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International Court of Justice

THE HAGUE

Cour internationale de Justice

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YEAR 2010

Public sitting

held on Wednesday 13 October 2010, at 11.20 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 mercredi 13 octobre 2010, à 11 h 20, 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
		Simma
		Abraham
		Keith
		Sepúlveda-Amor
		Bennouna
		Skotnikov
		Cançado Trindade
		Yusuf
		Xue
		Donoghue
	Judges *ad hoc*	Cot
		Gaja
	Registrar	Couvreur

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

M. Couvreur, greffier

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The PRESIDENT: Please be seated. Now we come to the first round of oral argument of Colombia. But before inviting the first speaker to the floor, Judge Al-Khasawneh, for reasons which have been communicated to the President earlier, is unfortunately unable to participate in the second half of this session. Now I give the floor to His Excellency Mr. Julio Londoño Paredes, the Agent of Colombia.

Mr. LONDOÑO:

1. Thank you Mr. President. Mr. President and distinguished Judges, it is a great honour for me to address the Court, as Agent for the Republic of Colombia in these hearings on the Application for permission to intervene submitted by the Republic of Costa Rica on 25 February 2010, in the case concerning *Territorial and Maritime Dispute (Nicaragua* v. *Colombia).*

2. Pursuant to the Court's communication, my Government submitted its Observations on 26 May 2010 with regard to the Application filed by Costa Rica. In those Observations, Colombia stated that it took note of the fact that the Application was filed within the framework of Article 62 of the Statute of the Court and the intervention sought by Costa Rica only had the purpose of informing the Court of its interests and rights concerning maritime delimitation that may be affected by a decision in the case of the dispute between Nicaragua and Colombia.

3. Mr. President, it is not my intention to discuss issues that do not form part of the subject-matter of Costa Rica's request to intervene. However, I believe it may assist the Court if I briefly recall the way in which Colombia, Costa Rica, Panama and Nicaragua came to be neighbouring States in this part of the Caribbean, bearing in mind that Costa Rica's Application arises within a particular historic and geographic context.

4. The present-day political geography of the area has its origins in the early nineteenth century when not only the Archipelago of San Andrés but also the Mosquito Coast were part of the Viceroyalty of Santa Fe (Nueva Granada) — today the Republic of Colombia, which has exercised uninterrupted sovereignty and jurisdiction over the whole Archipelago ever since. This has been extensively discussed in Colombia's written pleadings and the situation can be seen on the map being displayed on the screen.

5. During the second half of the nineteenth century, Colombia and Costa Rica undertook negotiations in order to fix their common land boundary. Throughout the entire negotiation process, Colombia was willing to recognize Costa Rica's sovereignty over the segment of the Mosquito Coast comprised between the San Juan river and the Chagres river; this was finally decided in the Loubet Award of 1900 which set the land boundary between both countries and reiterated Colombia's sovereignty over the San Andrés Archipelago.

6. In 1903, what is known as the Republic of Panama seceded from Colombia in an episode well known in world history.

7. Subsequently, Colombia and Nicaragua concluded the 1928/1930 Treaty, by which Colombia recognized Nicaraguan sovereignty over the segment of the Mosquito Coast comprised between Cape Gracias a Dios and the San Juan river, as well as the Islas Mangles — Corn Islands. Nicaragua, which for the first time had claimed the Archipelago in 1913, in turn recognized Colombia's sovereignty over the islands of San Andrés, Providencia and Santa Catalina, as well as over "all the other islands, islets and cays that form part of the said Archipelago of San Andrés".

8. Mr. President, in order to prevent differences and conflicts amongst States, in the 1970s Colombia embarked upon the task of concluding a number of delimitation treaties with neighbouring States with the aim of establishing clear and stable maritime boundaries.

9. As a result of this policy, Colombia concluded maritime delimitation treaties with Panama in 1976; Costa Rica in 1977; the Dominican Republic and Haiti in 1978; Honduras in 1986; and Jamaica in 1993. Moreover, in 1972, it concluded a treaty with the United States of America with regard to the cays of Roncador, Quitasueño and Serrana. Many of these involve delimitations between Colombia's San Andrés archipelago and neighbouring States. It can be noted that most of these agreements were concluded before Nicaragua raised its claim over the entire archipelago in 1980.

10. The archipelago of San Andrés, one of the 32 provinces of Colombia, linked to the national soul, is located between 266 and 106 miles away from the Nicaraguan coast. With its population of approximately 80,000 inhabitants, it is an essential centre for trade, tourism, agriculture and fisheries, as well as for maritime and aerial communications.

11. A number of these treaties have, in turn, served as a basis for subsequent agreements between third States, and have contributed to peace, stability and effective co-operation among States in such an important area of the western Caribbean, criss-crossed by important navigation routes and the centre of intense actions by Colombia and its treaty partners against drug trafficking.

12. Having provided the Court with this overview, I note that the distinguished Agent of Costa Rica indicated on Monday that his country's preferred method of proceeding is also to resolve maritime boundaries by diplomatic means and agreement[1], as Colombia has done.

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13. The 1977 Treaty between Colombia and Costa Rica took into account international law with regard to islands and their entitlements to maritime areas, in light of the provisions of Article 10 of the 1958 Territorial Sea Convention and Article 1 *(b)* of the Continental Shelf Convention of the same year[2], and continues to reflect the law as it stands today. As Costa Rica's counsel have recalled during these hearings, it is one of three legal instruments that Costa Rica has concluded to delimit its maritime areas.

14. The Treaty has been complied with in good faith by both countries since the date of its conclusion in 1977. It is not necessary to recall for the distinguished Members of the Court the evident legal effect of the consistent application of such a treaty by both States for 33 years without any incident, which has been referred to in numerous diplomatic exchanges and statements made by high officials of the two countries in that regard.

15. Colombia has recalled this in its written pleadings in this case, and Mr. Bundy will develop this point further as well. For its part, Costa Rica mentions it in paragraph 12 of its Application, where it states that it "has, in good faith, refrained from acts which would defeat the

[1]CR 2010/12 p. 16, para.5 (Ugalde Álvarez).

[2]D.W. Bowett, *The legal regime of islands in the international law*, 1979, p. 33; H.W. Jayewardene, *The regime of islands in international law*, 1990, p. 14.

object and purpose of this agreement". In its Written Observations on the Costa Rican Application, Nicaragua also points out this fact.

16. The main principle inspiring and framing inter-State relations — including the delimitation of their territorial borders and maritime areas — is that of preserving peace and stability while maintaining good neighbourliness between them. That has been precisely the effect of the 1977 Treaty.

17. Mr. President and distinguished Judges, we heard on Monday in more detail what Costa Rica considers its legal interest that may be affected by a decision in this case to be. Colombia takes note of Costa Rica's acknowledgment of the 1977 Treaty as limiting its entitlements with regard to Colombia. In its Written Observations, Colombia did not object because it considered that there were legal interests relating to the maritime areas that were delimited pursuant to the 1977 Treaty that Nicaragua's claims have put in question and which consequently may be affected by a decision in this case.

18. In the main case, Colombia has taken care to respect the potential interests of third States, including Costa Rica, as will be explained in more detail by Professor Crawford. Nicaragua's claims, on the other hand, fly in the face of the interests of third States in the region.

19. Mr. President and distinguished Judges, Colombia's presentation follows with Mr. Rodman Bundy, who will address the Court on the geographic and historic factors that Colombia deems relevant in the assessment of the substance of Costa Rica's Application.

20. Subsequently, Professor James Crawford, will address the legal issue whether, from Colombia's point of view, Costa Rica has shown an interest of a legal nature that may be affected by a decision in the case within the meaning of Article 62 of the Statute.

