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International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2010

Public sitting

held on Monday 11 October 2010, at 10 a.m., at the Peace Palace,

President Owada presiding,

***in the case concerning the* Territorial and Maritime Dispute (Nicaragua *v.* Colombia)**

Application by Costa Rica for permission to intervene

VERBATIM RECORD

ANNÉE 2010

Audience publique

tenue le lundi 11 octobre 2010, à 10 heures, au Palais de la Paix,

sous la présidence de M. Owada, président,

***en l'affaire du* Différend territorial et maritime (Nicaragua c. Colombie)**

Requête du Costa Rica à fin d'intervention

COMPTE RENDU

Present:	President	Owada
	Vice-President	Tomka
	Judges	Koroma
		Al-Khasawneh
		Simma
		Abraham
		Keith
		Sepúlveda-Amor
		Bennouna
		Cançado Trindade
		Yusuf
		Xue
		Donoghue
	Judges *ad hoc*	Cot
		Gaja
	Registrar	Couvreur

Présents : M. Owada, président
M. Tomka, vice-président
MM. Koroma
Al-Khasawneh
Simma
Abraham
Keith
Sepúlveda-Amor
Bennouna
Cançado Trindade
Yusuf
Mmes Xue
Donoghue, juges
MM. Cot
Gaja, juges *ad hoc*

M. Couvreur, greffier

The Government of Nicaragua is represented by:

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

as Agent and Counsel;

Mr. Alex Oude Elferink, Deputy-Director, Netherlands Institute for the Law of the Sea, Utrecht University,

Mr. Alain Pellet, Professor at the University Paris Ouest, Nanterre-La Défense, Member and former Chairman of the International Law Commission, associate member of the Institut de droit international,

Mr. Paul Reichler, Attorney-at-Law, Foley Hoag LLP, Washington D.C., Member of the Bars of the United States Supreme Court and the District of Columbia,

Mr. Antonio Remiro Brotóns, Professor of International Law, Universidad Autónoma, Madrid; Member of the Institut de droit international,

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Mr. Robin Cleverly, M.A., DPhil, CGeol, F.G.S., Law of the Sea Consultant, Admiralty Consultancy Services,

Mr. John Brown, Law of the Sea Consultant, Admiralty Consultancy Services,

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Mr. Julio César Saborio, Juridical Adviser, Ministry of Foreign Affairs,

Mr. Walner Molina Pérez, Juridical Adviser, Ministry of Foreign Affairs,

Ms Tania Elena Pacheco Blandino, Juridical Adviser, Ministry of Foreign Affairs,

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Ms Carmen Martinez Capdevila, Doctor of Public International Law, Universidad Autónoma, Madrid,

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Mr. Edgardo Sobenes Obregon, First Secretary, Embassy of Nicaragua in the Kingdom of the Netherlands,

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M. Julio César Saborio, conseiller juridique au ministère des affaires étrangères,

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Mr. Eduardo Valencia-Ospina, Member of the International Law Commission,

H.E. Ms Sonia Pereira Portilla, Ambassador of the Republic of Colombia to the Republic of Honduras,

Mr. Andelfo García González, Professor of International Law, former Deputy Minister of Foreign Affairs,

Ms Victoria E. Pauwels T., Minister-Counsellor, Ministry of Foreign Affairs,

Mr. Julián Guerrero Orozco, Minister-Counsellor, Embassy of the Republic of Colombia in the Kingdom of the Netherlands,

Ms Andrea Jiménez Herrera, Counsellor, Ministry of Foreign Affairs,

as Legal Advisers;

Mr. Thomas Fogh, Cartographer, International Mapping,

as Technical Adviser.

Le Gouvernement de la Colombie est représenté par :

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S. Exc. M. Guillermo Fernández de Soto, président du comité juridique interaméricain, membre de la Cour permanente d'arbitrage et ancien ministre des affaires étrangères,

comme coagent ;

M. James Crawford, S.C., F.B.A., professeur de droit international à l'Université de Cambridge, titulaire de la chaire Whewell, membre de l'Institut de droit international, avocat,

M. Rodman R. Bundy, avocat à la Cour d'appel de Paris, membre du barreau de New York, cabinet Eversheds LLP à Paris,

M. Marcelo Kohen, professeur de droit international à l'Institut de hautes études internationales et du développement de Genève, membre associé de l'Institut de droit international,

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M. Thomas Fogh, cartographe, International Mapping,

comme conseiller technique.

The Government of Costa Rica is represented by:

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as Agent;

Mr. Coalter G. Lathrop, *Lecturing Fellow* at Duke University School of Law, member of the North Carolina State Bar, Special Adviser to the Ministry of Foreign Affairs,

Mr. Sergio Ugalde, Member of the Permanent Court of Arbitration, Senior Adviser to the Ministry of Foreign Affairs, Member of the Costa Rican Bar,

Mr. Arnoldo Brenes, Senior Adviser to the Ministry of Foreign Affairs, Member of the Costa Rican Bar,

Mr. Carlos Vargas, Director of the Legal Department, Ministry of Foreign Affairs,

as Counsel and Advocates;

H.E. Mr. Jorge Urbina, Ambassador of Costa Rica to the Kingdom of the Netherlands,

Mr. Michael Gilles, Special Adviser to the Ministry of Foreign Affairs,

Mr. Ricardo Otarola, Minister and Consul General of Costa Rica to the Republic of Colombia,

Mr. Christian Guillermet, Ambassador, Deputy Permanent Representative of Costa Rica to the United Nations Office at Geneva,

Mr. Gustavo Campos, Consul General of Costa Rica to the Kingdom of the Netherlands,

Ms Shara Duncan, Counsellor at the Embassy of Costa Rica in the Kingdom of the Netherlands,

Mr. Leonardo Salazar, National Geographic Institute of Costa Rica,

as Advisers.

Le Gouvernement du Costa Rica est représenté par :

S. Exc. M. Edgar Ugalde Álvarez, ambassadeur de la République du Costa Rica auprès de la République de Colombie,

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M. Arnoldo Brenes, conseiller principal auprès du ministère des affaires étrangères, membre du barreau du Costa Rica,

M. Carlos Vargas, directeur du département juridique du ministère des affaires étrangères,

comme conseils et avocats ;

S. Exc. M. Jorge Urbina, ambassadeur du Costa Rica auprès du Royaume des Pays-Bas,

M. Michael Gilles, conseiller spécial auprès du ministère des affaires étrangères,

M. Ricardo Otarola, ministre et consul général du Costa Rica en République de Colombie,

M. Christian Guillermet, ambassadeur, représentant permanent adjoint du Costa Rica auprès de l'Office des Nations Unies à Genève,

M. Gustavo Campos, consul général du Costa Rica au Royaume des Pays-Bas,

Mme Shara Duncan, conseiller à l'ambassade du Costa Rica aux Pays-Bas,

M. Leonardo Salazar, Institut géographique national du Costa Rica,

comme conseillers.

The PRESIDENT: Please be seated. The sitting is open.

Before we start our judicial proceedings today however, I should first like to pay solemn tribute, on behalf of the Court, to the memory of Professor Shabtai Rosenne, a truly distinguished international lawyer, who sadly passed away on 21 September 2010.

Professor Rosenne was born in London in 1917. He studied law at the University of London and, during the Second World War, served in the Royal Air Force. In later years, he successfully combined a career as an Israeli diplomat and an active academic career, with an especial focus on international law. As a scholar, he was the author of an impressive number of notable publications which helped to bring international law to a wider readership. In particular, his landmark treatise, "The Law and Practice of the International Court", which all of you know, remains an indispensable guide to the role and functioning of this Court, and serves as the first port of call for international lawyers and diplomats alike who are interested in the work of the principal judicial organ of the United Nations. I would add that judges themselves not infrequently consult this oeuvre in exercising their judicial duties. Professor Rosenne was not only a leading academic authority on the Court, he also participated directly in a number of cases as Agent or counsel, most recently in the *LaGrand* case *(Germany* v. *United States of America)*. His keen interest in and enthusiasm about the work of the Court, which continued unabated throughout his life, was greatly appreciated by all Members of the Court, past and present.

Professor Rosenne will also be warmly remembered for his contribution to numerous international institutions of which he was a member, including the United Nations International Law Commission and the *Institut de droit international*.

I would now like to invite you to stand and observe a minute's silence in memory of Professor Rosenne.

The Court observes a minute's silence.

The PRESIDENT: Please be seated.

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The Court meets today pursuant to Article 84, paragraph 2, of the Rules of Court to hear the oral argument of the Republic of Costa Rica and the Parties on the question whether the Application for permission to intervene in the case concerning the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, filed on 25 February 2010 by Costa Rica under Article 62 of the Statute, should be granted.

I begin by noting that Judge Greenwood, who invoked Article 24, paragraph 1, of the Statute, will not participate in this phase of the case. For reasons which he had duly conveyed to me, Judge Skotnikov is unable to be present on the Bench today.

I note that since the Court does not include upon the Bench a judge of the nationality of either of the Parties, both Parties have availed themselves of the right, under Article 31, paragraph 2, of the Statute, to choose a judge *ad hoc*. Nicaragua originally chose Mr. Mohammed Bedjaoui. Following the resignation of the latter, Nicaragua chose Mr. Giorgio Gaja. Colombia chose Mr. Yves Fortier. Following the resignation of Mr. Fortier, Colombia chose Mr. Jean-Pierre Cot.

Article 20 of the Statute provides that "[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously". Pursuant to Article 31, paragraph 6, of the Statute, that same provision applies to judges *ad hoc*. Mr. Gaja, having participated in the proceedings on preliminary objections in the present case, and having made his solemn declaration on that occasion, need not make another declaration in the present proceedings.

Although Mr. Cot has been a judge *ad hoc* also and made a solemn declaration in a previous case, not in the present case, Article 8, paragraph 3, of the Rules of Court provides that he must make a further solemn declaration in the present case.

In accordance with custom, therefore, I shall first say a few words about the career and qualifications of Mr. Cot before inviting him to make his solemn declaration.

Mr. Jean-Pierre Cot, of French nationality, is a member of the International Tribunal for the Law of the Sea. He is also Professor Emeritus at the *Université de Paris-I (Panthéon-Sorbonne)* and an associate research fellow at the *Centre de droit international* of the *Université Libre de Bruxelles*. Between 1981 and 1982, he served as Minister for Co-operation and Development in

the French Government. For a number of years Mr. Cot was a member of the European Parliament and held several distinguished positions at that institution, including Chairman of the Committee on Budgets and Vice-President of the Parliament. Mr. Cot has appeared before this Court as counsel and advocate in a number of cases, such as the cases concerning *Frontier Dispute (Burkina Faso/Republic of Mali)*, *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, *Kasikili/Sedudu Island (Botswana/Namibia)*, *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening)*, and *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*. Mr. Cot also served as judge *ad hoc* for Romania in the case concerning *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)* and has been chosen as judge *ad hoc* in the case concerning *Aerial Herbicide Spraying (Ecuador* v. *Colombia)*. He is the author of many publications on various questions of international law, European law and political science and is the current President of the *Société française pour le droit international*.

I shall now invite Mr. Cot to make the solemn declaration prescribed by the Statute, and I would request all those present to rise.

M. COT: Merci M. le président.

> « Je déclare solennellement que je remplirai mes devoirs et exercerai mes attributions de juge en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience. »

The PRESIDENT: Thank you. Please be seated. I take note of the solemn declaration made by Mr. Cot and declare him duly installed as judge *ad hoc* in the case concerning the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*.

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I shall now recall the principal steps of the procedure so far followed in this case.

On 6 December 2001, the Republic of Nicaragua filed in the Registry of the Court an Application instituting proceedings against the Republic of Colombia in respect of a dispute consisting of a group of "related legal issues subsisting" between the two States "concerning title to territory and maritime delimitation" in the western Caribbean.

In its Application, Nicaragua founded the jurisdiction of the Court firstly on the provisions of Article XXXI of the American Treaty on Pacific Settlement signed on 30 April 1948, known according to Article LX thereof as the "Pact of Bogotá", and secondly on the declarations made by the Parties recognizing the Court's jurisdiction.

By an Order dated 26 February 2002, the Court fixed 28 April 2003 as the time-limit for the filing of the Memorial of Nicaragua and 28 June 2004 as the time-limit for the filing of the Counter-Memorial of Colombia. Nicaragua filed its Memorial within the time-limit so prescribed.

