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Mercredi 20 octobre 2010 à 9 h 30

Wednesday 20 October 2010 at 9.30 a.m.

10 Le PRESIDENT : Veuillez vous asseoir. L'audience est ouverte. La Cour se réunit ce matin pour entendre le premier tour de plaidoiries du Nicaragua et ensuite le premier tour de plaidoiries de la Colombie. Avant de donner la parole au premier orateur, je voudrais indiquer que le juge Abraham, pour des motifs qu'il m'a fait connaître, n'est pas en mesure de siéger aujourd'hui. Je donne à présent la parole à S. Exc. M. Carlos José Argüello Gómez, agent de la République du Nicaragua.

M. ARGUELLO GOMEZ : Monsieur le président, Mesdames et Messieurs de la Cour, bonjour. C'est toujours un honneur de plaider devant vous.

1. La présente affaire constitue malheureusement un exemple flagrant d'une tentative visant à jeter le discrédit sur l'un de vos arrêts. Le Nicaragua s'indigne de cette manœuvre ourdie par le Honduras pour vous amener à réexaminer une affaire que vous avez tranchée il y a trois ans à peine. La présence à l'audience aujourd'hui de M. Samuel Santos, ministre des affaires étrangères du Nicaragua, souligne l'importance que le Nicaragua attache à cette question.

2. Monsieur le président, il y a onze ans, le 8 décembre 1999, le Nicaragua a déposé une requête, priant la Cour «de déterminer le tracé de la frontière maritime unique entre les mers territoriales, les portions de plateau continental et les zones économiques exclusives relevant respectivement du Nicaragua et du Honduras» (*Différend territorial et maritime entre le Nicaragua et le Honduras dans la mer des Caraïbes (Nicaragua c. Honduras), arrêt, C.I.J. Recueil 2007 (II)*, p. 666, par. 17).

3. Au cours des huit années pendant lesquelles l'affaire était pendante devant la Cour, les deux Parties ont eu l'occasion de présenter tous les arguments et questions de fait ayant trait aux questions soumises à la Cour.

4. La Cour a été priée par *les deux* Parties, dans leurs conclusions finales, de déterminer une frontière maritime unique pour toutes les zones en litige.

5. Il est pertinent de rappeler que le Honduras, dans les premières conclusions qu'il a présentées dans son contre-mémoire, avait fait valoir que

> «[l]a frontière, aux fins de la délimitation des zones contestées du plateau continental et de la zone économique exclusive dans la région, [était] une ligne qui part[ait] du point précité de la limite des 12 milles, en direction de l'est, et qui longe[ait] le 15e parallèle (14° 59,8') jusqu'à la longitude du point de départ (82e méridien) de la

frontière maritime établie par le traité de 1986 entre le Honduras et la Colombie» (*ibid*., p. 667-668, par. 18).

6. En d'autres termes, le Honduras a modifié sa position initiale et a omis, dans ses conclusions finales, de préciser que la ligne de délimitation s'arrêtait au 82e méridien, demandant
11 que la frontière maritime unique à déterminer par la Cour s'étende «jusqu'à atteindre la juridiction d'un Etat tiers» (*Différend territorial et maritime entre le Nicaragua et le Honduras dans la mer des Caraïbes (Nicaragua c. Honduras), arrêt, C.I.J. Recueil 2007 (II)*, p. 667-668, par. 18). Voilà qui rend d'autant plus surprenante son actuelle demande à fin d'intervention fondée sur de prétendus intérêts qu'il détiendrait dans des zones situées à l'est du 82e méridien.

7. Il est donc évident, à la lecture de leurs conclusions, que les Parties ne demandaient pas une délimitation partielle de leurs espaces maritimes dans la mer des Caraïbes mais une délimitation complète de ceux-ci. Et c'est exactement dans ce sens que la Cour a statué dans son arrêt du 8 octobre 2007. La Cour a fixé un point de départ pour la délimitation et a ensuite indiqué que cette ligne, après avoir décrit un arc de cercle autour de certaines cayes attribuées au Honduras, suivrait une bissectrice le long d'un azimut déterminé par la Cour, jusqu'à atteindre la zone dans laquelle les droits d'Etats tiers pourraient être en cause (*ibid*., p. 759-760, par. 320).