21. In light of Costa Rica's contention in its Application that, "in their maritime boundary claims against each other the parties to this case encompass, to a greater or lesser extent, maritime areas to which Costa Rica is entitled"[3], Professor Crawford will also discuss the implications of Colombia's and Nicaragua's respective claims, and their overall approaches to delimitation, in so

[3]Application of Costa Rica, para. 11.

far as these positions bear on matters raised by Costa Rica's Application for permission to intervene.

22. I thank the Court for having allowed me the privilege of opening Colombia's oral argument in these proceedings. I would now ask you, Mr. President, to give the floor to Mr. Rodman Bundy. Thank you, Mr. President.

The PRESIDENT: I thank His Excellency Mr. Julio Londoño Paredes, the Agent of Colombia for his presentation. I now give the floor to Mr. Rodman Bundy to make his presentation.

Mr. BUNDY:

GEOGRAPHIC AND HISTORIC BACKGROUND

Introduction

1. Thank you very much, Mr. President. Mr. President, distinguished Members of the Court, it is, as always, a great honour to appear before the Court and it is also an honour for me to represent the Republic of Colombia in this phase of the proceedings.

2. The Court will be aware from Colombia's Written Observations and from the remarks of its Agent a few minutes ago, that Colombia does not object to Costa Rica's Application for permission to intervene as a non-party with respect to certain aspects of the maritime delimitation at issue in the main case between Nicaragua and Colombia.

3. Colombia recognizes, of course, that the burden is on the applicant State to demonstrate that it has an interest of a legal nature that may be affected by a decision in the case within the meaning of Article 62 of the Statute.

4. Notwithstanding that that burden falls on Costa Rica to justify its Application, throughout the main proceedings in the case, Colombia has repeatedly emphasized that the existence of interests of third States in the region constitutes an important factor to be taken into account, both for purposes of identifying the relevant area within which the delimitation between Nicaragua and Colombia should be carried out, and also in order to ensure that any delimitation decided by the Court does not trespass onto areas where third States have legitimate interests. And it is for this

reason that when proceeding to identify the maritime boundary in the present case, Colombia duly took into account the legal interests of third States in the area, including Costa Rica. Nicaragua did not. I realize that this morning we heard Nicaragua profess to express its concern not to prejudice the actual or potential rights of third States in the region — but that is not a concern that is reflected in Nicaragua's written pleadings in the main case and that is the real reason why we are here today.

5. My task this morning is to lay before the Court a number of geographic and historic factors which, from Colombia's perspective, may be useful in assessing whether Costa Rica has an interest of a legal nature that may be affected by a decision in the case. I will start with a brief description of the geographic context within which Costa Rica's Application falls to be considered. I will then examine the practice of the States concerned with regard to delimitations in the area within which Costa Rica's Application is concerned. Because those agreements shed light on where the genuine interests of the riparian States in this part of the Caribbean are situated.

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The Geographic setting

6. Let me start with a broad description of the geography of the maritime area where Costa Rica has announced interests of a legal nature which it maintains may be affected by a decision in the case.

7. Costa Rica's Caribbean coast is situated in the south-west corner of the Caribbean Sea between the coasts of Nicaragua and Panama. That coast faces towards Colombia's San Andrés archipelago lying to the north-east.

8. To the north of Costa Rica, Nicaragua's coast is aligned on a north-south axis and the result of that is that Nicaragua's coast faces eastwards towards the string of islands comprising the San Andrés archipelago. It is only where the Nicaragua-Costa Rica land boundary meets the sea that the general configuration of the coast begins to change direction so as to trend in more of a south-east direction.

9. To the south-east of Costa Rica on the other side lies Panama. The westernmost part of Panama's coast extends in a south-east direction from the land boundary with Costa Rica and that coast also faces north-eastwards, similar to Costa Rica's coast, as you can see on the map. Moving east, Panama's coast then changes direction such that the next segment of the coast faces in a north-west direction towards the San Andrés archipelago and, in particular, towards the islands of San Andrés, Providencia, the Alburquerque Cays and the East and Southeast Cays. Further east, the Panama coast bends once more and the northernmost part of that coast lies opposite to the Colombian island of Roncador. The remainder of Panama's Caribbean coast, as it dips back down towards the south-east and up to the land boundary between Panama and Colombia, is not relevant to Costa Rica's Application because it is located outside the immediate area of concern.

10. While Panama has not applied to intervene in this case, Colombia considers that its interests must also be borne in mind in effecting any maritime delimitation between Colombia and Nicaragua. Colombia bases this position on the fact that, in maritime delimitation cases, the Court has invariably indicated that it should be sensitive to the actual or potential rights of third States bordering the area to be delimited whether or not they have applied to intervene. Panama has fully delimited its maritime areas in the Caribbean by means of a 1976 treaty with Colombia and a 1980 treaty with Costa Rica. These instruments reflect the legal interests of all three States in this area and they were grounded on the principle that delimitation should be effected by agreement, on the basis of international law. Any delimitation between Colombia and Nicaragua in the main cae ought not to prejudice the rights of third States which are not parties to the main case.

11. Opposite the relevant coasts of Nicaragua, Costa Rica and Panama lie the islands of Colombia's San Andrés archipelago. And, as is the case with all islands under international law, their legal entitlements to maritime areas generated by their coasts project radially in a 360° direction, as is being illustrated on the map.

12. Given the overall orientation of the coasts of the various States in this region, it is not surprising that the area between the southern and central islands of the San Andrés archipelago, on the one hand, and the coasts of Costa Rica and Panama, on the other, have been the subject of a series of prior delimitation agreements dating back over 30 years involving Colombia, Costa Rica and Panama and dealing with the delimitation of their overlapping maritime entitlements.

13. As we have heard, Costa Rica and Nicaragua do not have a delimited maritime boundary extending from their common land boundary. While there is some question as to how far negotiations between those two States over a boundary have progressed, Colombia takes no position on this issue, the details of which it is not privy to. As I will show, however, when Colombia and Costa Rica concluded a maritime boundary treaty — to which you have already been referred — in 1977, they proceeded on the basis that their boundary to the south-west of the Alburquerque Cays would eventually meet up with the boundary with a third State — namely, Nicaragua — in this area.

14. Colombia would also point out that, to its knowledge, and based on the evidence that has been filed in the main case, Nicaragua has never had any presence in the maritime areas lying between the San Andrés archipelago and the opposite coasts of Costa Rica and Panama. And moreover, there is no evidence on the record that Nicaragua protested any of the delimitation agreements in this part of the sea signed by Colombia, Costa Rica and Panama.

15. In short, Colombia, Costa Rica and Panama have shown that they do have interests of a legal nature in this part of the sea by virtue of their conclusion of a series of long-standing delimitation agreements in the area based on equidistance methodology. In contrast, Nicaragua has shown no similar interest. It did not protest these treaties. It did not conclude any delimitation agreements of its own in the area. And it had, and continues to have, no presence in this area. It is only in this case — the main case between Nicaragua and Colombia — that Nicaragua has advanced a claim seeking to cut off the maritime entitlements and projection of Colombia's archipelago towards the coasts of Costa Rica and Panama — entitlements that have been recognized by those two States, as evidenced by the agreements concluded in 1976 and 1977, agreement which I now intend to take up.

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Existing delimitations in the area

16. If we turn in a little more detail to the delimitation agreements that have been negotiated and signed in the area, unlike Costa Rica, I propose to take them up and discuss them in a chronological order; in other words in the order in which they were concluded. I think that this is important because, as I shall show, the three agreements that have been referred to in these proceedings are all carefully linked to each other.

