ebanks Wood, vol 2, annex 93; Bryd Adalid Rosa Chavez, vol 2, annex 91; Eri Melvin Hyde More, vol 2, annex 90; Audley Desmond Phillips Woods, vol 2, annex 89; John True Osgood Moore, vol 2, annex 88; Charlie Edward Ebanks Woods, vol 2, annex 87.

mainland, in Honduras; the fishing permits are granted for one year and expire in December and are then subsequently renewed; [...] these permits are for fishing with traditional procedures; the Jamaicans have their own motorboats and that most of the product is exported to Jamaica; they are charged a certain amount according to the type of fishing permit depending on whether it is for traditional fishing, industrial fishing or for purchase and sale, and each of these permits is subject to a specific tax; [...] industrial permits are granted to fishing boats; and that they verify whether these persons have the required permits when the Naval Force conducts its patrolling routines as their budget does not allow them to carry out these inspections frequently; [...] considering the distance from the cays to the mainland and in order to save costs, applications for permits are made collectively entrusting one person with the proceedings[.]”⁶⁵

6.35. One fisherman who is a Jamaican national and who has been fishing off Savanna Cay for more than thirty years explains:

“I fish here because I have been provided with a licence by the Honduran fishing authorities. I always go to Puerto Lempira to renewal my licence. I fish red snapper and grouper, many different types of fish that I export to Jamaica. I do not sell in Honduras what I fish, given that there exists a better market in Jamaica. The exporting of fish to Jamaica is allowed through a licence issued by the Honduran Government.”⁶⁶

6.36. Another Jamaican fisherman who has been fishing around Savanna Cay for more than 15 years states:

“I live on the island during the fishing season. We fish every day but we return to the Key at night, where we sleep. I am authorised to fish here by the Honduran fishing authorities, which have provided me with a licence to fish here. We obtain a new licence every year. We pay the Honduran Government so as to obtain the licence. I have never turned to the Nicaraguan authorities so as to obtain a licence. I have never seen a Nicaraguan public official on the island. No Nicaraguan public official has told me to obtain the fishing licence in Nicaragua.”⁶⁷

⁶⁵ Statement of Ramon Antonio Nell Manister, HCM, vol 2, annex 72.

⁶⁶ Statement of Maurice Gowe, HCM, vol 2, annex 67.

⁶⁷ Statement of Everton Anthony HCM, vol 2, annex 66.

6.37. In another deposition a Honduran fisherman states that over the course of his thirty years experience fishing around the islands:

“the seamen operating Honduran fishing boats [...] always acknowledged Parallel 15 as the limit and then changed course veering 90° to the East and then continued to the north; during the time he worked as Master in Honduran fishing vessels, the Nicaraguans never conducted any fishing activities north of Parallel 15 and at that time there were no patrolling ships either from Honduras or Nicaragua [...] Parallel 15 has always been the line considered as the maritime border between both countries; in the course of this fishing activities as Master he never found any Nicaraguan fishing boats operating north of the above-mentioned parallel, and only fishing boats belonging to Honduran nationals were found.”⁶⁸

6.38. Other Honduran fishermen whose depositions form part of this pleading have provided statements confirming unambiguously that for the fishing community the 15th parallel has always been recognised as the boundary between Honduras and Nicaragua.⁶⁹ As one fisherman states in his deposition, for more than sixty years:

⁶⁸ Statement of Edgar Henry Haylock Arrechavala, vol 2, annex 74.

⁶⁹ See Statement of Gabriel Echeverría Arrechavala, HCM vol 2, annex 75 (“[I] never encountered any Nicaraguan fishing boats in the area north of Parallel 15°; it is only now that problems have arisen with the Sandinists because the Nicaraguan patrols invade the area north of Parallel 15°; [...] the Nicaraguan authorities have never granted fishing permits north of Parallel 15°”); Statement of Santos Calderon Morales, HCM, vol 2, annex 78 (“since the Award issued by the International Court of Justice the border line between the two countries has always been respected; such border line has not only been observed by the fishing boats but also by the Honduran and Nicaraguan authorities, and is also known as Parallel 15°”); Statement of Mario Domínguez, HCM, vol 2, annex 80 (“in his experience all fishermen admit and acknowledge that parallel fifteen (15°) acts as the maritime border between Honduras and Nicaragua”), Statement of Daniel Bordas, vol 2, annex 70 (“he represents that after the Award of the International Court of Justice the Parallel Fifteen (15°) was always acknowledged as the border between Nicaragua and Honduras”); Statement of Edgar Henry Haylock Arrechavala, vol 2, annex 74 (“Parallel 15° has always been the line considered as the maritime border between both countries [Honduras and Nicaragua]”); Statement of Daniel Solabarrieta Armayo, HCM vol 2, annex 82 (“parallel fifteen acted as the maritime border between Honduras and Nicaragua for their fishing activities and at that time [1950s and 1960s] no problems arose with the Nicaraguan government”); Statement of Herbert Balder Hyde Carter, vol 2, annex 83 (“all Honduran fisherman and authorities have always acknowledged that the maritime border between Honduras and Nicaragua is Parallel 15°”); Statement of Robert Richard Gough, HCM vol 2, annex 84 (“when they fished in Honduras they operated [...] up to the North of Parallel 15° as this was the maritime border at that time [1960s] and because the maps used had been acquired in the United States and such limit appeared in them”); Statement of Bob Ward McNab Bodden, HCM vol 2, annex 86 (“at present he is fishing in Nicaragua

“as far as [I am] aware and since [I] was born the border line between Honduras and Nicaragua has always been Parallel fifteen (15)”.⁷⁰

6.39. The significance of the 15th parallel has also been recognised by merchant seamen, who explain that the 15th parallel was the boundary marked in the nautical charts produced in the United States that they would use for navigation. Charles Lindbergh Dixon states in his deposition that he:

“[w]as employed as an officer and Master of large vessels from [1958] until [2000] sailing north of Parallel 15 commanding merchant ships bound for Puerto Limón in Costa Rica and Panama; that the sailing directions contemplated Parallel 15 as the maritime border between Honduras and Nicaragua because as such it was recorded in the navigation charts which were acquired in the United States; he is aware that there are British navigation charts which show the border line between Honduras and Nicaragua to be Parallel 15; he used both of these charts; he further deposes that he never encountered any Nicaraguan fishing vessels north of Parallel 15.”⁷¹

6.40. In his deposition Daniel Solabarrieta Armayo explains how he has fished in the area since 1958, using Guanaja as a base for fishing around the islands. He says that:

“he started his fishing activities following a fishing concession granted by the Government of Julio Lozano Díaz and then he acquired other fishing boats in Spain with all their tackle which considerably improved the Honduran fishing industry, specially in Guanaja; there were ten fishing boats in total and all the complement was from Honduras, including a Honduran Master called Baldor Hyde who went to Spain to bring the fishing vessels; with this fleet he extended his scope of action to all the coast of the Caribbean Sea and the Antilles including all the fishing boats

south of Parallel 15 and 82° West [...] ships continue fishing south of Parallel 15° which has been the traditional limit respected by all). See also statements by Arturo Parchmont Wood, vol 2, annex 92; Austin Larrabee Ebanks Wood, vol 2, annex 93; Bryd Adalid Rosa Chavez, vol 2, annex 91; Eri Melvin Hyde More, vol 2, annex 90; Audley Desmond Phillips Woods, vol 2, annex 89; John True Osgood Moore, vol 2, annex 88; Charlie Edward Ebanks Woods, vol 2, annex 87.

⁷⁰ See Statement of Francisco Gómez Colomer, HCM, vol 2, annex 79.

⁷¹ Statement of Charles Lindbergh Dixon, HCM, vol 2, annex 85. See also statements by Arturo Parchmont Wood, vol 2, annex 92, and Austin Larrabee Ebanks Wood, vol 2, annex 93.

located in that Area up to the Cape Gracias a Dios in parallel 15, Serranilla and Rosalinda; the product obtained from those areas was sold or exported to Tampa, United States;

[...] parallel fifteen acted as the maritime border between Honduras and Nicaragua for their fishing activities and at that time no problems arose with the Nicaraguan government; in the event of rough weather or hurricanes they took shelter in the Cays of Caratasca and sometimes south of the Cape Gracias a Dios; from [1958] until [1974] when he quit his fishing activities they never found any [Nicaraguan] fishing vessels north of parallel 15;

[...] he provided monthly reports on the amount of product fished with a breakdown of what was exported and for domestic consumption to the Ministry of Natural Resources; [...] maintenance of all the fishing fleet was carried out here in Guanaja by persons trained to that purpose;”⁷²

6.41. Another fisherman states that from the time he started fishing in the area (in 1958) until he retired he

“never encountered any Nicaraguan boats north of Parallel 15 and he never had any problems with the Nicaraguan authorities nor were their boats boarded by the Nicaraguan authorities requesting them to show their documents.”⁷³

6.42. Another fisherman, Mario Domínguez, maintained a fishing base at South Cay for nine years until it was ransacked by Nicaraguans in December 2000. As set out in his deposition:

“he owns a motorboat which is registered in Puerto Lempira and for these 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; his captures are mainly fish, snails and lobster; he also states that in order to conduct his fishing equipment [sic] he applies for a fishing permit each year from the Fishing Inspector of Puerto Lempira and satisfies the appropriate tax thereon; in order to carry his fishing activities he hires individuals, that is assistants apart from his two sons; he further declares that he operates in the fishing banks close to South Cay; the product obtained is exported to Jamaica through a Jamaican boat that sails to that zone; the

⁷² Statement of Daniel Solabarrieta Armayo, HCM, vol 2, annex 82.

⁷³ Statement of Herbert Balder Hyde Carter, HCM, vol 2, annex 83.

Jamaican boat which acquires their product obtains its export permit from the Customs Authorities in Puerto Lempira where they pay their taxes; he as a fisherman pays his taxes in Puerto Lempira; with respect to his fishing activity he files a tax statement before the Government of Honduras and further represents that in his experience all fishermen admit and acknowledge that parallel fifteen (15°) acts as the maritime border between Honduras and Nicaragua; he further deposes that on the twentieth of December of last year his belongings in South Cay were sacked and as a consequence of that robbery he lost all his fishing and diving equipment and damages [sic] the freezer and the installations; he believes on the basis of the account provided by the two persons that were in charge of the installations that the offenders were Nicaraguan because they arrived in a speedboat in company of armed men and fired shots with an AK-47; fortunately this is a single incident which has not been repeated;⁷⁴

6.43. These fisheries activities are duly regulated by the Honduran authorities. Fisheries concessions (to companies) and licences (to individuals) have been granted by the national authorities of Honduras for several decades, upon request of the company or individual and payment of the appropriate fee. The requests by companies for concessions are published in *La Gaceta* (the Official Journal of Honduras), and typically they indicate the area for which the concession was sought,⁷⁵ the type of fish to be harvested, and the proposed duration of the concession. Volume

⁷⁴ Statement of Mario Domínguez, vol 2, annex 80. Austin Larrabee Ebanks Wood also states that he had a house in South Cay, made of cement, which was used “as a home for the Honduran fisherman”, vol 2, annex 93.

⁷⁵ See e.g. area described in Notification Concerning an Application for Fishing concession Submitted by “Hondureña de Pesca, S. de R.L.”, Published in the Official Gazette of Honduras N.17.611 of 23 February 1962:

“The area destined for fishing will include the area from the Bay of Puerto Cortés up to the mouth of the River Wans Coco or Segovia, in a North bound direction, up to where the territorial sea of Honduras extend to, in the bed and subsoil of the submarine shlef, continental shelf and other zones that correspond to Honduran sovereignty, in accordance with the provisions of the Constitution of the Republic” (HCM, vol 2, annex 119).

Also area described in Notification Concerning an Application for Fishing permit, Submitted by “Alimentos Marinos Hondureños, S. A.”, Published in the Official Gazette of Honduras No. 22.551 of 17 July 1978:

“[...] from the Bay of Puerto Cortés, in the Department of Cortés up to the mouth of the River Wans Coco o Segovia, in the territorial sea, in the bed and subsoil of the submarine shelf and other adjacent submarine zones in its territory, and up to where the depth of those waters allow for the exploitation of the marine resources, in accordance with the Law and International Treaties [...]” (HCM, vol 2, annex 120).

2 of this Counter-Memorial includes examples of such requests from the company “Hondureña de Pesca” for fishing shrimp, lobster and other species off the Mosquito coast, dating back to February 1962, and from the company “Alimentos Marinos Hondureños” in 1978. The fishing activities of Alimentos Marinos Hondureños in this area are corroborated in witness statements.⁷⁶ Fisheries concessions were granted by Congressional Decree and published in *La Gaceta*.⁷⁷

6.44. Together with the fisheries licence, the Honduran authorities provide the fishermen with a *bitácora*, a document which indicates the area in which fishing is permitted and which is to be returned to the Honduran authorities with an indication of the quantity and type of the fish which have been caught as well as the location. With regard to the location, the area in question is divided into grids. The *bitácora* issued for the area now claimed by Nicaragua uses the 15th parallel as the southernmost limit of the fishing area authorised by Honduras. *Bitácoras* for this area have been issued since at least the 1970s. At Plate 31 in Volume 3 there are reproduced copies of two *bitácoras* dating to 1978, showing the 15th parallel as the southern limit of Honduran fisheries jurisdiction.

⁷⁶ Statement of Edgar Henry Haylock Arrechavala:

“[. . .] they fished in the area from Patuca to the Parallel 15° and from there out to sea until they reached the Rosalind Fishing Bank [...] the company that hired them was called Alimentos Marinos; in the first year of operation the company employed North American captains but after the second year there were only Honduran Masters; he also states that Alimentos Marinos was located in the reef of Caratasca but the company went under due to the hurricane Greta; he further deposes that within the fishing areas we find South Cay, Savanna Cay and Bobel Cay because there are fishing banks next to these Cays; the fishing boats sold their captures in Guanaja except those boats hired by Alimentos Marinos (Marine Foods) that unloaded their production in Puerto Lempira; he started out as a Master with Alimentos Marinos and later continued working for local fishing boats of the islands; the owners of the fishing boats paid their taxes in Guanaja and those of Alimentos Marinos in Puerto Lempira” (HCM, vol 2, annex 74).

Also Statement of Porfirio Echevarría Haylock:

“[...] he worked as a fishing boat captain for Alimentos Marinos and then moved to Guanaja in 1969 [...] the fishing area was Tela and Ceiba up to parallel fifteen which included the banks close to the cays” (HCM, vol 2, annex 76).

⁷⁷ See e.g. Resolution Concerning a Fishing Concession Granted to “Mariscos de Centroamérica”, with base in Cayos Vivorillos, Decree No 109, Published in the Official Gazette of Honduras No. 20,302 of 15 February 1971, Document 6-46 deposited with the Registry.

6.45. Finally, where the fisheries licences or concessions are not complied with, or where they have expired, enforcement measures are taken by the Honduran authorities.⁷⁸

6.46. There is overwhelming evidence that Honduran regulation of fishing in the area is well-established and uninterrupted, and that it has not been previously challenged by Nicaragua. Honduras has granted fishing concessions and permits for the area at least as early as 1962⁷⁹ and uninterruptedly ever since.⁸⁰ The evidence includes:

- all fishing boats operating in the area are Honduran-registered or, if registered by third countries, are authorized to carry out their activities in the area by Honduras;⁸¹
- the 15th parallel is now and has always been recognised by fishermen as the southern limit of Honduras' fishing jurisdiction and the northern limit of Nicaragua's fishing jurisdiction, and these islands and cays treated as Honduran;⁸²

⁷⁸ See Statement of Fabián Flores Ramirez, HCM, vol 2, annex 73; Statement of Ramón Antonio Nell Manister, HCM, vol 2, annex 72. See also *infra* paras 6.60 to 6.63 on naval patrols.

⁷⁹ Resolution concerning a fishing concession published in the Official Gazette of Honduras No. 17.61, 23 February 1962, HCM, vol 2, annex 119.

⁸⁰ See *supra* paragraphs 6.34-6.36 above.

⁸¹ Statement of Harley Seision Paulisto, HCM, vol 2, annex 71 ("the Jamaican residents own motorboats registered in Honduras"); Statement of Maurice Gowe, HCM, vol 2, annex 67 ("I fish here because I have been provided with a licence by the Honduran fishing authorities"); Statement of Everton Anthony, HCM, vol 2, annex 66 ("I am authorised to fish here by the Honduran fishing authorities, which have provided me with a licence to fish here. We obtain a new licence every year. We pay the Honduran Government so as to obtain the licence."); Statement of Selvin McKenlly Johnson, HCM, vol 2, annex 68 ("Here I need a licence to fish, and I obtain the licence from the Honduran authorities in Puerto Lempira. I would never go to Nicaragua to obtain a licence."). Also Statement of Edgar Henry Haylock Arrechevala, HCM, vol 2, annex 74; Statement of Gabriel Echeverría Arrechavala, HCM vol 2, annex 75; Statement of Porfirio Echeverría Haylock, HCM vol 2, annex 76; Statement of Angela Green de Johnson, HCM, vol 2, annex 77; Statement of Francisco Gómez Colomer, HCM, vol 2, annex 79; Statement of Mario Domínguez, vol 2, annex 80.

⁸² See *supra* paras 6.37-6.42. See also Statement of Daniel Bordas HCM, vol 2, annex 70 ("it has always been admitted that Cayo Bobel belongs to Honduras"); Statement of Selvin McKenlly Johnson, HCM, vol 2, annex 68 ("everything North of the 15th parallel, including all these islands, the entire fishing community knows, belong to Honduras"); Maurice Gowe, HCM, vol 2, annex 67 "Savanna Cay is in Honduras and not in Nicaragua"); Arturo Parchmont Wood, vol 2, annex 92; Austin Larrabee Ebanks Wood, vol 2, annex 93; Bryd Adalid Rosa Chavez, vol 2, annex 91; Eri Melvin Hyde More, vol 2, annex 90; Audley Desmond Phillips Woods, vol 2, annex 89; John True Osgood Moore, vol 2, annex 88; Charlie Edward Ebanks Woods, vol 2, annex 87.

- generally, Honduran fishermen go south of the 15th parallel only where they need to take shelter at Cape Gracias a Dios in times of storm,⁸³ or if authorised by Nicaraguan authorities;⁸⁴
- retired Honduran fishermen have reported that up to the 1960s there were attempts to place markers at sea along the 15th parallel to indicate the boundary between Honduras and Nicaragua, and the southern limit of Honduran fishing waters and the northern limit of Nicaraguan fishing waters;⁸⁵
- fisheries catches in the area are reported to the Honduran authorities and treated as part of Honduras' catch for FAO reporting purposes, and there is no evidence that catches from the area are reported to the Nicaraguan authorities;⁸⁶
- fish caught in Honduran waters north of the 15th parallel are authorised for export by Honduras and treated by importing countries (including Jamaica and the United States) as Honduran product;⁸⁷

⁸³ Statement of Mario Domínguez, HCM, vol 2, annex 80; Statement of Herbert Balder Hyde Carter, HCM vol 2, annex 83; Statement of Edgar Henry Haylock Arrechavala, HCM, vol 2, annex 74, Statement of Porfirio Echevarría Haylock, HCM, vol 2, annex 76.