8. Le Honduras ne saurait détenir le moindre intérêt de nature juridique au sud de cette bissectrice. Les zones de délimitation éventuelles, qui sont en litige entre le Nicaragua et la Colombie, sont toutes situées au sud de cette ligne.

9. M. Pellet examinera ces points plus en détail, mais je vais vous en faire une démonstration préalable à l'aide de la carte qui est projetée à l'écran.

10. (CAG 1) La figure 3-1 de la réplique du Nicaragua illustre la zone de délimitation générée par l'ensemble des côtes continentales du Nicaragua et de la Colombie. Elle ne représente naturellement pas les zones sur lesquelles le Nicaragua fait valoir des prétentions, mais toute la zone sur laquelle des titres sont susceptibles d'être générés par les deux côtes continentales. Cette carte a été brandie comme une indication que le Nicaragua prétendait engloutir le Panama et d'autres pays voisins. Mais quiconque connaît un peu la délimitation maritime comprend l'objet de cette illustration. En tout état de cause, cette carte ne présente aucun intérêt juridique pour le Honduras étant donné qu'elle ne concerne que des zones situées exclusivement au sud de la frontière maritime définie par la Cour. Nous avons superposé à l'écran la ligne de délimitation

définie par la Cour (CAG 1). Sur ce schéma figure aussi la limite extérieure de la délimitation du plateau continental revendiquée par le Nicaragua. Elle se trouve fort loin, à l'est et au sud, de la ligne tracée par la Cour entre le Nicaragua et le Honduras.

11. Cette carte, plus éloquente qu'un long discours, montre à l'évidence que le Honduras n'a aucun intérêt juridique à l'égard de l'une ou l'autre des questions soumises à la Cour.

12 12. Monsieur le président, Mesdames et Messieurs de la Cour, la majorité des membres actuels de la Cour étaient également présents sur le siège au moment où l'arrêt du 8 octobre 2007 a été rendu et sont donc parfaitement informés de la situation. Quoi qu'il en soit, les choses sont très claires — même au terme d'une lecture rapide de cet arrêt — au regard de ce que fait valoir à présent le Honduras. Je ne prolongerai donc pas mon exposé pour répondre à des questions qui ne revêtent aucune pertinence pour la présente affaire.

13. Lundi, l'agent du Honduras a demandé à la Cour de contribuer à établir la certitude, la stabilité et le caractère définitif des frontières dans la région[1], comme si elle ne l'avait pas déjà fait à l'égard du Nicaragua et du Honduras dans son arrêt d'octobre 2007. Ce qui est véritablement en cause ici, c'est la certitude, la stabilité et le caractère définitif des arrêts de la Cour, et en particulier de l'arrêt qu'elle a rendu en octobre 2007.

14. Monsieur le président, tout ce que j'ai fait valoir jusqu'à présent répond amplement à la requête et aux arguments présentés jusqu'ici par le Honduras, mais M. Pellet complétera mon exposé en passant en revue les principales questions juridiques que soulève une requête à fin d'intervention utilisée pour réintroduire, par la petite porte, une affaire qui a été tranchée avec toute l'autorité de la chose jugée.

15. Monsieur le président, je vous remercie et vous prie de bien vouloir appeler M. Pellet à la barre. Je vous remercie de votre attention.

Le PRESIDENT : Je remercie S. Exc. M. l'ambassadeur Carlos José Argüello Gómez, agent de la République du Nicaragua.

J'appelle à présent M. Alain Pellet à la barre.

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[1] CR 2010/18, p. 18, par. 19 (M. López Contreras).