On 21 July 2003, within the time-limit set by Article 79, paragraph 1, of the Rules of Court, as amended on 5 December 2000, Colombia raised preliminary objections to the jurisdiction of the Court. Consequently, by an Order dated 24 September 2003, the Court, noting that by virtue of Article 79, paragraph 5, of the Rules of Court, the proceedings on the merits were suspended, fixed 26 January 2004 as the time-limit for the presentation by Nicaragua of a Written Statement of its observations and submissions on the preliminary objections made by Colombia. Nicaragua filed such a statement within the time-limit so prescribed, and the case thus became ready for hearing on the preliminary objections.

Pursuant to Article 53, paragraph 1, of the Rules of Court, the Governments of Honduras, Jamaica, Chile, Peru, Ecuador and Venezuela asked, between 2003 and 2006, to be furnished with copies of the pleadings and documents annexed produced in the case. In accordance with the same provision, having ascertained the views of the Parties, the Court granted these requests.

From 4 to 8 June 2007, oral proceedings were held on the preliminary objections in the case. In its Judgment of 13 December 2007, the Court found that it had jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to adjudicate upon the dispute concerning sovereignty over the maritime features claimed by the Parties other than the islands of San Andrés, Providencia and Santa Catalina and that it had jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to adjudicate upon the dispute concerning the maritime delimitation between the Parties.

On 22 September 2008, the Government of Costa Rica, citing Article 53, paragraph 1, of the Rules of Court, submitted to the Court a request to be furnished with copies of the pleadings and documents annexed produced in the case. In accordance with the same provision, having ascertained the views of the Parties, the Court granted this request.

On 11 November 2008, Colombia filed its Counter-Memorial.

By an Order dated 18 December 2008, the Court directed the Republic of Nicaragua to submit a Reply and the Republic of Colombia to submit a Rejoinder. It fixed 18 September 2009 and 18 June 2010 as the respective time-limits for the filing of these written pleadings. Those pleadings were filed within the time-limits so prescribed.

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On 25 February 2010, Costa Rica filed an Application for permission to intervene in the case. In its Application, Costa Rica states that "[b]oth Nicaragua and Colombia, in their boundary claims against each other, claim maritime area to which Costa Rica is entitled". It specified, *inter alia*, that its intervention "would have the limited purpose of informing the Court of the nature of Costa Rica's legal rights and interests and of seeking to ensure that the Court's decision regarding the maritime boundary between Nicaragua and Colombia does not affect those rights and interests".

In its Application, Costa Rica invoked Article 62 of the Statute of the Court as the basis for its intervention, underlining that it does not seek to become a party to the case between Nicaragua and Colombia.

In accordance with Article 83, paragraph 1, of the Rules of Court, Costa Rica's Application was immediately communicated to Nicaragua and Colombia, which were informed that the Court had fixed 26 May 2010 as the time-limit for the filing of written observations by those States.

Both Parties filed their observations within the time-limits so prescribed. Since the Court considered that an objection to the Application had been raised by Nicaragua, the Parties and Costa Rica were notified that the Court would hold public sittings pursuant to Article 84, paragraph 2, of the Rules of Court to hear the views of Costa Rica, the State seeking to intervene, and those of the Parties in the case.

After ascertaining the views of the Parties, the Court has decided that the Written Observations of the two Parties on the Application for permission to intervene shall be made

accessible to the public on the opening of the present oral proceedings; additionally, those Written Observations will shortly be posted on the Court's website.

I note the presence at the hearing of the Agents, counsel and advocates of both Parties as well as of Costa Rica. In accordance with the arrangements for the organization of the proceedings which have been decided by the Court, the hearings will comprise a first and a second round of oral argument. Costa Rica will be heard first.

During the first round of oral argument, Costa Rica and each Party will speak for a maximum of two hours: Costa Rica will take the floor this morning until 12 noon, and on Wednesday 13 October 2010 Nicaragua will take the floor between 9.30 a.m. and 11.30 a.m., and Colombia between 11.30 a.m. and 1.30 p.m.

During the second round of oral argument, Costa Rica and each Party will speak for a maximum of one hour: Costa Rica will take the floor on Thursday 14 October 2010 between 3 p.m. and 4 p.m., and on Friday 15 October 2010 Nicaragua will take the floor between 3 p.m. and 4 p.m., and Colombia between 4 p.m. and 5 p.m.

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In this first sitting, Costa Rica may, if required, avail itself of a short extension beyond 12 noon, in view of the time taken up by the opening part of these oral proceedings.

I now give the floor to H.E. Mr. Edgar Ugalde Álvarez, Agent of Costa Rica.

Yes, H.E. Ambassador Álvarez, you have the floor.

M. UGALDE ALVAREZ :

1. Monsieur le président, distingués membres de la Cour : en tant qu'agent du Costa Rica, c'est pour moi un grand honneur de m'adresser à vous pour défendre les intérêts juridiques de mon pays dans cette affaire.

2. Avec votre permission, Monsieur le président de la Cour, je prends un moment afin de rappeler et de rendre hommage à sir Ian Brownlie, un des plus grands experts en droit international, dont ses contributions à son développement et la consolidation de son enseignement et sa pratique laissent une empreinte profonde. Son absence est regrettée, mais son extraordinaire héritage

continuera d'être une source d'inspiration et de guide pour les spécialistes du droit international. De la même façon, la délégation du Costa Rica présente ses salutations aux distinguées dames qui font partie de la Cour internationale de Justice.

3. Monsieur le président, la décision du Costa Rica de solliciter l'autorisation pour intervenir dans cette affaire, non comme partie, mais conformément à l'article 62 du Statut de la Cour, a été soigneusement réfléchie et fondée sur la thèse que d'aucune façon cette décision vise à nous immiscer ou à faire obstacle aux efforts de cette Cour suprême et des Républiques sœurs de la Colombie et du Nicaragua dans la recherche d'une solution aux aspects soumis à votre considération.

4. Cependant, à la lumière des prétentions soumises par les Parties à la Cour, le Costa Rica a dû utiliser la procédure prévue par le Statut, dans le but d'informer la Cour sur ses intérêts juridiques qui pourraient bien être compromis par le jugement de la Cour dans cette affaire.

5. Le Costa Rica, en ligne avec sa tradition démocratique et juridique, a toujours mis en avant son intérêt pour trouver des solutions avec ses Etats voisins par le biais des mécanismes de la diplomatie et du droit international. C'est dans ce sens que nous avons réussi à signer des accords avec les Républiques du Panamá, de la Colombie et de l'Equateur. Nous avons aussi entrepris des efforts dans ce sens avec la République du Nicaragua. Aujourd'hui, le Costa Rica renouvelle sa disponibilité et son souhait pour que par le biais de ces mécanismes, soient établies les frontières maritimes entre ces deux républiques sœurs. Mais soyons clairs, le fait que le Costa Rica cherche à délimiter ses frontières maritimes par la voie de la négociation diplomatique, ne signifie en aucun cas qu'il renonce à ses droits ou à la protection de ses intérêts par tous les moyens juridiques possibles.

6. Monsieur le président, concernant le délai octroyé pour la présentation de la requête à fin d'intervention, l'article 81 du Règlement de la Cour signale que celle-ci doit être présentée : «le plus tôt possible avant la clôture de la procédure écrite».

7. Le Costa Rica a soumis sa requête à fin d'intervention le 25 février 2010, seize semaines avant le terme du délai pour la finalisation de la procédure écrite, dont la clôture fut fixée par la Cour au 18 juin 2010.

8. Avant d'adopter cette très importante décision de se présenter devant cette honorable Cour, le Costa Rica a dû prendre en considération divers facteurs. Parmi ceux-ci, le processus électoral qui s'est achevé le dimanche 7 février 2010. Etant donné cette situation, et en prenant toujours en considération un délai suffisant avant la finalisation de la procédure écrite, la requête à fin d'intervention fut présentée aussitôt que possible, en plein respect des mesures de l'article 81, paragraphe 1, du Règlement de la Cour.

9. Dans la requête soumise le 25 février 2010, le Costa Rica a exprimé qu'il ne prétendait pas se constituer comme partie dans cette affaire, et que son seul intérêt était lié au différend maritime, et non à son aspect territorial.

10. Le Costa Rica a aussi exprimé dans sa demande l'intérêt de nature juridique qui pourrait être touché par la décision de la Cour dans cette affaire, à savoir l'exercice des droits souverains et de la juridiction sur les espaces maritimes dans la mer des Caraïbes, ainsi que sur la protection, en vertu du droit international, de tout autre intérêt que le Costa Rica détient dans cette zone. L'exercice de ces droits pourrait se voir affecté par la décision de la Cour, comme conséquence des prétentions des Parties dans l'affaire en cours qui, d'une part, pénètrent clairement les zones maritimes costa-riciennes, et d'autre part, font que la décision puisse produire des effets juridiques qui, en termes pratiques, auront un impact sur la relation maritime convenue avec la République de la Colombie.

11. Monsieur le président, dans sa requête à fin d'intervention, le Costa Rica a identifié deux objets précis : premièrement, «pour protéger les droits et intérêts légaux du Costa Rica dans la mer des Caraïbes par tous les moyens juridiques disponibles, et, par conséquence, utiliser les procédures établies dans ce but dans l'article 62 du Statut de la Cour», et deuxièmement, «pour informer la Cour sur la nature des droits et des intérêts juridiques du Costa Rica qui pourraient se voir affectés par la décision de la Cour en ce qui concerne la délimitation maritime dans cette affaire».

12. Apparemment, le Nicaragua s'oppose à cette formulation en affirmant que : «nowadays the exceptional procedure of intervention on the basis of Article 62 may be accomplished by third

parties with only the vague object of «informing» the Court of their supposed rights and interests, and therefore «protecting» them»[1].

13. Ceci constitue un argument étonnant, car la jurisprudence de cette Cour, a solidement établi que les objets présentés par le Costa Rica étaient clairement encadrés dans l'article 62.

14. Dans cet esprit, souvenons-nous que, en réponse à une objection semblable d'El Salvador à l'objet exprimé par le Nicaragua, dans sa requête à fin d'intervention dans l'affaire entre El Salvador et le Honduras, l'une des chambres de cette Cour a considéré :

> «Dans la mesure où l'intervention du Nicaragua a pour objet «d'informer la Cour de la nature des droits du Nicaragua qui sont en cause dans le litige», on ne peut pas dire que cet objet n'est pas approprié : il semble d'ailleurs conforme au rôle de l'intervention… En revanche, la Chambre estime qu'il est tout à fait approprié — et c'est d'ailleurs le but de l'intervention — que l'intervenant l'informe de ce qu'il considère comme ses droits ou intérêts, afin de veiller à ce qu'aucun intérêt d'ordre juridique ne puisse être «affecté» sans que l'intervenant ait été entendu.» (*Différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras), requête à fin d'intervention, arrêt, C.I.J. Recueil 1990*, p. 130, par. 90.)

15. Egalement, des observations similaires peuvent être trouvées dans les décisions de la Cour sur les requêtes à fin d'intervention présentées par la Guinée équatoriale dans l'affaire entre le Cameroun et le Nigéria[2], et par les Philippines dans l'affaire entre l'Indonésie et la Malaisie[3].

16. En effet, il est extrêmement clair que la formulation du Costa Rica indique l'objet précis de la requête, en accord avec les décisions successives de la Cour : premièrement, le Costa Rica souhaite informer cette Cour sur toutes les questions pertinentes ainsi que sur le droit applicable qui soutient l'existence de ses droits et ses intérêts dans la mer des Caraïbes. Deuxièmement, le Costa Rica cherche à utiliser cette procédure d'intervention afin de protéger lesdits droits et lesdits intérêts.

17. En conséquence, il ne fait aucun doute que l'objet précis de la requête à fin d'intervention du Costa Rica a été clair, qu'il est correctement identifié et approprié, et qu'il se trouve en pleine conformité avec la procédure d'intervention reconnue par cette Cour.

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[1] Observations écrites du Nicaragua, p. 2, par. 5.

[2] *Frontière terrestre et maritime entre le Cameroun et le Nigéria (Cameroun c. Nigéria), requête à fin d'intervention, ordonnance du 21 octobre 1999, C.I.J. Recueil 1999 (II)*, p. 1034, par. 14.

[3] *Souveraineté sur Pulau Ligitan et Pulau Sipadan (Indonésie/Malaisie), requête à fin d'intervention, arrêt, C.I.J. Recueil 2001*, p. 606, par. 87.