(i) The 1976 Colombia-Panama Treaty

17. The first such agreement that was concluded between Colombia and Panama in November 1976[4], is an agreement that entered into force in 1977; a copy of it, which is in the written pleadings, may also be found under tab 5 of Colombia's judges' folders. Nicaragua itself has referred to this agreement at paragraphs 28 and 29 of its Written Observations, and mention was made of it again this morning.

18. For present purposes, the relevant part of the Colombia-Panama Treaty concerns their maritime boundary in the western sector. As can be seen from the map on the screen, the delimitation line agreed assumes, for the purposes of simplicity, a step-like configuration between the western half of Panama's coast and the Colombian islands of San Andrés, Providencia, Roncador, East Southeast Cays and Alburquerque. The basis of this delimitation line was explained in Article 1 (A) of the Treaty which states that:

> "In accordance with the principle of equidistance hereby agreed upon, except for a few minor deviations which have been agreed upon in order to simplify the drawing of the line, the median line in the Caribbean Sea should be constituted by straight lines joining the following points."

The co-ordinates of the turning points on the line are then listed in the agreement. As is apparent, Panama recognized the maritime entitlements generated by Colombia's archipelago under international law and accorded the islands and cays full equidistance effect in the agreed delimitation.

19. The last, or westernmost, segment of the Colombia-Panama boundary line beyond point M — and point M is being highlighted on the map now —, the last segment of that boundary

[4]CMC, Ann. 4.

follows a straight line azimuth along a bearing of 225° — or, in other words, in a south-west direction. The Colombia/Panama agreement did not specify the terminal point of that line, pending delimitation with a third State which, in this case, was Costa Rica. As Article 2 of the Treaty stipulates: "From point M, the delimitation continues in a straight line at azimuth 225° — 45° south-west — to the point where the maritime boundaries with a third State require delimitation."

20. Now as I will presently explain, this is an important element which has implications for both of the subsequent delimitation treaties that were signed between Colombia and Costa Rica in 1977 and between Costa Rica and Panama in 1980.

(ii) The 1977 Colombia-Costa Rica Treaty

21. The second maritime boundary agreement of direct relevance to these proceedings is the Treaty signed by Colombia and Costa Rica on 17 March 1977 dealing with the delimitation of their maritime boundary in the Caribbean[5] — that is under tab 7 of your folders. That Treaty, which Colombia's Agent referred to a few moments ago and which was also mentioned by Costa Rica on Monday, and again this morning by Nicaragua, was approved by Colombia's Congress, but it has not yet been ratified by Costa Rica's Legislative Assembly[6]. However, there is no dispute between Colombia and Costa Rica that the boundary line agreed in 1977 has been respected in practice throughout the 33 years since the Treaty was signed, and that it has contributed to the maintenance of peace and stability in the area. Moreover, as I shall explain in a few moments, when Costa Rica and Panama subsequently delimited their maritime boundary in this part of the Caribbean in 1980, that Treaty also expressly recognized the existence of the Colombia-Costa Rica boundary.

22. Costa Rica's Application states that "Costa Rica has, in good faith, refrained from acts which would defeat the object and purpose of this agreement"[7]. Now that statement is unquestionably correct. However, in Colombia's view it presents an unduly modest assessment of the effect of the Treaty. In practice, both Colombia and Costa Rica have fully respected the boundary line. Both States have exercised sovereign rights and jurisdiction on their respective

[5]CMC, Ann. 5.

[6]Application of Costa Rica, para. 12.

[7]*Ibid.*

sides of the line in a manner that is entirely consistent with it, and as I said, the existence of an agreed boundary in this part of the Caribbean has contributed to the maintenance of peace and stability in the region.

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23. In this connection, it should be noted that Colombia and Costa Rica also concluded a delimitation treaty for their separate maritime boundary in the Pacific in 1984. And subsequently, when the instruments of ratification of that Treaty — of the 1984 Treaty — were exchanged in 2000, those two States executed a Protocol which also referred to the 1977 Treaty. And that Protocol, and I quote, and the language is appearing on the screen and it is also in your folders, that Protocol confirmed:

> "That the compliance of the 'Treaty on the Delimitation of Marine and Submarine Areas and Maritime Cooperation' signed on March 17, 1977, will continue in the current condition until the exchange of the respective instruments of ratification of that treaty is carried out."[8]

While we heard from Counsel for Costa Rica on Monday that Costa Rica has abstained from ratifying the 1977 Treaty in deference to Nicaragua's requests that Costa Rica not do so until Nicaragua's dispute with Colombia is resolved [CR 2010/12, p. 22, para. 8 (Brenes)] clearly, as this language evidences, the intention of both parties to the 1977 agreement was that instruments of ratification would be exchanged. And for its part, Nicaragua's Written Observations note "that Costa Rica has not given any indication of an intention of not ratifying it"[9].

24. A number of other statements emanating from senior Costa Rican officials confirm the *de facto* recognition of the Colombia-Costa Rica boundary by Costa Rica and confirm its intention to proceed with the Treaty's ratification. Now, several examples of these have been sighted in Colombia's written pleadings[10] and for the sake of time, I will mention just two here.

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[8]CMC, Ann. 18.

[9]Written Observations of Nicaragua, para. 18.

[10]See, for example, CMC, paras. 4.156-4.162.

25. The first is a diplomatic Note that was referred to also this morning in part. It was a Note sent by the Foreign Minister of Costa Rica to the Foreign Minister of Colombia on 14 May 1996, which in relevant part stated as follows:

> "[I] inform Your Excellency that in the Government of Costa Rica's view, in full harmony with international norms as embodied in the Vienna Convention on the Law of Treaties, the Treaty on Maritime Delimitation between Colombia and Costa Rica has been complied with, is being complied with and will continue to be complied with, as a show of good faith of the Parties. The terms of that Treaty are clear, unequivocal and the absence of incidents or difficulties between both countries in this matter evidences the beneficial character of that legal instrument."[11]

26. The second statement that I would like to refer to is a further diplomatic Note also on the record sent by Costa Rica's Foreign Minister to the Colombian Foreign Minister on 29 May 2000, which stated in relevant part:

> "As the Costa Rican Legislative Assembly is setting out to consider, for its approval, the Treaty on Delimitation of Marine and Submarine Areas and Maritime Cooperation signed between our two countries on 6 April 1984" — that is the Pacific Treaty —, "I am pleased to convey to Your Excellency that my country, always observant of the principles and rules of international law and in particular those framing the conclusion of international treaties, has complied with and will continue to comply with that instrument in good faith, as well as the Treaty on Delimitation of Marine and Submarine Areas and Maritime Cooperation of 17 March 1977."

And the Note continues:

> "It is evident that throughout these years, both treaties have shown their beneficial character, have facilitated cooperation and contributed to mutual understanding, the preservation of peace and trust between our two States, becoming an example for the region and the continent.
>
> The Government of Costa Rica, therefore, will continue the required procedures for the ratification and exchange of corresponding instruments, once approved by the Legislative Power."[12]

27. Turning to the course of the 1977 boundary when Mr. Brenes discussed the 1977 Treaty on Monday, he neglected to point out the fact that the Treaty provided that the maritime boundary between Colombia and Costa Rica starts at the intersection of a straight line drawn in a south-west direction from what is point M on the Colombia-Panama boundary that is along the 225° azimuth with the 10° 49' N parallel of latitude. That point is labelled point A on the map. The significance of this fact is that, by using as a reference point the last segment of the Colombia-Panama boundary

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[11]CMC, Ann. 67.

[12]RC, Vol. II, Ann. 2.

in establishing its boundary with Colombia, Costa Rica effectively accepted that boundary. In other words it effectively accepted the Colombia-Panama boundary by using the last part of the Colombia boundary as a reference point for the starting point for its boundary with Colombia, and indeed, Costa Rica agreed that Colombia's islands were entitled to the same equidistance treatment as they had been accorded in the Colombia-Panama Treaty.