M. PELLET:

1. Mr. President, Members of the Court, let me begin where my friend Paul Reichler[2] ended his oral argument last Friday on Costa Rica's intervention by saying how lost I am too at finding myself in a Nicaraguan courtroom team without the presence of Ian Brownlie, with whom I have worked for so long and who, since the mid-1980s initiated me into the mysteries of proceedings before the Court. We sometimes disagreed yet this did not prevent strong ties developing between us, here, in the International Law Commission and elsewhere . . . I also share in the tribute paid to
13 him by Professor Sánchez Rodríguez and in particular express my sympathy to the representatives of the Republic of Honduras.

2. Mr. President, applications to intervene come up regularly and are not alike. Or rather, they seem alike whereas, when looked at closely, not negligible differences appear. This is the case of both the one we are concerned with here today and the one submitted to you by Costa Rica last week. In both cases, the applicant for intervention clearly wishes to convince you that "it has an interest of a legal nature which may be affected". In both cases, it does so by attributing to the Parties' submissions a significance they certainly do not have and by seeking to turn the treaties concluded with Colombia to its advantage. And in both cases, the State applying to intervene is endeavouring to convince you that, in fact, you should rule on the course of its own boundary with the Parties.

3. But there the similarities end. Even if they are important, so are the differences — among other things because, while Costa Rica is seeking to intervene without being bound by the future judgment of the Court, Honduras claims to do so, at least in its principal claim, as a party. But also and above all because, while Costa Rica uses its intervention as a pretext for questioning its well-established boundary with Colombia, confirmed by long and peaceful practice, Honduras, meanwhile, in applying to intervene, is challenging nothing less than a judgment of the Court, the one you delivered on 8 October 2007 in the case of the *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea*.

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[2]CR 2010/16, pp. 28-29, para. 36 (Reichler).

4. As a possible way out, Honduras, eagerly supported by Colombia, brandishes the Treaty it concluded with it on 2 August 1986. This agreement alters nothing in the case: Honduras cannot have attributed to a third State maritime areas appertaining to Nicaragua and cannot assert, in disregard of *res judicata*, any "legal interest" at stake for it in the case in which it is seeking to intervene.

5. Before coming to this point — the only one which seems to me worth serious discussion — I would first like to point out, at the risk of disappointing counsel of Honduras, that I shall only reply briefly to an argument which they developed at length: because they dwelt on the two alternative capacities in which the country they represent is claiming to intervene — that of

14 "intervening party" or that of intervener "*tout court*"[3]. With due respect, this seems to me quite irrelevant: even accepting that the two forms of intervention are possible, both of them would continue to be governed by Article 62 of the Statute and would have to meet the *sine qua non* condition (or conditions) laid down by this provision: the State applying to intervene must be able to show "an interest of a legal nature" which may be affected "in a dispute" submitted to the Court: this must be an interest of a legal nature; and it must be at issue in a dispute between other States also. Whether it is a single condition consisting of two indissociable elements or two different but complementary conditions, the result is the same: it (or both of them) must be met. I will lump these two requirements together under the single heading of "the condition of Article 62", yet making it quite clear that both of them, indissociably, form part of it. This condition of Article 62 has not been met in this case.

6. Professor Boisson de Chazournes seeks to release Honduras from this by asserting, most insistently, that this obligation is a matter for subjective assessment only by the party seeking to intervene: "it is . . . enough for a State to consider that 'one' of its legal interests is affected in a *pending case* for it to be in principle authorized . . . to exercise *its right of intervention*"[4]. "Right of intervention . . .", a deceptive expression to say the least: right <u>to apply to intervene</u>, yes — and it is a right which a State considering it has an interest of this kind may freely choose to exercise or

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[3]CR 2010/18, pp. 28-31, paras. 19-29 Boisson de Chazournes); *ibid.*, p. 36, paras. 19-20, p. 41, para. 36 or p. 45, para. 48 (Wood).