18. Monsieur le président, parmi les observations écrites, le Nicaragua a suggéré que le Costa Rica semble assumer qu'une décision de la Cour est un motif pour ne pas respecter ou modifier ses traités en vigueur[4]. Cette suggestion n'est pas seulement sans fondement, mais elle dénature, en plus, la position du Costa Rica contenue dans sa requête à fin d'intervention. Le critère de base de mon pays est qu'une décision de la Cour sur la propriété et l'extension des espaces maritimes de la Colombie et du Nicaragua, pourrait avoir pour résultat la modification ou l'élimination de la relation de voisinage existant entre la Colombie et le Costa Rica dans la mer des Caraïbes, ce qui engendrerait, sans aucun doute, un possible impact sur les intérêts juridiques que possède le Costa Rica sur ladite mer.

19. De plus, parmi les indications faites, le Nicaragua a essayé de signaler que la requête du Costa Rica présente des déficiences et que, par conséquent, la requête à fin d'intervention ne satisfait pas les conditions requises par le Statut et par le Règlement de la Cour[5]. Le Costa Rica refuse que sa requête soit imprécise ou qu'elle ne contienne pas les renseignements nécessaires pour que la Cour autorise son intervention dans ce cas. Néanmoins, car cela est nécessaire, durant le déroulement de cette audience, le Costa Rica précisera les fondements de sa demande d'autorisation d'intervention.

20. Dans le cadre de la juridiction que la Cour a pour reconnaître une requête à fin d'intervention, il est clair que l'article 62 du Statut de la Cour octroie le droit à un Etat tiers de présenter une requête à fin d'intervention quand il juge que la décision dans une affaire pourrait porter préjudice à un de ses intérêts de nature juridique. L'article 62 mentionné est également déterminant, car il indique que la Cour, de façon exclusive, décide si la requête à fin d'intervention est acceptée, raison pour laquelle, elle n'est pas assujettie à la position adoptée par les Parties sur le sujet. Cela veut dire que même si une seule ou les deux Parties dans la procédure s'opposent à l'intervention d'un Etat tiers dans l'affaire, cela constitue seulement un élément additionnel à considérer, comme la Cour l'a déjà souligné[6], et non pas une exigence pour que la requête à fin d'intervention soit permise.

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[4] Voir les observations écrites du Nicaragua, p. 9, par. 24.

[5] *Ibid.*, p. 17, par. 41.

[6] Voir *Différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras), requête à fin d'intervention, arrêt, C.I.J. Recueil 1990*, p. 133, par. 96.

21. De ce qui précède, il est clair que le Costa Rica remplit toutes les conditions formelles, selon l'article 81 du Règlement, et l'article 62 du Statut de la Cour, et reste confiant que la Cour acceptera la présente requête d'intervention.

22. De même, le Costa Rica tient à préciser très clairement, que le but de cette intervention n'est pas de soutenir une des Parties, ni de défendre les thèses que les Parties ont exprimées quant à l'affaire principale.

23. Je suis confiant qu'après cette audience, il n'y aura aucun doute quant au bien-fondé de la requête du Costa Rica, et l'honorable Cour pourra déterminer que le Costa Rica dispose de suffisamment de raisons pour justifier la permission d'autorisation pour intervenir.

24. Monsieur le président, permettez-moi de vous présenter le programme pour cette journée. M. Arnoldo Brenes expliquera les antécédents et les aspects géographiques des espaces maritimes costa-riciens dans la mer des Caraïbes. M. Carlos Vargas se référera à des considérations juridiques sur la requête du Costa Rica. M. Coalter Lathrop expliquera à la fois l'intérêt d'ordre juridique que le Costa Rica a dans la mer des Caraïbes et comment la décision de la Cour pourrait avoir un impact sur celui-ci. Finalement M. Sergio Ugalde examinera des aspects liés aux articles 59 et 62 du Statut de la Cour.

25. Monsieur le président, membres de la Cour, merci de votre attention. Monsieur le président, je vous prie d'appeler à la tribune M. Arnoldo Brenes. Merci.

Le PRESIDENT : Je vous remercie, Monsieur l'ambassadeur Ugalde Alvarez, l'agent du Costa Rica, pour votre intervention. Now I invite the second speaker, Mr. Arnoldo Brenes to come to the floor.

Mr. BRENES:

THE GEOGRAPHICAL AND HISTORICAL CONTEXT OF COSTA RICA'S LEGAL INTEREST IN THE CARIBBEAN SEA

1. Mr. President, distinguished Members of the Court, it is my great honour to appear before you this morning on behalf of Costa Rica.

2. My task is to provide the Court with some historical and geographical background information, which will lay the groundwork to show in subsequent presentations how Costa Rica's legal interests may be affected by the outcome of the present case.

Costa Rica's maritime boundaries

3. Although the Court is already familiar with the maritime boundary situation of the Parties to this case in the Caribbean Sea, it may nevertheless be useful to have a quick overview of the history of Costa Rica's maritime delimitation efforts in the area. This is particularly relevant because, as will be seen, that history is inextricably linked to the maritime boundary between Colombia and Nicaragua that is the subject-matter of the present dispute.

4. I will start by describing the delimitation treaty between Costa Rica and Colombia signed on 17 March 1977, known as the Facio-Fernández Treaty, which speaks solely of the delimitation of Caribbean Sea entitlements as between these two countries. The graphic on screen illustrates the boundary established through the treaty. Its first notable feature is that, when it was negotiated, Costa Rica agreed to give full weight to Colombia's San Andrés Island. Thus, the treaty establishes a simplified equidistant maritime border by drawing a median line based on the relationship between the Costa Rican coast and the island of San Andrés.

5. Clearly, the basic premise upon which the 1977 Treaty was negotiated and concluded was that if Colombian insular features — here San Andrés Island —were given a notional 200-nautical-mile entitlement, the Colombian maritime zone thus generated would overlap with the Costa Rican maritime zone, thereby requiring an agreement to divide the overlapping entitlements.

6. The second feature of the 1977 Treaty that merits attention is that the negotiating States agreed to simplify their equidistance boundary line by exchanging similarly-sized areas in the Caribbean Sea. The final result of this exchange, and the resulting boundary line, may be seen in the graphic on the screen[7]. Colombia ceded to Costa Rica a triangular-shaped area in the east that would have gone to Colombia under strict equidistance delimitation. In exchange, Costa Rica granted Colombia another portion of the maritime area located to the west, in the vicinity of the 82nd meridian, that would otherwise have been on the Costa Rican side of the equidistance line.

[7]American Society of International Law, *International Maritime Boundaries*, Vol. I, J.I. Charney & L.M. Alexander (eds.), 1996, p. 473.

7. In accordance with the negotiation and the areas exchanged, the maritime boundary between Costa Rica and Colombia was established from point A to point B along the Parallel 10° 49' 00" North and from point B northward along the Meridian 82° 14' 00" West. These lines were chosen in an attempt to create a balance between the sizes of the areas exchanged, while at the same time allowing sufficient distance from both Colombia's insular territory and Costa Rica's mainland coast. From point B, the boundary extends north to an unspecified point where it would intersect with Nicaragua.

8. At this point, I would like to note that the 1977 Treaty has been ratified by Colombia, but not by Costa Rica. While Colombia has urged Costa Rica to ratify, Nicaragua has strongly voiced its opposition to ratification. Ratification falls upon Costa Rica's Parliament; however, in consideration of Nicaragua's continuous requests that Costa Rica not ratify the treaty until the dispute with Colombia has been resolved, Costa Rica, acting out of good neighbourliness, has abstained from doing so.

9. The decision to abstain from ratifying was taken before Nicaragua initiated the present case in 2001, but its sensibility has been vindicated now that the dispute has been brought to the Court, since the decision in this case could significantly alter the substantive basis on which the 1977 Treaty was negotiated and concluded. I will not expand on this subject since my colleagues will refer to it in more detail in subsequent interventions.

10. In connection with Costa Rica's endeavour to negotiate all its maritime boundaries in the Caribbean Sea, it should also be noted that on 2 February 1982 Costa Rica and Panama signed their maritime delimitation treaty, known as the Calderón-Ozores Treaty. This Treaty has been ratified by both States, and sets out their maritime boundaries in both the Pacific Ocean and the Caribbean Sea, as can be appreciated in the graphic presented on screen[8]. In both cases, the maritime boundaries were drawn by applying the equidistance method to establish a median line parting from the mainland coasts of both States. The equidistance boundary in the Caribbean was simplified into a single line segment that discounted the effect of Panama's near shore islands. It originates at the land border terminus and extends to a notional tri-point with Colombia.

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[8]American Society of International Law, *International Maritime Boundaries*, Vol. I, J.I. Charney & L.M. Alexander (eds.), 1996, p. 546.

Maritime boundary negotiations between Costa Rica and Nicaragua

11. With regard to maritime boundaries between Costa Rica and Nicaragua, it still has not been possible to reach a bilateral agreement, either in the Caribbean Sea or in the Pacific Ocean. Although talks between Costa Rica and Nicaragua can be traced back as early as 1977, formal maritime boundary negotiations actually began in 2002. In a Joint Communiqué signed by the Costa Rican and Nicaraguan Vice Ministers of Foreign Affairs on 6 September 2002, both countries agreed to initiate negotiations to define maritime boundaries in both the Caribbean Sea and the Pacific Ocean, and for that purpose the bilateral Sub-Commission on Limits and Cartography was activated.

12. The Sub-Commission met on five occasions between 2002 and 2005, alternating the venue of the meetings between Costa Rica and Nicaragua. Notably, during the first meeting, both countries listed the legal instruments that would guide the negotiation process, which included, *inter alia*, the United Nations Convention on the Law of the Sea, with reference to its Article 15, among others.

13. The last meeting of the Sub-Commission took place on 22 August 2005 in San José. The next meeting was scheduled for 10 and 11 October 2005, in Managua, that is, exactly five years ago. The Nicaraguan Government, however, cancelled that meeting and showed no enthusiasm for continuing negotiations, despite Costa Rica's repeated requests to resume the process. Unfortunately, Nicaragua's reticence prevailed and the process has been suspended since 2005.

14. Nicaragua's Written Observations on Costa Rica's Application to intervene assert that "Nicaragua does not recall any negotiations on maritime delimitation with Costa Rica in the Caribbean that involved specific claims to maritime areas or even methods of delimitation."[9] In light of the detailed and documented history of negotiations just presented, it is clear that this statement obscures the level of real effort the neighbouring States undertook in their boundary negotiations.

15. The 2002 Joint Communiqué expressly stated that the maritime boundary negotiations would involve both the Pacific Ocean and the Caribbean Sea. Nevertheless, when formal talks started, the Nicaraguan delegation requested that the negotiations in the Caribbean Sea take into

[9]Written Observations of the Republic of Nicaragua on the Application for permission to intervene filed by the Republic of Costa Rica, p. 7, para. 19.

consideration the ongoing dispute between Nicaragua and Colombia, which constituted an element of uncertainty that could eventually alter some aspects of the nascent bilateral agreement between Costa Rica and Nicaragua. Therefore, the efforts in the Caribbean Sea focused on the negotiation of the territorial sea boundary only. As a first step, the negotiating teams agreed to locate the missing marker No.°1, placed at the land border terminus of Punta Castilla, which had disappeared due to the forces of nature. The task of re-establishing the location of marker No. 1 was in fact the subject of constant discussion during the ensuing meetings of the Sub-Commission. As a consequence of the inability to locate marker No. 1, neither Nicaragua nor Costa Rica was able to present a precise proposal for maritime delimitation in the Caribbean.

16. While the negotiations in the Caribbean Sea were focused on the location of marker No.°1, negotiations in the Pacific Ocean did advance, and there was in fact an exchange of proposals by both countries. It is particularly noteworthy that both countries agreed on the use of equidistance to establish the maritime boundary between their Pacific territorial seas, which resulted in generally concordant proposals in that zone.

17. Nicaragua's claim that it "does not recall any negotiations on maritime delimitation with Costa Rica in the Caribbean"[10] therefore reveals a profoundly selective memory. Because of the circumstances just explained, and most notably the suspension of the negotiation process due to Nicaragua's inaction, negotiations in the Caribbean Sea did not reach a point where concrete proposals for delimitation could have been exchanged. But the fact is that if negotiations were formally joined to establish maritime boundaries in the Pacific and the Caribbean, it can only be because overlapping entitlements exist in those areas. Why else would both countries engage in the process of negotiating maritime limits if it were not for the fact that their respective maritime interests overlapped?