28. Now, from the starting point A, the Colombia-Costa Rica Treaty then stipulates that the boundary continues along the 10° 49' N parallel of latitude westwards until its intersection with the 82° 14' W meridian, which is labelled point B on the map. For all intents and purposes as we heard also on Monday, the straight line segment between points A and B is also a simplified equidistance line between the southern part of the archipelago and the Costa Rican coast which gives full effect to the southern islands of the San Andrés archipelago.

29. On Monday, counsel for Costa Rica stated that, when the agreement was negotiated, "Costa Rica agreed to give full weight to Colombia's San Andrés Island"[13]. With respect, that is not correct. The agreed line actually gave full weight to the Alburquerque Cays located some 20 nautical miles south of San Andrés Island. You can see that just glancing at the map on the screen as well as on map 1 that was produced in Costa Rica's judges' folders, and you can see it if you refer to the volume of the Charney and Alexander study on *International Maritime Boundaries* to which Counsel's presentation referred.

30. From point B, the boundary then continues northwards along the 82° 14' W meridian "up *to* where the delimitation shall be done with a third State"[14]. That has been shown by an arrow on the map. In this manner, both Colombia and Costa Rica recognized that the identification of the precise terminal point on their boundary in the west depended on future delimitation with a third State in this area — in other words, Nicaragua — and thus sought to avoid any prejudice to non-parties to the agreement by leaving that point open.

31. On Monday, Mr. Lathrop for the first time produced a map which showed a Costa Rica that is a hypothetical Costa Rica-Nicaragua lateral equidistance line projecting far into the sea to the East well beyond the limits of the 1977 Costa Rica-Colombia Treaty. Colombia interprets, that

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[13]CR 2010/12, p. 21, para. 4 (Brenes).

[14]CMC, Vol. II, Ann. 5.

by doing this, Costa Rica is not rejecting its constant position of recognizing the maritime delimitation agreed with Colombia in 1977, but is only depicting what it considers to be its minimum hypothetical maritime entitlement *vis-à-vis* Nicaragua, in the face of the claim made by the Applicant in the present case. But, in any event, a hypothetical Costa Rican claim regarding its delimitation with Nicaragua does not and can not affect any areas delimited by agreement in the 1977 Treaty.

32. What is clear from the 1977 Treaty is that the Parties to it — Colombia and Costa Rica — thought that the prolongation of the northward segment of that delimitation line would eventually meet a lateral Costa Rica-Nicaragua boundary line to the south-west of the San Andrés archipelago. Counsel for Costa Rica referred to the fact that the 1977 Treaty showed that the line would be extended northwards "to where a delimitation must be made with a third State", which he said could only be Nicaragua[15].

33. If we use a map produced by Costa Rica on Monday, the Court can see the general area where a Costa Rica-Nicaragua boundary might be expected to intersect with the prolongation of the Costa Rica-Colombia boundary. And, as I have said, that tripoint would be situated to the south-west of the archipelago, not far to the east. As to areas lying to the east, Mr. Lathrop himself confirmed that "Colombia was the State with which Costa Rica had a boundary relationship in this part of the Caribbean" [16].

34. Costa Rica's Application states that the 1977 Treaty with Colombia was predicated on the notion that Costa Rica and Colombia have overlapping maritime entitlements, the division of which required agreement in the area eventually covered by their boundary line[17]. That point was repeated by counsel for Costa Rica on Monday[18]. Colombia agrees that this was the understanding — in fact, to borrow Mr. Lathrop's words, this was the "fundamental notion" of the two States when they negotiated and signed the 1977 Treaty. Nicaragua did not protest the Treaty's conclusion to Colombia. Moreover, no Nicaraguan protest to Costa Rica is referred to

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[15]CR 2010/12, p. 34, para. 11 (Lathrop).

[16]*Ibid.*, p. 35, para. 13 (Lathrop).

[17]Application of Costa Rica, para. 13.

[18]CR 2010/12, p. 35, para. 13 (Lathrop).

either in Costa Rica's Application or in Nicaragua's written pleadings, including in its Written Observations on the Application.

35. Costa Rica also noted in its Application that its agreement with Colombia was based on the assumption "that Colombian insular territory in the southwestern Caribbean Sea is entitled to full weight, or effect, in a delimitation"[19]. Now that statement from the Application was again confirmed by two different speakers for Costa Rica on Monday morning, Mr. Brenes[20] and Mr. Lathrop[21]. In fact, the 1977 Treaty not only embodies that recognition by Costa Rica and Colombia, it is also fully consistent, as I have said, with the principles upon which Panama and Colombia agreed their maritime boundary further to the north-east. Mr. Brenes further explained that these lines were agreed in an attempt to create a balance between the size of those small areas that were exchanged by use of a simplified equidistance line, while at the same time according sufficient distance from Colombia's insular territory and from Costa Rica's mainland coast[22]. Costa Rica also mentioned on Monday that equidistance was the method it had employed for delimitation purposes in the Pacific as well.

36. This is an important point. The distinguished Agent of Costa Rica confirmed on Monday that, in line with Costa Rica's democratic and legal tradition, Costa Rica has always given priority to finding solutions with neighbouring States on the basis of diplomatic means and international law. Under customary international law, of course, as reflected in Articles 74 and 83 of the 1982 [Law of the Sea] Convention, maritime delimitation should be effected by agreement. The Agent of Costa Rica confirmed that it was in this sense that Costa Rica succeeded in signing agreements with Colombia, Panama and Ecuador[23]. For his part, Mr. Lathrop indicated that Costa Rica's claims for maritime areas are in accordance with international law, including what he termed the governing principle of maritime delimitation which is to produce an equitable solution or result[24].

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[19]Application of Costa Rica, para. 13.

[20]CR 2010/12, p. 21, para. 4 (Brenes).

[21]*Ibid.*, p. 35, para. 13 (Lathrop).

[22]*Ibid.*, p. 22, para. 7 (Brenes.

[23]*Ibid.*, p. 16, para. 5 (Ugalde Álvarez).

[24]*Ibid.*, p. 37, paras. 19-20 (Lathrop).

37. In the light of those statements, it was surprising to read in Costa Rica's Application that this assumption underlying the 1977 Treaty — the giving of full weight to Colombia's islands — "is now in question" in the merits phase of the case, and that Costa Rica will, therefore, not take a position on the validity of that assumption[25]. The fact of the matter is that Costa Rica has already taken a position on the issue in accordance with its appreciation of international law, and that position is that Colombia's islands are entitled to "full weight, or effect". In other words, Costa Rica's considered view was evidently that the boundary Treaty it signed with Colombia in 1977 accorded with international law and produced an equitable result.

38. While Nicaragua's extreme claim around Colombia's islands is indeed a matter that will be — and is being — discussed in connection with the merits of the case, that in no way places into question the principles upon which the Colombia-Costa Rica boundary was based. The 1977 Treaty recognized that an equitable delimitation between the respective entitlements of Colombia's islands and Costa Rica's coast should be grounded on the application of equidistance principles giving full effect to the islands. And that principle has been respected in practice by both Costa Rica and Colombia for over three decades. It is as valid today as it was in 1977.

39. As I have shown, that was also the underlying basis of the Colombia-Panama boundary Treaty which Costa Rica accepted by commencing its delimitation with Colombia at the end of the south-western segment of the Colombia-Panama boundary, and ending also its delimitation with Panama at the same point. The boundary lines agreed in the Colombia-Costa Rica Treaty and the Colombia-Panama Treaty reflected and gave due account to the location, size and importance of the San Andrés archipelago and gave due account to the geographic relationship with the neighbouring coasts of Costa Rica and Panama in this part of the Caribbean Sea.