[4]*Ibid.*, p. 25, para. 13 — emphasis in the text; underlining added; see, also: *ibid.*, p. 21, paras. 5-6, pp. 22-23, paras. 7-9, p. 24, para. 10, p. 12, paras. 12-13, p. 27, para. 16, p. 29, para. 25 (Boisson de Chazournes).

not; the Court pointed this out in the *Cameroon* v. *Nigeria* case[5] of which my amiable opponent offers an interpretation which does not hold water[6]. But "[t]the Court [shall] decide", as indicated by Article 62 (2); hence what is subjective becomes objective, since it is naturally for your esteemed Court to *objectively* determine whether the legal interest relied on is *real* and whether it is *affected* in the case in relation to which it is presented in incidental proceedings. And it is not
15 enough, as Sir Michael Wood claims, for a State to "advance overlapping claims"[7] to entitle it to intervene; those claims must also be credible enough to be construed as a genuine legal interest at issue for the State applying to intervene.

7. Whether Honduras wishes to intervene as a party or not in our case is scarcely important. It cannot do so in either of these two capacities: the interest it relies on is fanciful and based on challenging the *res judicata* of the 2007 Judgment. And invoking the 1986 Treaty cannot alter this conclusion at all. These, Mr. President, are the two points which, with your permission, I propose to deal with in turn.

I. THE IMPUGNMENT OF *RES JUDICATA*

8. Mr. President, in its Application[8], as in its oral arguments on Monday, Honduras virtuously declared that it "fully accepts the *res judicata* of the 2007 decision of the Court"[9]. Having said this, it seeks — not a little insidiously — to persuade the Court to have a rethink and questions both the operative part of the 2007 Judgment and the reasons forming its indispensible basis.

[Slide 1: Extracts from the operative part of the 2007 Judgment]

9. To remove any ambiguity, I feel it would be helpful to recall what the Court decided on that occasion, which is relevant for assessing the legal interest asserted by Honduras in support of its claim to intervene in the case between Nicaragua and Colombia. The passage which interests us reads as follows:

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[5] *Land and Maritime Boundary between Cameroon and Nigeria, Preliminary Objections, Judgment, I.C.J. Reports 1998,* p. 324, para. 116.

[6] CR 2010/18, p. 22, para. 7 (Boisson de Chazournes).

[7] *Ibid.*, p. 44, para. 44 (Wood).

[8] Application for permission to intervene, p. 4, para. 15.

[9] CR 2010/18, p. 16, para. 12 (López Contreras); see also, *ibid.*, p. 37, para.22 (Wood).

> "from point E, the boundary line shall follow the 12-nautical-mile arc of the territorial sea of South Cay in a northerly direction until it meets the line of the azimuth at point F (with co-ordinates 15° 16' 08" N and 82° 21' 56" W). From point F, it shall continue along the line having the azimuth of 70° 14' 41.25" N until it reaches the area where the rights of third States may be affected." (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, pp. 760 and 763, para. 321.3 *in fine*.)

16 [Slide 2: Course of the maritime boundary line]

10. This is probably easier to understand if we see it on a sketch. It is the one on page 761 of the Court's 2007 Judgment, to which a few explanatory comments have been added:

— points E and F mark the two ends of the last segment of the maritime boundary which skirts the cays which the Court determined as falling within Honduran sovereignty;

[Slide 2.1]

— point F is also the one where the line reverts to the direction of the azimuth followed since the starting-point of the single maritime boundary between the two States, interrupted by the need to give effect to the cays attributed to Honduras; and

[Slide 2.2]

— we have added an arrow at the end of the dotted line on the Court's illustrative sketch.

11. This arrow merely signifies that the azimuth of 70° 14' 41.25" continues until it reaches "the area where the rights of third States may be affected" — to quote the actual words of the Court (*ibid.)*, which gave a long explanation involving a detailed examination of the rights of third States which might be affected — and, in particular, those of Colombia. And this reply refutes the Honduran claim to intervene in the present case. Yet this places me in an uncomfortable position, Mr. President: either I reread whole chunks of your 2007 Judgment; or I decide not to reply to Honduras in full since, in fact, it is against that Judgment that it is waging war and because the reply to its arguments is found in your Judgment itself in whole, complete and limpid form.