⁸⁴ Statement of Gabriel Echevarría Arrechavala, HCM, vol 2, annex 75; Statement of Robert Richard Gough, HCM, vol 2, annex 84.

⁸⁵ Memorandum of the Head of the Technical Supervision Division of the Honduran National Harbour Authority to the Head of Hydrography dated 11 July 1980 (Installation of buoys). HCM, vol 2, annex 155.

⁸⁶ See e.g. Statement of Daniel Solabarrieta Armayo, HCM, vol 2, annex 82 ("he provided monthly reports on the amount of product fished with a breakdown of what was exported and for domestic consumption to the Ministry of Natural Resources").

⁸⁷ Statement of Eugenio Chirinos Mejía, Customs Supervisor, HCM, vol 2, annex 69; Statement of Maurice Gowe, HCM, vol 2, annex 67 ("I do not sell in Honduras what I fish, given that there exists a better market in Jamaica. The exporting of fish to Jamaica is allowed through a licence issued by the Honduran Government. I believe they have an agreement with the Jamaican Government for the exporting of fish."); Statement of Everton Anthony, HCM, vol 2, annex 66 ("I sell in Jamaica what I fish. All of it goes to Jamaica. The licence that we are provided with by the Honduran Government permits us to export the fish to Jamaica. There exists an accord between the Jamaican Government and the Honduran Government so as to sell the fish in Jamaica."); Statement of Selvin McKenly Johnson, HCM, vol 2, annex 68 ("The product that I fish here is sold in Jamaica. The licence that we are provided with by the Honduran Government allows us to export the produce of our fishing to Jamaica."); Statement of Mario Domínguez, vol 2, annex 80 ("the product obtained is exported to Jamaica through a Jamaican boat that sails to that zone; the Jamaican boat which acquires their product obtains its export permit from the Customs Authorities in Puerto Lempira where they pay their taxes"). See also statements of Arturo Parchmont Wood, vol 2,

- fish caught in Honduran waters north of the 15th parallel which are not exported are sold in Honduras, not in Nicaragua;⁸⁸
- the fishing areas north of the 15th parallel, including all the fishing banks, are patrolled by the Honduran authorities (including the Honduran Navy and air patrols), not by the Nicaraguan authorities,⁸⁹ and the Honduran authorities have taken steps to enforce Honduran fisheries laws, including against Nicaraguan vessels (most recently in July 2001)⁹⁰ (no Nicaraguan patrol vessels have been identified in the area except to “bother” legitimate fishing duly authorised by the

annex 92; Austin Larrabee Ebanks Wood, vol 2, annex 93; Bryd Adalid Rosa Chavez, vol 2, annex 91; Eri Melvin Hyde More, vol 2, annex 90; Audley Desmond Phillips Woods, vol 2, annex 89; John True Osgood Moore, vol 2, annex 88; Charlie Edward Ebanks Woods, vol 2, annex 87.

⁸⁸ See Statement of Edgar Henry Haylock Arrechevala, HCM, vol 2, annex 74 (“the fishing boats sold their captures in Guanaja except those boats hired by Alimentos Marinos (Marine Foods) that unloaded their production in Puerto Lempira”); Statement of Mario Domínguez, vol 2, annex 80 (“the captures of the Jamaicans are exported to Jamaica and is also sold to the Hondurans in Guanaja”).

⁸⁹ Statement of Ramón Antonio Nell Manister:

“[...] during the term of his office no Nicaraguan authority has attempted to regulate the fishing activities in the Cays and whilst holding office he is aware that only Honduran Patrols from the Naval Force cover the area of the cays, and during the Closed Season it is the Honduran Merchant Navy that supervises and controls the fishing activities” (HCM, vol 2, annex 72).

See also Statement of Selvin McKennly Johnson, HCM, vol 2, annex 68 (“[o]nce you obtain a licence it is necessary that you carry it with you at all times, so as to be able to show it in the event that the Honduran patrol boats requests such. But I have never been asked to show same, given that the majority of the patrol boats know me, and my vessel.”); Statement of Mario Domínguez, vol 2, annex 80 (“[h]e also declares that during the time he has worked as a fisherman in Cayo Sur, the Honduran Naval Force has patrolled the area and he has even joined the authorities in its patrolling efforts; said patrols have gone as far as parallel fifteen (15°)”; Statement of Santos Calderón, HCM, vol 2, annex 78 (“to the extent of his knowledge the Nicaraguans have never attempted to regulate the fishing activities north of parallel 15°”).

⁹⁰ Statement of Fabián Flores Ramírez, HCM, vol 2, annex 73 (“a week ago some four fishing boats with the Nicaraguan flag were seized because they were fishing illegally in the area of the Cays Sur and Bobel”). See also on seizure of a Nicaraguan vessel fishing illegally, Report Dated 23 September 2000 to the Naval Commander of the Honduran Naval Base of Puerto Castilla, Regarding the Capture of a Nicaraguan Vessel while Engaged in Illegal Activities to the North of the 15° Parallel, HCM, vol 2, annex 141.

Honduran authorities, and there is no evidence of enforcement by Nicaragua of its fisheries laws in the area);⁹¹

- the fishing vessels active in the area obtain – and according to the evidence have always obtained – their supplies from Honduran ports, including Raya and Puerto Lempira, and not from Nicaraguan ports;⁹²
- the fishermen and ship-owners operating in the area have always paid and continue to pay their taxes in Honduras, not in Nicaragua,⁹³ and they obtain their insurance from Honduran insurance companies;⁹⁴
- the social connections of the fishermen living on Savanna Cay and South Cay are with Honduras (they are married to Honduran women, their children have Honduran nationality, their families live and work in Honduras, and their children attend Honduran schools);⁹⁵

⁹¹ Statement of Ramón Antonio Nell Manister, HCM, vol 2, annex 72 (“the Nicaraguan authorities have [not] tried to regulate [fisheries] in the aforementioned cays”); Statement of Everton Anthony:

“Sometimes the Nicaraguans come over here and bother us. They do not come here to fish or to enquire about the licences, they solely come to bother the fishermen who have a right to fish here, right that was granted to us by the Honduran authorities..” (HCM, vol 2, annex 66).

⁹² See Statement of Maurice Gowe:

“Even though the community of La Barrita is Honduran territory and is closer to Savanna Cay, when we require provisions or medical assistance we travel to the Community of Raya, Municipality of Ramón Villeda Morales, Administrative District of Gracias a Dios, firm land in Honduras, given that we have a hundred per cent relationship with Honduras and none with Nicaragua, and there we receive greater amounts of provisions and better public services. Ever since I was a child we have always gone to Raya and Puerto Lempira.” (HCM, vol 2, annex 67).

Also Statement of Selvin McKennly Johnson, HCM, vol 2, annex 68; Statement of Everton Anthony, HCM, vol 2, annex 66; Statement of Daniel Solabarrieta Aramayo, HCM, vol 2, annex 82 (“maintenance of all the fishing fleet was carried out here in Guanaja by persons trained to that purpose”).

⁹³ See e.g. Statement of Edgar Henry Haylock Arrechevala, HCM, vol 2, annex 74; Statement of Mario Domínguez, HCM, vol 2, annex 80; Statement of Robert Richard Gough, HCM, vol 2, annex 84; Statement of Santos Calderón, HCM, vol 2, annex 78, Statement of Daniel Solabarrieta Aramayo, HCM, vol 2, annex 82.

⁹⁴ Statement of Daniel Solabarrieta Aramayo, HCM, vol 2, annex 82 (“when the seamen became ill or suffered an accident they were insured of these risks by the Insurance Company Interamericana in Tegucigalpa”).

⁹⁵ See Note N.007-99 dated 31 March 1999 addressed by the Regional Agent of Migration of Puerto Lempira to the General Director of Population and Migratory Policy on an on-site visit to the cays, HCM, vol 2, annex 146, determining that all foreign-Jamaican

- where these fishermen require medical attention they attend the facilities in Raya, Puerto Lempira or Roatán;⁹⁶
- the crews of larger fishing boats operating in the area are and have been nationals of Honduras;⁹⁷ and
- where there have been accidents involving fishing boats in the area it is the Honduran authorities which have been involved in search and rescue, not the Nicaraguan authorities.⁹⁸

6.47. By contrast, Nicaragua has provided *no* evidence to the Court to show that it has ever applied or enforced – or even sought to apply and enforce – its fisheries laws north of the 15th parallel.⁹⁹ Its own legislation and maps indicate that the northern limit of the Nicaraguan fisheries jurisdiction lies south of the 15th parallel.¹⁰⁰ Other evidence confirms that Nicaragua’s new claim to the area is inconsistent with, and unsupported by, its own practice in relation to fisheries matters, as well as the application of its laws generally. By contrast, there is no evidence that Nicaragua has

and Nicaraguan--fishermen living in the cays who are married are married to Honduran women and have their permanent residence in towns of the Honduran coast. Also e.g. Statement of Fabián Flores Ramírez, HCM, vol 2, annex 73 (“their children go to school in the mainland where they attend the schooling facilities available in those communities”); Statement of Santos Calderón, HCM, vol 2, annex 78; Statement of Selvin McKennly Johnson, HCM, vol 2, annex 68; Statement of Mario Domínguez, vol 2, annex 80.

⁹⁶ See Statement of Maurice Gowe, HCM, vol 2, annex 67; Statement of Everton Anthony, HCM, vol 2, annex 66; Statement of Selvin McKennly Johnson, HCM, vol 2, annex 68. See also excerpts from the records of the Fantasy Island Clinic, 17 November 1997 to 13 May 1999, recording the treatment of divers involved in accidents in Rosalind Bank, HCM vol 2, annex 151, and excerpts from labour law cases resulting from diving accidents around the cays and banks, *supra* para 6.22.

⁹⁷ Statement of Daniel Solabarrieta Armayo, HCM, vol 2, annex 82; Statement of Robert Richard Gough, HCM, vol 2, annex 84; Statement of Herbert Balder Hyde Carter, HCM, vol 2, annex 83.

⁹⁸ See Statement of Everton Anthony:

“If there is an accident or somebody needs to be hospitalised, they travel to Puerto Lempira where they are provided with the necessary medical attention. In the event of an accident at sea, and there is a need for a “Search and Rescue”, this is carried out by the Hondurans. We never go close to the Nicaraguans – they stay on their side [...]” (HCM, vol 2, annex 66)

Also Statement of Robert Richard Gough, HCM, vol 2, annex 84; Statement of Edgar Henry Haylock Arrechavala, HCM, vol 2, annex 74; Statement of Gabriel Echeverría Arrechavala, HCM, vol 2, annex 75; Statement of Mario Domínguez, HCM, vol 2, annex 80.

⁹⁹ See Statement of Ramon Antonio Nell Manister, HCM, vol 2, annex 72.

¹⁰⁰ See for example oil concessions granted by the government of Nicaragua *supra* paras 6.27-6.28.

ever claimed the right to apply its fisheries laws in areas north of the 15th parallel.

6.48. The evidence shows that Nicaragua licensed fisheries activities only up to the 15th parallel and not north of that point. Robert Gough, a Honduran fisherman states in his deposition:

“From the period between 1980 and 1983 he fished in the Nicaraguan Republic with a permit from the Nicaraguan authorities, south of Parallel 15; when they fished in Honduras they operated from the Castilla point to Cape Gracias a Dios and up to the North of Parallel 15 as this was the maritime border at that time and because the maps used had been acquired in the United States and such limit appeared in them; if they went south of Parallel 15, their boats were captured by the Nicaraguan authorities; the fishing permits were issued by the Natural Resources Ministry and it was the Honduran authorities who provided documents to the seamen; he further deposes that all persons working in these boats were Honduran nationals and during all the time they engaged in this activity they never encountered any Nicaraguan fishing boats north of Parallel 15 and if they found any they reported this to the Honduran authorities; at that time the Honduran authorities conducted occasional patrols but the Nicaraguan authorities patrolled south of Parallel 15 but they never crossed that limit;”¹⁰¹

6.49. Current practice in relation to the enforcement of its own fisheries laws confirms that the Nicaraguan authorities treat the 15th parallel as the northern limit of its territory and of its fishing waters. Honduran fishermen have reported that where they have been caught by the Nicaraguan authorities allegedly fishing illegally south of the 15th parallel, they are escorted by the Nicaraguan coastguard up to the 15th parallel and, at that point, released. One fisherman describes in his deposition that as recently as 2000 a Honduran fishing vessel alleged to be fishing illegally in Nicaraguan waters south of the 15th parallel was apprehended by a Nicaraguan patrol, escorted to a point on the 15th parallel and – at that point – released:

¹⁰¹ Statement of Robert Richard Gough, HCM, vol 2, annex 84. See also Statement of Bob Ward McNab Bodden, HCM, vol 2, annex 86 (“at present he is fishing in Nicaragua south of Parallel 15 and 82° West; he has not seen the last fishing permits issued by the Nicaraguan authorities because the business is now run by his son Kerry Evans McNab; he thinks that the permits mention anything about maritime limits but ships continue fishing south of Parallel 15° which has been the traditional limit respected by all”).

“he remembers an incident last year when he had a problem with a fishing boat of Mr. Henry Jackson registered in Nicaragua which he brought to Honduras in order to have it repaired in French Harbor; the boat was being tugged together with a recreational boat with an Honduran flag and he was escorted by a Nicaraguan patrol from Puerto Cabezas until they reached Parallel 15 when the patrol returned.”¹⁰²

6.50. After the Sandinista Government came into power in 1979, Nicaragua did, on one occasion at least, purport to grant a fishing permit to include an area north of parallel 15, but this was withdrawn following a protest from Honduras. On 17 November 1986 the Nicaraguan fisheries authorities (Instituto Nicaragüense de la Pesca, “INPESCA”) granted a permit for lobster fishing in Nicaraguan waters to thirty fishing vessels, through a contract signed with Mr. Ramón Sánchez Borba, a Honduran national.¹⁰³ The extent of the concession was determined in accordance with clause 6 of the concession, which referred to a map in Annex 1. That map indicated that the fishing area extended north of the 15th parallel.¹⁰⁴ By letter dated 16 January 1987 Mr. Borba provided a copy of the map to the Honduran authorities. By letter dated 20 March 1987 the Minister of Foreign Affairs of Honduras wrote to his counterpart in Nicaragua stating that clause 6 of the concession was rejected by Honduras and should be treated as being without effect.¹⁰⁵ Shortly thereafter, on 7 April 1987 the Nicaraguan fisheries authorities (INPESCA) adopted an act modifying clause 6 of the concession. The modification states:

“The fishing area for each fishing boat shall be determined by INPESCA *in areas south of parallel 15*.”¹⁰⁶ (emphasis added)

¹⁰² Statement of Bob Ward McNab Bodden, HCM, vol 2, annex 86.

¹⁰³ HCM, vol 2, annex 121.

¹⁰⁴ *Ibid.*

¹⁰⁵ HCM, vol 2, annexes 122 and 123.

¹⁰⁶ HCM, vol 2, annex 124.

E. HONDURAS REGULATES IMMIGRATION IN THE AREA

6.51. The Honduran islands now claimed by Nicaragua have long been inhabited and subject to the municipal, regional and national government of Honduras. Honduras has long controlled the flow of immigration into the area north of the 15th parallel. The population which resides or is economically active in the area comprises Honduran nationals or nationals of third States (in particular Jamaican nationals and also some Nicaraguan nationals) who have been authorised by Honduras to live or work in the area. At least four of the islands claimed by Nicaragua sustain (or have sustained) permanent populations: Port Royal Cay, South Cay, Savanna Cay and Bobel Cay. The Honduran authorities maintain details of foreigners living in Honduras, and these lists routinely include information on foreigners living on the islands now claimed by Nicaragua.¹⁰⁷

6.52. More than thirty men and women live on Savanna Cay during the fishing season, of whom more than half are Jamaican nationals and the rest Honduran nationals (Plate 16).¹⁰⁸ Nicaraguans have also lived on the island but, like the Jamaicans, only where authorized by the relevant Honduran authorities (see below).

6.53. Some of the Honduran nationals now living on Savanna Cay have been active in the area for more than 30 years.¹⁰⁹ Other Honduran fishermen, now retired, describe their activities in the area going back more than 40 years.¹¹⁰ The Jamaicans now living on Savanna Cay have immigrated to the area with the authorisation of the Honduran

¹⁰⁷ See for example List of Residents in the Departments of Gracias a Dios and Bay Islands, Issued by the General Division of Population and Migratory Policy of Honduras on 14 October 1999, HCM, vol 2, annex 147. See Notes No. 899-99 DG and No. 901-99-DG addressed by the Director of Population and Migratory Policy of Honduras to the Minister of the Interior on 30 November and 2 December 1999, respectively, relating to immigration movements in the area north of parallel 15, HCM, vol 2, annexes 148 and 149; and report from the Regional Delegate on Migration, Mr. Harley Seision Paulisto, to the Director General on Population and Migratory Policy on an on-site visit to the cays, Note N.007-99 Dated 31 March 1999, HCM, vol 2, annex 146.

¹⁰⁸ See also HCM, vol 3, Plate 30.

¹⁰⁹ See Statement of Maurice Gowe, HCM, vol 2, annex 67; Statement of Selvin McKennly Johnson, HCM, vol 2, annex 68.

¹¹⁰ See Statement of Daniel Solabarrieta Armayo, HCM, vol 2, annex 82; Statement of Herbert Balder Hyde Carter, HCM, vol 2, annex 83; Statement of Charles Lindbergh Dixon Jackson, HCM, vol 2, annex 85.

authorities,¹¹¹ or work in the area duly authorised by Honduras.¹¹² Their residence on the cays in question (Savanna Cay and South Cay) has been formally recognized.¹¹³ Such residence is also recognized in other official documents, such as applications for registration of fishing vessels.¹¹⁴ Non-Honduran nationals wishing to fish in and around the islands are required to obtain a work permit. These are granted by the municipality of Puerto Lempira (Corporación Municipal de Puerto Lempira). They have been granted to Jamaican nationals.¹¹⁵ Work permits have also been granted to Nicaraguan nationals.¹¹⁶

6.54. The current Immigration Officer with responsibility for the area, including the islands, has confirmed that he travels regularly throughout the Department of Gracias a Dios, including the islands now claimed by Nicaragua. In his deposition he states that:

“he has visited the Cays three or four times during the years [1997, 1998 and 1999]; he has visited South Cay and Savanna Cay; in these visits he has verified that most of the people that live in the cays are Jamaican and there are 2 or 3 persons from Nicaragua; they are not legal residents and most of them are Jamaicans that live with women from Honduras and have Honduran children; they have received temporary permits until they sort out their legal residence; the Nicaraguans have been there since [1982] and they have also received temporary permits until they obtain their legal residence as they also live with Honduran women and have Honduran children [...]