18. In light of the foregoing observations, it cannot escape the Court's notice that Costa Rica's maritime boundary relationships in the Caribbean Sea are currently uncertain, and will necessarily remain so until the Court reaches a decision in the present case.

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[10]Written Observations of the Republic of Nicaragua on the Application for permission to intervene filed by the Republic of Costa Rica, p. 7, para. 19.

Maritime boundary treaties between Costa Rica and its neighbours constitute *res inter alios acta*

19. Mr. President, in its Written Observations on Costa Rica's Application to intervene, Nicaragua scrutinizes the maritime boundary delimitation agreements that Costa Rica has ratified with Panama, and signed with Colombia. In both instances, it applies an extraordinary inverted logic in an attempt to serve its purposes. To Nicaragua, the conclusion of a maritime boundary agreement with Panama means that "Costa Rica acknowledges that it has no claims to the areas further east from the end point"[11] of that boundary; and "the same understanding"[12], according to Nicaragua, applies in the case of the maritime agreement with Colombia, where the proposed conclusion is that "Costa Rica has no maritime claims further than the line of the meridian 82° 14' 00" W"[13].

20. These assertions mischaracterize the effect of Costa Rica's treaties with Panama and Colombia. Costa Rica has certainly not acknowledged in these agreements, or anywhere else, what Nicaragua wishes for: namely, that Costa Rica has relinquished certain maritime claims it may hold *vis-à-vis* Nicaragua in the Caribbean Sea. However, those maritime agreements relied upon to derive this remarkable conclusion neither expressly nor implicitly entail Costa Rica's relinquishment of any maritime areas to third States not party to those agreements. In other words, those maritime agreements concluded between Costa Rica and its other neighbours are exclusively the result of particular negotiations between the Parties, and, most importantly, constitute *res inter alios acta* for Nicaragua as well as for all other non-party States.

21. As Article 34 of the 1969 Vienna Convention on the Law of Treaties states, "a treaty does not create either obligations or rights for a third State without its consent"[14]. Unfortunately for Nicaragua even the most strenuous wishful thinking cannot overcome this long-standing rule. As such, it is manifestly the case that Nicaragua is not bound by Costa Rica's treaties with other States, nor can Nicaragua benefit from or rely upon Costa Rica's negotiated bilateral maritime agreements with Panama and Colombia. These agreements divide overlapping maritime interests

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[11]Written Observations of the Republic of Nicaragua on the Application for permission to intervene filed by the Republic of Costa Rica, p. 6, para. 16.

[12]*Ibid*., p. 6, para. 17.

[13]*Ibid*., p. 7, para. 18.

[14]Vienna Convention on the Law of Treaties, 23 May 1969, 1155 United Nations, *Treaty Series (UNTS)*, p. 331.

in the Caribbean Sea only as between the signatory States, and that is the only effect that can be given to them. Nicaragua's wish simply cannot be granted by this Court.

22. It is thus clear that Nicaragua, as a matter of both law and fact, is precluded from extracting any legal interests or legal rights out of these agreements. All the more so when the apparent intention is to grasp legal benefits against Costa Rica, the very State it presently seeks to deny the opportunity to make its interests known.

Nicaragua's claim for an extended continental shelf is irrelevant

23. As a final point before I conclude my presentation, I would note that Nicaragua's Written Observations also seem to place great importance on having presented to the Office of the Secretary-General of the United Nations a preliminary information document for an extended continental shelf in the Caribbean Sea, while Costa Rica has not[15]. This observation, like so many others, is absolutely irrelevant. The fact is that, as stated in Article 56 of the 1982 United Nations Convention on the Law of the Sea, Costa Rica's 200 nautical mile exclusive economic zone entitlement in the Caribbean Sea already includes its respective sea-bed and subsoil, that is, in other words, any continental shelf entitlement within that zone. Therefore, considering that continental shelf claims beyond 200 nautical miles in the Caribbean Basin are precluded by competing third State claims to exclusive economic zones, all lying within 200 nautical miles from their respective coasts, there is no need for Costa Rica to submit continental shelf claims beyond its exclusive economic zone. Nonetheless, should there arise any technical information and legal grounds on which to place such a claim, Costa Rica reserves its right to do so.

24. As a matter of fact, Costa Rica protested Nicaragua's preliminary information document through a diplomatic note to the Secretary-General of the United Nations dated 19 August 2010, by reason of the existence of overlapping interests within the maritime areas requested by Nicaragua in the Caribbean Sea, which Costa Rica itself claims.

25. Moreover, it should be noted that Nicaragua's preliminary information document does not trigger automatic acceptance of its claim. As is well known, a final submission must eventually be filed to the United Nations Commission on the Limits of the Continental Shelf, which will

[15]Written Observations of the Republic of Nicaragua on the Application for permission to intervene filed by the Republic of Costa Rica, p. 7, para. 20.

carefully analyse it before making its comments and recommendations to Nicaragua, and none of this has happened yet.

26. Mr. President, as demonstrated, all three of Costa Rica's maritime boundary relationships in the Caribbean Sea are inextricably linked to each other. They also share a common element: all three relationships may be affected by the delimitation decision in this case. Costa Rica wishes to inform the Court of this possibility through the process of intervention.

27. Mr. President, distinguished Members of the Court. With these remarks I close my presentation, and thank you all for your kind attention. Mr. President, may I ask you now to call on Mr. Carlos Vargas.

The PRESIDENT: Thank you, Mr. Arnoldo Brenes, for your presentation. I now invite Mr. Carlos Vargas, to take the floor.

Mr. VARGAS:

ATTACHMENT OF DOCUMENTS, STANDARD OF PROOF, AND THE LEGAL BASIS OF COSTA RICA'S LEGAL INTEREST IN THE CARIBBEAN SEA

1. Mr. President and distinguished Members of the Court, I am honoured to appear before you on behalf of the Republic of Costa Rica. My task today is to emphasize certain aspects of our Application for permission to intervene in the present dispute. In particular, I will demonstrate how certain criteria set forth in Article 81 of the Rules of this Court should be interpreted and applied to Costa Rica's Application to intervene, and elaborate on the legal basis of Costa Rica's interest of a legal nature in the Caribbean Sea.

Costa Rica's decision not to attach documents to its Application for permission to intervene is legally irrelevant and in no way a procedural defect

2. I will begin my discussion with paragraph three of Article 81. That paragraph states, "[t]he application shall contain a list of the documents in support, which documents shall be attached"[16]. In its Written Observations, the Government of Nicaragua suggests that Costa Rica's decision not to attach documents to its Application "makes it even more difficult to determine

[16]International Court of Justice, *Rules of Court*, Art. 81, para. 3.

exactly what are the legal interests claimed by Costa Rica"[17], implying that this supposed lack of documentary support is a defect in the Application. This accusation is entirely without merit.

3. In the first place, this Court has made clear that Article 81 does not require the attachment of documents. In its Judgment on the Philippines' Application to intervene in the case between Indonesia and Malaysia the Court said:

> "there is no requirement that the State seeking to intervene necessarily attach any documents to its application in support. It is only where such documents have in fact been attached to the said application that a list thereof must be included." (*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Application to Intervene, Judgment, I.C.J. Reports 2001,* p. 587, para. 29.)

Furthermore, the Court continued, "the choice of the means whereby the State wishing to intervene seeks to prove its assertions lies in the latter's sole discretion"[18].

4. Although these observations are sufficient to demonstrate the error of Nicaragua's assertion, I would like to correct one other misleading allegation regarding the attachment of documents made in the same paragraph. Nicaragua alleges that Costa Rica's decision not to attach unnecessary supporting documents differs "quite distinctly from the procedure followed by Equatorial Guinea"[19] in its successful application to intervene in the dispute between Cameroon and Nigeria. A gullible reader may assume that Equatorial Guinea attached a substantial volume of documentary support, thus distinguishing its application from Costa Rica's.

5. However, as this Court will recall, the truth is that Equatorial Guinea attached to its application only two distinct documents, referring to domestic legal provisions framing Equatorial Guinea's maritime entitlements[20]. Notably, Costa Rica did essentially the same in referencing Article Six of its Constitution in the Application itself[21]. Thus, the two applications may be considered essentially equivalent. And regardless, it is clear that Costa Rica's application is sufficiently supported by the evidence contained therein and the materials furnished to this Court by the parties to this case in their submissions.

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[17]Written Observations of the Republic of Nicaragua on the Application for permission to intervene filed by the Republic of Costa Rica, p. 10, para. 25.

[18]*Ibid.*

[19]*Ibid.*

[20]*Application for Permission to Intervene by the Government of Equatorial Guinea: Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon/Nigeria),* pp. 16-39.

[21]Application for permission to intervene by the Republic of Costa Rica, p. 3, para. 14, footnote 1.

The standard of proof in the application stage is low and has been met by Costa Rica's submissions to the Court

6. Indeed, this observation leads naturally into the next topic of my presentation: the standard of proof that Costa Rica must meet in their application stage of the intervention process. Nicaragua suggests in its Written Observations that Costa Rica "has failed to clearly identify any interest it may have of a legal nature that might be affected by the decision in this case"[22]. The failure, however, is not with Costa Rica's Application; rather, it lies in Nicaragua's confusion regarding the standard of proof resting on Costa Rica at this stage of the proceedings. That standard, properly conceived, has been easily met by Costa Rica's Application.

7. Nicaragua would apparently require Costa Rica to submit its complete arguments on the merits of its intervention at the time of the application to intervene. This would be a profound perversion of the intervention process established in the Rules of this Court. In reality, the intervention process proceeds in two distinct stages: First, the "application stage", which is the stage in which we find ourselves at this moment; and second, if the party seeking to intervene is successful in its application, the "intervention stage", which is the moment in which the intervening State presents the full merits of its intervention position.

8. In this initial application stage, it is not Costa Rica's burden to set forth in full every argument that would be made in the subsequent intervention stage. Indeed, to do so would improperly burden this court with information irrelevant to the particular decision at hand. Rather, as this Court said with regard to Nicaragua's Application to intervene in the case between El Salvador and Honduras, in the application stage a State seeking to intervene must only "demonstrate convincingly . . . the interest of a legal nature which it considers may be affected by the decision in the case, and to show in what way that interest may be affected" (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, pp. 117-118, para. 61). Furthermore, as Judge Sette-Camara observed in his opinion dissenting from the Judgment on Italy's Application to intervene in the dispute between Libya and Malta,

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[22]Written Observations of the Republic of Nicaragua on the Application for permission to intervene filed by the Republic of Costa Rica, p. 2, para. 4.

> "In the first stage of the procedure of intervention — *and that is all we are concerned with here* — the only thing that the Court is asked to do is decide whether or not to grant the request to intervene. It is only if intervention is granted that the intervener is bound to substantiate its claims and its reasons to consider that its interests may be affected." (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, Diss. Op. Sette-Camara, pp. 83-84, para. 65; emphasis added.)

9. Thus, Costa Rica assumes its proper burden of proof in this stage, to demonstrate convincingly that it claims a legal interest that may be affected by the Court's decision in the instant dispute. Costa Rica is confident that its Application and oral submissions easily exceed that standard, as properly applied at this stage.

The substantive legal basis of Costa Rica's legal interest in the Caribbean Sea

10. Now having addressed these two procedural considerations emanating from the requirements of Article 81 of the Court's Rules, I will conclude by addressing the substantive basis of Costa Rica's legal interest in the Caribbean Sea. In accordance with principles of international law, Costa Rica has claimed sovereign rights and jurisdiction in its maritime entitlements in both the Pacific Ocean and Caribbean Sea. These claims are manifest in Costa Rica's Constitution, its domestic laws and regulations, and its international agreements.

11. First, Article Six of the Constitution of the Republic of Costa Rica explicitly states:

> "The State exercises complete and exclusive sovereignty over the airspace above its territory, its territorial waters for a distance of 12 miles measured from the low-water line along its coasts, its continental shelf and its insular sill, in accordance with the principles of International Law.
>
> Furthermore, it exercises special jurisdiction over the seas adjacent to its territory for an extent of 200 miles from the aforesaid line, in order to protect, conserve and utilize on an exclusive basis all natural resources and riches existing in the waters, soil and subsoil of those zones, in conformity with the aforesaid principles."[23]

It is through these provisions, clearly referenced in Costa Rica's Application[24], that Costa Rica expressly claims its maritime entitlements under international law. If these entitlements are not an interest of a legal nature, then that concept is completely devoid of meaning.