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[25] Application of Costa Rica, para. 13.

40. There is a further statement in the Costa Rican Application regarding the 1977 Treaty, which was also repeated again by counsel on Monday[26], which requires correction and that is Costa Rica's assertion that, because Costa Rica understood at the time that Colombia had an agreed maritime boundary with Nicaragua along the 82nd degree meridian, Costa Rica assumed that Colombia was free to negotiate maritime limits with its other neighbours only in areas lying to the east of the 82nd degree meridian. Costa Rica went on in its Application to indicate that, based on the Court's decision at the preliminary objections stage of this case, that assumption — the assumption that Colombia was only free to delimit with its neighbours areas to the east of the 82nd degree meridian — appears to be incorrect[27].

41. Costa Rica's assumption about the status of the 82nd degree meridian may be understandable when it is recalled that in 1977, when it signed the Treaty with Colombia, Costa Rica was well aware of the provision concerning the 82nd degree meridian established as the limit to the San Andrés archipelago in the 1928/1930 Treaty between Colombia and Nicaragua, and Costa Rica was undoubtedly also aware of Colombia's exercise of sovereignty and jurisdiction over the archipelago and within its appurtenant waters. Moreover, as of 1977 Nicaragua had not yet concocted the argument that the 1928/1930 Treaty was somehow "null and void", an argument which the Court summarily rejected in its Judgment on the Preliminary Objections (*Judgment, I.C.J. Reports 2007*, p. 859, paras. 79-81).

42. That being said, Colombia is constrained to point out that there are no grounds, either in the 1977 Treaty itself or arising out of its negotiation, for Costa Rica's suggestion that its boundary agreement with Colombia was in some way predicated on the assumption that Colombia was only free to delimit areas with its other neighbours east of the 82nd degree meridian. It is a fact that the 82nd° meridian is not mentioned in the 1977 Treaty between Colombia and Costa Rica, and it did not influence or figure in any way the boundary line that was agreed. To the contrary, as you can see on the map, the western segment of the delimitation line agreed between Colombia and Costa Rica falls along the 82nd° 14' W longitude, which is obviously to the *west* of the 82nd meridian. It is evident, therefore, that Colombia and Costa Rica felt perfectly free to delimit their respective

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[26]CR 2010/12, p. 35, para. 13 (Lathrop).

[27] Application of Costa Rica, para. 13.

maritime areas both east and west of that meridian — although they purposely left the endpoint of that boundary line undefined pending delimitation with a third State. It follows that the 1977 Treaty between Colombia and Costa Rica remains unaffected by the status of the 82nd degree meridian. As Mr. Brenes explained on Monday, the 1977 Treaty line was based on the application of equidistance, with minor balancing adjustments. There is in fact no Nicaraguan territory closer to this line than the territories of Colombia and Costa Rica, the parties to the 1977 Treaty.

43. As will be explained by Professor Crawford shortly, there is no incompatibility between the 1977 Treaty line and Colombia's claim in the main case. Both leave the endpoints of the delimitation lines in the relevant area unspecified so as not to prejudice third State rights and thus Colombia at least has thus fully taken into account the legal interests of third States in the area.

(iii) The 1980 Costa Rica-Panama Treaty

44. The third and final delimitation agreement in the area to which I have alluded and which I would like to turn to is the treaty concluded between Costa Rica and Panama on 2 February 1980. Although Mr. Brenes indicated on Monday that that agreement was signed in February 1982[28], this was undoubtedly a slip, probably occasioned by the fact that the agreement came into force in 1982[29], but it was signed in 1980. Both the Costa Rican Application and Nicaragua's Written Observations have made reference to this agreement.

45. Let me portray it on the screen, you have seen it before. As can be seen, the boundary is a straight line extending from the land boundary terminus in a north-east direction. As was the case with both the Colombia-Panama and the Colombia-Costa Rica treaties, the Costa Rica-Panama agreement was based on the application of equidistance principles, albeit this time between States with adjacent coasts. Article 1 of the 1980 Agreement stipulates that the boundary is a "median line every point of which is equidistant from the nearest baselines from which the breadth of the territorial sea of each State is measured in accordance with public international law".

46. That line extends up to its intersection with the latitude of 10° 49' N, which constitutes, as we heard this morning, the tripoint where the Colombia-Costa Rica boundary begins and the

[28]CR 2010/12, p. 22, para. 10 (Brenes).

[29]CMC, Ann. 6, and Vol. I, para. 8.42.

Colombia-Panama boundary ends. While Mr. Brenes referred to this on Monday as a "notional tripoint"[30], there was in fact nothing notional about it. Article 1, paragraph 1, of the 1980 Treaty expressly states that the boundaries of Costa Rica, Colombia and Panama all intersect at this point.

47. It is significant that, in referring in their Treaty to the boundaries of Costa Rica and Colombia intersecting at this tripoint, both Costa Rica and Panama recognized the existence of a Colombia-Costa Rica boundary. Although Colombia is not a party, obviously, to the 1980 Treaty between Costa Rica and Panama, it is not aware of any Nicaraguan protest having been lodged against it, and none is referred to either in Costa Rica's Application or Nicaragua's pleadings, including its Written Observations.

48. In summary, by their conduct in agreeing this tripoint, Colombia accepted the Costa Rica-Panama boundary, Costa Rica accepted the Colombia-Panama boundary, and Panama accepted the Colombia-Costa Rica boundary. In other words, as between Costa Rica, Colombia and Panama, there has been complete harmony in their approaches to delimitation in this part of the Caribbean, including with respect to the application of equidistance principles on which all three boundaries in the region have been concluded, and should be concluded, in accordance with international law.

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Conclusions

49. Mr. President, Members of the Court, based on this *tour d'horizon* of the geographic characteristics of the area and the delimitation practice of the States concerned, it is apparent that it is Costa Rica, Panama and Colombia that all have legal interests in the maritime areas covered by their delimitation agreements. As I said, Nicaragua's land territory is located further from those areas than the territories of those three States.

50. All three States have proceeded on the basis that the maritime areas lying between the San Andrés archipelago and the Costa Rican and Panamanian coasts fell to be delimited between

[30]CR 2010/12, p. 22, para. 10 (Brenes).

those three States in accordance with the principles and rules of international law. The three treaties were the result of protracted negotiations; they coincide in using the equidistance method. Each of the treaties has been in existence and respected in practice for over 30 years; and collectively, they have, in fact, contributed to stability in the region, as is evidenced by the absence of any incidents therein.

51. On Monday, we heard the distinguished Agent of Costa Rica voice concerns that a decision of the Court in the present case may result in the modification or elimination of what he termed the "relation de voisinage" between Colombia and Costa Rica under the 1977 Treaty[31]. That would entail affecting one of the cornerstones of the law of the sea pursuant to which maritime delimitation is to be effected by the agreement of the parties, a principle which the Agent of Costa Rica confirmed, for his part, has been a cornerstone of Costa Rica's policy as well.

52. Costa Rica has agreed boundaries with Panama and Colombia. Respect for those Treaties, together with the 1976 Panama-Colombia Treaty, has ensured stability and certainty in the maritime relationships in this part of the Caribbean for over 30 years. The only uncertainty for Costa Rica is its outstanding delimitation with Nicaragua, but even as to that "uncertainty", Costa Rica clearly envisaged that its boundary with Nicaragua would link up with its 1977 boundary to Colombia to the south-west of the San Andrés archipelago[32]. Obviously, delimitation between Costa Rica and Nicaragua is not the subject-matter of the present proceedings. Nonetheless, what would lead to uncertainty in this region would be a decision in the case adversely affecting the 1977 Treaty, or in fact any of these three Treaties — a treaty which Costa Rica itself has acknowledged has "facilitated cooperation and contributed to mutual understanding, the preservation of peace and trust between our two States, becoming an example for the region and the continent"[33].