¹¹¹ See report from the Regional Delegate on Migration, Mr. Harley Seision Paulisto, to the Director General on Population and Migratory Policy on an on-site visit to the cays, Note N.007-99 Dated 31 March 1999, HCM, vol 2, annex 146.

¹¹² Statement of Everton Anthony, HCM, vol 2, annex 66; Statement of Maurice Gowe, HCM, vol 2, annex 67; Statement of Angela Green de Johnson, HCM, vol 2, annex 77.

¹¹³ See for example the Attestation of the Regional Agent for Migration of Puerto Lempira issued on 7 January 2000 on behalf of Linford Wilson, Alpha Athens Mackay, James Calbert Heath, Aldon Perth Bailey, Anthony Litzroy Woodhey, Seabert Gray (all resident on Savanna Cay), 7 January 2000, HCM, vol 2, annex 150.

¹¹⁴ See Applications for Registration of a Small Vessel by Victor Vasell and by Donald Moxan, HCM, vol 2, annexes 127 and 128.

¹¹⁵ See for example Temporary Work Permits, issued by the Municipality of Puerto Lempira, Department of Gracias a Dios on 6 and 10 January 2000, to Jamaican fishermen David Anthony Parchment and James Heath to carry out fishing activities in South and Savanna Cays, HCM, vol 2, annex 125.

¹¹⁶ See for example Temporary Work Permits, issued by the Municipality of Puerto Lempira, Department of Gracias a Dios on 6 and 10 January 2000, to Nicaraguan fishermen Anthony Richard Deffis Fax and Darwin Leslie Dalex to carry out fishing activities in South and Savanna Cays, HCM, vol 2, annex 125.

In order to work in the Cays, the Town Hall of Puerto Lempira issues a provisional work permit to the Jamaicans and Nicaraguans as at present there is no employment office open in Puerto Lempira; in the course of his duties as a Delegate of Migration, he is not aware that the Jamaicans and Nicaraguans who occupy the Cays hold any documentation issued by Nicaragua for their fishing activities, as they only have the documents provided by Honduras;”¹¹⁷

6.55. The Immigration Officer has further stated that boats from the Bay Islands apply for and obtain export licences in Roatán and Guanaja for fish caught around the cays, and that boats which are registered in Puerto Lempira are granted export licences by the Customs Supervisor in Puerto Lempira.¹¹⁸

6.56. The residents of the cays (whether Honduran, Jamaican or Nicaraguan) recognise the authority of Honduras over them, and have long done so.¹¹⁹ One fisherman describes the situation as follows:

“I am of Jamaican nationality, for most part of the year I am living in Savanna Cay in Honduras, and the rest of the year I live in Jamaica [...] I am a fisherman. I have been coming to this side, within the Honduran waters around Savanna Cay, for more than thirty years. I have worked on a boat since I was a child – approximately as from the age of 15. I fish sea fish in this area and I obtain much fish, and as a result there exists an important Jamaican fishing community that has been coming here for approximately thirty-five years. This is also the reason why the people on the Honduran coast sometimes call this “Jamaican Cay”. Savanna Cay is in Honduras and not in Nicaragua. We have always known that south of Parallel 15 is Nicaragua, and the northern side of this point is Honduras.”¹²⁰

¹¹⁷ Statement of Harley Seision Paulisto, HCM, vol 2, annex 71. For an example of periodical reports on on-site visits by this Regional Delegate on Migration, see HCM, vol 2, annexes 148 and 149.

¹¹⁸ Statement of Harley Seision Paulisto, HCM, vol 2, annex 71.

¹¹⁹ Statement of Selvin McKennly Johnson: “The elders in the fishing community have always told us that this is Honduras. Everybody that I know have always told me that these islands belong to Honduras, and nobody knows any other different sovereignty. Likewise, my parents, who also formed part of the fishing community, knew that these islands belong to Honduras.” HCM, vol 2, annex 68.

¹²⁰ Statement of Maurice Gowe, HCM, vol 2, annex 67.

6.57. Honduran citizens have lived at different times in South Cay. In December 2000 the Domínguez family was living on the cay, but were forced to leave when it was ransacked by Nicaraguans. In July 2001 the Domínguez family returned to the cay and started rebuilding the houses that had been destroyed.

6.58. Bobel Cay has also sustained a population in the past, although it currently does not do so. There are numerous reports that guano has been exploited on Bobel Cay since the middle of the 19th Century.¹²¹ More recently guano has been exploited from Bobel Cay and exported to the U.S. In his deposition, ninety-year old Daniel Bordas Nixon describes how he used to go to Bobel Cay in the 1920s:

“[...] he traveled there with his father when he was around twelve years of age to extract some dung samples which they call – guano- from marine birds in the hope of exporting it to the United States, but at the end nothing came of it; but he is aware that there had been exports in the past of guano to the United States, and there were remains of guano extraction (a lagoon).”¹²²

6.59. By contrast Nicaragua has provided no evidence that it has ever applied its immigration laws to the islands or otherwise sought to regulate the activities of the populations residing on them. Indeed, Nicaragua’s Memorial suggests that she appears to be entirely unaware of the economic activities which have been centred around the islands it now claims.

F. HONDURAS CARRIES OUT MILITARY AND NAVAL PATROLS IN THE AREA, AS WELL AS SEARCH AND RESCUE OPERATIONS

6.60. It will be apparent from the previous sections that Honduras has carried out naval and other patrols to enforce Honduran laws in the area now claimed by Nicaragua. These patrols have been undertaken since 1976 (Plate 15). These patrols have a number of objects, including in particular the enforcement of fisheries laws and the maintenance of security in Honduras, including immigration laws. The Immigration Officer has deposed that he has participated in two patrols to the islands with the Navy, to enforce immigration laws.¹²³ The Port Supervisor at Puerto Lempira has

¹²¹ See e.g. Resolution Concerning a Concession for Exploiting Guano and Other Substances, Granted to Mr. Jacob Baiz, Official Gazette of Honduras No. 413 of 5 June 1888, HCM, vol 2, annex 169.

¹²² Statement of Daniel Bordas Nixon, HCM, vol 2, annex 70.

¹²³ Statement of Harley Seision Paulisto, HCM, vol 2, annex 71.

also stated in his deposition that he has patrolled with the immigration authorities and other authorities from the area and has visited all the cays in question.¹²⁴ One fisherman who has fished in the region for more than forty years describes the situation as follows:

“In reality, I have never had any serious problems with the Honduran fishing authorities. Once you obtain a licence it is necessary that you carry it with you at all times, so as to be able to show it in the event that the Honduran patrol boats requests such. But I have never been asked to show [it], given that the majority of the patrol boats know me and my vessel.”¹²⁵

6.61. The Director of the Regional Department of Fishery in Gracias a Dios confirms his department’s role in enforcing fisheries permits when the Naval Force is unable to do so.¹²⁶ He also states:

“during the term of his office no Nicaraguan authority has attempted to regulate the fishing activities in the Cays and whilst holding office he is aware that only Honduran Patrols from the Naval Force cover the area of the cays, and during the Closed Season it is the Honduran Merchant Navy that supervises and controls the fishing activities”.¹²⁷

6.62. Naval patrols by Honduras commenced in 1976, when the Navy was established. Since that date naval patrols have been carried out on a regular basis in the waters north of the 15th parallel, which has been treated as the maritime boundary between Honduras and Nicaragua. In some cases (always after 1982) the patrols are reported to be responding to incursions by Nicaraguan vessels, including military vessels.¹²⁸ In other cases the

¹²⁴ See Statement of Fabián Flores Ramirez, HCM, vol 2, annex 73.

¹²⁵ Statement of Selvin McKenny Johnson, HCM, vol 2, annex 68.

¹²⁶ Statement of Ramon Antonio Nell Manister, HCM, vol 2, annex 72.

¹²⁷ Statement of Ramon Antonio Nell Manister, HCM, vol 2, annex 72.

¹²⁸ See e.g. logbook of the *Hibueras*, entries of 18 September 1982 (incident at Bobel Cay), April 1983 (incident at Bobel Cay), 9 September 1983 (incident at 15°02’00”N 82°30’00”W), 6 November 1983 (incident at 15°01’00”N 82°58’00”W), HCM, vol 2, annex 129; Note dated 21 March 1982, addressed by the Chief of the Honduran Armed Forces to the Minister of Foreign Affairs of Honduras Regarding an Incident with Sandinista Patrol boats in Bobel and Media Luna Cays, HCM, vol 2, annex 139; Report dated 9 December 1982, addressed to the Commander in Chief of the Honduran Navy about an Incident with a Nicaraguan Patrol boat in the Bobel Cay Area, HCM, vol 2, annex 140. See also Report of 19 April 1983 by the Commander in Chief of the Honduran Navy about an Incident with a Nicaraguan Patrol boat at 15°10’00”N 82°40’00”W, Document 6-47 deposited with the Registry; Report of 12 September 1983 by the Head of Intelligence of the Honduran Armed Forces about an incident at 15°02’00”N 83°30’00”W), Document 6-48 deposited with the Registry; Report of 16

patrols are routine. Since 1986 two patrol boats – the *Hibueras* and the *Honduras* – have carried out routine patrols, visiting *inter alia* Bobel Cay, Savanna Cay, South Cay and the Alargado Reef, as well as the Rosalind and Thunder Knoll Banks. Patrols by these military boats serve a number of functions in the waters around the islands and banks, including inspecting Honduran fishing boats and catches¹²⁹ – and occasionally arresting ships fishing or trading illegally,¹³⁰ assisting boats in distress,¹³¹ and providing injured fishermen and sailors with first aid or taking them to medical facilities in Honduras.¹³² These patrols have also provided

October 1983 by the Commander in Chief of the Honduran Navy about an Incident at 15°04'00"N, Document 6-49 deposited with the Registry; Report of 17 November 1983 by the Head of Intelligence of the Honduran Armed Forces about an incident at 15°01'00"N 82°85'00"W, Document 6-50 deposited with the Registry; Report of 8 December 1983 by the Commander in Chief of the Honduran Navy about an incident at 15°03'00"N 83°08'00"W, Document 6-51 deposited with the Registry; Report of 14 December 1983 by the Head of Intelligence of the Honduran Armed Forces Affairs about an incident at 15°03'00"N 83°08'00"W, Document 6-52 deposited with the Registry.

¹²⁹ See e.g. Logbook of the *Honduras*. Naval Base of Puerto Castilla (Patrolling of 16 November 1988 at 15°18'25"N 82°35'00"W, around Media Luna and Bobel cays), HCM, vol 2, annex 133; Logbook of the *Honduras*. Naval Base of Puerto Castilla (Patrolling of 17 and 18 April 1989 at Media Luna and South cays), HCM, vol 2, annex 134; Logbook of the *Honduras*. Naval Base of Puerto Castilla (Patrolling of 20-26 and 30 October 1990 at 15°06'00"N 83°18'00"W), HCM, vol 2, annex 135; See generally "Annual Report of Organisation, Operations and Training No.11" of the Naval Base of Puerto Cortés. Period Covered: from December 1987 to December 1988 (Patrolling the Rosalinda's Fishing banks), HCM, vol 2, annex 136. See also Logbook of the *Honduras*. Naval Base of Puerto Castilla (Patrolling of 10-13 February 1989, around Media Luna and Bobel cays). Document 6-53 deposited with the Registry; Logbook of the *Hibueras*. Naval Base of Puerto Castilla (Patrolling of 14 and 15 January 1990 at 15°05'66"N 82°38'64"W), Document 6-54 deposited with the Registry; Logbook of the *Hibueras*. Naval Base of Puerto Castilla (Patrolling of 16, 17, and 18 June 1990 at 16°18'74"N 80°40'26"W, Rosalind Bank), Document 6-55 deposited with the Registry; Logbook of the *Honduras*. Naval Base of Puerto Castilla (Patrolling of 20-24 May 1991 at 15°16'00"N 82°38'00"W), Document 6-56 deposited with the Registry; Logbook of the *Hibueras*. Naval Base of Puerto Castilla (Patrolling of 3 November 1987 at South Cay), Document 6-57 deposited with the Registry.

¹³⁰ US vessel Captain Bill was arrested, on 14 May 1988, at 16°20'N 80°09'W with 3,000 pounds of lobster and no permits, Report of the Naval Squadron of the Atlantic of Puerto Cortés of 23 May 1988, HCM, vol 2, annex 132; Report of 23 September 2000 to the Naval Commander of the Honduran Naval Base of Puerto Castilla, regarding the Capture of a Nicaraguan Vessel while Engaged in Illegal Activities to the North of the 15° Parallel (15°09'N 82°12'), HCM, vol 2, annex 141.

¹³¹ See e.g. Logbook of the *Hibueras*. Naval Base of Puerto Cortés (Patrolling of 6, 7 and 8 August 1986 and 6 May 1987 at South and Bobel Cays). HCM, vol 2, annex 130. See also Logbook of the *Hibueras* (Patrolling of 18 January 1989, describing rescue of fishing crew at South Cay), Document 6-58 deposited with the Registry.

¹³² See e.g. Logbook of the *Hibueras*. Naval Base of Puerto Cortés (Patrolling of 6, 7 and 8 August 1986 and 6 May 1987 on an incident at South Cay), HCM, vol 2, annex 130.

assistance to distressed foreign vessels in these Honduran waters.¹³³ In at least one case a distressed Nicaraguan sailing boat was located at 15°00'10"N and 82°50'W and towed to the maritime boundary at the 15th parallel.¹³⁴ More recently, since 1995, special patrols have been conducted with three objectives: to ensure that Nicaraguan vessels do not enter Honduran waters and harass or apprehend Honduran fishing vessels; to prevent and control narco-trafficking activities; and to ensure that duly authorized fishing vessels respect Honduran fisheries conservation measures.¹³⁵

6.63. By contrast, it is plain that Nicaragua does not – and does not purport to – enforce its fisheries or other laws in the area north of the 15th parallel.¹³⁶ Nicaragua has provided no evidence that prior to 1982 it patrolled, or sought to patrol, any part of the waters north of the 15th parallel. The situation changed only from 1979 with the coming to power of the new Sandinista Government of Nicaragua.¹³⁷

See also Logbook of the *Hibueras*. Naval Base of Puerto Cortés (Patrolling of 5 April 1987, describing incident in Media Luna Cay), Document 6-59 deposited with the Registry.

¹³³ Logbook of the *Hibueras*. Naval Base of Puerto Cortés (Patrolling of 6 May 1987, assisting a United States registered vessel originating from Newport, Rhode Island, en route to Panama, which had run aground on Alargado Reef), HCM, vol 2, annex 130.

¹³⁴ See Logbook of the *Honduras*. Naval Base of Puerto Cortés (Patrolling of 21 October 1990, involving the *Blanca Esters* with a Nicaraguan crew), HCM, vol 2, annex 135.

¹³⁵ See e.g. Operations Order N.003-95 of the Naval Base of Puerto Castilla (Patrolling of February 1995 at Bobel Cay, Cabo Falso Cay, Cape Gracias a Dios and La Mosquitia), HCM, vol 2, annex 137; Operations Order N.01-97 of the Naval Base of Puerto Castilla (Patrolling of December 1997 on Areas including Bobel, Savanna Cay and South Cay, Alargate Reef and Rosalind and Thunder Knoll banks), HCM, vol 2, annex 138; Annex “E” Resolution N.06-2000 to Operations Order N.21-2000, Concerning the Preservation of Fishing Natural Resources, Issued by the Naval Base of Puerto Castilla. (Diagram of Operations Annexed), HCM, vol 2, annex 142. See also Order 004/98 of the Fuerza Naval, 4 March 1998, (patrolling at Bobel, Savanna Cay and South Cay, Alargate Reef, and Rosalind and Thunder Knoll banks), Document 6-60 deposited with the Registry; Order 15/99 of the Honduran Navy, 21 September 1999, (patrolling at Bobel, Savanna Cay and South Cay, Alargate Reef, and Rosalind and Thunder Knoll banks), Document 6-61 deposited with the Registry; Order 003/96 of the Honduran Navy, 13 August 1996, (patrolling at Media Luna Cay and Alargate Cay), Document 6-62 deposited with the Registry.

¹³⁶ See Statement of Ramon Antonio Nell Manister, HCM, vol 2, annex 72.

¹³⁷ See Statement of Gabriel Echeverría Arrechavala, HCM, vol 2, annex 75 (“he never encountered any Nicaraguan fishing boats in the area north of Parallel 15°; it is only now that problems have arisen with the Sandinists because the Nicaraguan patrols invade the area north of Parallel 15°; he further deposes that the Nicaraguan authorities have never granted fishing permits north of Parallel 15°”); Statement of Santos Calderón, HCM, vol 2, annex 78 (“such activities have always been regulated by the

G. HONDURAS ENGAGES IN PUBLIC WORKS
AND SCIENTIFIC SURVEYS IN THE AREA

6.64. Honduras has carried out public works on the islands, including Bobel Cay, South Cay and Savanna Cay, which have involved the activities of – and recognition by – third States.

6.65. For example, in 1976 Honduras entered into an “Arrangement” with the United States for Hydrographic and Nautical Cartography between the Agencies of the Republic of Honduras and the United States of America. According to this ‘Arrangement’ the national agencies of the Honduran and United States Governments agreed to participate in surveys of “the ports and coastal waters of the Republic of Honduras and to the publication of nautical charts of these areas”.¹³⁸ Pursuant to this arrangement, in 1980 and 1981 triangulation markers (for the purposes of establishing satellite observation stations for navigational and other uses) were placed on Savanna Cay (with the name “Logwood” on the marker), South Cay and Bobel Cay by the Inter-American Geodetic Survey of the Defence Mapping Agency of the United States: see Plates 16, 17, 18. For each of these triangulation markers a report was prepared (Summary of Satellite-Observed Stations), and in each case the Summary identifies the location of the island (by detailed geographic coordinates) and states that the marker is located in Honduras.¹³⁹

6.66. Beyond the markers, Honduras has promoted the installation of navigational aids and demarcation devices in the area, such as lighthouses and demarcation buoys.¹⁴⁰

Hondurans and as to incidents with Nicaraguan patrols he is only aware that several incidents took place when the Sandinists were in power”).