[End of slide 2]

12. If I were in your place, Members of the Court, I would not be best pleased if someone were to reread at this podium long passages from a judgment of the Court, a recent one moreover, and one which many of you helped to draft. But at the same time, it is difficult for me to simply invite you to reread your Judgment and act like Lewis Carol's cat, fading away with a grin — content that you have already demonstrated . . . what I should demonstrate. As this, however, is

what you did and as I have to justify my presence at this podium, I have chosen an approach
17 midway between: in your folders (under tab No. 4) you will find a table placing Honduras's allegations side by side with the replies you made to them in advance (the table is first in French, then in English); and I shall simply draw some conclusions from this.

13. Two things emerge very clearly from this:

— the first is that, in 2007, the Court determined the whole maritime boundary between Nicaragua and Honduras;

— the second is that, in particular, it took great pains to show that its Judgment did not affect the interests of third States and those of Colombia quite specifically.

14. On the first point, it is deliberately misleading to assert that "the Court, in its Judgment of 8 October 2007 on the *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea* has already determined part of the maritime boundary between Nicaragua and Honduras"[10]. It has not determined *part* but *all* of that boundary. As regards the endpoint of the line, it had three possibilities which it set out very clearly:

(1) it could "say nothing", stating "only that the line continues until the jurisdiction of a third State is reached";

(2) it could "decide that the line does not extend beyond the 82nd meridian"; or

(3) it could "indicate that the alleged third-States rights said to exist east of the 82nd meridian do not lie in the area being delimited" (*I.C.J. Reports 2007*, p. 758, para. 314).

It is the third solution it chose after ensuring that the rights of third States could not be affected and, in so doing, it was the whole maritime boundary between the two States that it drew; there is nothing else left for it to delimit in relations between Honduras and Nicaragua.

18 15. Notwithstanding Sir Michael's learned terminological quibbles[11] — over which I shall refrain from wrangling — I do not see how he can assert that it is not the case when, *in the operative paragraph itself* since he is so set on it (too much so too, as we will see), the Court expressly said:

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[10]Application for permission to intervene, p. 2, para. 7; see also, CR 2010/18, p. 16, para. 11 (López Contreras); *ibid.*, p. 33, para. 7 and p. 39, para. 27 (Wood).

[11]CR 2010/18, pp. 38-39, paras. 25-31 (Wood).

> "From point F, it [the single maritime boundary between Nicaragua and Honduras] shall continue *along the line having the azimuth* of 70° 14' 41.25" *until it reaches* the area where the rights of third States may be affected." (*Land and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), I.C.J. Reports 2007(II),* p. 763, para. 3) of the operative paragraph; emphasis added.)

As regards these two States (Nicaragua and Honduras), the maritime boundary is completely determined without the endpoint itself having to be fixed by precise co-ordinates as this would have involved the rights of a third State (which is not Colombia, but Jamaica — I shall come back to this). All the Court could say (and did say) is that, as regards the endpoint of the boundary between Nicaragua and Honduras, it is situated on the azimuth. This is sufficient for determining the whole boundary between these two countries.

16. I would add that, in so doing, the Court fully discharged its function, which is to "decide . . . such disputes as are submitted to it" — not to leave them pending. And this is especially true of frontier disputes. In accordance with the celebrated *dictum* of the 1962 Judgment in the *Temple* case:

> "In general, when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment, and on the basis of a continuously available process, be called in question . . .". (*Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962,* p. 34.)

This is equally true when the frontier settlement follows from a judicial decision, which — as is well known — is "only an alternative to the direct and friendly settlement of such disputes" (*Free Zones of Upper Savoy and the District of Gex, Order of 19 August 1929, P.C.I.J., Series A, No. 22,* p. 13)[12]. Furthermore, in its 2007 Judgment, the Court, as the Agent of Nicaragua has just reminded us, responded to the expectations of Honduras itself which, in its submissions, had asked it to fix the maritime boundary between the two States according to a specified line "until the

19 jurisdiction of a third State is reached" (*I.C.J. Reports 2007 (II),* p. 669, para. 19). After a long explanation, this is what your distinguished Court did in the operative part of the 2007 Judgment.