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[31]CR 2010/12, p. 19, para. 18 (Ugalde Álvarez).

[32]*Ibid.*, p. 24, para. 18 (Brenes).

[33]RC, Vol. II, Ann. 2.

53. Colombia believes, Mr. President and Members of the Court, that these factors that I have discussed are relevant in determining whether Costa Rica has an interest of a legal nature that may be affected by a decision in the case, where that interest genuinely lies and consequently whether its Application for permission to intervene should be accepted by the Court.

54. These are matters that Professor Crawford will now be addressing and discussing further, and therefore, Mr. President, I would be grateful if the floor could now be given to Professor Crawford. I thank the Court for its attention.

The PRESIDENT: I thank Mr. Rodman Bundy for his presentation and I now invite Professor James Crawford to the floor.

Mr. CRAWFORD:

LEGAL ISSUES

Mr. President, Members of the Court, it is an honour to appear before you on behalf of Colombia.

Introduction

1. The key question under Article 62 of the Statute is whether Costa Rica has an interest of a legal nature that may be affected by a decision in this case. Costa Rica affirms that it has such an interest. In its Written Observations, Nicaragua denied it; at least, that was your interpretation of what it said. Today they denied it, without qualification. Of course, under Article 62 it is for the Court to decide upon Costa Rica's request.

2. As to the *precise object of the intervention*, Costa Rica's initial request says that it is twofold:

> "First, generally, to protect the legal rights and interests of Costa Rica in the Caribbean Sea by all legal means available . . .
>
> Second, to inform the Court of the nature of Costa Rica's legal rights and interests that could be affected by the Court's maritime delimitation decision in this case."[34]

[34] Application of Costa Rica, para. 23.

3. In principle these objects are perfectly legitimate. I need only refer to the comment of the Chamber in the *El Salvador/Honduras* case where it stated:

> "So far as the object of Nicaragua's intervention is 'to inform the Court of the nature of the legal rights of Nicaragua which are in issue in the dispute', it cannot be said that this object is not a proper one: it seems indeed to accord with the function of intervention." *(I.C.J. Reports 1990*, p. 130, para. 90 (cited at para. 23 of Costa Rica's Application).)

4. In terms of the application of these criteria, you heard counsel for Costa Rica on Monday. They went further and specified in detail the hypothetical minimum area as to which or on the basis on which Costa Rica claims a legal interest in the present dispute. In doing so, they focused very largely on Nicaragua's claim, and we do not blame them for doing so. For there is an important difference between Colombia's claim line, which, as I will show, takes account of Costa Rica's interests in accordance with the 1977 Treaty and Nicaragua's. Nicaragua has no relevant treaty with Costa Rica and its claim pays no attention to Costa Rica's claims or interests.

5. Colombia agrees with the conclusion counsel for Costa Rica reached, that is to say, that Costa Rica has legal rights and interests to protect in the western Caribbean Sea, rights and interests which may — I stress the word "may" — be affected by your decision in the main case. The issue is where those interests lie, a matter to which I will return.

6. But Colombia does not agree with all the arguments put forward on Monday in support of that conclusion. It may be of assistance to the Court if I spell out some of these points of agreement and disagreement, and explain why they lead us nonetheless to the same conclusion as Costa Rica with respect to their eligibility to intervene.

Points of agreement

7. There are four points of agreement. The graphic on the screen, one of Costa Rica's, is tab 15 in your folders. The first point of agreement is that the 1977 Colombia-Costa Rica Treaty is a treaty in place. Mr. Lathrop put it well when he said:

> "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."[35]

[35] CR 2010/12, p. 34, para. 9 (Lathrop).

And he said much the same thing in paragraph 11 of his statement[36].

8. Secondly, Colombia agrees that bilateral delimitation treaties, in which a negotiated settlement of overlapping claims is reached between two States, are not opposable to third States and cannot be relied upon by them. In Mr. Brenes's 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"[37].

9. This point deserves particular emphasis. You have heard this morning counsel for Nicaragua trying to evade the *res inter alios* principle by reliance on good faith or conduct, or whatever. Nicaragua cannot at the same time deny Colombia's title beyond 12 nm from even the main islands of the archipelago and rely on treaties concluded by Colombia with its neighbours to the south that were based on the recognition by Costa Rica and Panama of the archipelago as *Colombian* territory, of its maritime entitlements and of its full weight in the delimitation. Colombia was not acting when it concluded those treaties as a collection agent on behalf of Nicaragua. Nicaragua cannot take what it likes from these treaties while rejecting the very basis on which they were concluded. It either takes them as they stand, which evidently it does not do, or it is a stranger to them entirely.

10. The third point on which we agree concerns claims to the outer continental shelf in the western Caribbean. There is no maritime space in the western Caribbean which is more than 200 nm from the nearest coast. The whole area is exclusive economic zone, and there is accordingly no room for outer continental shelf claims. Again, Mr. Brenes made this point when he said that Nicaragua's preliminary information document but later be filed with the Secretary-General is without any incidence for the case. He described it as "absolutely irrelevant"[38].

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[36]CR 2010/12, p. 34, para. 11 (Lathrop).

[37]*Ibid.*, p. 25, para. 20 (Brenes).

[38]*Ibid.*, p. 26, para. 23 (Brenes).

11. The fourth point on which we agree concerns two of the characteristics Mr. Lathrop discerned in an eventual maritime boundary between Colombia and Nicaragua[39]. He suggested that the eventual boundary to be decided by the Court is likely to have the following two features:

— first it will trend north-south, with a northern end and a southern end both interacting with the claims of third States — in the south, Costa Rica.

— second, it will run through its entire length between overlapping 200 nm zones of several States, indeed up to three or four States in some locations. Yet — I interpolate — it is in such "crowded geography of the south-west Caribbean Sea"[40] that Nicaragua claims to appropriate, whether as EEZ or fictitious outer continental shelf, more than half the total maritime area. And — again I interpolate — the more crowded the geography, the more equidistance comes to the fore as the presumptive method of delimitation.

Points of disagreement

12. I come to the points of disagreement, which I can illustrate by reference to figure 10 in Costa Rica's judges' folder on Monday. I refer to three points.

13. The first point of disagreement concerns the role of islands in maritime delimitation. Counsel for Costa Rica on Monday on a number of occasions — for example by reference to Honduras's inshore islands, the effect on the mainland equidistance line, or to Serpents' Island in the *Romania/Ukraine* case — mentioned that islands are often ignored or given less than full effect in a delimitation. But he failed to observe two things. The first thing is that this is only true of inshore islands such as Serpents' Island, which is 23 miles offshore and can be seen from the coast, if it is not raining. The islands and cays of the San Andrés archipelago, are, as the Agent has said, oceanic, not coastal; they range from 106 to 266 nautical miles away from Nicaragua — the archipelago straddles the 200-mile line from Nicaragua's coast, they are relatively speaking over the seas and far away. Mid-oceanic islands of this sort, including islands ever smaller than the small cays, naturally have such a pronounced effect in maritime delimitation. This is because of

[39]CR 2010/12, p. 46, para. 39 (Lathrop).

[40]*Ibid.*

the geometry of spatial distribution, and because all their coasts project and count with respect to neighbours in all directions.

14. Another thing counsel for Costa Rica failed to note concerns the function of equidistance as a presumptive method of delimitation between opposite coasts in this region. Indeed it was adopted in the 1977 Agreement itself, not as a mere assumption but as an integral part of the bargain, an essential arrangement by the parties. It played a major role in the other regional delimitations, as described in our pleadings.