¹³⁸ See Arrangement for Hydrographic and Nautical Cartography between the Agencies of the Republic of Honduras and the United States of America, Signed at Tegucigalpa on 30 August 1976. Attachment 1: US Naval Oceanographic Office. General Instructions. Harbor Survey Assistance Program (HARSAP). Annex A: U. S. Naval Oceanographic Office. Horizontal Control. A10201 Triangulation, HCM, vol 2, annex 152.

¹³⁹ See Summaries of Satellite-Observed Stations Effected in Accordance with the 1976 Arrangement for Hydrographic and Nautical Cartography between the Agencies of the Republic of Honduras and the United States of America (triangulation markers on Bobel, Logwood and South cays), HCM, vol 2, annex 154. See Notarial Certifications Issued in Bobel, Logwood and South cays, requested by the Director of Demarcation and Boundaries Maintenance of the Ministry of Foreign Affairs of Honduras. Certified Copies of 16 February 2000, HCM, vol 2, annexes 94-96.

¹⁴⁰ See Report dated 13 May 1980 addressed to the Commander of the Naval Base of Puerto Cortes Regarding the Installation of Beacons and Buoys in Vivorillos Cays, Gorda Bank, Cayo Pichon and Others Located North of the 15th Parallel, HCM, vol 2,

6.67. Honduras has also carried out scientific surveys in the area, or permitted third parties (including intergovernmental organisations) to carry out such surveys. In 1970 the UN Food and Agriculture Organisation and the United Nations Development Programme supported a Regional Project for the Development of Fisheries in Central America, involving the Governments of Honduras and Nicaragua and four other States in the Region. The Project involved a programme of general investigations aiming to research spiny lobster (*Panulirus Argus*) in Honduran and Nicaraguan waters. The Report of those investigations describes the results of investigations in Honduras in

“an off-shore area with a surface of about 6,500 square miles, East-North-East of Cabo Gracias a Dios, between 15,00 and 16,00 N and ending at 81,00 W in the East”.¹⁴¹

The Report on this part of the investigation in Honduras concluded:

“The edge of the continental shelf, between 15,00 and 15,20N, seems to possess an interesting commercial population from 25 down to 120 fathoms.”¹⁴²

The Report also addresses similar activities in Nicaragua. All the investigations referred to as taking place in Nicaragua occurred south of the 15th parallel.¹⁴³

H. THIRD PARTIES RECOGNISE HONDURAN SOVEREIGNTY AND JURISDICTION IN THE AREA

6.68. Beyond the recognition by *inter alia* fishermen and oil companies of the 15th parallel as the maritime boundary between Honduras and Nicaragua, a number of States have recognised Honduran sovereignty and jurisdictional rights over the islands and waters north of the 15th parallel. The recognition of Jamaica, for example, is reflected in the activities of its nationals who have fished in these waters for many years, duly licensed by the Honduran authorities, and by the export to Jamaica of fish caught in

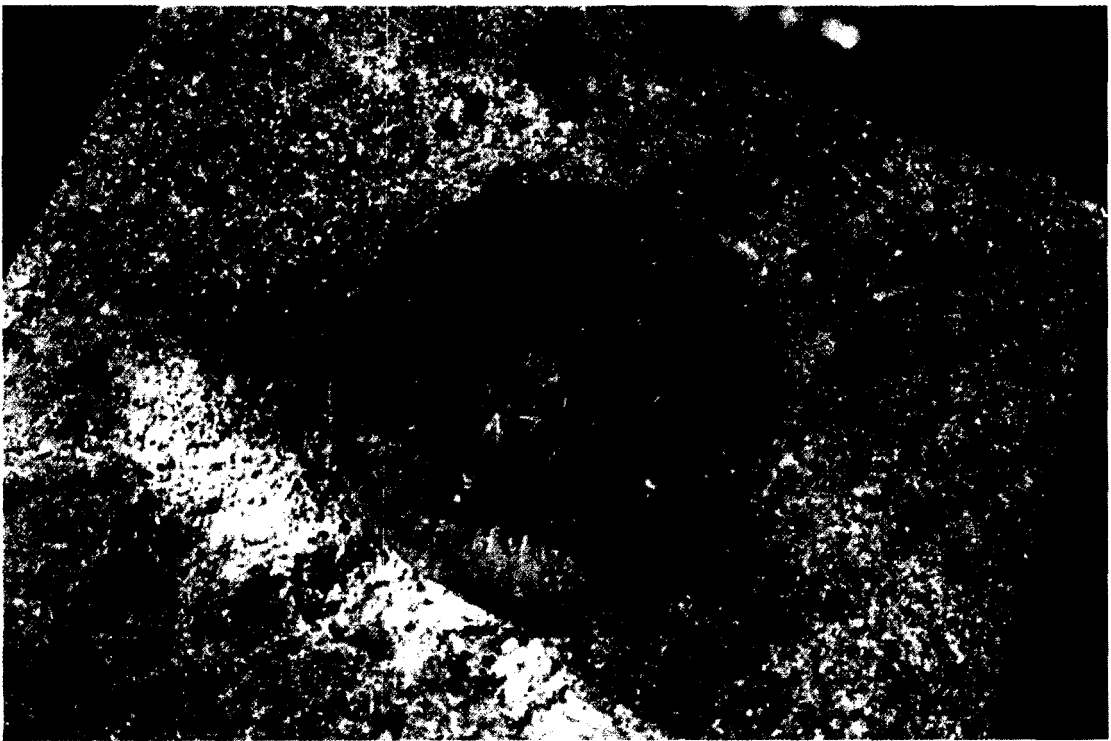
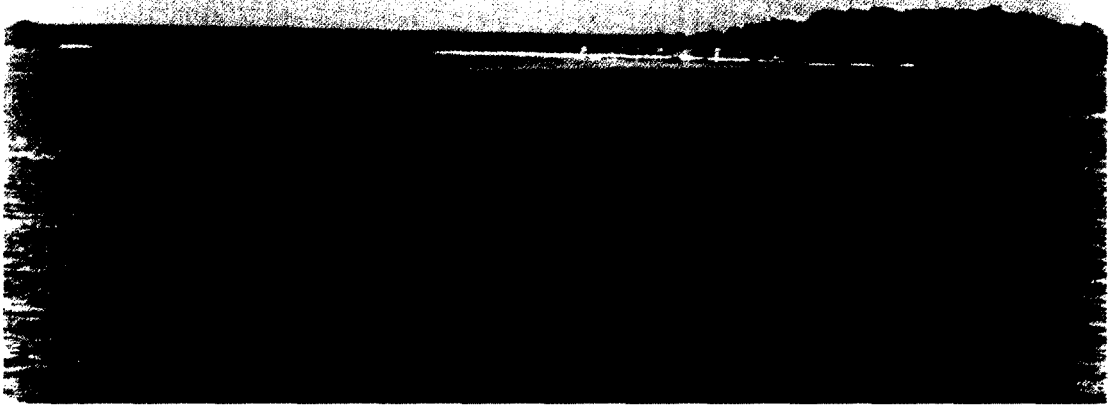
annex 145. See also on buoys Working Plan of the National Port Authority, 11 July 1980, HCM, vol 2, annex 155.

¹⁴¹ Document “Exploratory and Simulated Commercial Fishing Operations in the Western Caribbean Sea. R/V “CANOPUS”, May to November 1970” by Marcel Giudicelli, CCDO-FAO-UNDP, San Salvador 1971, at p 60, HCM, vol 2, annex 163.

¹⁴² *Ibid*, p 63.

¹⁴³ *Ibid*, pp 69-75.

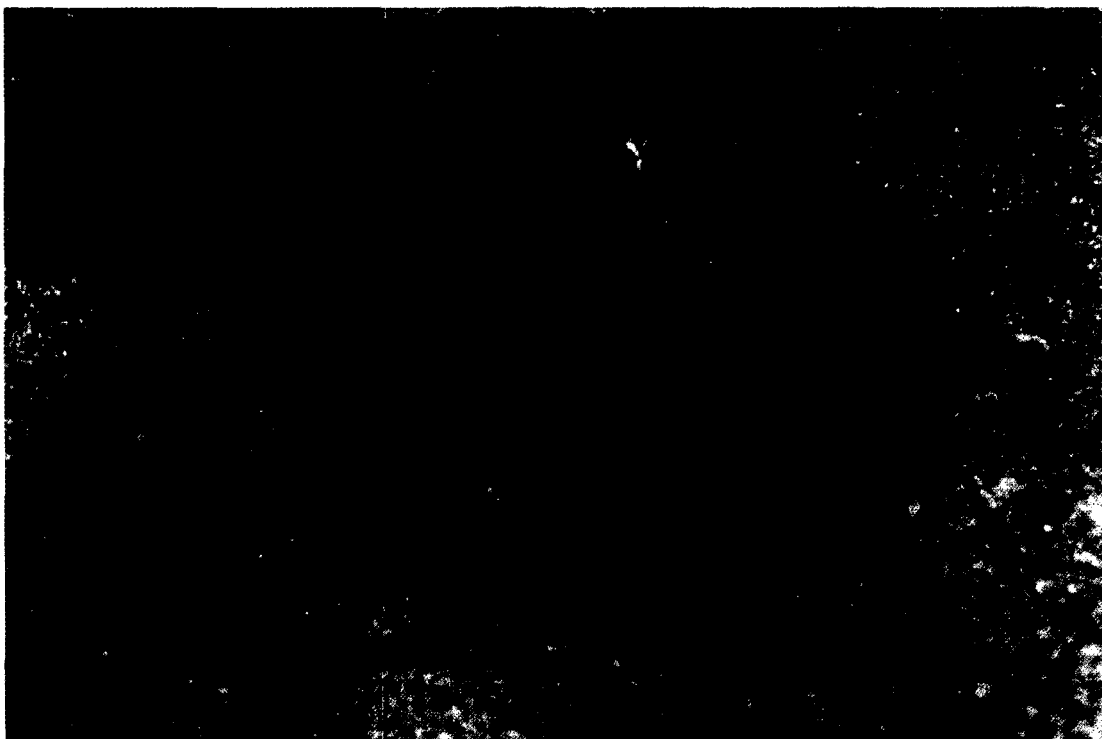
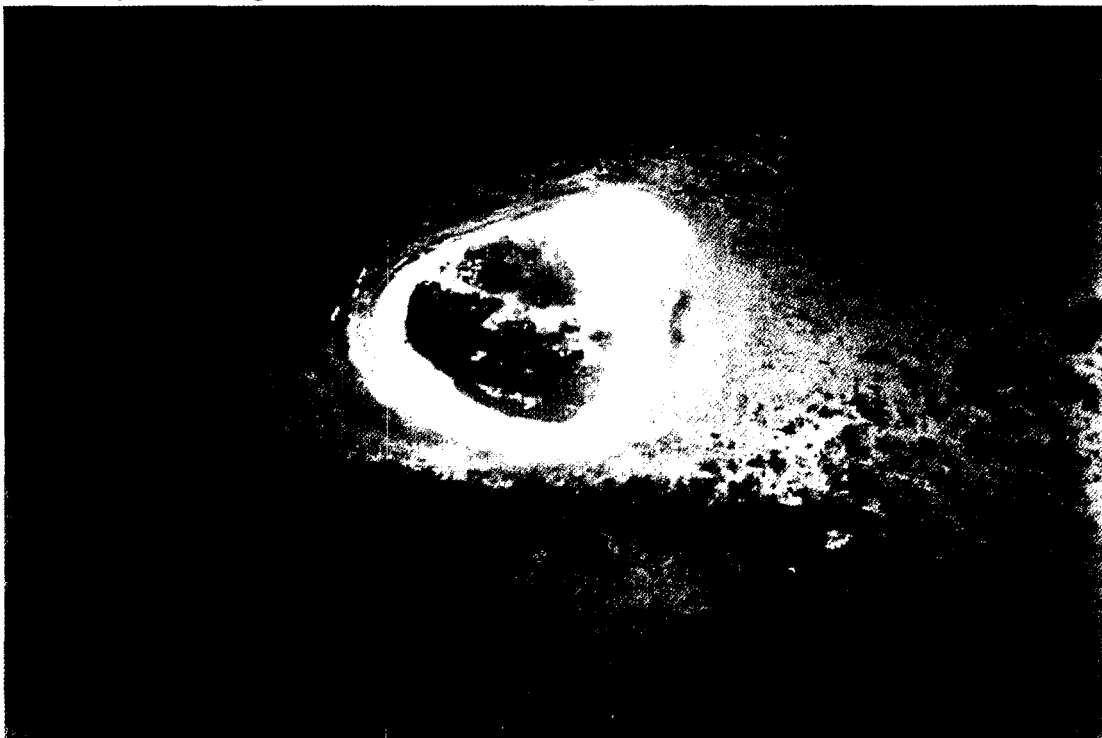
Savanna Cay and Triangulation Station Disc (Photograph taken February 2000)



Bobel Cay and Triangulation Station Disc (Photograph taken February 2000)



South Cay and Triangulation Station Disc (Photograph taken February 2000)



those waters.¹⁴⁴ Jamaica's recognition is also reflected, more formally, in a request it made in 1977 to have access to Honduran waters to rescue twelve Jamaican nationals who were shipwrecked in Savanna Cay.¹⁴⁵

6.69. Until the Sandinista Government took over in 1979, the practice of Nicaragua was to treat the 15th parallel as the traditional maritime border.¹⁴⁶

6.70. The recognition of the United States is reflected in numerous activities carried out by the United States in and around the islands. These activities include the installation of triangulation markers pursuant to the 1976 Honduras/United States Arrangement,¹⁴⁷ and drug enforcement operations carried out jointly by Honduras and the United States in 1993.¹⁴⁸ Indeed, the United States treats as Honduran all the islands and banks now claimed by Nicaragua which are located north of the 15th parallel. Such recognition is reflected in a 1943 Report on "The fisheries and the fishery resources of Honduras" of the Fish and Wildlife Service of the US Department of the Interior and the Office of the Coordinator of Inter-American Affairs, which identifies among others fishing banks Gorda, Rosalind and Thunder Knoll.¹⁴⁹ Similarly, the 1983 Report (3rd edition) of the US Board on Geographic Names¹⁵⁰ 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. By contrast, none of the islands and reefs claimed by Nicaragua are identified in the 1985 Gazetteer of Nicaragua (published by the US Defense Mapping Agency, Washington DC) as being in Nicaragua.¹⁵¹ It is to be noted that the reports of the US National Imagery and Mapping Agency and the US Board on Geographic Names are partially based on Honduran and

¹⁴⁴ See *supra* paras 6.35-6.36, and 6.46.

¹⁴⁵ See Note No. 320-SAC of 25 February 1977, from the Under-Secretary of Foreign Affairs of Honduras to the Minister of Defence of Honduras, HCM, vol 2, annex 19.

¹⁴⁶ See Notarial Certification Issued on 5 June 2001. (Deposition by Roberto Arita Quiñónez and others concerning a meeting held between Honduras and Nicaragua on 12 July 1982, HCM vol 2, annex 97. ("On the problems regarding the Atlantic Ocean, both delegations accepted that they have always respected parallel 14°59'08" (known as parallel 15) as the traditional line delimiting the maritime boundary between the two Republics"). See *supra* paras 6.37-6.42.

¹⁴⁷ See *supra* para 6.65.

¹⁴⁸ See *supra* para 6.21.

¹⁴⁹ See *supra* para 6.31.

¹⁵⁰ See HCM, vol 2, annex 167.

¹⁵¹ See HCM, vol 2, annex 168.

Nicaraguan official information.¹⁵² There is no evidence that Nicaragua has ever objected to these US Reports, notwithstanding the fact that she contributed to their preparation and is presumably well aware of them.

6.71. Similarly, the Gazetteer of Geographic Features updated by the US National Imagery and Mapping Agency in October 2000,¹⁵³ identifies the following cays as being part of Honduras: South Cay, Bobel Cay, Port Royal Cay, Porpoise Cay, Savanna Cay, Cayo Media Luna and Arrecifes de la Media Luna (also called Half Moon Cay and Reefs), Burn Cay, False Cape Shoal and Bank and Logwood Cay. The southernmost island located within the territory of Honduras is one Hara Island at 15°00' N; the northernmost insular feature attributed to Nicaragua appears to be at San Pio Island at 14°59' N. Such recognition is also reflected in the 1995 "Sailing Directions" for the Caribbean Sea issued by the US Defense Mapping Agency, which divides the areas in dispute into 2 sectors. Sector 5 includes the coasts of Panama, Costa Rica and Nicaragua and Sector 6 sets out the coasts of Honduras, Guatemala, Belize and Mexico. The Sectors are divided along the 15th parallel from Cape Gracias up to the 81st meridian. The description of Sector 5 does not include any of the insular features in dispute. By contrast, the description of Sector 6 relating to the Honduras Coastline includes references to the "N. part of the Miskito Bank" and includes 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.¹⁵⁴ Charts published in 1993 by the British Hydrographer of the Navy, do not appear to divide the relevant coasts along maritime boundaries, but the insular features in question are included in the British Pilot in a subsection entitled "Cabo Gracias a Dios to Cabo Falso," Cabo Falso being in Northern Honduras.¹⁵⁵

6.72. Other forms of recognition are expressed for example by means of requests by third States to the Government of Honduras to authorise their aircrafts to fly over Honduran territory,¹⁵⁶ or through diplomatic action on

¹⁵² See HCM, vol 2, annexes 167 and 168, which state: "Wherever possible, gazetteer production is carried out with the cooperation of the concerned country."

¹⁵³ See the website of the US National Imagery and Mapping Agency at <http://gnpswww.nima.mil/geonames/Gazetteer/Search>.

¹⁵⁴ See See Sailing Directions (Enroute), Caribbean Sea, vol II, Defense Mapping Agency, 5th Ed (1995), p 93 *et seq*, Document 6-63 deposited with the Registry.

¹⁵⁵ See See East Coast of Central America and Gulf of Mexico Pilot, Hydrographer of the Navy, 2nd Ed (1993), p 72 *et seq*, Document 6-64 deposited with the Registry.