12. Furthermore, Costa Rica's exercise of its sovereign rights and jurisdiction over its maritime entitlements is demonstrated by its international agreements and domestic legislation. I

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[23]Constitution of the Republic of Costa Rica, 1949, Art. 6.

[24]Application for permission to intervene by the Republic of Costa Rica, p. 3, para. 14 and footnote 1.

will note a few examples. First, Costa Rica has been legislating and regulating its fisheries areas for over 60 years, most recently through the Fishery and Aquaculture Law of 2005[25]. Second, Costa Rica has enacted legislation regulating the exploitation of its maritime oil and gas resources and reserves[26]. Third, Costa Rica has also enacted laws establishing criminal penalties for activities relating to illegal fishing and piracy[27]. Fourth, Costa Rica has engaged by international agreement with its Caribbean neighbours in joint efforts to combat narco-trafficking in the Caribbean region[28].

13. Finally, in accordance with its Constitution and domestic legislation, Costa Rica has in practice licensed fishing and oil and gas activities in parts of its Caribbean zone, and engaged in other exercises of its sovereign rights and jurisdiction.

14. As such, it is clear that Costa Rica maintains an undisputable interest of a legal nature in the Caribbean Sea.

Conclusions

15. Mr. President and distinguished Members of the Court, these observations allow us to draw three conclusions. First, Costa Rica's Application was complete without documents attached and fully satisfies the appropriate procedural requirements. Second, Costa Rica's Application easily clears the standard of proof at this, the application stage of the proceedings, by clearly and convincingly demonstrating the existence of Costa Rica's interest of a legal nature in the Caribbean Sea, which may be affected by the Court's decision. And third, that Costa Rican law and practice clearly evince Costa Rica's legal rights and interests in maintaining its sovereign rights and jurisdiction over its maritime entitlements in the Caribbean Sea.

16. Mr. President, these remarks conclude my presentation. I thank you for your attention, and respectfully request that you now call on Professor Lathrop. Thank you.

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[25]Law No. 8436, March 1, 2005, http://www.acto.go.cr/descargas/Ley_Pesca_y_Acuicultura_8436.pdf.

[26]Costa Rica Hydrocarbon Law, Law No. 7399, May 3, 1994, http://www.mag.go.cr/legislacion/1994/ley-7399.pdf.

[27]Foreign Flag Vessels in the Patrimonial Sea Law, Law No. 6267, August 29, 1978, http://www.pgr.go.cr/scij/Busqueda/Normativa/Normas/nrm_repartidor.asp?param1=NRTC&nValor1=1&nValor2=32016&nValor3=33767&strTipM=TC.

[28]Agreement Concerning Cooperation in Suppressing Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean Area, Law No. 8800, 28 April 2010, http://www.oas.org/juridico/spanish/tratados/sp_conve_coop_traf_estup.pdf.

The PRESIDENT: Thank you, Mr. Carlos Vargas, for your presentation. The Court has two more speakers this morning, but given the time consideration, I suggest that the Court has a very short recess of ten minutes, until 11.20 a.m., and resume the session with the next speaker on the Costa Rican side.

The Court adjourned from 11.10 to 11.20 a.m.

The PRESIDENT: Please be seated. Now I invite Mr. Coalter Lathrop to take the floor to make his presentation.

Mr. LATHROP:

THE GEOGRAPHIC SCOPE OF COSTA RICA'S LEGAL INTEREST IN RELATION TO THE SUBJECT-MATTER OF THE PRESENT CASE AND HOW THAT LEGAL INTEREST MAY BE AFFECTED BY THE COURT'S DECISION IN THIS CASE

1. Thank you, Mr. President. Mr. President, distinguished Members of the Court, it is a great honour to appear before you this morning on behalf of the Republic of Costa Rica. Mr. President, before I begin, if I could do some housekeeping. Costa Rica has utilized approximately 50 minutes of their two hours this morning. We have approximately 70 minutes of argumentation left to make. Considering the interruption for a break and the introductory matters earlier this morning we hope, with your permission, to continue until approximately 12.30 this morning, to utilize the entire two hours of our time.

The PRESIDENT: Thank you Mr. Lathrop. I made the announcement at the beginning of my presentation that due account will be taken concerning the time that I had to spend for the opening speech. That will be taken into account in the calculation of the two hours I meant.

Mr. LATHROP:

2. Thank you very much. Mr. President, you have just heard about the nature of Costa Rica's legal interest. My job this morning is to demonstrate that Costa Rica's legal interest may be affected by the delimitation decision in this case. This will not be a difficult job because the geographic facts — including the coastal configuration of the south-western Caribbean Sea, the

area in which Costa Rica has a legal interest, and the area in dispute as defined by the claims of the Parties against each other — these geographic facts allow for only one conclusion: *because Costa Rica has a legal interest in an area of the Caribbean Sea that is also in dispute between the Parties to this case, the delimitation of that disputed area by this Court may affect Costa Rica's legal interest.*

3. Here is how I will carry out my morning's task: First, I will show the Court the minimum geographic area in which Costa Rica has a legal interest. Second, I will describe the area in dispute between Nicaragua and Colombia. Third, I will demonstrate the significant overlap between the area in which Costa Rica has a legal interest and the area that is in dispute in this case. Fourth, and finally, I will describe how a delimitation decision may affect the legal interest of Costa Rica.

The minimum geographic scope of Costa Rica's legal interest in the Caribbean Sea

4. Costa Rica has an interest of a legal nature in the exercise of its sovereignty, its sovereign rights and its jurisdiction in its territorial sea and its exclusive economic zone. However, a question remains as to the spatial extent of those zones.

5. I will begin by showing the Court the hypothetical extent of Costa Rica's maritime zones in the absence of overlapping interests and conflicting claims of neighbouring States. After presenting those zones in the abstract, I will turn to the factors that limit the extent of Costa Rica's zones and area of interest.

6. On the screen you will see a map that shows the geographic relationship among Costa Rica and other coastal States in the region. Costa Rica is in the south-west, or bottom left of the screen, Nicaragua is to the north, Colombia to the north-east, and Panama is to the south-east of Costa Rica. Together, these are the coastal States facing on the south-west Caribbean Sea.

7. Costa Rica claims a 12-nautical-mile territorial sea and a 200-nautical-mile exclusive economic zone in the Caribbean. These two maritime zones have now been added to the map in two shades of blue.

8. In the hypothetical absence of any neighbouring State entitlement Costa Rica would have maritime entitlements, and a corresponding legal interest, in the areas shown on this map. However, in order to understand the actual maritime area in which Costa Rica has a legal interest

we must bring Costa Rica's neighbourly relationships with Nicaragua, Colombia, and Panama into the picture.

9. As you have heard, Costa Rica has negotiated two maritime boundaries in the Caribbean Sea: one with Panama and one with Colombia. Those boundaries limit — with respect to those treaty partners — the area in which Costa Rica maintains a legal interest. Costa Rica has not yet agreed a maritime boundary with Nicaragua nor has any international court or tribunal delimited that boundary. This is an important difference between Costa Rica's intervention and the Honduran request for permission to intervene in this case.

10. In my presentation of Costa Rica's boundary relationships, I will begin with Panama and work counter-clockwise through Colombia to Nicaragua. Starting at their shared land boundary terminus, Costa Rica and Panama have agreed a single-segment boundary that extends seaward as a simplified equidistance line between the mainland coasts of the two adjacent States. By concluding this bilateral boundary treaty, Costa Rica has — vis-à-vis Panama — abandoned its claims to maritime area south and east of the boundary with Panama. The map on the screen now reflects the effect of Costa Rica's agreed boundary with Panama on the area in which Costa Rica has a legal interest.

11. Costa Rica has also agreed a line with Colombia in the south-west Caribbean, intended to divide areas of overlapping maritime zones generated by Costa Rica's mainland Caribbean coast and Colombia's insular Caribbean coast of San Andrés. I will refer to this line as the 1977 line, which has now been added to the map. The 1977 line is a two-segment, simplified equidistance line that extends northward "to where delimitation must be made with a third state". In this geography, that third State could only be Nicaragua, and the delimitation referred to is the future delimitation of a lateral boundary between Costa Rica and Nicaragua from their shared land boundary terminus, out to a maritime tripoint with Colombia. By virtue of the agreement between Costa Rica and Colombia that created the 1977 line, Costa Rica relinquishes its claim — vis-à-vis Colombia — to areas north and east of this line. The map on the screen now shows the two boundaries that Costa Rica has agreed in the Caribbean that limit, through bilateral agreement, the extent of Costa Rica's maritime entitlements.

12. Importantly, the 1977 line arises from a bilateral agreement between Costa Rica and Colombia only. With respect to any other State this agreement is *res inter alios acta*. It is not opposable to other States and other States, including Nicaragua, may not invoke this agreement to limit the area in which Costa Rica has a legal interest. This is, of course, equally true of the agreement between Costa Rica and Panama.

13. As Costa Rica noted in its Application, the negotiations that resulted in the 1977 line were predicated on the notion that Costa Rica and Colombia had overlapping maritime entitlements, the division of which required agreement[29]. This fundamental notion arose from two assumptions. First, that an agreed boundary was in place between Nicaragua and Colombia along the meridian 82° W leaving to Colombia the waters east of 82° W. Second, that Colombia's insular features were entitled to full effect in any delimitation. Taken together with Costa Rica's maritime entitlements, this meant that Colombia was the State with which Costa Rica had a boundary relationship in this part of the Caribbean.

14. Nicaragua has challenged these assumptions in the main proceedings in this case. Nicaragua has challenged 82° W by claiming an area that extends east of that line, past Colombia's islands to Nicaragua's 200-nautical-mile limit and far beyond. Nicaragua's area of "potential EEZ entitlement" presented throughout its submissions has now been added to the screen. Nicaragua's boundary claim as expressed in its Reply lies well beyond this area to the east. Nicaragua has also challenged the effect of Colombia's islands on a delimitation, asking the Court to give significantly less than full effect to Colombia's insular features. In fact, under Nicaragua's delimitation scenarios, Colombia's insular features would generate no more than, and in some cases significantly less than, a 12-nautical-mile territorial sea. Those enclaves have now been added to the map, in white. In Nicaragua's view, the maritime enclaves shown here are all the area Colombia should get in the south-west Caribbean and the remaining maritime area should go to Nicaragua.

15. Costa Rica takes no position on the boundary claims of the Parties, or on the question of the effect of Colombia's insular features on a delimitation between Colombia and Nicaragua.

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[29] Application for permission to intervene by the Republic of Costa Rica, p. 3, para. 13.

However, it is impossible for Costa Rica to ignore the prospect that the entire basis on which the 1977 line was negotiated would be eliminated by creating a zone of *non-Colombian* waters immediately north and east of the 1977 line, thus rendering the agreement between Costa Rica and Colombia without purpose. Because Nicaragua claims the area north and east of the 1977 line in this case, and because the Court could delimit the Nicaragua-Colombia boundary in such a way that those areas are no longer Colombian, Costa Rica maintains a legal interest in that area notwithstanding its agreement with Colombia.

16. The map now reflects the impact of Nicaragua's position in this case on Costa Rica's area of interest. While Costa Rica's area may be limited by the 1977 line when Colombia is the State with jurisdiction in the waters to the north and east, no such limitation exists if Colombia is *not* the State with jurisdiction to the north and east of that line. In those circumstances Costa Rica has a legitimate legal interest in areas extending north and east of the 1977 line to at least the 200-nautical-mile outer limit of its exclusive economic zone.

17. I turn now to the third and final boundary relationship between Costa Rica and its Caribbean neighbours: that is, the relationship to the north between Costa Rica and Nicaragua. As the Court is aware, Costa Rica and Nicaragua share a land boundary that stretches from the Pacific Ocean to the Caribbean Sea. In addition, Costa Rica and Nicaragua enjoy a maritime boundary relationship in both the Pacific and the Caribbean. Despite efforts by Costa Rica and Nicaragua to agree their maritime boundaries, those efforts have not been successful and the two States continue to maintain boundary positions that create large overlapping maritime areas.