15. The second point of disagreement with Costa Rica's presentation on Monday concerns what Mr. Lathrop described as its hypothetical "minimum area of legal interest" shown on his figure 10. Costa Rica tended to present this area as a function of the extreme claims of both parties. In truth it is a function of the extreme claims of Nicaragua. You will see on figure 10 the Nicaraguan claim line shown in the Application and again in the Memorial. That claim line is a single maritime boundary drawn from the coasts of the parties. It is a *singular* maritime boundary, because it is utterly untenable, as we pointed out in the Counter-Memorial. The line is 230-260 miles from Nicaragua's coast, well beyond any area it could possibly claim as exclusive economics zone even if the archipelago did not exist. You heard Mr. Reichler withdrawing rapidly from it today. Having been maintained for eight long years, that claim line is now abandoned. But what replaces that untenable claim? An even less tenable claim, if that is possible — 100 miles still further east — it was made in the Reply; it is a claim to an extended shelf which does not and cannot exist within the exclusive economic zone of another State. I noticed that Nicaragua in today's folder refers to it as a proposal — but with respect, Sir, one does not make proposals to the Court, one make arguments, and makes claims. For its part, Costa Rica expressly accepts that the claim is legally impossible, or "irrelevant", to reuse Costa Rica's words[41].

16. So far there is no disagreement between Colombia and Costa Rica. The point of disagreement concerns Costa Rica's placement of the arrowed southerly claim line of Colombia, which here is shown well to the south of the lateral, notional equidistance line between Costa Rica and Nicaragua.

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[41]CR 2010/12, p. 26, para. 23 (Brenes).

17. Costa Rica's Application states that, despite assurances to the contrary, the southern end of Colombia's median line extends into areas to which Costa Rica is entitled in a potential delimitation with Nicaragua[42]. In its Application Costa Rica said that Colombia's assurances of taking into account third State interests ring hollow. Colombia respectfully disagrees, and I note that Costa Rica did not repeat the point on Monday. Colombia accepts that Costa Rica has legal interests in the south, and has taken these into account as best it can.

18. Costa Rica particularises the adverse effect to which it is subjected in a single paragraph of the Application[43]. It makes two points. First, it notes that the Colombian claim line, which is shown on the screen as the southward-proceeding red arrow, is somewhat to the west of the agreed Colombia-Costa Rica line, shown on the screen as the northward-proceeding blue arrow. Secondly, it complains that the red arrow is located too far south, trenching on areas claimed by Costa Rica vis-à-vis Nicaragua.

19. Both problems, if they are problems, are readily resolved. The red line on the screen indicates a direction, not an extent, of the boundary so delimited. Whenever and as soon as that red southward line meets the lateral Costa Rica/Nicaragua boundary — a boundary yet to be negotiated — then that junction marks the southern limit of Colombia's claims with regard to Nicaragua in this case. It is true that there is a slight disjunction between the Costa Rica-Colombia northward-proceeding line and the Colombian claim line vis-à-vis Nicaragua. But this is quite normal where a bilateral boundary meets the maritime zones of a third State. The existence of a gap in such case is virtual rather than real. In adopting the northerly blue line as their maritime boundary *inter se*, the parties to the 1977 Treaty did not indicate its extent either. That issue is necessarily determined by the location of the lateral Nicaragua-Costa Rica boundary, which is not a matter for Colombia but for those two coastal States. Costa Rica will have maritime jurisdiction over all areas south of the boundary with Nicaragua, south and west of the 1977 Treaty line, and that is all the 1977 Treaty ever assured it *inter partes*.

20. The third point of disagreement concerns Costa Rica's after-the-fact "explanation" of the so-called twin assumptions underlying the 1977 Treaty. You heard it repeated on Monday by

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[42]Application of Costa Rica, para. 20.

[43]*Ibid.*

Mr. Lathrop. One of these assumptions, you will recall, concerned the 82nd degree°W meridian, but in fact there is no indication the parties took that into account, and the northerly line of the Colombia/Costa Rica Agreement is not on the 82° line. The second assumption was "that Colombia's insular features were entitled to full effect in any delimitation"[44]. But that was not a given, it was not an objective fact — it was not a mere matter of assumption — it was a question of entitlement. Parties can discuss a delimitation, and the weight to be given to relevant coasts. Colombia and Costa Rica did so, and Costa Rica expressly recognized the San Andrés islands — actually Alburquerque, not San Andrés itself, was the basepoint — recognizing as Colombian as entitled to full effect. That was not an assumption, it was an agreement. Panama did exactly the same.

21. This brings me to my final point concerning the hypothetical "minimum area of legal interest" shown on figure 10. Nothing like it has been seen before. Most of the dark blue areas shown to the east of point A — the tripoint of the two treaties — most of the dark blue areas shown to the east of point A are closer to San Andrés and the other Colombian features than they are to Costa Rica; for most of the dark blue areas, they are much closer. Of course, that does not stop Costa Rica claiming them against Nicaragua, which is even further away. But it stands in acute tension with the long-standing position of Costa Rica as to the maritime entitlements of Colombia's islands. It would appear that as Nicaragua has gone lumbering off eastwards in search of a line it can actually defend for more than five minutes, so it has dragged Costa Rica along in its wake, producing the strange hourglass figure first shown to you on Monday. With all the respect I have for Costa Rica's Agent, it is not right to say, as he said on Monday, that it was the claims of the parties that produced the result that Costa Rica was entitled to intervene[45]. It was because of the extreme claims of one of the parties, Nicaragua, claims, the basis of which Costa Rica itself, for all its neutrality as a third party, can only describe as "utterly irrelevant"[46].

22. Mr. President, Members of the Court, in its Written Observations on Costa Rica's Application in this case, Nicaragua remarked that Costa Rica's admission that it made no claim as

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[44]CR 2010/12, p. 35, para. 13 (Lathrop).

[45]CR 2010/12, p. 17, para. 10 (Ugalde Álvarez).

[46]CR 2010/12, p. 26, para. 23 (Brenes).

far east as Nicaragua's reply line was decisive against it[47] — and the Agent repeated that this morning. That is not merely wrong in principle; what is at stake is not a line but an area bounded by a line — and determining where the line is, requires you take into account the area of overlapping claims. It also has this very subtle but profound effect, it would reward a State for over-claiming. Nicaragua's reply line is an obvious over-claim, Nicaragua should not be rewarded by the disqualification of an intervention — for making a claim that will not stand up in open court for more than five minutes and that it now describes as a mere proposal. So at the end of this part of my presentation, I take you back to the real area in dispute, this is the area between the relevant coasts — the opposite coasts of the Colombian archipelago, on the one hand, and of Nicaragua on the other. The question is, this being the real area for the delimitation — what is Costa Rica's "interest of a legal nature" in this scenario?

Costa Rica's interest of a legal nature

23. In its Application, Costa Rica gives as its key interest of a legal nature the fact that:

> "in their maritime boundary claims against each other the parties to this case encompass, to a greater or lesser extent, maritime areas to which Costa Rica is entitled"[48].

This claim is made against both parties. But as we have seen, and it is fundamental to understanding the problem in front of the Court, maritime boundaries are established on a relative, relational basis, by each State vis-à-vis each other relevant coastal State. Principles of good faith or whatever do not transform that relational basis. Thus it is necessary to deal separately with the position of Costa Rica versus the claims of Nicaragua and that of Colombia. That is why it is utterly invalid for Nicaragua to rely on the 1977 Treaty or to argue as it argued today as a third Party in favour of the validity of the line drawn by that treaty. What is that to Nicaragua?

(a) ***The position vis-à-vis Nicaragua***

24. I deal first with the position of Costa Rica *vis-à-vis* Nicaragua. Costa Rica dealt with that position in paragraphs 16 to 19 of its Application. It shows there, and has shown again on Monday, that areas depicted in Nicaragua's pleadings as apparently claimed by it are areas which, as

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[47]Written Observations of Nicaragua, para 33, citing Application of Costa Rica, para 18.