¹⁵⁶ Transcription of diplomatic note from the Embassy of the Republic of Argentina to the Ministry of Foreign Affairs of Honduras requesting authorisation to fly through

behalf of its own nationals, such as the inquiry by the US regarding a vessel of its flag that supposedly had been fired at by Honduran patrols at 15°10'N 83°10'W.¹⁵⁷

6.73. Finally, recognition that the 15th parallel represents the boundary between Honduras and Nicaragua is reflected in the activities of international organisations. For example, in its work identifying fisheries stocks in the Caribbean Sea the FAO has relied on the 15th parallel as the maritime boundary between Honduras and Nicaragua.¹⁵⁸ There is no evidence that Nicaragua, which participated in this FAO project, objected to the approach taken by the FAO. Recognition by other international organizations is reflected *inter alia* in the activities of UNDP¹⁵⁹ and the Inter-American Development Bank.¹⁶⁰

6.74. Recognition of Honduran sovereignty and jurisdiction over the area is not limited to governments and international organisations. Private companies also have recognized Honduran sovereignty in the area north of the 15th parallel, for example in requests for authorization to carry out research on ancient shipwrecks.¹⁶¹

6.75. In contrast to this evidence confirming that the 15th parallel constitutes the maritime boundary between Honduras and Nicaragua, and that the islands lying to the north of that parallel are without exception part of Honduras, Nicaragua has provided no evidence in its Memorial indicating any third party recognition of its claim.

position 15°17'N 82°W en route between the US and Argentina, 30 October 1975, HCM, vol 2, annex 143.

¹⁵⁷ Diplomatic note No. 106 of the Embassy of the United States of America, 27 June 1978, HCM, vol 2, annex 144.

¹⁵⁸ See *supra* at paras 6.32 and 6.33.

¹⁵⁹ See *supra* at para 6.32.

¹⁶⁰ See *supra* at para 6.33.

¹⁶¹ See Note N.954-G Dated 28 December 1994 addressed by the General Manager of the Honduran Institute of Anthropology and History to the Commander of the Naval Force of Honduras (Regarding Permission Requested by the Company Research and Recovery Inc. for Searching Remains of Spanish Galleons North of the 15th Parallel), HCM, vol 2, annex 157.

I. HONDURAS HAS CONSISTENTLY OBJECTED TO ANY CLAIMS BY NICARAGUA TO THE AREA NORTH OF PARALLEL 15

6.76. Until 1980 Nicaragua's practice was consistent in recognizing Honduran sovereignty and jurisdiction over the islands and maritime areas north of the 15th parallel. That practice changed in 1980. As described in Chapter 3, when Honduras has learnt of any claim by Nicaragua, or any act which might support or evidence such a claim or belief, to any area north of the 15th parallel, she has responded by formal diplomatic protest. Those protests have generally been addressed to the Ministry of Foreign Affairs of Nicaragua,¹⁶² and have also on occasion been raised by Honduras before the United Nations Security Council.¹⁶³

III. CONCLUSIONS

6.77. By way of conclusion it may be seen that Honduras' effective administration of the area north of the 15th parallel is reflected in her long-standing (and until recently, unchallenged) application and enforcement of its laws and regulations and the regulation of economic activities in the area. By contrast Nicaragua has provided the Court with no evidence that she has ever applied (or even sought to apply) any of its laws or regulations to the area north of the 15th parallel and has never sought to regulate oil, gas and fisheries activities in that area. Honduran nationals live and work on the islands in the area; foreign nationals (including Nicaraguans) live and work on the islands only where duly authorised by the Honduran authorities. Specifically, and in contrast to Honduras' activities within the area, Nicaragua has within the area:

- never exercised administrative control or applied its legislation or laws;
- never applied or enforced its criminal or civil laws;
- never regulated the exploration and exploitation of oil and gas activities north of the 15th parallel, and has always limited regulation of such activities to areas south of the 15th parallel;

¹⁶² See generally, Chapter 3 at paras 3.18 *et seq.*

¹⁶³ The following Honduran diplomatic notes of protest were submitted to the UN Security Council: No. 2176 of 18 September 1982; No. 479 DA of 17 October 1983; Note 571 DA of 14 November 1983; No. 053-DA of 29 January 1985 (see HCM, vol 2, annexes 25, 30, 33 and 40); No. D55-502 of 20 September 1982; No. 228-DSM of 15 April 1983 and No. 426-DA of 29 August 1983 (see NM, annexes 19-21 and 102).

- never regulated fisheries activities north of the 15th parallel, and has always limited regulation of such activities to areas south of the 15th;
- never regulated immigration;
- never carried out and search and rescue operations and has been met with objections from Honduras on the few occasions its vessels have entered the area;
- never engaged in public works and scientific surveys; and
- made no formal claim to sovereignty and jurisdiction before its Application of 9 December 1999.

6.78. Moreover, no third State or other party has recognised Nicaraguan sovereignty or jurisdiction over the area north of the 15th parallel. Nicaragua has not shown any conduct by its authorities in the area such as to demonstrate any exercise – whether effective or otherwise – of territorial jurisdiction. In the circumstances, Nicaragua has shown no basis upon which to make her present claim, and cannot now properly and lawfully do so.

CHAPTER 7

THE APPLICATION OF THE RELEVANT CIRCUMSTANCES AND THE COURSE OF THE SINGLE MARITIME BOUNDARY

I. INTRODUCTION

7.1. The Court has always made it clear that the determination of an equitable result requires account to be taken of *all* the relevant circumstances or factors.¹ It is the complex task of identifying, weighing, and then balancing all the relevant circumstances that often proves so difficult, for these factors vary in weight and some may even prove to have little relevance. But *all* must be taken into account.

7.2. The Nicaraguan Memorial has chosen to ignore this precept. It has taken account of the geographical configuration of the two coasts – which is certainly one relevant factor – and ignored many others: the long-established, traditional maritime frontier along the 15th parallel, the existence of Honduran islands and Honduran *effectivités* just to the north of this parallel, the delimitations already made in the area under the 1928 Nicaragua /Colombia Treaty and the 1986 Colombia/Honduras Treaty.

7.3. To compound this error, Nicaragua relies on a bathymetric argument (the Nicaraguan Rise) of dubious authenticity² which has been legally irrelevant for nearly twenty years; on a claimed security need³ which, if it has marginal, legal relevance as a concept, has no basis in fact; and on a list of “equitable criteria”⁴ which amount to no more than a plea for a greater share of the offshore resources.

¹ Malta/Libya, ICJ Reports 1985, p 38, para 45:

“Judicial decisions are at one – and the Parties themselves agree – in holding that the delimitation of a continental shelf boundary must be effected by the application of equitable principles in all the relevant circumstances in order to achieve an equitable result.”

The same point is made in the *Dispositif*, A(I), at p 57.

² NM, vol I, pp 131-133.

³ NM, vol I, pp 134-136.

⁴ NM, vol I, p 123 *et seq.*

II. THE CIRCUMSTANCES INVOKED BY NICARAGUA WHICH ARE IRRELEVANT OR MISCONCEIVED

A. THE BATHYMETRIC FEATURE, THE NICARAGUAN RISE

7.4. As noted earlier,⁵ this is a dubious feature with a new nomenclature. Moreover, since the Court's Judgment in 1985 in *Libya/Malta*,⁶ it has no relevance for delimitation, lying within 200 miles of the coast. Nicaragua is well aware of the Court's Judgment, but says:⁷

"However, the present argument of Nicaragua is basically different, namely that the Nicaraguan Rise is one single feature shared by Nicaragua and Honduras, which is characterised by the absence of any natural dividing lines. [Para. 17]

[...]

The boundary proposed by Nicaragua respects the unitary character of the Nicaraguan Rise, by dividing the Rise in approximately equal halves between Nicaragua and Honduras." [Para. 21]

The argument is facile. If Nicaragua relies on the unitary character of the feature, this is invoking the geophysical characteristics of the feature as a criterion for delimitation: precisely what the Court said was not to be done.

B. THE ALLEGED SECURITY NEED

7.5. The Court has on occasion accepted⁸ the relevance of an argument based on security, usually to avoid a boundary which would locate shelf areas belonging to one State too close to the shores of another State. But the traditional boundary along the 15th parallel does not do that. A parallel running due east from Cape Gracias a Dios remains well away from the Nicaraguan coast. And the Nicaraguan Memorial is devoid of any explanation as to how this, or any other, line could pose a threat to its own

⁵ Para 2.22 *supra*.

⁶ ICJ Reports 1985, p 35, para 39. The Court's argument was that, since the acceptance of the "distance principle", geological or geomorphological features less than 200 miles from the coast had ceased to have any relevance in either verifying title or delimitation.

⁷ NM, pp 132-133, paras 17 and 21.

⁸ See, for example, *Libya/Malta*, ICJ Reports, 1985, para 51.

security, or how its own proposed bisector of the angle of the two coasts would provide greater protection to the security of both Parties.

C. THE ARGUMENT THAT “THE BISECTOR” WOULD GIVE TO NICARAGUA AN EQUITABLE SHARE OF THE RESOURCES OF THE AREA.

7.6. This part of the Nicaraguan Memorial,⁹ whilst it abounds with citations from the case-law, is singularly lacking in any evidence that the citations are relevant to this case. The notion that, in an area of “overlapping claims”, a boundary might be adjusted to avoid “catastrophic repercussions for the livelihood and economic well-being of the population [...]”¹⁰ is quite irrelevant to this case *unless* Nicaragua can show that it has *bona fide* claims in the area, overlapping with those of Honduras, *and* that the line claimed by Honduras would produce an economic catastrophe for the Nicaraguan people. Nicaragua does neither. And she ignores the effect on those living and working on and around the islands north of the 15th parallel.

7.7. In fact, until 1980, there had been no Nicaraguan claims to this area north of the 15th parallel. And to this day there has never been a Nicaraguan petroleum concession granted north of this parallel, or a well drilled under her authorization.¹¹

7.8. So far as fishing is concerned, whilst some unauthorised fishing by Nicaraguan vessels has undoubtedly occurred, north of the 15th parallel, the Honduran authorities have vigorously attempted to stop all unauthorised fishing north of the 15th parallel.¹²

⁹ NM, vol I, pp 123-130.

¹⁰ *Gulf of Maine Case*, US/Canada ICJ Reports 1984, p 342, para 237.

¹¹ Para 6.27 *supra*.

¹² *Supra* Para 6.60 *et seq.*

D. THE INSTABILITY OF THE MOUTH OF THE RIVER COCO

7.9. In this case there is a relevant factor which affects not so much the course of the delimitation line as the point from which the Court should draw that line. Nicaragua does not ignore this factor, but misconceives its relevance in that Nicaragua advocates starting the Court's line offshore, but at 15°01'53" N and 83°05'36" W.¹³ But this, of course, assumes the line should be the Nicaraguan "bisector", a view Honduras cannot share.

7.10. The Arbitral Award of 1906 defined the terminal point of the land boundary as "the mouth of the River Coco, Segovia or Wanks, where it flows out into the sea close to Cape Gracias a Dios, taking as the mouth of the river its principal arm between Hara and the Island of San Pio."¹⁴

7.11. However, the constantly-changing geography of the mouth led to difficulties in identifying this terminal point, and its exact location was eventually agreed on 15 December 1962, at the twelfth meeting of the Honduran/Nicaraguan Mixed Commission, established under the aegis of the OAS: it was located at 14°59.8' latitude north and 83°08.9' longitude west.¹⁵

7.12. A series of Landsat images, compiled after 1979, shows that these geographical changes have continued, moving the mouth eastwards, and thus the 1962 location now lies well inside what would now be described as "the mouth" in geographical terms (see Plate 19).¹⁶ To this extent Honduras shares the view expressed in the Nicaraguan Memorial.¹⁷

7.13. This is certainly a relevant factor for the delimitation. It affects the delimitation in that the terminal point of the land boundary is the normal starting-point for the maritime boundary. However, if the location of the mouth of the river is constantly changing, as seems probable,¹⁸ it is inappropriate to request the Court to draw a boundary from this point. The

¹³ NM, vol I, p 10, para 29.

¹⁴ ICJ Pleadings, *Case Concerning the Arbitral Award Made by the King of Spain on 23 December 1906*, Vol I, Application Instituting Proceedings, Annex II, pp 18-26.

¹⁵ NM, annex 1.

¹⁶ For a larger scale version of this image, see HCM, vol 3, Plate 19.

¹⁷ NM, p 13, para 30.

¹⁸ The instability of the coast at this point was emphasized in the 1962 Report of the Honduran/Nicaraguan Mixed Commission which, in its concluding remarks, noted that the topography of the region had undergone constant changes for many years. NM, vol 2, annex 1.

boundary to be determined by the Court should be enduring, whilst respecting both the 1906 Award and the 1962 Agreement.

7.14. The solution, in Honduras' submission, is to invite the Court to draw its line from the current mouth of the River Coco, as agreed between the Parties, to the 12-mile limit at a point where it intersects the 15th parallel (14°59.8')

III. THE RELEVANT CIRCUMSTANCES IGNORED BY NICARAGUA

A. THE CONDUCT OF THE PARTIES

7.15. The evidence that there has been conduct by both Parties, showing their acceptance of a particular method of delimitation, or a particular line of delimitation – even though not formally embodied in treaty form – is highly relevant. It was affirmed by the Court in *Libya/Tunisia* in these terms:

“The line of adjoining concessions, which was tacitly respected for a number of years, and which approximately corresponds furthermore to the line [...] which had in the past been observed as a de facto maritime limit, does appear to constitute a circumstance of great relevance.”¹⁹

7.16. The rationale for this approach is compelling. It is highly unlikely that the Parties would have accepted by their conduct a boundary which one or other thought to be *inequitable*. Thus concerted, voluntary conduct must be *prima facie* evidence of the equitableness of the result they acted upon.²⁰

7.17. As has been shown, prior to 1980, the Parties readily accepted the traditional maritime boundary along the 15th parallel. This boundary may not have been embodied in a treaty, but then no rule of international law requires a boundary to be based on treaty, rather than custom. The limit may not have been absolutely precise, and it was not until 1962 that the Honduras/Nicaragua Mixed Commission gave it an exact latitude by fixing

¹⁹ ICJ Reports 1982, p 71, para 96.

²⁰ P Weil, *The Law of Maritime Delimitation—Reflections* (1989), p 258 is doubtful of its relevance, believing this approach makes effectiveness the criterion for delimitation. But this overlooks the fact that it is the common acceptance of the line, not its effectiveness, which is the test.

accurately the terminal point of the land boundary in the middle of the thalweg in the River Coco at 14°59.8'. But, prior to that, the limit was no more imprecise than the 26 degree line running seawards from Ras Adjir in the *Tunisia/Libya* Case. Most importantly, it was a limit observed by both Parties, as can be seen from the examples of their practice in the following sections. And it was known to the fishermen who were active in the area.

(1) Oil and Gas Concessions

7.18. The details of these concessions have already been set out in Chapter 6 above. The crucial, relevant circumstances are that, from 1965 to 1978, Nicaragua granted various offshore concessions and licences, *but in no case north of the 15th parallel*. Honduras observed the same limit in its own concession practice (see Plates 11, 12, 13). The coincidence is striking. It is hard to distinguish from the coincidence of Libyan and Tunisian practice in observing the 26 degree line from Ras Adjir.

7.19. Nor is it possible to see this line of coincidence as anything other than a maritime boundary. The Nicaraguan concession granted to the Pure Oil Company (later the Union Oil Company) in 1965 described the northern limit as “the boundary line with the Republic of Honduras, which has not been determined.”²¹

(2) Fishing Activities

7.20. As set out in great detail in Chapter 6, Honduras has exercised and continues to exercise sovereignty or sovereign rights over a number of significant and well-established fisheries grounds in the area north of the 15th parallel which is now claimed by Nicaragua. Pursuant to domestic legislation Honduras has long granted fisheries licences to its nationals and to nationals of third States (including Nicaraguan nationals) to fish in the area north of the 15th parallel; it has granted permits to export fish caught in Honduras; and has granted Fisheries concessions (to companies) and licences (to individuals) for several decades. Finally, where the fisheries licences or concessions have not been complied with, or where they expired, enforcement measures have been taken by the relevant Honduran authorities.²²

²¹ Document 6-37 deposited with the Registry. See also para 3.41 *supra*.

²² For an example of a Honduran fishing logbook form (*bitácora*) see HCM vol 3, Plate 31.

7.21. As stated earlier, third States and international institutions like the FAO have also recognized Honduran jurisdiction and control over fisheries activities north of the 15th parallel including specifically around the fisheries banks of Rosalinda and Thunder Knoll, as well as the Media Luna reefs.²³ All these factors are indicative of the overwhelming evidence that Honduran regulation of fishing activities in the area is well-established and uninterrupted, and that it is previously unchallenged by Nicaragua.²⁴

7.22. Nicaragua has failed to provide the Court with any evidence of its jurisdiction over these fishing banks. There is no evidence that Nicaragua has ever regulated, or even sought to regulate, fisheries activity in this area.²⁵ Further, fishermen in the area make it clear that they have rarely encountered any Nicaraguan boats north of the 15th parallel and where they have done so they have been immediately arrested if they were not carrying a Honduran licence. Moreover, the Nicaraguan authorities have never asked them for any documentation.²⁶ Interestingly, on the one instance when Nicaragua did purport to grant a fisheries concession to include an area north of parallel 15, it was withdrawn following a protest from Honduras.²⁷

(3) Naval and Aerial Patrols

7.23. It is also relevant that the waters and airspace in the area north of the 15th parallel, which is now claimed by Nicaragua, are patrolled by the Honduran authorities (including the Honduran Navy and air patrols). These patrols have as their purpose the enforcement of Honduran laws and regulations, including in particular in relation to fisheries. There are no patrols by the Nicaraguan authorities, and there have never been such patrols. The Honduran authorities have taken steps to enforce Honduran fisheries and other laws, including against Nicaraguan vessels (most recently in July 2001). Nicaragua has adduced no evidence which indicates that she has now or ever sought to prescribe, police or enforce any of its laws, including in relation to fisheries, in any area north of the 15th parallel.²⁸

²³ *Supra* paras 6.70 and 6.73.

²⁴ *Supra* para 6.46.

²⁵ *Supra* para 6.47.

²⁶ *Supra* para 6.46.

²⁷ *Supra* para 6.50.

²⁸ *Supra* para 6.50 *et seq.*

7.24. Indeed, Nicaraguan practice in relation to the enforcement of her fisheries laws confirms that the Nicaraguan authorities treat the 15th parallel as the northern limit of its territory and jurisdiction over her fishing waters. Only Honduran fishermen fishing south of the 15th parallel have been caught by the Nicaraguan authorities. In these cases the fishermen were escorted to the 15th parallel and, then released by the Nicaraguan coastguard.²⁹ One such incident is reported as recently as 2000.³⁰

7.25. Based on this evidence, and on the review of a long-established, common practice in Chapter 6, a maritime frontier running eastwards along approximately the 15th parallel was well-established by 1979. No rule of law required that the Parties should embody their agreement in formal, written treaty form, however desirable that may be. It would be quite wrong to allow the new Government of one Party to re-assess the “equities” of the situation and demand a revision of the agreement, as of right, or to argue, as Nicaragua now does, that no agreement exists and an equitable delimitation must be established *de novo*.