18. Costa Rica is not here to litigate its undelimited maritime boundaries with Nicaragua. As the Agent stated, Costa Rica believes that negotiation is the best method for resolving these differences, and is confident that its outstanding maritime boundary with Nicaragua in the Caribbean can be agreed through negotiation. When that does occur, the agreed line will form the northern limit of the area in which Costa Rica has a legal interest. However, in the absence of an agreed line, Costa Rica will posit a boundary between its maritime areas and those that would pertain to Nicaragua in accordance with international law. Costa Rica does not ask the Court to decide this boundary. Instead, this notional boundary must be put forward to demonstrate to the

Court that there is a significant overlap between the area in which Costa Rica has a legitimate legal interest and the area in dispute between the Parties to this case.

19. Costa Rica has not published a specific unilateral claim to maritime area in the Caribbean, preferring instead to rely on the language of its Constitution in which Costa Rica claims maritime area in accordance with the principles of international law. What then are the principles of international law that govern maritime boundary delimitation?

20. The governing principle of international maritime boundary delimitation is that a delimitation should produce an equitable solution or result. The Court has grappled with this rather vague principle over the years and has developed a procedural methodology for arriving at an equitable solution. This methodology was articulated most recently in the maritime delimitation case in the Black Sea between Romania and Ukraine. In its unanimous decision the Court wrote: "When called upon to delimit the continental shelf or exclusive economic zones, or to draw a single delimitation line, the Court proceeds in defined stages." (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment*, *I.C.J. Reports 2009*, p. 37, para. 115.) In the first stage the Court establishes a provisional delimitation line usually based on the equidistance method[30]. In the second stage the Court "consider[s] whether there are factors calling for the adjustment or shifting of the provisional equidistance line in order to achieve an equitable result"[31]. In the third stage the Court verifies the equity of the delimitation by checking that "no great disproportionality of maritime areas is evident by comparison to the ratio of coastal lengths"[32].

21. When applied in the Black Sea, this three-stage approach yielded an equidistant maritime boundary between the opposite and adjacent mainland coasts of the parties, giving no effect to the insular feature in the area beyond its own territorial sea, and making no adjustment to the line despite a certain level of disproportionality between coastal length and maritime area ratios.

22. In some circumstances it has not been possible to construct a provisional delimitation line based on equidistance as a result of unstable coastline and the difficulty of determining the location of base points. This was the situation in the recent delimitation between Nicaragua and

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[30]Application for permission to intervene by the Republic of Costa Rica, p. 37, para. 118.

[31]*Ibid*., p. 37, para. 120 (citation omitted).

[32]*Ibid*., p. 39, para. 122.

Honduras in the Caribbean Sea. In these circumstances, the Court has used methods other than strict equidistance to construct a provisional delimitation line. In the delimitation case between Nicaragua and Honduras, the Court used a bisector of the angle of the general directions of the mainland coasts. This is also a distance-based method, but one that relies on a generalized version of coasts. Here, too, the Court's approach yielded a distance-based maritime boundary, giving no effect beyond 12 nautical miles to the insular features in the area, and making no proportionality-based adjustment to the line.

23. Although these two most recent delimitation cases resulted in largely unadjusted, distance-based delimitation lines, there are situations in which distance-based methods will not produce an equitable result. This is particularly true in circumstances in which one State is located at the back of a coastal concavity[33].

24. The specific application of the three-stage delimitation process has varied from one maritime boundary case to another. Nonetheless, several points can be drawn from the decisions. First, mainland coastal configuration or coastal geography is the foremost concern in maritime boundary delimitation. Second, small islands are normally given no weight in delimitations, especially in lateral delimitations between adjacent States. Islands typically are, however, given 12-nautical-mile territorial seas in these circumstances. Third, in order to adjust a line to account for disproportionality between coastal length and maritime area, the disproportion must be quite significant. Fourth, and finally, in certain coastal configurations distance-based delimitation methods require adjustment in order to achieve an equitable result.

25. What then is the concrete effect of these principles when applied to the relationship between Costa Rica and Nicaragua in the Caribbean Sea?

26. The map now on the screen reflects the area to the north and north-east of Costa Rica's Caribbean coast that is within 200 nautical miles of that coast. Costa Rica would be entitled to exercise its sovereign rights and jurisdiction in this area in the absence of any Nicaraguan maritime entitlement. Of course Nicaragua also has maritime entitlements off its coast. In fact, several of Nicaragua's figures in the written pleadings in this case indicate that there would be a significant

[33]See, e.g., *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3, pp. 17–18, 48–49, paras. 8, 88–89.

overlap between area claimed by Nicaragua and area to which Costa Rica is entitled[34]. At some point in time this overlap must be divided between Costa Rica and Nicaragua in a way that achieves an equitable result. Now is not that time. However, for the purpose of Costa Rica's request for permission to intervene, it is necessary to present a depiction of a line that reasonably approximates an equitable result.

27. As discussed, this Court has developed a procedural method for reaching such a result. Costa Rica has applied that method in this intervention process and has concluded that the relevant principles of international law when applied to this coastal geography, would result — at a minimum — in a lateral equidistant boundary drawn from the mainland coasts of Costa Rica and its adjacent neighbour, Nicaragua[35]. That line — an equidistant line drawn from the mainland coasts of Costa Rica and Nicaragua without adjustment — is now shown on the screen.

28. We should take a moment to be clear about what this line does and does not represent. This line is not a negotiating position. It is not a maximum plausible claim. And, most importantly, it is not a line that Costa Rica is asking the Court to delimit. Instead, this is a line that reflects a restrained interpretation of the principles of international law applied to this particular coastal configuration. It does not, for example, take account of Costa Rica's disadvantaged position at the back of a coastal concavity. It represents a reasonable northern limit of the minimum maritime area in which Costa Rica has a legal interest. It is used here only to demonstrate, for the purpose of this preliminary proceeding, that Costa Rica has a legal interest that is situated in the midst of the delimitation case between Nicaragua and Colombia. Under this hypothetical delimitation scenario between Costa Rica and Nicaragua developed in accordance with international law and notwithstanding other third State interests, Costa Rica has a legal interest in the area now shown in blue.

29. At this stage in the proceedings Costa Rica is not required to argue a detailed delimitation case. Instead Costa Rica need only show that a delimitation decision of the Court could affect a legal interest of Costa Rica's. This would be the case if there were any overlap whatsoever between the area in which Costa Rica has a legal interest, as shown on the map, and the

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[34]MN, figs. I & II; RN, figs. 3-1, 3-10, 4-5, 6-1, 6-5, 6-7, 6-8, 6-9, 6-10, & 6-11.

[35]Application for permission to intervene by the Republic of Costa Rica, p. 3, para. 14.

area in dispute between the Parties to this case. In Costa Rica's view there is a rather large overlap between these two areas, an overlap of approximately 30,000 sq km.

The maritime area in dispute between the Parties is the subject-matter of the present dispute

30. Mr. President, let me turn now to the subject-matter of the main case between Nicaragua and Colombia in order to demonstrate the significant overlap between that subject-matter and Costa Rica's legal interest. For the purpose of Costa Rica's intervention — the scope of which does not include issues of island sovereignty — the subject-matter of this case is the maritime area in dispute between the Parties and the division of that area in the Court's delimitation decision.

31. Colombia appears to accept that Costa Rica has a legal interest that may be affected by the delimitation decision in this case. Nicaragua does not. Nicaragua's argument seems to be that there is no possible intersection between the line that Nicaragua has asked the Court to delimit and the area in which Costa Rica has a legal interest. In support of its opposition, Nicaragua points out "that the line of delimitation *it seeks with Colombia* is located substantially east of the furthest 200 nm EEZ claim of Costa Rica"[36], and Nicaragua refers to a quotation from Costa Rica's Application in which Costa Rica wrote that Nicaragua's new line — the one from the Reply — is "beyond any area to which Costa Rica claims an entitlement"[37]. Finally, Nicaragua writes that "this admission in itself should be enough to dismiss the Application of Costa Rica"[38].

32. Well, before we pack up and head home, perhaps we should take a closer look at Nicaragua's logic. The map on the screen shows the minimum area in which Costa Rica has a legal interest. Adding both of Nicaragua's maritime boundary claims in this case, the dashed line to the west is the claim made by Nicaragua in its Memorial[39]. The solid line to the east is the new claim made by Nicaragua in its Reply[40]. Nicaragua would have the Court believe that the only area

[36]Written Observations of the Republic of Nicaragua on the Application for permission to intervene filed by the Republic of Costa Rica, p. 10, para. 27; emphasis added.

[37]*Ibid.*, p. 13, para. 32.

[38]*Ibid.*, p. 2, para. 3.

[39]MN, pp. 266–267, "Submissions" para. 9.

[40]RN, pp. 239-240, "Submissions" para. 3.

in dispute between the Parties "is where the Parties' continental shelf entitlements overlap"[41]. That area is now shown on the screen.

33. But the area in the vicinity of Nicaragua's claimed boundary does not constitute the entire subject-matter of this delimitation case. In an attempt to convince the Court that Costa Rica should not be allowed to intervene, Nicaragua has ignored the fact that there is another party to the main case. Colombia, not surprisingly, has a different perspective than Nicaragua on the question of delimitation. Colombia's claimed boundary against Nicaragua, depicted in its Counter-Memorial and Rejoinder, has now been added to the map on the screen[42].

34. These two or three lines, Nicaragua's in the east and Colombia's in the west, do not stand alone. Although they are separated from each other by hundreds of nautical miles they are not disembodied lines drifting at sea, instead they are inextricably linked to the *areas* of that sea claimed by each of the Parties to this case. The lines themselves are merely the outermost limits of the areas in which the Parties claim maritime entitlements as against each other. The area *between* the lines is the area claimed by both Nicaragua and Colombia. *This* is the area in dispute between the Parties. *This* is the subject-matter of the case, the decision in which may affect Costa Rica's legal interest. And that area has now been added to the map.

Because the area that is subject-matter of the present dispute and Costa Rica's area of legal interest overlap, Costa Rica's legal interest may be affected by the decision in this case

35. The graphic now on the screen captures the essence of Costa Rica's intervention argument: there is a significant overlap between the area in which Costa Rica has a legal interest and the area in dispute between the Parties to the main case. Any delimitation decision in this case that enters that area of overlap would affect Costa Rica's legal interest.

36. What you see on the screen is, essentially, a two-set Venn diagram. One set, in light red, is the part of the Caribbean Sea in dispute between the Parties in this case, and is the very subject-matter of the delimitation case between Nicaragua and Colombia. It is bounded on the east and on the west by the boundary claims of the Parties against each other, and on the south by the southern limit of Nicaragua's so-called "potential EEZ entitlement" combined with its area of

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[41]RN, p. 157, para. 6.27.

[42]CMC, p. 425, "Submissions" para. *(b)*; RC, p. 337, "Submissions" para. *(b)*.

extended continental shelf, both as depicted in Nicaragua's Reply[43]. The other set, in blue, is the part of the Caribbean Sea in which Costa Rica has an interest of a legal nature. It is bounded by an agreed boundary with Panama, a notional boundary with Nicaragua and the outer limits of Costa Rica's EEZ entitlement. The purple or the dark blue area is the intersection of the two sets. It represents the area in dispute in this case in which Costa Rica has a legal interest. The very existence of the purple area demonstrates that in the present case the legal interests of Costa Rica form part of the subject-matter of the delimitation decision in this case and may be affected by that decision.

37. You may hear from one or both of the Parties that there is something wrong with either the shape or the size of the purple area shown here. Costa Rica submits that the approximately 30,000 sq km purple area on this map is an accurate representation of the intersection between Costa Rica's minimum area of interest and the area in dispute between the Parties. However, even if the purple area were smaller or a different shape, the existence of any purple area whatsoever would be sufficient to demonstrate that the delimitation decision in this case *may* affect the legal interest of Costa Rica.

Without intervention by Costa Rica, the Court's decision in this case could prejudice Costa Rica's legal interest

38. Mr. President, allow me to turn to the question of how, exactly, a decision in this case might affect the legal interest of Costa Rica. The Parties have asked the Court to delimit a maritime boundary between them. They have put forward their boundary positions and staked out the area in dispute. At the completion of oral argument on the merits, it will be for the Court to render a delimitation decision that divides that disputed area. Costa Rica does not presume to know what that delimitation decision will be. However, Costa Rica has contemplated the possible outcomes and many of them could indeed affect its interests.