[48]Application of Costa Rica, para 11.

between the two coastal States, are closer to Costa Rica than Nicaragua and therefore would prima facie be claimable by the former. It is worth dwelling on this point for a moment, to put Nicaragua's position in context.

25. In its Written Observations, Nicaragua did not address the exaggerated nature of its proposed delimitation area. It simply referred to a statement in Costa Rica's Application that

> "Costa Rica understands that these figures are not meant to show the maritime area claimed by Nicaragua, but instead are meant to show the area in which the delimitation should occur according to Nicaragua"[49].

26. In fact, adjudged from the written pleadings, it appears that Nicaragua does claim all such areas. In its Memorial, Nicaragua claimed a boundary based on a so-called equal division of the delimitation area[50]. How can one apply an "equal division" concept unless there is a specific area to which the "equal division" can apply? That area was Nicaragua's delimitation area, as shown on figure 1 of its Memorial. Now Nicaragua has withdrawn from that concept, but nonetheless it remains the case that maritime delimitation is not merely the drawing of a line on a map but a consideration of the areas appertaining to each State which result from that line. A State cannot avoid intervention in the terms of Article 62 by disclaiming any eventual impact on the third State, if the nature of the reasoning which leads to the conclusion nonetheless does impact on that third State

27. Nicaragua relies on Costa Rica's treaty practice, in particular the treaties with Panama and Colombia, which show that Costa Rica makes no claim to areas claimed by Nicaragua[51]. My colleague, Mr. Bundy, has already described the position with regard to these two treaties. The following points are relevant:

(1) As Costa Rica confirmed on Monday, the treaties disposed of all the maritime claims of the parties, but only vis-à-vis each other.

(2) The Costa Rican treaties mutually confirm a tripoint between Costa Rica, Panama and Colombia, which is point A on the map shown on the screen. Nicaragua denies the existence of

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[49]Written Observations of Nicaragua, para. 30; Application Costa Rica, para. 16.

[50]MN, para. 3.50.

[51]Written Observations of Nicaragua, paras. 14-18.

this tripoint, agreed in treaties between all three States and located at a point which is closer to the territory of each of them than it is to Nicaragua.

(3) Both treaties give full effect to the relevant coasts of the archipelago as Colombian.

(4) The treaties have been long-standing and have been applied in practice.

28. Now Nicaragua, of course, is not a party to those treaties. It is not bound by them, though it did not protest them. But it now purports to rely on them to deny Costa Rica's legal interest in areas going beyond those lines. Presumably it would take the same position against Panama. I have already shown that this position is untenable and inconsistent with basic principle in relation to the conclusion and legal effects of bilateral treaties. It follows from that, as the night the day, that Costa Rica has a legal interest as against Nicaragua in relation to at least some areas claimed by the latter in these proceedings and going beyond those lines.

(b) *The position* vis-à-vis *Colombia*

29. I turn to the position vis-à-vis Colombia. Mr. Reichler said this morning that at least if you take those lines as constituting a limit, then Costa Rica does not claim a legal interest in the present dispute. Mr. Bundy has described the factual situation, and in particular the application of the 1977 Treaty in practice as between the parties to it. Costa Rica's Application seems to consider the 1977 Treaty in terms of an obligation not to defeat its object and purpose pending ratification[52] in accordance with Article 18 of the Vienna Convention, but the practice since 1977 goes well beyond that limited obligation. For it is the Treaty of 1977 *as such* which has been given effect for more than 30 years, without doubt or difficulty. This is shown by the facts, by the diplomatic correspondence between the Parties, by the statements of Costa Rica's highest officials and by the recognition in the Costa Rica-Panama Treaty, of a tripoint as recalled by my colleague Mr. Bundy earlier this morning.

30. By contrast, Costa Rica and Nicaragua have not delimited their maritime boundary. In setting forth its position on the maritime dispute with Nicaragua, Colombia was not aware of any boundary claims either State might have extending seaward from their land boundary as between Nicaragua and Costa Rica. Nonetheless, in formulating its delimitation claim in this case,

[52]Cf. Art. 18 of the 1969 Vienna Convention on the Law of Treaties.

Colombia has taken care not to prejudice the potential rights and interests of Costa Rica vis-à-vis Nicaragua.

31. I show Colombia's illustration of the relevant area on the screen. As can be seen, the relevant area posited by Colombia does not extend as far as the Costa Rica-Nicaragua land boundary in the south. [That is the line shown on the map, and the line shown on the map that we distributed earlier does not extend that far.] Colombia's equidistance-based position purposely does not identify a southern end-point. Instead, an arrow has been placed on that line, consistent with the Court's practice in other cases.

32. That does not mean that Costa Rica lacks any interest of a legal nature vis-à-vis Colombia. The point has already been made that the Treaty of 1977, represents a peaceful status quo so far as the two neighbouring States are concerned. Under Article 62, it is respectfully suggested, Costa Rica should be entitled as a State party to the Statute to express its views in order to safeguard its interest in preserving that treaty.

(c) ***Conclusion on legal interest***

33. In the *Cameroon-Nigeria* case, the Court articulated the following important principle with respect to the maritime delimitation issues before it.

> "The jurisdiction of the Court is founded on the consent of the parties. The Court cannot therefore decide upon legal rights of third States not parties to the proceedings. In the present case there are States other than the parties to these proceedings whose rights may be affected, namely Equatorial Guinea and Sao Tome and Principe. Those rights cannot be determined by decision of the Court unless Equatorial Guinea and Sao Tome and Principe have become parties to the proceedings."[53]

Nicaragua accepted that principle in its Memorial.

34. The legal rights and interests of Costa Rica and Panama include the legal rights and obligations that they have subscribed to in the delimitation agreements with Colombia. At a minimum, given that neither are parties to this case, the Court should exercise restraint in making any decision in the main case that might affect those rights and obligations.

35. But the matter can be taken further. And it was expressly accepted by the distinguished Agent for Costa Rica on Monday, and I quote:

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[53] *I.C.J. Reports 2002*, p. 421, para. 238.

> "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."[54]

36. I would add that it is sufficient for this purpose that an interest of a legal nature *may* be affected by the decision: precisely how, and with what consequences, is not a matter to be decided in terms of the admissibility of an application to intervene but in terms of the merits. In Colombia's case, the scenario envisaged by the Agent for Costa Rica — that is, that Colombia disappears from the case — is unlikely, out of touch with diplomatic history and the geography of the relevant area. But that is not for you to decide now; and whatever one's views on the merits, it cannot be said *a priori* that something sought by a party is something the Court may not decide.

37. Finally, Colombia records its understanding that the arguments advanced by Costa Rica in its Application and in the present hearings *vis-à-vis* Nicaragua with regard to 200-mile entitlements in the east of the delimitation area posited by Nicaragua, do not detract from its treaty obligations with regard to Colombia and Panama, and are rather illustrative of Nicaragua's disregard for the rights of third States in the region.

Mr. President, Members of the Court, that concludes my presentation, and that of Colombia, for today. Thank you for your attention.

The PRESIDENT: I thank Professor James Crawford for his presentation. That brings to an end the first round of oral argument on Costa Rica's Application for permission to intervene. I wish to thank Costa Rica and the Parties, namely, Nicaragua and Colombia, for the statements presented in the course of this first round of oral argument.

The Court will meet again tomorrow, from 3 p.m. to 4 p.m., to hear the second round of oral argument of Costa Rica.

Thank you. The Court is adjourned.

The Court rose at 1 p.m.

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[54] CR 2010/12, p. 19, para. 18 (Ugalde Álvarez).