B. THE PRESENCE OF ISLANDS

7.26. There are four islands under Honduran sovereignty lying just north of the 15th parallel: Bobel Cay, Savanna Cay, Port Royal Cay, and South Cay.³¹ In the section of the Nicaraguan Memorial dealing with delimitation,³² nothing is said about these islands.

7.27. The details of the many governmental acts by which Honduras has maintained its sovereignty have already been given in Chapter 6. There is no doubt that they are true islands. Their permanence and significance are attested by the fact that several are inhabited.³³ They lie so close to the 15th parallel that the line cuts through a 12-mile arc of territorial sea, drawn from the two most southerly islands.

²⁹ *Supra* para 6.49.

³⁰ *Supra* para 6.49.

³¹ *Supra* para 2.3 *et seq.*

³² NM, vol I, pp 138-9. However, some cays are mentioned at an earlier stage (at p 36), but as Nicaraguan “islets” forming part of the Cays of Media Luna.

³³ Their permanence can also be seen from the fact that, under a 1976 Agreement between the United States and Honduras, Triangulation points were placed on Bobel Cay, Savanna Cay (referred to as Logwood), and South Cay, to aid accurate mapping: *supra* para 6.65 *et seq.*

7.28. Thus they are true islands within the meaning of Article 121 of the 1982 UN Law of the Sea Convention and, except to the extent that the traditional boundary precludes it, would be entitled to a territorial sea of 12 miles. They demonstrate the practicality of a boundary along the parallel, as claimed by Honduras, and the complete impracticality of the boundary claimed by Nicaragua. Their significance as relevant circumstances is beyond doubt, given their location, yet Nicaragua seems to ignore them, making a sweeping assertion of sovereignty over the islands,³⁴ based on the Nicaraguan Constitution, but offering no proof of the exercise of that sovereignty. And, by a series of lengthy citations to the jurisprudence,³⁵ Nicaragua argues that small, insignificant islands do not qualify as “base-points” where, being given “full-effect”, they would distort a maritime boundary. It is all irrelevant. Honduras does not use these islands as base-points, and claims neither shelf nor economic zone for the islands as such. Its claim is based on its mainland and the long history of an established, accepted boundary.

C. BOUNDARY AND OTHER TREATIES CIRCUMSCRIBING THE RELEVANT AREA

7.29. Over many years the Courts have made clear the relevance of maritime delimitation agreements with, or between, neighbouring States. In the *North Sea Cases* this Court stressed that an equitable delimitation required account to be taken “[...] of the effects, actual or prospective, of any other continental shelf delimitation between adjacent States in the same region.”³⁶

7.30. Similarly, in the *Guinea/Guinea-Bissau* arbitration³⁷ the Tribunal looked at actual delimitations off the coast of West Africa in order to arrive at an equitable delimitation consistent with the general pattern of agreements in the region. And in *Tunisia/Libya*, the Court took into account, as a relevant circumstance,

“[...] the existence and interests of other States in the area, and the existing or potential delimitations between each of the Parties and such States [...]”³⁸

³⁴ NM, vol I, p 36.

³⁵ NM, vol I, pp 139-144.

³⁶ ICJ Reports 1969, *Dispositif*, para 101 (D),(3).

³⁷ ILR vol 77, p 636, para 109.

³⁸ ICJ Reports 1982, para 81.

The rationale for this approach is clear. Such delimitations, whether with or between third States, can well limit or circumscribe the maritime area relevant to the dispute between the Parties. Moreover, the test of proportionality (if and when applied) requires account to be taken of third State interests, for the area to be attached to a Party must end where the area attached to a third State begins. The relevance of these third State delimitations will be especially acute in a semi-enclosed sea, like the sea in this case, where the whole maritime area has to be shared by several States.

7.31. It is a striking feature of the Nicaraguan Memorial that it pays scant regard³⁹ to other neighbouring delimitations. Three delimitations are relevant: the 1928 Nicaragua/Colombia Treaty, the 1986 Honduras/Colombia Treaty, and the Jamaica/Colombia Treaty of 1993.⁴⁰

(1) The 1928 Nicaragua/Colombia Treaty

7.32. This agreement,⁴¹ confirmed by instruments of ratification in 1930, established the 82nd meridian as the limit of sovereignty between Nicaraguan and Colombian possessions, thus confirming Colombian sovereignty over the group of islands, the Intendencia de San Andrés and Providencia. The 82nd meridian has been regarded by Colombia as a maritime boundary and it was some fifty years later⁴² that Nicaragua began its challenge to the validity of this treaty, finally denouncing the treaty in 1980.

7.33. It is for Nicaragua to explain to the Court why, after fifty years, the new Sandinista Government, after one year in power, believed it had a right to denounce a boundary treaty. Colombia has refused to accept this denunciation, and this explains why the delimitation line agreed in the 1986 Colombia/Honduras Treaty uses the 82nd meridian as a starting point: west of that point, Colombia had no further claims.

7.34. Assuming the 1928 Agreement to remain valid (as both Colombia and Honduras assume), the present Nicaraguan claim against Honduras becomes virtually impossible to sustain. For the line claimed by Nicaragua, which “continues up to the area of the seabed occupied by Rosalinda

³⁹ Nicaragua may well argue that a treaty is irrelevant, or even invalid. But then it must make the argument to this Court. It cannot simply ignore the treaty.

⁴⁰ *Supra* paras 2.13 *et seq.*

⁴¹ HCM, vol 2, annex 9.

⁴² Nwheid, in *International Maritime Boundaries*, ed. Charney and Alexander (1993), p 274.

Bank”⁴³ is almost impossible to reconcile with the 82nd meridian. Rosalinda Bank lies some 90 miles *east* of the 82nd meridian, so the boundary (if Nicaragua were right) would have to be dragged back sharply to meet with this meridian to the south. And to link up the line claimed by Nicaragua with the starting point of the 1986 Honduran/Colombian line is almost impossible: it was never contemplated by either Honduras or Colombia, who both assumed the area north of the approximate 15th parallel to be Honduran waters.

*(2) The 1986 Honduras/Colombia Treaty*⁴⁴

7.35. This treaty is now in force, and was registered with the U.N. on 21 December 1999. The starting point of the agreed line is exactly on the 82nd meridian. This is Point 1, and the boundary then moves eastwards along the parallel of 14°59’08” which, as has been noted, results from taking the erroneous English version of the 1963 Report of the OAS Mixed Commission;⁴⁵ the correct, authentic Spanish version reads 14°59.8’.

7.36. The crucial significance of the treaty lies in its recognition that the maritime area to the north of the agreed line is Honduran, not Nicaraguan. This is why Nicaragua protested the treaty.⁴⁶

*(3) The Colombia/Jamaica Treaty of 1993*⁴⁷

7.37. This treaty proceeds from a recognition of the validity of the 1986 Honduran/Colombian Treaty, taking the part of the 1986 line which divides Serranilla Bank as the western limit of the new Joint Regime Area, established under the 1993 Treaty. The effect is that Colombia shares with Jamaica that part of the Serranilla Bank which was recognised as belonging to Colombia under the 1986 Treaty. It is plainly inconsistent with the Nicaraguan claim, which envisages a line further north, continuing into the Rosalinda Bank, and Nicaraguan ownership of all the waters to the south of the line.

⁴³ NM, vol I, p 98, para 29.

⁴⁴ HCM, vol 2, annex 12. Honduran parliamentary opposition to this treaty, which delayed ratification, was based on the view that Serranilla Bank and Bajo Nuevo were Honduran, and should not be ceded to Colombia.

⁴⁵ Paras 2.25 to 2.28 *supra*.

⁴⁶ NM, vol I, p 60, para 69.

⁴⁷ HCM, vol 2, annex 11.

IV. THE LINE PROPOSED BY HONDURAS

7.38. In the view of the Honduran Government, an equitable delimitation will require account to be taken of *all* the relevant factors, or circumstances, and, moreover, of the fact that there are three different sectors of the course of the single maritime boundary requiring separate consideration.

(1) The Territorial Sea Boundary

7.39. Honduras agrees with Nicaragua⁴⁸ that, in this sector, there are “special circumstances” which, under Article 15 of the 1982 UN Convention on the Law of the Sea, require a delimitation by a line other than a strict median line. Certainly what Nicaragua describes as the “elbow formation of the continental landmass” may be one such “special circumstance”, but 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′). And a further factor, of the greatest significance for the Court’s task, is the gradual movement eastwards of the actual mouth of the River Coco. This is graphically illustrated by the satellite imagery reproduced as Figure VII in the Nicaraguan Memorial (see also Plate 19). It means that, by February 2000, the river mouth had moved almost a mile to the east of the point where the Honduras/Nicaragua Mixed Boundary Commission had located the mouth in 1962.

7.40. It follows from this that the mouth of the river identified as the endpoint of the boundary established by the Award of the King of Spain in 1906 will change from time to time. For that Award defined the endpoint simply as “the mouth of the River Coco where it flows out into the sea close to Cape Gracias a Dios, taking as the mouth of the river its principal arm [...]”⁴⁹ That Award is still binding and the application of its terms requires the Parties to verify the position of the mouth from time to time and to agree on any necessary re-drawing of the boundary on their maps. And it follows from that that, if the mouth of the river changes, some modification of the line may be necessary until it joins the parallel of 14 degrees 59.8 minutes (14°59.8′).

7.41. It is clearly undesirable to seek from the Court a line which, however accurate it may be on the day of Judgment, becomes less accurate as a reflection of the obligations of the Parties under the Award of 1906

⁴⁸ NM, vol I, pp 157-8.

⁴⁹ UNRIAA, vol XI, p 111.

with the passage of time. Thus prudence (and *res judicata*) would suggest that the Court should not be requested to determine either the location of the mouth of the river, or even the starting point of the line immediately east of that point. The Court should begin the line only at the outer limit of territorial waters. The actual boundary would therefore have three sections.

Section One: A straight and horizontal line following the thalweg of the River Coco from the point identified in 1962 by the Honduras/Nicaragua Mixed Commission to the current mouth, where it reaches the sea as agreed by the two Parties.⁵⁰

Section Two: A continuation of this line through territorial waters, from the current mouth to the 12-mile limit at a point where it intersects the parallel of 14 degrees 59.8 minutes (14°59.8').

Section Three: An EEZ/Continental Shelf, single maritime boundary extending from the 12-mile limit, eastwards along the parallel of 14 degrees 59.8 minutes (14°59.8') to the junction with the 1986 Honduras/Colombian Treaty boundary: this section to be established by the Court. This would be the Court's main task, and covers the most important sector, on which the following observations might be made.

(2) The Single Maritime Boundary from the 12-mile Limit of Territorial Waters to the Point of Junction with the Most Westerly Point of the Honduran/Colombian 1986 Treaty Boundary.

7.42. In the submission of the Honduran Government, and based on the evidence and argument in this Counter-Memorial, this sector of the boundary should be the traditional boundary along the 15th parallel (14°59.8'), eastwards until it reaches the longitude at which the 1986 Honduran/Colombian maritime boundary begins (82°00'00").

7.43. It will be seen that such a line would maintain the place of the islands of Bobel Cay, Port Royal Cay, Savanna Cay and South Cay on the Honduran side, in accordance with the long-established Honduran sovereignty over these islands; but it would not accord to the two most southerly islands, Bobel Cay and South Cay, a full 12-mile territorial sea. Honduras does not seek to change this. The recognition of this parallel as a

⁵⁰ This is technically part of internal waters, not territorial waters, but it is convenient to deal with it here.

boundary by both States long precedes the general recognition that such features are entitled to a 12-mile territorial sea. Honduras, however, does not seek to up-date this maritime frontier by claiming a 12-mile arc around these islands, creating a deviation in the traditional line.

(3) The Junction between the Honduran/Colombian Maritime Frontier, Ending at Latitude 14°59'08" and Longitude 82°00'00" and the Honduran/Nicaraguan Frontier along Latitude 14°59.8'00"

7.44. There is a small misalignment between the line agreed with Colombia in the 1986 treaty (14°59'08") and the line of the traditional frontier with Nicaragua (14°59.8'00").⁵¹ However, Honduras does not seek to change or challenge the delimitation line agreed with Columbia. This line was agreed between the two Parties, acting in good faith, and, unlike the boundary with Nicaragua, there was no long history of conduct by both Parties, evidencing their common acceptance of a particular line. But, as regards Nicaragua, the Honduran claim is that the traditional boundary lies at latitude 14°59.8'00" and Honduras asks the Court to continue that boundary out to longitude 82 degrees.

7.45. The fact that at that point the Court's line and the 1986 line do not precisely meet can be resolved by a simple "step", to be agreed upon with Colombia. The practice of "stepping" a line is, in fact, a fairly common feature of maritime delimitations.

⁵¹ The discrepancy between the English and Spanish versions of the Report of the Inter-American Peace Committee of the OAS of 16 July 1963 is addressed in Chapter 2, at paras 2.26-2.27.

CHAPTER 8

CONCLUSIONS

8.1. Before presenting its formal Submissions to the Court, the Government of Honduras briefly summarises its arguments on the issues of law and fact.¹

THE OBJECT OF THE DISPUTE

8.2. The object of the dispute, as defined by Nicaragua in its Application, deals wholly and exclusively with the delimitation of maritime areas. Consequently Nicaragua is bound by the very terms of its own Application. Contrary to the approach taken in its Memorial, Nicaragua cannot now transform this dispute into a case concerning, in substantial part, the question of sovereignty over certain islands, cays, reefs and fishing banks. These well-known geographic features, of which Nicaragua has been aware for many decades prior to the filing of her Application, are only relevant in relation to the determination of the maritime delimitation which is the object of this case.

THE MARITIME AREAS IN DISPUTE

8.3. The maritime areas off the coasts of Honduras and Nicaragua which are the subject of these proceedings are those which are located in the area north of latitude 14°59.8', traditionally referred to as the "15th parallel" from Cape Gracias a Dios, north and south of the mouth of the Coco/Segovia/Wanks River. Within that area, the so-called "Nicaraguan Rise", which is a bathymetric feature of dubious authenticity, is entirely irrelevant for the delimitation of the relevant maritime area in view, in particular, of the applicable law.

¹ Pursuant to the Court's Practice Direction No II, 30 November 2001.

THE APPLICABLE LAW

8.4. With the 1982 United Nations Convention on the Law of the Sea now in force between the two Parties, the law applicable to the case is the positive customary international law of the sea, as reflected by the practice of States, the relevant articles of the 1982 Convention, and the international case law, beginning with the judgments of the International Court of Justice. Accordingly, the achievement of an equitable solution constitutes the aim of the delimitation, taking into account all relevant circumstances characterising the relevant maritime area. Any reference to equity in maritime delimitation cannot run against those circumstances of a legal nature which are pertinent to the case.

8.5. The law applicable to the case includes the principle of *uti possidetis juris* of 1821 and the Honduran *effectivités* since that date, in particular during the 20th century and continuing up to the present time. The well-established principle of *uti possidetis* is the basis of initial Honduran title to the territorial sea and the islands, which, in their turn, have a substantial effect upon the delimitation of the continental shelf and the EEZ. Further, the principle of *uti possidetis juris* gives rise to a presumption of Honduran title to the continental shelf and EEZ north of the 15th parallel (14°59.8'). In each case, and independently of the applicability of the principle of *uti possidetis juris*, Honduras *effectivités* since independence in 1821 confirm Honduran sovereignty north of the 15th parallel.

THE CIRCUMSTANCES PERTINENT TO THE CASE

8.6. Most of the circumstances or factors relevant to the maritime delimitation in the present case are entirely ignored by Nicaragua in its Memorial. These circumstances consist, in particular, of the presence of islands, cays, banks and reefs north of the 15th parallel, including Bobel Cay, Savanna Cay, Port Royal Cay, and South Cay.

8.7. In relation to these islands, the conduct of the parties constitutes one of the most pertinent circumstances: Honduras' effective administration of the area north of the 15th parallel (14°59.8') is reflected in the long-standing application and enforcement of her laws and regulations and the regulation of economic activities in the area. Honduran nationals live and work on the islands and cays in the area; foreign nationals (including Nicaraguans) live and work on the islands only where duly authorized by the Honduran authorities.

8.8. By contrast, Nicaragua has provided the Court with no evidence whatsoever that it has ever sought to apply any of its national laws or regulations to the area north of the 15th parallel (14°59.8'). In particular, Nicaragua has never sought to regulate oil, gas and fisheries activities in that area. The evidence that Honduras has put before the Court in the Counter-Memorial confirms that in relation to these and other matters Nicaragua has treated the 15th parallel as the traditional maritime boundary between the Parties, at least until 1980.

8.9. Moreover, no third party has recognised Nicaraguan sovereignty over the area north of the 15th parallel, by contrast with the extensive third party recognition of Honduran sovereignty and jurisdiction in that area. Nicaragua did not object to Honduran exercise of sovereignty in the area it now claims until 1982, following many decades of peaceful and effective control by Honduras pursuant to her sovereignty and jurisdiction. Nicaragua has not provided any evidence which indicates any conduct by its authorities in the area such as to demonstrate any exercise – whether effective or otherwise – of sovereignty or jurisdiction. In the circumstances Nicaragua has shown no basis upon which to make its present claim, and is estopped from making such a claim.

8.10. Another important circumstance relevant to the case is provided by the existence of numerous boundary treaties or other agreements circumscribing the relevant area. Of particular relevance are the 1928 Nicaragua/Colombia Treaty, the 1972 US/Colombia Treaty, the 1986 Honduras/Colombia Treaty, the 1993 Colombia/Jamaica Treaty, and the 2001 United Kingdom/Honduras Treaty, all of them dealing with maritime delimitations in the region.

THE METHOD OF DELIMITATION

8.11. The method of delimitation proposed by Nicaragua is not equitable and does not lead to an equitable result. It is not acceptable. Based upon a bisector of the two coastal fronts, it invokes in respect of Honduras a coastline which bears no relation to the actual configuration of the coastline. Moreover, it ignores each and every one of the relevant circumstances mentioned above.

8.12. With regard to the territorial sea boundary, considering the gradual movement eastwards of the actual mouth of the River Coco, the endpoint of the boundary established by the Award of the King of Spain in 1906 will change from time to time. Under these “special circumstances” in the sense of Article 15 of the 1982 Convention, it seems inaccurate to request from

the Court the determination of the line immediately east of the mouth of the River Coco.