39. Although there are many possible delimitation results in this case, the boundary is likely to have certain characteristics. First, the maritime boundary decided in this case is likely to fall somewhere between the claims of the Parties. Second, whether the boundary is drawn between

[43]RN, figs. 3-10, 4-5, 6-5, 6-9, 6-10, & 6-11.

opposite islands as Colombia has urged, or between opposite mainland coasts or hypothetical continental shelf outer limits as Nicaragua has urged, it is likely to trend — generally speaking — north-south. Third, in the congested geography of the south-west Caribbean Sea the boundary will run, for its entire length, within 200 nautical miles of the territory of the Parties or of a neighbouring State. Taking these three characteristics into account, the boundary relationship between Nicaragua and Colombia must necessarily end in the north and the south where their maritime areas meet an area in which a third State has an interest. In other words, a trilateral boundary relationship will exist at both ends of the Nicaragua-Colombia boundary. In the south, that trilateral relationship could be between the Parties to this case and Costa Rica.

40. In both the Counter-Memorial and Rejoinder, Colombia took note of this potentially problematic issue writing that "there is a question how far the median line should be prolonged to the south given the potential interests of third States in the region"[44]. Indeed this question — how far south the boundary between Nicaragua and Colombia should extend considering the existence of Costa Rica's interests — this is the question that concerns Costa Rica in these proceedings. Costa Rica has no interest in the Court's decision regarding title to territory, the effect of small insular features, the east-west location of the Nicaragua-Colombia boundary, or, for that matter, the northern terminus of the boundary. The question that concerns Costa Rica is the location of the southern terminus of the boundary that will be delimited in this case and that will divide the area in dispute between the Parties. Costa Rica has requested permission to intervene in this case so that it may inform the Court of the extent of Costa Rica's legal interests and thereby help the Court to answer this important question regarding the southern endpoint of its boundary.

41. The question of endpoints in the vicinity of third States is of course not unique to the delimitation between Nicaragua and Colombia, but instead is a question that arises in the majority of bilateral delimitations. State practice and the practice of international courts and tribunals indicate a strong concern to avoid entering areas in which third States have expressed an interest or might reasonably maintain an interest. This concern arises precisely because to enter those areas could prejudice the interests of the third State, enflame an existing dispute, or, in the worst case,

[44]CMC, p. 394, para. 9.34; RC, p. 312, para. 8.78.

create a new dispute where none previously existed. It is not necessary at this point in the proceedings to go into a full assessment of State practice or the practice of courts and tribunals on this issue. It should suffice to briefly review the last four maritime delimitation cases decided by this Court over the last decade.

42. In all four of those cases this Court encountered the problem of third State interests and avoided entering third State areas by indicating the continuation of the boundary between the parties from a point safely beyond the area of third State interest[45]. In the case between Romania and Ukraine in the Black Sea, Bulgaria and Turkey were the third States to the south of the delimitation. The Court drew the final segment of its line from a fixed point located safely beyond the area of third State interest on a constant bearing "until it reaches the area where the rights of third States *may* be affected" (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, 3* February 2009, p. 67, para. 219; emphasis added). The Court faced the same problem in the case between Nicaragua and Honduras in the Caribbean Sea with respect to third States east of the delimitation area; in the case between Cameroon and Nigeria in the Gulf of Guinea with respect to Equatorial Guinea immediately to the south of the delimitation area; and in the case between Qatar and Bahrain in the Arabian Gulf with respect to Iran in the north and Saudi Arabia in the south. In all of these cases the Court continued its boundary in a specified direction from an endpoint safely beyond the area of third State interest.

43. In only one of these instances had the relevant third State delimited its boundaries with both parties to the case, thereby circumscribing its area of interest with respect to both parties. In the absence of agreed boundaries between the third State and both parties, the Court is left to rely upon the parties themselves to indicate the limits of third State interests. However, if the parties' representations were incorrect and if the Court were to rely on them in its delimitation decision, the line decided by the Court could unintentionally penetrate areas of third State interest and prejudice future delimitations between the third State and the parties to the Court's decision.

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[45] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment*, 3 February 2009; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Carribean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007*, p. 659; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 303; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Judgment, I.C.J. Reports 2001*, p. 40.

44. Here, Costa Rica and Nicaragua have not agreed their maritime boundary. The map now on the screen shows two very different lines extending from the Costa Rica-Nicaragua land boundary terminus at Punta Castilla. The northern line is Costa Rica's modest rendition of an equitable result described earlier. The southern line is Nicaragua's "roughly sketched" southern limit of its potential EEZ entitlement. If the Court were to delimit a boundary between Nicaragua and Colombia ending anywhere south of Costa Rica's line, it would impair Costa Rica's ability to negotiate an equitable boundary with Nicaragua and it would put in jeopardy Costa Rica's area between these lines. This is one concrete way in which the Court's delimitation decision may affect Costa Rica's legal interest.

45. The Court's practice of stopping its delimitation lines before entering areas of third State interest manifests a strong concern to avoid prejudicing those interests by avoiding the division of areas between parties to a case when those areas are also claimed by a third State. However, in order to fully delimit between the parties while avoiding prejudice to third State interests, the Court must have correct and complete information about the limits of the third State area. In their pleadings to date the Parties have not provided this information. Costa Rica intends, by intervening in this case, to correct the record and to inform the Court of the true extent of its interests.

Conclusions

46. Mr. President, Costa Rica's argument in this phase of the proceedings is really quite simple: there is a significant overlap between the area in which Costa Rica has a legal interest and the area disputed by the Parties to this case. If the Court's delimitation of that disputed area were to extend into the area in which Costa Rica has a legal interest, that delimitation decision would affect Costa Rica's legal interest. Costa Rica requests permission to intervene in order that it might inform the Court of the nature and extent of its legal interests and thereby protect those interests.

47. Mr. President, with those remarks I am finished for the day. I thank you for your attention, and I ask the Court to please call on my colleague, Sergio Ugalde, who will deliver the final presentation for Costa Rica today.

The PRESIDENT: I thank Mr. Coalter Lathrop for his presentation. Now I call the last speaker this morning, Mr. Sergio Ugalde.

Mr. UGALDE:

THE EFFECTIVE PROTECTION OF COSTA RICA'S LEGAL INTEREST, THE NATURE OF INTERVENTION, AND ASSOCIATED ISSUES

1. Mr. President, distinguished Members of the Court. It is a great privilege to have the opportunity to appear before you today on behalf of Costa Rica.

2. Mr. Lathrop has just demonstrated that Costa Rica does have an interest of a legal nature that may be affected by the decision in this case. My task today is to demonstrate that, to protect Costa Rica's interests in the Caribbean Sea, Article 59 of the Statute and the possibility of bringing two new individual cases against the Parties to this case, are no substitute for intervention under Article 62.

Costa Rica's interests of a legal nature are not sufficiently protected by Article 59 of the Statute of the Court

3. At the outset, I would like to recall what Nicaragua stated in its Written Observations to Costa Rica's Application to intervene. Nicaragua said:

> "Costa Rica has available the jurisdiction of the Court with respect to both Nicaragua and Colombia, at least by invoking the Pact of Bogota, to which all three States are Parties. The significance of this is that Costa Rica is not only protected against any decision of the Court in this case by Article 59 of the Statute, but also by its ability to file an independent claim against either or both Parties, in the event its legal interests so require."[46]

4. By this statement, Nicaragua implies that, despite the fact that Costa Rica may have an interest of a legal nature that may be affected by the decision in this case, Costa Rica need not be allowed to intervene under Article 62, because it is protected by Article 59 of the Statute, and also, alternatively, by its ability to bring new claims before this Court against the Parties in the instant case. This argument is flawed for three reasons: first, Article 59 protection is, in practical terms, insufficient. Second, the avenues suggested by Nicaragua do not provide the Court with what it needs, namely, complete and correct information about Costa Rica's interests that may be affected by the decision of the Court. And third, bringing new claims to protect legal interests, that otherwise could be protected by means of Article 62, is inefficient, unnecessary and only serves to

[46]Written Observations of the Republic of Nicaragua on the Application for permission to intervene filed by the Republic of Costa Rica, p. 3, para. 9.

compound the problem faced by the Court in this case, which is, lack of information about the true extent of Costa Rica's interests.

5. I will begin by considering Nicaragua's argument that Article 59 protects Costa Rica against any decision of the Court. Whilst it is true that in the eventuality of a decision affecting Costa Rica's legal interests, Article 59 would afford protection from the direct legal effects of a binding decision to which it is not a party, this is merely a legal technicality that, in practical terms, offers only limited protection to Costa Rica, especially in the circumstances of this case.

6. Costa Rica acknowledges that Article 59 stands as an important pillar in the system of international justice. It gives compulsory force to the judgments of the Court between the parties and in respect to a particular case. Taken together with Article 60, in any specific case, it gives to a judgment of the Court the character of *res judicata*.

7. In addition, Article 59 embodies another important international law principle: that a decision of the Court has no binding force for third States not party to a particular case. Notwithstanding this principle, I will show that in certain circumstances Article 59 cannot prevent a judgment of the Court from affecting third State interests.

8. Article 59 ascribes "force of law" to a judgment vis-à-vis the parties bound by it. But the fact that a judgment may have binding force only as between the parties to a particular case does not prevent, per se, certain effects — to which I will refer later — from transcending the judgment, carrying with them implications of fact and law that may be prejudicial to the legal interests of third States.

9. In the *Continental Shelf* case between Libya and Malta, the Court examined certain issues related to third State legal interests. The Court stated:

> "there can be no doubt that the Court will, in its future judgment in the case, take account, as a fact, of the existence of other States having claims in the region. As the Permanent Court of International Justice emphasized in the case of the *Legal Status of Eastern Greenland*,
>
> > 'another circumstance which must be taken into account by any tribunal which has to adjudicate upon a claim to sovereignty over a particular territory, is the extent to which the sovereignty is also claimed by some other Power',
>
> and this observation, which is itself unrelated to the possibility of intervention, is no less true when what is in question is the extent of the respective areas of continental

> shelf over which different States enjoy 'sovereign rights'. The future judgment will not merely be limited in its effects by Article 59 of the Statute: it will be expressed, upon its face, to be without prejudice to the rights and titles of third States." (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, pp. 26-27, para. 43; internal citation omitted.)

10. From this reasoning, three points can be drawn: first, the Court must take account of third State interests — irrespective of Article 59; second, Article 59 does protect, but not completely; and third, the Court may expressly state in its judgment that third States will not be prejudiced by the decision.

11. The third point raises the following question: even when a judgment expresses that it does not prejudice third State legal interests, is this statement sufficient to fully protect those interests? The answer is no. No, because a general statement of this kind cannot afford more protection than Article 59 itself. Without complete and correct information about the rights and interests claimed by third States, a decision of the Court, while not binding on third States, may indeed produce prejudicial effects not fully considered in light of arguments or facts not known to the Court. Moreover, Article 59, applied *ex post facto*, does not offer real protection in these circumstances.

12. Mr. President, I will now address the problem of information. In this case, the Court has not been provided with complete information about the interests of Costa Rica in the Caribbean Sea. Therefore, I will examine some matters that will conclude with a material example of how important facts in a case may evade the Court's attention, in turn prejudicing a third State's legal interests without sufficient protection from Article 59.

13. Nicaragua asserts what it considers to be the area subject to delimitation in figure 3-1 of its Reply. The Reply also shows what Nicaragua's potential EEZ entitlement would be according to figures 4-5, 6-5, 6-9, 6-10 and 6-11. Nicaragua has not denied that what it seeks from the Court is not merely the drawing of a boundary line with Colombia, but also the recognition of the maritime areas bounded by that line as belonging to Nicaragua. As these figures show, there is no indication whatsoever of potential conflicting or overlapping interests with other countries, especially with Costa Rica.

14. In its Written Observations, Nicaragua argued that this point — Nicaragua's claimed entitlement to the area bounded by the requested delimitation line — is irrelevant[47], but does not explain why it is so. Despite Nicaragua's plea of irrelevance, there is a clear and very relevant intrusion by Nicaragua's southern lines (bounding Nicaragua's claimed maritime areas) on Costa Rica's maritime entitlements, as has been demonstrated by Mr. Lathrop. Thus, it is obvious that this is a fact quite relevant to Costa Rica's Application.