17. In this respect, there is a very striking contrast between its position in this 2007 Judgment and the one in the *Cameroon* v. *Nigeria* case regarding the intervention of Equatorial Guinea. In the latter case — as in *Nicaragua* v. *Honduras*, the Court pointed out that problems might arise

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[12]See also *Aerial Incident of 10 August 1999 (Pakistan* v. *India), Jurisdiction, Judgment, I.C.J. Reports 2000,* p. 33, para. 51.

concerning the rights and interests of third States[13]; and, in both cases, it fixed the end portion of the maritime boundary by indicating the direction a specific azimuth line was to follow, without indicating a specific endpoint, in order to preserve the rights of third States[14]. But while, of the three possible solutions it listed in its 2007 Judgment, it opted for the third one in *Nicaragua* v. *Honduras*, it chose the first, consisting of saying nothing, as regards the maritime boundary between Cameroon and Nigeria. In its 1998 Judgment, it noted that

> "the geographical location of the territories of the other States bordering the Gulf of Guinea, and in particular Equatorial Guinea and Sao Tomé and Principe, [demonstrated] that it is evident that the prolongation of the maritime boundary between the Parties . . . will eventually run into maritime zones where the rights and interests of Cameroon and Nigeria will overlap those of third States" (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 324, para. 116).

And this prompted it to issue a species of invitation to intervene to these States[15], then to refrain from giving any details whatever regarding the extension of the azimuth line[16]. In its 2007 Judgment by contrast, it pointed out that the line it was fixing could not "affect Colombia's rights" (*Land and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 758, para. 316), and it expressly stated that it "may": a "may" to which Sir Michael ventures, without a smile, to ascribe a simple

20 "methodological" meaning[17] — it therefore declares that it may, as I was saying — it may, because it has assured itself that this was possible — *declare* that "the maritime boundary [between Nicaragua and Honduras] . . . extends beyond the 82nd meridian without affecting third-State rights" (*ibid., I.C.J. Reports 2007 (II)*, p. 759, para. 319) — "declare", this is not "methodological" at all; it is, on the contrary, very "*res judicata*"!

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[13] See *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, especially p. 324, para. 116, and *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 756, para. 312.

[14] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 448, para. 307, and p. 457, para. 325 IV (D) (operative paragraph); and *Land and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007(II)*, p. 759, para. 319, and para. 321.3 (operative paragraph).

[15] *Ibid.*

[16] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 448, para. 307, and p. 457, para. 325 IV (D).

[17] CR 2010/18, p. 39, para. 30.

18. This is really enough to establish that Honduras cannot assert *any* interest of a legal nature which might be affected by the judgment to be made in the case between Nicaragua and Colombia: regardless of what decision the Court makes, its maritime boundary with Nicaragua is, completely and definitively, determined by the 2007 Judgment which was delivered after Honduras had amply informed the Court not only of its own rights and interests, but also of those of Colombia — Honduras, in its written[18] and oral[19] pleadings at the time, having displayed extreme concern for Colombia's interests.

[Slide 3: begin with the map in slide 2]

19. Moreover, the Court was not unaffected by this; it quite specifically considered Colombia's interests, with respect to which it drew two essential conclusions:

[Slide 3.1: Colombia's interests according to the 2007 Judgment]

(1) Even if the Honduran interpretation of the 1928 Barcenas-Esguerra Treaty relating to the course of the maritime boundary between Colombia and Nicaragua was correct, on Honduras's own admission, "at most, the line set by this Treaty continues along the 82nd meridian up to the 15th parallel" (*I.C.J. Reports 2007 (II)*, p. 758, para. 351); yet, the Court points out, the delimitation line it adopted (the one which follows the azimuth) "will lie well north of the 15th parallel when it reaches the 82nd meridian. Thus, contrary to Honduras's argument, the line drawn above would not cross the 1928 Treaty line *and therefore* could not affect Colombia's rights" (*ibid.)*.