8.13. The actual boundary would therefore have three sections, as depicted in Plate 20. The first section consists of a straight and horizontal line following the thalweg of the River Coco from the point identified in 1962 by the Honduras/Nicaragua Mixed Commission to the mouth of the river where it reaches the sea, as agreed by the two Parties. The second section continues the same line through territorial waters to the 12-mile limit at a point where it intersects the parallel $14^{\circ}59.8'$. The third section, to be determined by the Court, comprises an EEZ/Continental Shelf, single maritime boundary extending from the 12-mile limit, eastwards along the 15th parallel ($14^{\circ}59.8'$) until it reaches the longitude at which the 1986 Honduran/Colombian maritime boundary begins (meridian 82). This third and last section of the maritime boundary between the Parties is not the one which results from the attribution of a full 12-mile territorial sea to each of the islands located north of the 15th parallel ($14^{\circ}59.8'$), all of which belong to Honduras, and which have the effect of pushing the boundary south of the 15th parallel ($14^{\circ}59.8'$). This segment corresponds nevertheless to the traditional line internationally recognized and recognized by Nicaragua until 1980; Honduras does not consequently seek to change it on the occasion of these proceedings.

SUBMISSIONS

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.

Max Velasquez Díaz
Agent of the Republic of Honduras

Carlos López Contreras
Agent of the Republic of Honduras

21 March 2002

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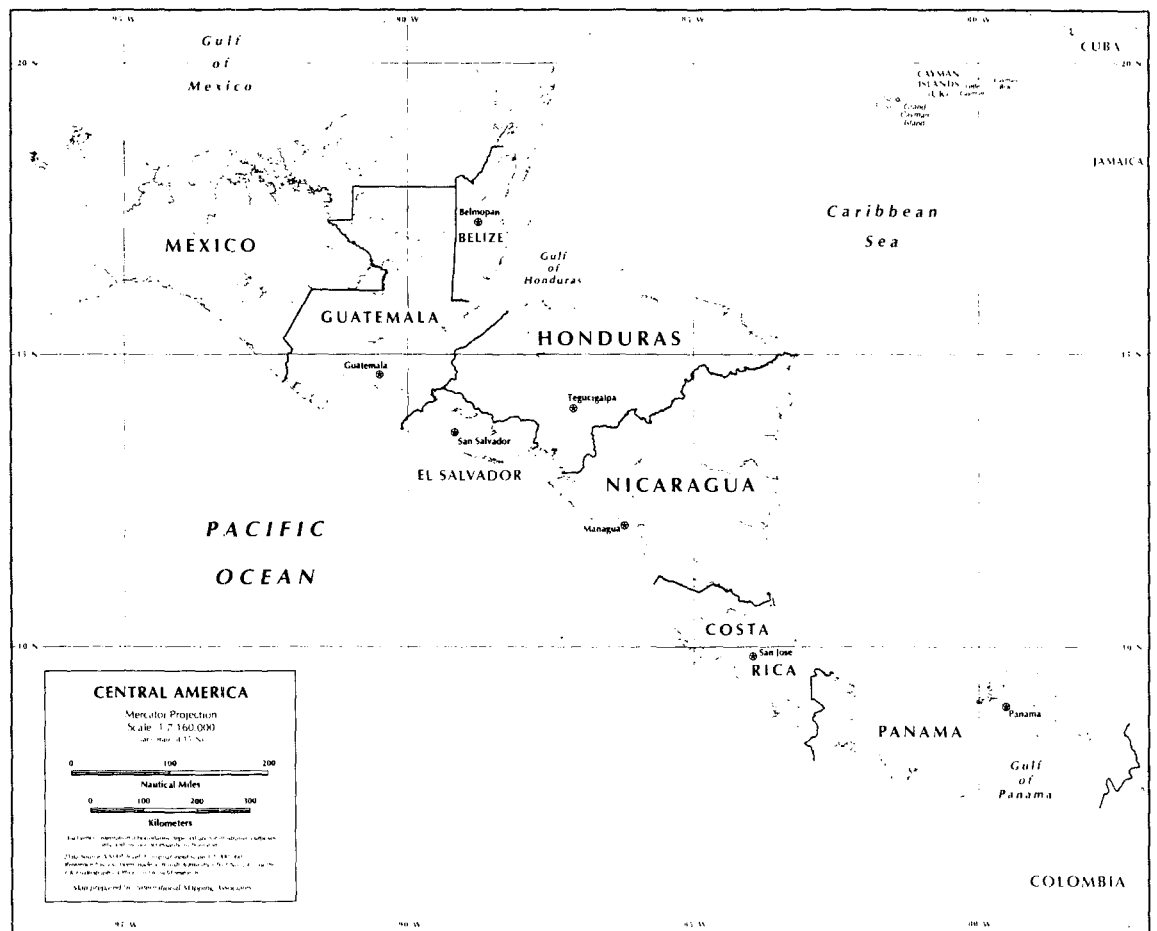
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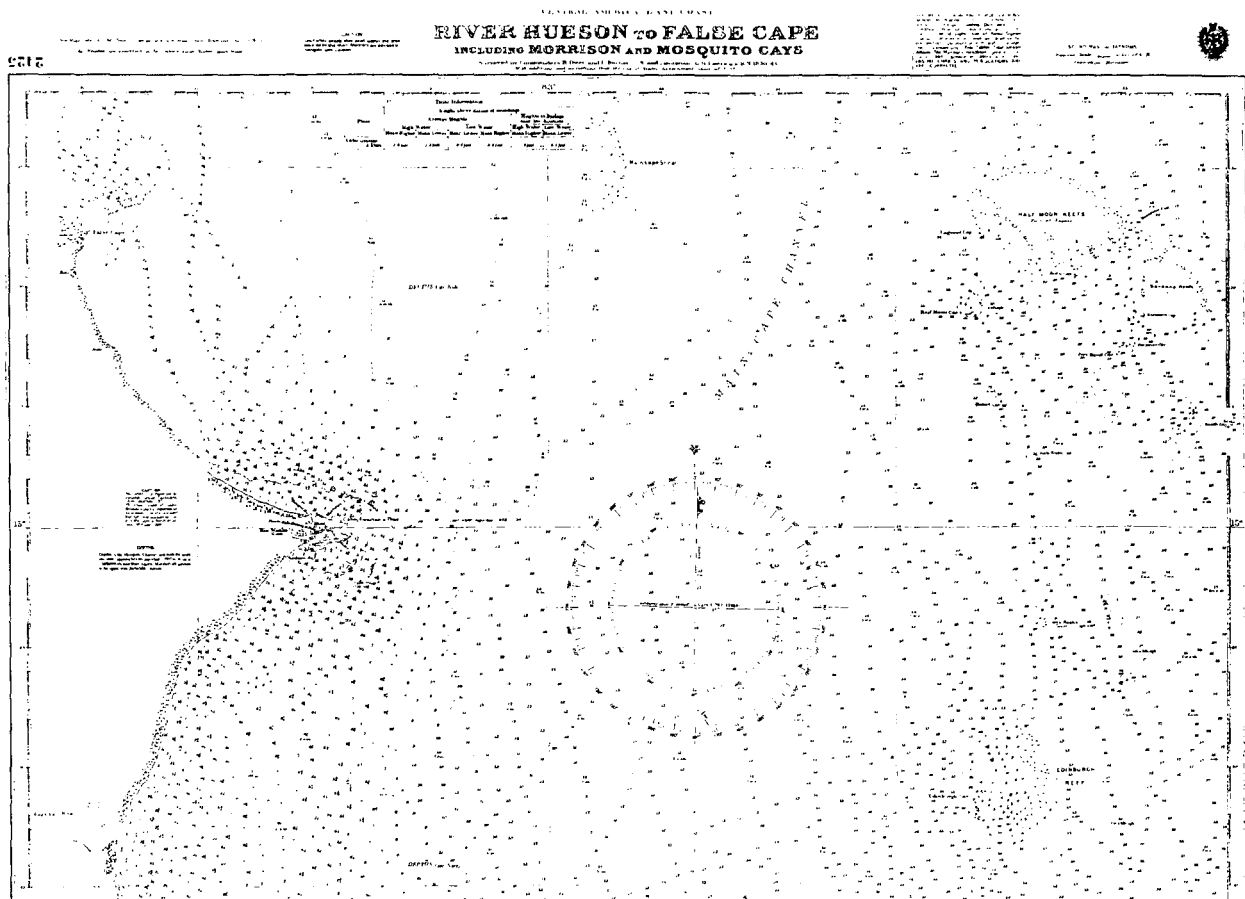
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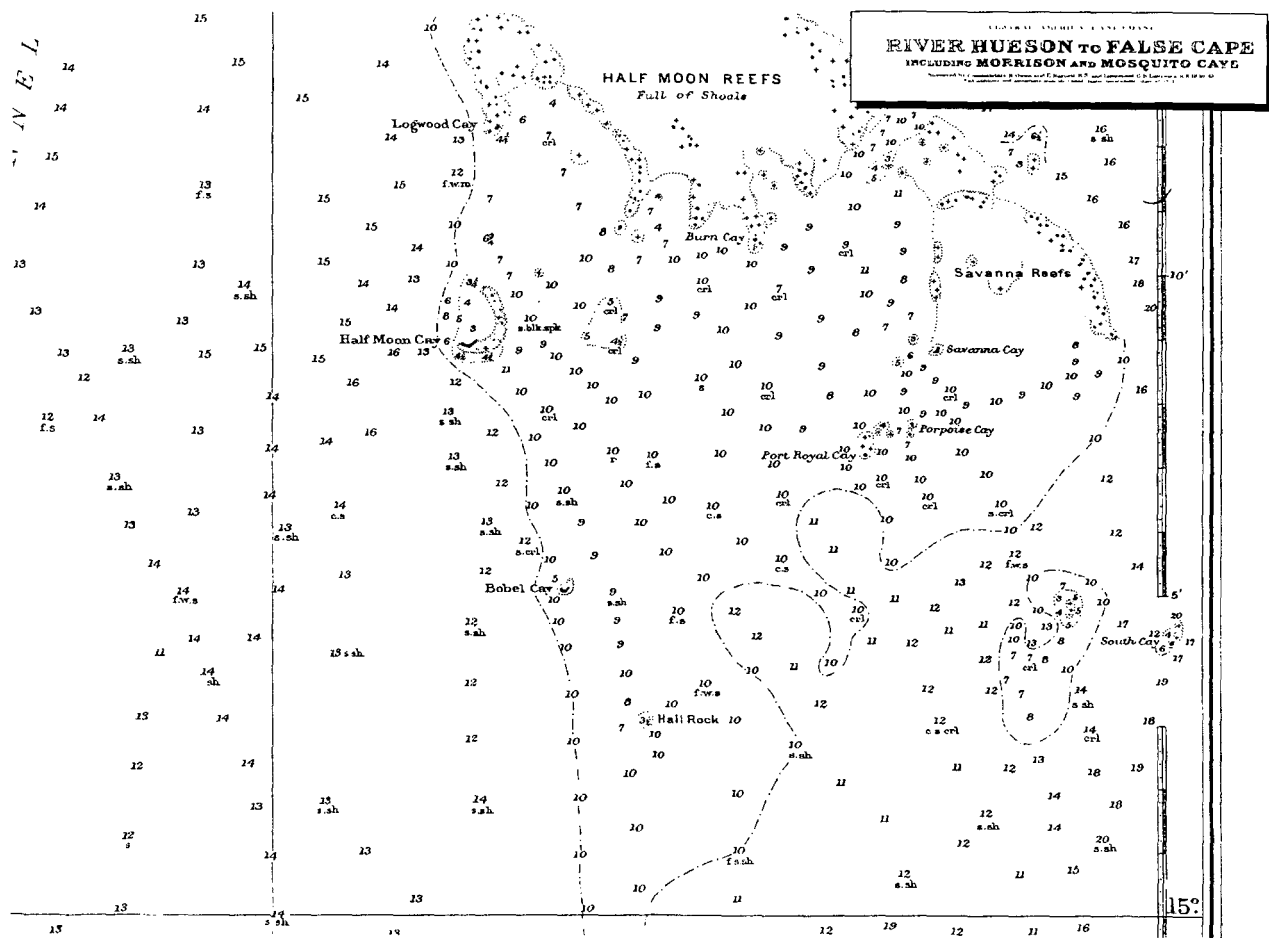
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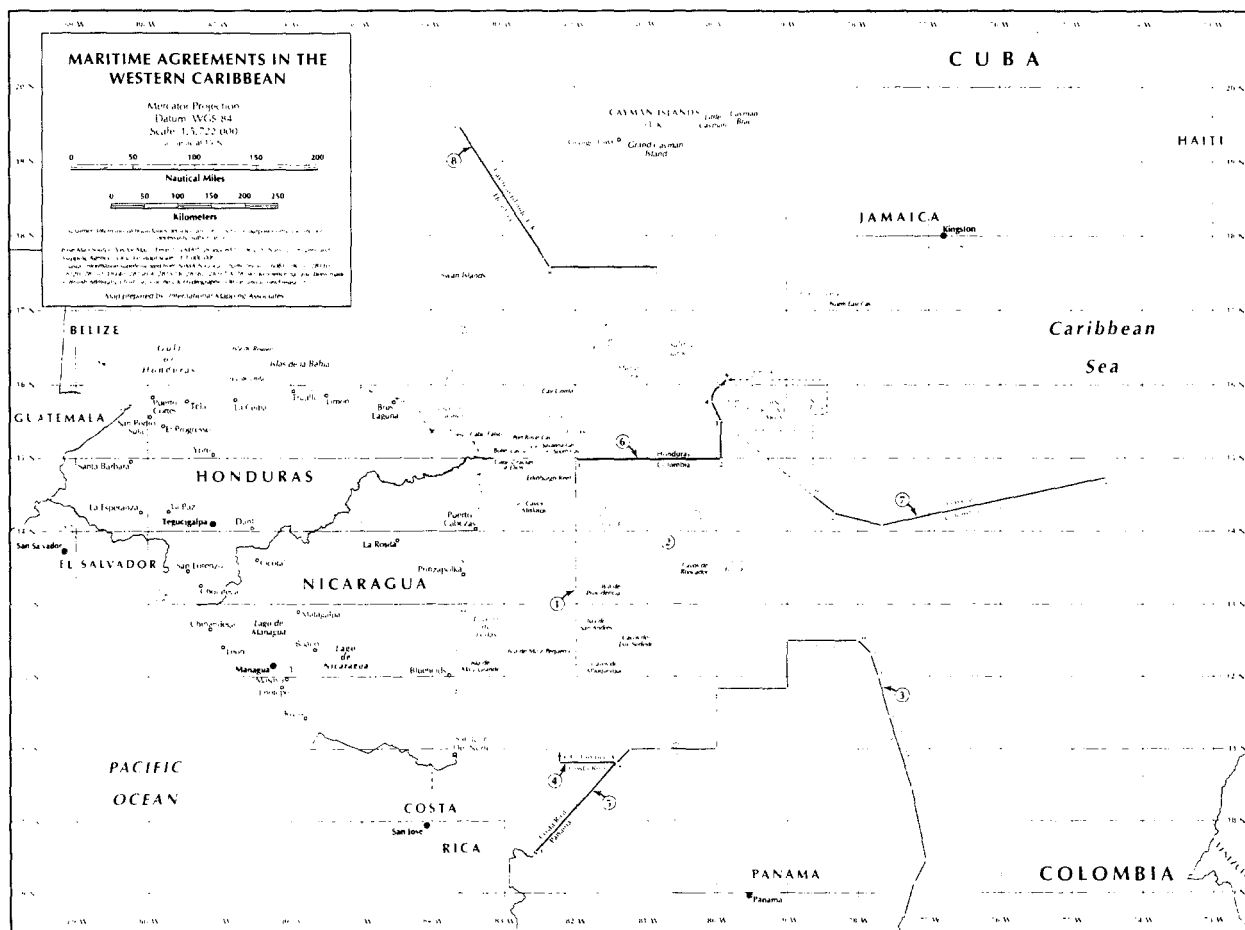
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- 6-59 Logbook of the *Hibueras*. Naval Base of Puerto Cortés (Patrolling of 5 April 1987, describing incident in Media Luna Cay)
- 6-60 Order 004/98 of the Fuerza Naval, 4 March 1998, (patrolling at Bobel, Savanna Cay and South Cay, Alargate Reef, and Rosalind and Thunder Knoll banks)
- 6-61 Order 15/99 of the Honduran Navy, 21 September 1999, (patrolling at Bobel, Savanna Cay and South Cay, Alargate Reef, and Rosalind and Thunder Knoll banks)
- 6-62 Order 003/96 of the Honduran Navy, 13 August 1996, (patrolling at Media Luna Cay and Alargate Cay)
- 6-63 Sailing Directions (Enroute), Caribbean Sea, Vol. II, Defense Mapping Agency, 5th Ed. (1995), p 93 *et seq*
- 6-64 East Coast of Central America and Gulf of Mexico Pilot, Hydrographer of the Navy, 2nd Ed. (1993), p 72 *et seq*