15. Furthermore, Nicaragua also asserts that "all these figures in the Reply refer to the general area of the 'potential EEZ entitlement', and do not imply, under any possible reading, a claim to the entirety of the areas thus roughly sketched"[48]. This remarkable admission underscores two points: First, that Nicaragua presented to the Court figures which do not mean what they intend to prove, that is, what Nicaragua claims the precise delimitation area is, and what Nicaragua's precise potential EEZ entitlements are. And second, that these figures, as drawn, do in fact intrude upon legal rights and interests of third countries, to be precise, the legal rights and interests of Costa Rica. In addition, if these figures do not imply Nicaragua's claim to the entirety of the areas "roughly sketched", this can only mean that a great extent of the areas erroneously depicted as Nicaraguan — but that are not — comprise an outright intrusion into maritime areas subject to the rights and interests of Costa Rica and perhaps other third States.

16. If, indeed, the figures presented and relied upon by Nicaragua "do not imply, under any possible reading, a claim to the entirety of the areas thus roughly sketched" as it is so candidly asserted, why did Nicaragua not clarify to the Court, at the time of submission, that these figures do not represent Nicaragua's actual and precise claims? Had Costa Rica not made this request for permission to intervene, these significant facts would have simply gone by unnoticed and concealed from the Court's attention! If the Court made its delimitation decision on the basis of Nicaragua's apparent claims, can we confidently say that Article 59 would have fully protected Costa Rica in this circumstance? Of course not.

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[47]See Written Observations of the Republic of Nicaragua on the Application for permission to intervene filed by the Republic of Costa Rica, p. 13, para. 33.

[48]*Ibid*., p. 12, para. 31.

17. This fact — the limited protection afforded by Article 59 — has been examined by distinguished jurists and by the Court itself. In his dissenting opinion in the *Libya/Malta* case, Judge Oda considered that Article 59 did not always sufficiently protect the interests of a third State. He affirmed: "Article 59 of the Statute may not be accepted as guaranteeing that a decision of the Court in a case regarding the title *erga omnes* will not affect a claim by a third State to the same title." (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, p. 109, para. 37.)

18. Judge Jennings, also in his dissenting opinion in the same case, went even further, emphasizing how Article 59 only provided technical protection. He commented:

> "the slightest acquaintance with the jurisprudence of this Court shows that Article 59 does by no manner of means exclude the force of persuasive precedent. So the idea that Article 59 is protective of third States' interests in this sense at least is illusory"[49].

19. In the *Cameroon* v. *Nigeria* case, the Court considered what the limits of Article 59 are, thus stating:

> "The Court considers that, in particular in the case of maritime delimitations where the maritime areas of several States are involved, the protection afforded by Article 59 of the Statute may not always be sufficient. In the present case, Article 59 may not sufficiently protect Equatorial Guinea or Sao Tome and Principe from the effects — even if only indirect — of a judgment affecting their legal rights." (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 421, para. 238.)

20. Therefore, Article 59 may not always afford sufficient protection to third States in circumstances where a judgment may carry with it, even if only indirectly, results that may affect their legal rights and interests, particularly in cases concerning maritime delimitations where the maritime areas of several States could be involved. It follows that intervention fulfils the purpose of allowing a third State to inform the Court of its interests *before* the Court renders a possibly prejudicial decision, from which Article 59 could not sufficiently protect those interests.

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[49]Written Observations of the Republic of Nicaragua on the Application for permission to intervene filed by the Republic of Costa Rica, p. 157, para. 27.

The possible prejudicial effect of a judgment on Costa Rica's legal interests, Article 59 notwithstanding

21. Mr. President, let me now demonstrate how a decision by this Court, in the instant case, may have practical and legal effects from which Article 59 provides no real protection. A judgment by this Court, delimiting maritime areas between Nicaragua and Colombia, implies much more than the allocation of the column of water and sea-bed to the Parties. It entails title to maritime areas, the right to exercise their sovereign rights and jurisdiction under international law in those areas, the right to exclude others from them and the right of enjoyment.

22. Once a judgment has been given, as the Court is aware, most countries under the jurisdiction of the Court incorporate into their own legal framework that final and binding judgment.

23. In the present case, it is expected that internal laws and regulations implementing the Court's decision may be enacted by the Parties. These regulations may range from domestic laws incorporating the exact coordinates of the maritime areas awarded by the Court, to rules related to fisheries, the environment, and oil and gas exploration and exploitation, just to mention the most common of regulation.

24. Even more importantly, and especially with respect to maritime delimitation, the Parties claims are not just against each other, but in effect against all comers: that is, a positive declaration awarding maritime areas is expected to be regarded as *erga omnes*. While it is true, that by virtue of Article 59, a third State with affected legal interests may oppose the larger scope of the judgment, that protection, as examined, is quite limited.

25. A judgment by the Court in this case could award, to one Party or the other, areas that overlap with Costa Rica's legal interests or rights, or end up being mute on issues relating to the presence of Costa Rican legal interests in areas subject to decision. This situation gives rise to the possibility that, either Colombia or Nicaragua, may carry out acts *à titre de souverain* that would encroach upon Costa Rican legal rights and interests. It is true that Costa Rica may protest any such acts carried out in contested maritime areas; but this is little consolation when, in practical terms, Costa Rica would effectively be deprived of enjoyment of maritime areas it is entitled to by virtue of international law. Obviously Article 59 would not afford Costa Rica any protection in

these circumstances. This could, undoubtedly, be the short-term practical consequence of a judgment as between Nicaragua and Colombia that does not consider Costa Rica's legal interests.

26. In addition, there are also long-term legal consequences. A party to a maritime delimitation case will not only rely on a Court's judgment recognizing it rights, but it will certainly use any and all means available to it to secure the full enjoyment of what it considers to be its title. It would benefit from the compulsory character of a decision of this Court in order to secure its presence in contested maritime areas, to build upon "custom" or "practice", and to strengthen its position *vis-à-vis* a third State with overlapping claims. This situation not only weakens the legal position of a third State, but it may altogether divest that third country of any and all enjoyment of a maritime area that may pertain to it under international law. Again, Article 59 cannot prevent the erosion of Costa Rica's legal position in this situation.

27. Mr. President, in light of the maritime claims made by Nicaragua and Colombia to areas where Costa Rica has undisputable legal interests, it is evident that only Costa Rica is capable of accurately informing the Court of the full extent of those interests, and that Article 59 alone would not protect Costa Rica from the effects of a judgment that may not have considered its interests in full. It follows, therefore, that the procedure of intervention is the only way by which Costa Rica can, effectively, inform the Court of its legal interests — and how a decision may affect them — for the purpose of assuring their protection by the means afforded by the Statute of the Court.

Jurisdictional and other associated issues

28. Mr. President, I turn now to Nicaragua's argument that Costa Rica may file an independent claim against Colombia or Nicaragua on the basis of the Pact of Bogotá, as a means to protect its legal interests[50]. It seems that the Nicaraguan hypothesis is that, if Costa Rica can file independent claims against the Parties here, there is no need to allow its intervention in the instant case.

29. While Article 62 does not state that a third party wishing to intervene need to fulfil any particular jurisdictional requirements, Article 81, paragraph 2 *(c)*, of the Rules of Court states that a third party must indicate any basis of jurisdiction in support of its application to intervene.

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[50]See *supra*, para. 3.

30. In its Application, Costa Rica informed the Court that it had made a declaration under Article 36, paragraph 2, of the Statute and that it is a party to the Pact of Bogotá. Elsewhere in the Application, Costa Rica asserted that it does not seek to become a party to the case between Nicaragua and Colombia, and that it only seeks to intervene as a non-party under Article 62 of the Statute. It additionally pointed out that, in similar circumstances, the Court has permitted non-party intervention in the absence of a valid jurisdictional link between the would-be intervener and the parties to the case. As a matter of fact, a jurisdictional link is only required if the intervener wishes to become a party to a case, as the Court observed in the *Indonesia/Malaysia* case[51].

31. However, it seems that Nicaragua advocates a procedural shift concerning non-party intervention, implying that protection of a third State interest in a particular case would no longer be achieved by means of Article 62 of the Statute, but rather by filing an entirely new case either on the basis of Article 36 of the Statute or by some other jurisdictional instrument, such as the Pact of Bogotá.

32. Nicaragua's novel jurisdictional doctrine further suggests that Costa Rica, having a jurisdictional link to the Parties to this case, may be barred from intervening solely on the basis of Article 62. If this argument holds ground, by implication, a third State could be barred from intervening in a case if that country can file an independent claim against the parties. Nicaragua's novel hypothesis has the effect of reading Article 62 out of the Statute for third States with a jurisdictional link to the Parties in an ongoing case, and equates the process of intervention with the initiation of a new case.

33. In light of this argument, let me make two points about intervention. First, intervention has the objective of allowing third States, with interests or rights of a legal nature that may be prejudiced or affected by a decision of the Court, to protect them by a special incidental procedure, that is, a procedure that stems out of and is closely connected to the principal case. This protection is not sought in the form of a declaration of rights by the Court in favour of the intervener; rather, it is laid out simply as a request to allow the intervener to inform to the Court its rights and interests. To accomplish this objective, the existence of a jurisdictional link is immaterial.

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[51] *Sovereignty over Pulau Ligitan and Pulau Sipidan (Indonesia/Malaysia), Application to Intervene, Judgment, I.C.J. Reports 2001*, p. 589, para. 35.

34. Second, in order to make use of intervention, the interests or the rights of a legal nature that a third State wishes to protect need not form part of a dispute per se. A third State need only show that a decision of the Court may, I repeat, *may*, affect those interests and rights for intervention to be allowed. Thus, intervention is available not to resolve disputes but, rather, to avoid new ones.

35. As said, Costa Rica's intervention is not set out to establish the existence of a dispute or to resolve one with the Parties to this case.

36. In addition, Costa Rica does not consider that the existence of an unresolved maritime delimitation with Nicaragua precludes Costa Rica, in any way, from informing the Court of its rights and interests that may be prejudiced or affected by the decision of the Court in this case.

37. In the *El Salvador/Honduras* case, a Chamber of the Court considered that the procedure of intervention fulfils a purpose other than the determination of a new dispute. It observed:

> "The function of intervention is, as indicated in the 1984 Judgment on the Application of Italy for permission to intervene . . ., and as explained below, something wholly different from the determination of a further dispute between the State seeking to intervene and one or both of the parties." (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, pp. 113-114, para. 51.)

38. It is thus clear that intervention functions as an instrument to protect third parties' legal interests, and not to determine the existence of disputes, or to resolve those disputes.

39. Setting aside Nicaragua's mistaken hypothesis about the significance of a possible jurisdictional link, starting a new case against either or both Parties, as Nicaragua suggests, is a highly inefficient way to protect Costa Rica's legal interests, and most importantly, does not resolve the underlying problem of protecting those interests from the effects of a judgment in this case. Bringing two new cases is inefficient, because it would unnecessarily burden the Court and the parties with issues for which there is a perfectly sound and proper procedural instrument available by way of Article 62. It does not solve the underlying problem in this case because the Court would still be uninformed of the full extent of Costa Rica's interests — in fact it would multiply the informational problems, as they would also arise in the new cases.

40. If third States with legal interests to protect were asked to bring separate cases for that purpose, it would render Article 62 without use or meaning. Not only would this call for excessive

litigation, it is altogether unnecessary. Can this Court imagine what sort of difficulties it would face by having to resolve a case, only to confront a number of new derivative cases solely for the protection of third State interests? I think we all understand the implications.

41. Thus, we must conclude that when a jurisdictional link is alleged, there is no basis, in law or in fact, for the novel idea that third party interests in a specific case may only be protected by means of bringing a new, full-fledged case, to the detriment of the procedure already set forth by Article 62. Therefore, there is no basis for entertaining Nicaragua's novel hypothesis.

42. Mr. President, as I come to a close, Costa Rica wishes to state that it is confident that this Court will look solely at the merits of its Application and the circumstances of this case, and that it will find that Costa Rica's request for permission to intervene is based on solid legal and factual grounds, thus warranting its acceptance.

43. Mr. President, this concludes Costa Rica's presentation for today. I thank you and the distinguished members of this Court for your kind attention.

The PRESIDENT: I thank you, Mr. Sergio Ugalde, for your presentation. That brings to an end today's sitting. The Court will meet again on Wednesday 13 October 2010 at 9.30 a.m. to hear the first round of oral argument of Nicaragua. The Court is adjourned. Thank you so much.

The Court rose at 12.30 p.m.