21 [Slide 3.2]

(2) Still following the caveats of Honduras, the over-zealous defender of Colombian interests, the Court also shows its awareness that "any extension of the delimitation line" in the *Land and Maritime Dispute between Nicaragua and Honduras* case might well "prejudice Colombia's rights under that Treaty" (*I.C.J. Reports 2007 (II)*, p. 758, para. 316). It nevertheless takes a very strong position on this: reserving any rights of third States[20], it points out, with the utmost

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[18]See, in particular, Counter-Memorial, pp. 21-22, paras. 2.15-2.16; pp. 145-146, paras. 7.42-7.43 or Rejoinder, p. 96, para. 5.42.

[19]See, in particular, CR 2007/8, p. 10, para. 2 (Jiménez Piernas) ; *ibid.*, p. 23, para and p. 46, para. 35 (Quéneudec).

[20]See, in particular, *I.C.J. Reports 2007 (II)*, p. 759, para. 318.

clarity, that a delimitation between Honduras and Nicaragua extending "east beyond the 82nd meridian and north of the 15th parallel (as the bisector adopted by the Court would do [does]) would not [does not] actually prejudice Colombia's rights because Colombia's rights under this Treaty *do not extend* north of the 15th parallel *(I.C.J. Reports 2007 (II)*, p. 759, para. 316) — I am quoting your Judgment but replacing the conditional by the present since, on the basis of this argument, such was, effectively, the delimitation adopted by the Court. I shall return in a few moments more specifically to the implications — or rather the absence of implications, of the 1986 Treaty with a view to assessing the interests relied on by Honduras in support of its intervention.

[Slide 3-3]

20. But for the moment, it would be hard to be clearer: whatever the Court decides in the present case, the boundary between Nicaragua and Honduras, which is completely delimited, is not such as to be called into question. Furthermore, and more specifically, its decision cannot affect Colombia's rights, such as those resulting from the 1986 Treaty with Honduras or from the 1928 Treaty with Nicaragua; and this is true even if one were to give this one — the 1928 Treaty — the extreme interpretation Honduras had put forward, in its eagerness to defend Colombia's interests — an interpretation which Nicaragua considers indefensible (but that is not on the agenda for today).

[End of slide 3].

22 21. The fact is that, using a skilfully crafted form of words in paragraph 15 of its Application, Honduras is seeking to circumvent *res judicata*. It denies seeking to "challeng[e] the effect of the operative part of the Judgment of 8 October 2007 as *res judicata*"[21], at the same time hinting that the reasoning is a different story . . . Then, on Monday, Sir Michael, less allusively (but at great length[22]), was more overtly defensive on this point: "the *res judicata* of the 2007 Judgment is contained in, and limited to, the *dispositif* set forth in paragraph 321"[23].

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[21]CR 2010/18, p. 38, para. 25, or p. 39, para. 27 (Wood); see also Application for permission to intervene, p. 4, para. 15.

[22]*Ibid.*, pp. 38-40, paras. 27-30.

[23]*Ibid.*, p. 38, para. 25.

22. However, according to time-honoured case law, going back to the *Pious Fund of the Californias* case:

> "all the parts of the judgment or the decree concerning the points debated in the litigation enlighten and mutually supplement each other, and . . . all serve to render precise the meaning and the bearing of the dispositif (decisory part of the judgment) and to determine the points upon which there is *res judicata* and which thereafter can not be put in question"[24].

And this has since been consistently confirmed in applications for interpretation or revision of judgments in particular, and was restated in the clearest terms — referring to the authority of the P.C.I.J. in the *Factory at Chorzów* case — by the Court of Arbitration in the *Delimitation of the Franco-British Continental Shelf* case:

> "The Court of Arbitration considers it to be well settled that in international proceedings the authority of *res judicata*, that is the binding force of the decision, attaches in principle only to the provisions of its *dispositif* and not to its reasoning. In the opinion of the Court, it is equally clear that, having regard to the close links that exist between the reasoning of a decision and the provisions of its *dispositif*, recourse may in principle be had to the reasoning in order to elucidate the meaning and scope of the *dispositif*[25]. . . . Furthermore, if findings in the reasoning constitute a condition essential to the decision given in the *dispositif*, these findings are to be considered as included amongst the points settled with binding force in the decision."[26]