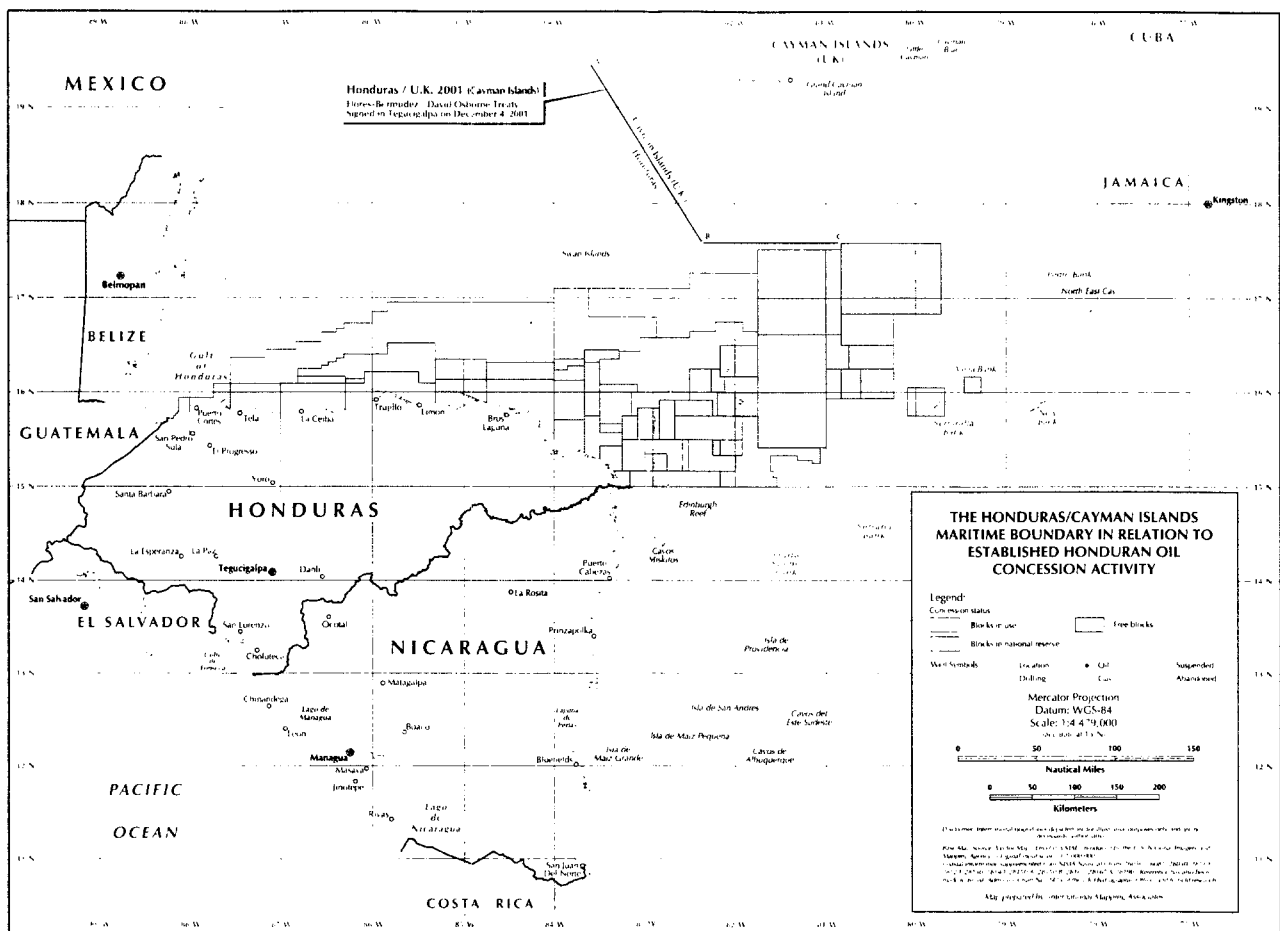


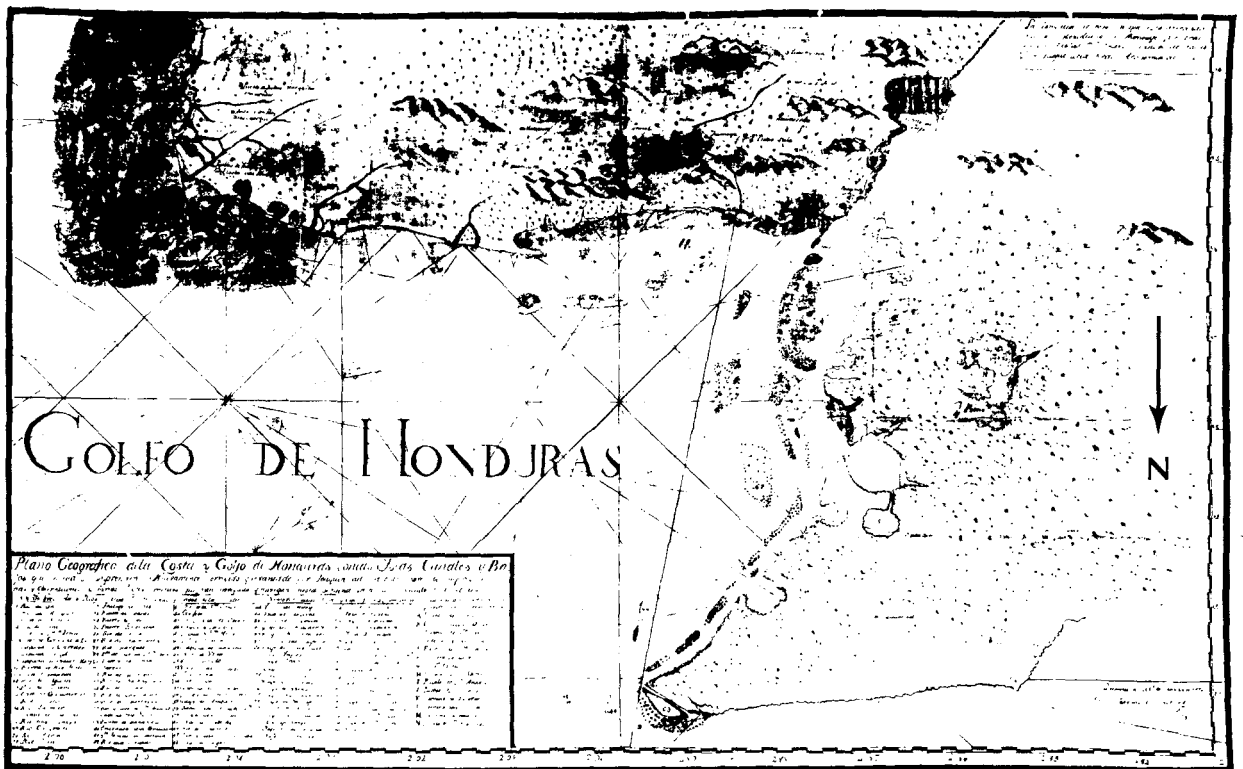


MARITIME AGREEMENTS

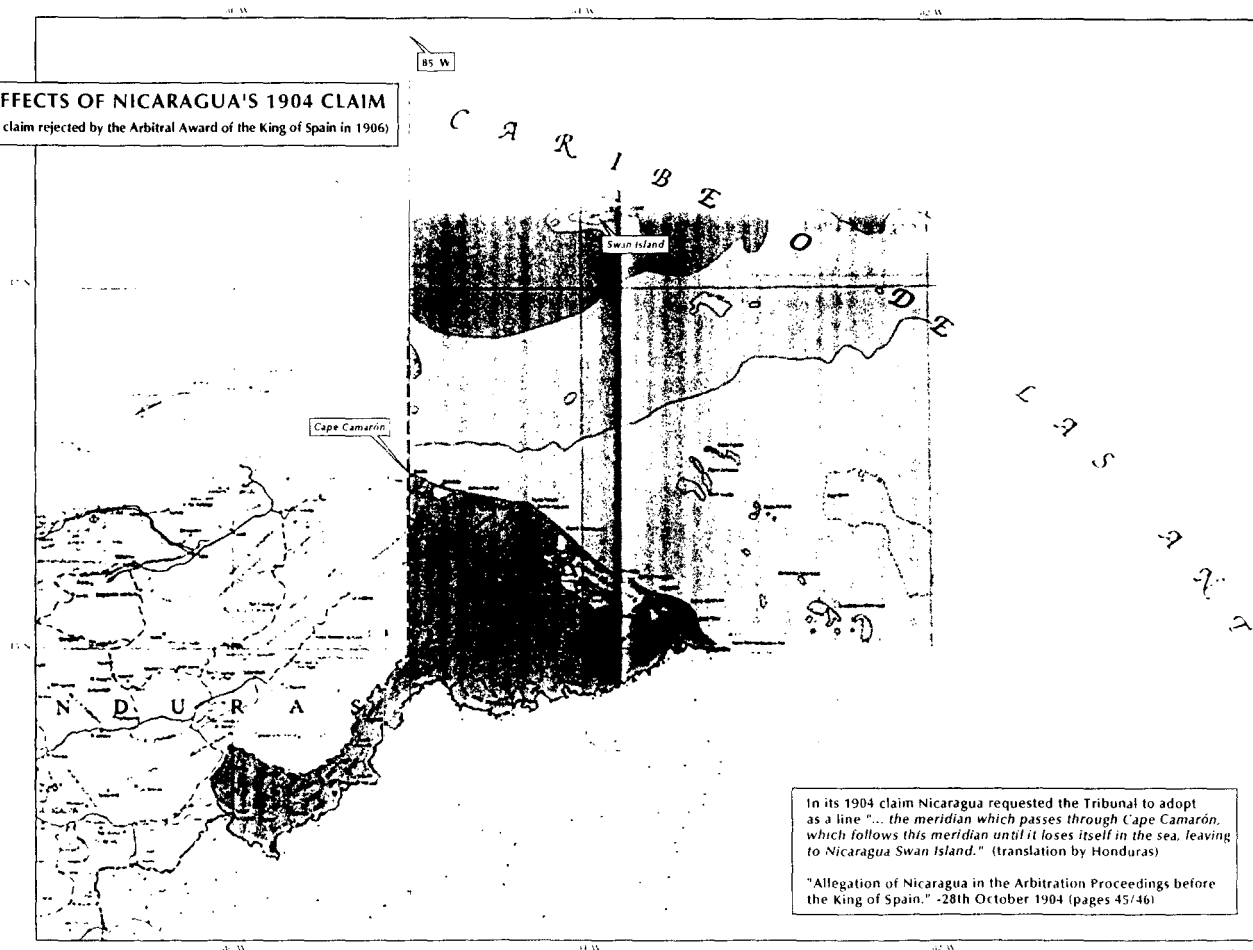
(In Chronological Order)

- ① **Colombia / Nicaragua 1928**
Barreras Arce-Suarez Treaty
Signed on March 24, 1928
Registered with the League of Nations on
August 16, 1930
Registration number: 2476
- ② **Colombia / U.S.A. 1972**
Valderrama-Sacco Treaty
Signed on September 8, 1972
Registered at the UN on March 11, 1981
Registration number: 23801
- ③ **Colombia / Panama 1976**
Dievano Aguirre - Aquilino E. Boyd Treaty
Signed in Cartagena on November 20, 1976
Registered at the UN on February 1, 1978
Registration number: 18198
- ④ **Colombia / Costa Rica 1977**
Fernandez-Sardinal - Gonzalez Fariu Treaty
Signed in San Jose on March 17, 1977
Agreement not yet registered at the UN
Agreement not yet in force
- ⑤ **Costa Rica / Panama 1980**
Calderon Fourmy - Orosco Tapalidos Treaty
Signed in Panama City on February 2, 1980
Agreement not yet registered at the UN
Agreement has been in force since 1982
- ⑥ **Colombia / Honduras 1986**
Lopez Fontiveros - Ramon Champo Treaty
Signed in San Andres on August 2, 1986
Registered at the UN on December 21, 1989
UN Registration Number: 16160
- ⑦ **Colombia / Jamaica 1993**
Samm-Robertson Treaty
Signed in Kingston on November 12, 1993
Registered at the UN on May 11, 1994
Registration Number: 18943
- ⑧ **Honduras / U.K. 2001**
(Cayman Islands)
Harris-Bromhead - David Osborne Treaty
Signed in Tegucigalpa on December 4, 2001



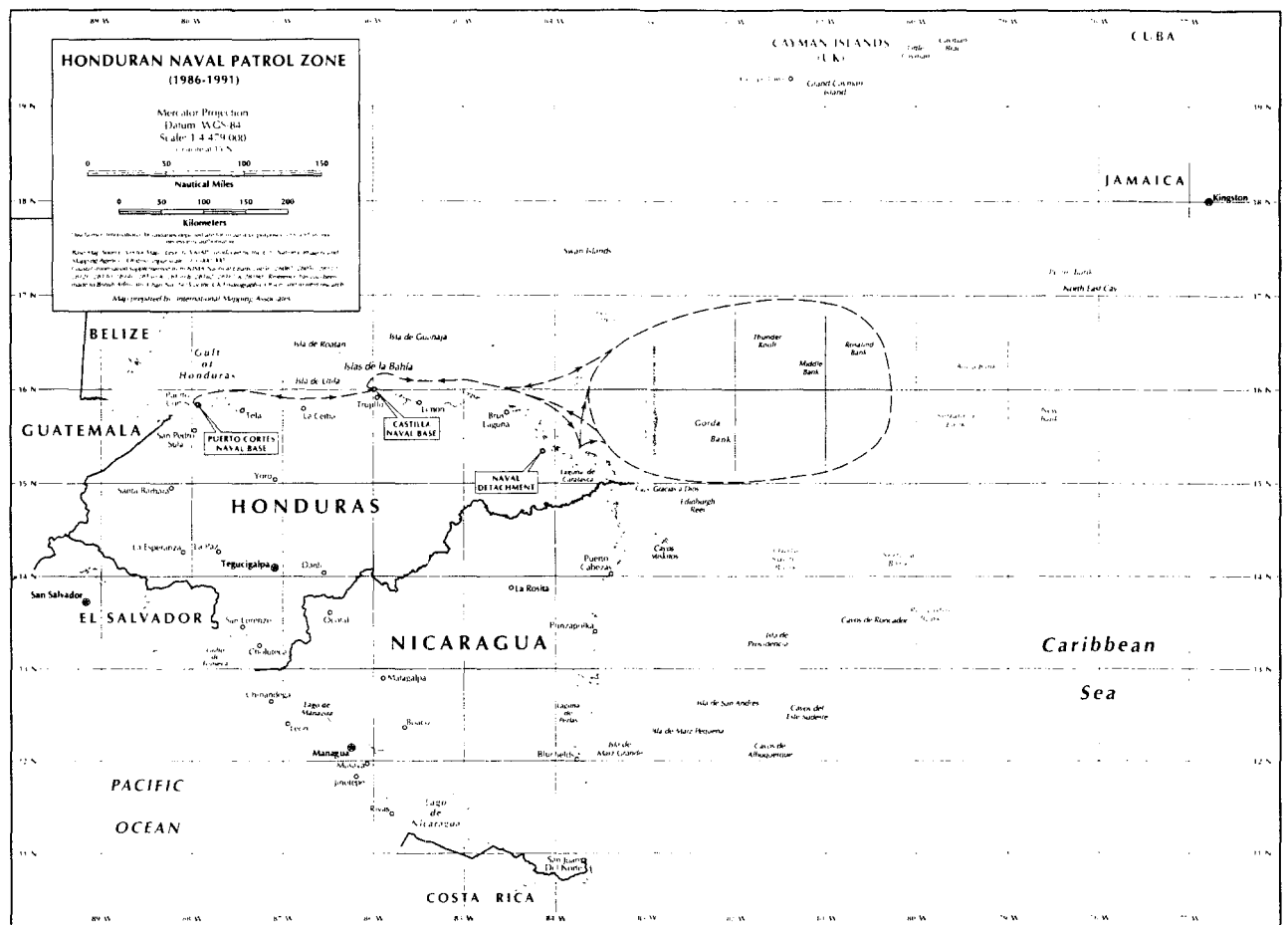


EFFECTS OF NICARAGUA'S 1904 CLAIM
(A claim rejected by the Arbitral Award of the King of Spain in 1906)



In its 1904 claim Nicaragua requested the Tribunal to adopt as a line "... the meridian which passes through Cape Camarón, which follows this meridian until it loses itself in the sea, leaving to Nicaragua Swan Island." (translation by Honduras)

"Allegation of Nicaragua in the Arbitration Proceedings before the King of Spain." -28th October 1904 (pages 45/46)



**SATELLITE ANALYSIS OF COASTAL
CHANGES AT CAPE GRACIAS A DIOS
(1979 - 2001)**

Images acquired from:

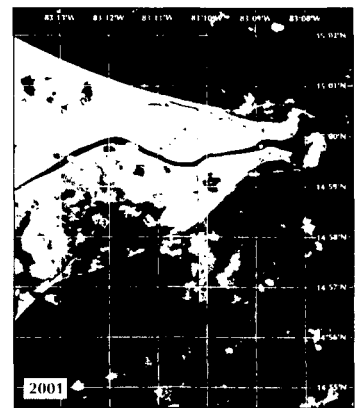
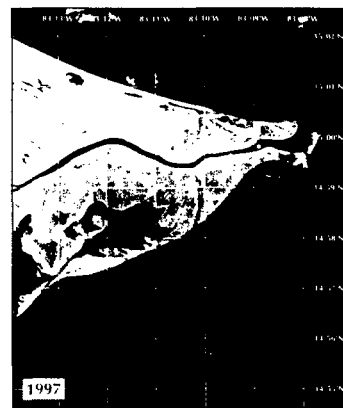
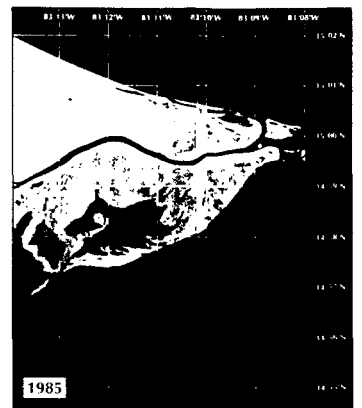
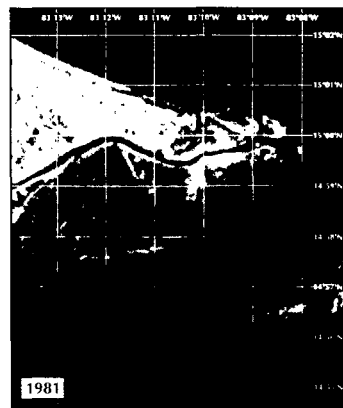
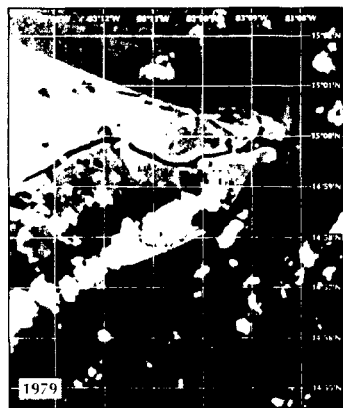
1979 - 1981 Landsat 1 & 2 Multi-Spectral Scanner (MSS)
1985 - 1997 Landsat 4 & 5 Thematic Mapper (TM)
2001 Landsat 7 Thematic Mapper (TM)

Scale: 1:100,000

Projection: Universal Transverse Mercator (UTM)

Datum: WGS84

Prepared by: International Mapping Associates



Terminus Point of the Land Boundary
(14 59.8'N - 83 08.9'W)

Section One

Cape Gracias a Dios

Section Two

Coastal configuration digitized from Indian Remote Sensing (IRS) high resolution imagery taken on April 7, 2000

12 nm Territorial Sea

HONDURAN METHOD OF DELIMITATION
Universal Transverse Mercator (UTM)
Datum WGS 84
Scale 1:82,500
Accuracy of 1:5,000

0 1 2 3
Mastical Miles

0 1 2 3 4 5
Kilometers

Disclaimer: International boundaries depicted are for illustrative purposes only and are not necessarily authoritative.

Base Map: Indian Remote Sensing (IRS) 1C Satellite, 5 meter black and white imagery acquired on 4/7/00

Map prepared by: International Mapping Associates

HONDURAN METHOD OF DELIMITATION

Mercaator Projection
Datum WGS 84
Scale 1:50,000
Sea Level at 15°N

0 5 10 15 20
Nautical Miles

0 10 20 30
Kilometers

This chart: International boundaries depicted are for illustrative purposes only and are not necessarily authoritative.

Chart No. 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498,