This is also the position of the present Court which considers that *res judicata* extends not only to the *dispositif*, as it does of course, but also to the "reasons . . . in so far as these are inseparable
23 from the operative part" (*Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon), Judgment, I.C.J. Reports 1999,* p. 35, para. 10)[27]. This is moreover exactly what the Court said in another 2007 Judgment, delivered in the *Genocide* case and cited by Sir Michael. In it, the Court referred, even more clearly in the English version than in the French, to: "the issues . . . which are entailed in the decision of those

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[24]The *Pious Fund* case *(United States of America* v. *Mexico), Arbitral Award, R.S.A.* Vol. IX, p.12. English translation, *Report of Jackson H. Ralston, Agent of the United States and of Counsel in the matter of the case of the Pious Fund of the Califomias, etc.,* Part I, p. 13.

[25]See *Factory at Chorzów, Merits, Judgment, P.C.I.J., Series A, No. 13*, p. 11.

[26]Arbitral Award, 14 March 1978, *Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland and the French Republic*, *R.S.A.*, Vol. XVIII, pp. 365-366, para. 28.

[27]See also, *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia* v. *Malaysia), Application for permission to intervene, Judgment, I.C.J. Reports 2001*, p. 596, para. 47, and Shabtai Rosenne, *The Law and Practice of the International Court*, Vol. III, Martinus Nijhoff publishers, 2006, p. 1603.

issues" (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I),* p. 95, para. 126), and added that "a general finding may have to be read *in context* in order to ascertain whether a particular matter is or is not contained in it" (*ibid.*, emphasis added).

23. The reasoning of the 2007 Judgment (the *Nicaragua* v. *Honduras* Judgment this time) to which I have referred constitutes the essential basis of the Court's decision on the end of the maritime boundary between Nicaragua and Honduras and clarifies any possible obscurity in the decision, — which there is not, despite Sir Michael's zealous efforts to obfuscate its meaning. Because, I reiterate, even sticking to the third point of the *dispositif*, without referring to the reasoning underpinning it, the position would be clear: this boundary has been determined in its entirety and Honduras cannot assert any legal interest which might be affected by the Court's future judgment in the *Nicaragua* v. *Colombia* case — save by necessarily impugning the *res judicata* of the 2007 Judgment:

— the wording of paragraph 3 *of the dispositif*, which I analysed a few moments ago[28], is crystal clear*:* the line of the azimuth (which forms the maritime boundary between Honduras and Nicaragua) continues "until it reaches . . ."; "until" is not "towards", it is . . . until! It means "until it reaches" the zone indicated where its endpoint is located;

— and the sketch-maps which illustrate this *dispositif*, on pages 761 and 762 of the Judgment, leave no doubt whatever as to its meaning.

24 24. As regards sketch-maps, those Honduras included in its judges' folder on Monday call for some comment.

[Slide 4: Honduras's judges' folder (MW3); sketch-map No. 8 in the 2007 Judgment]

25. Let us begin with the one at tab 8 (not tab 8 in our folder but in Honduras's folder on Monday). It reproduces one of the two sketch-maps included in the 2007 Judgment to illustrate its *dispositif*. There are two things to note. First the arrow — which confirms that the maritime boundary set by the Judgment quite clearly does not stop at the 82nd meridian. Yet also, and more

[28] See *supra*, paras. 10-15.

important, the fact that Honduras chose to include this sketch-map — but not the other one now being shown on the screen:

[Slide 5: 2007 Sketch-map No. 7 — 2007 Judgment]

26. Whereas in fact

— the sketch-map which Honduras has reproduced is merely an enlargement of a small part of the first one — the one it has not produced and which you can see here;

— the map you can see on the screen (and which is also at tab 6 of the judges' folder for today), contains a dashed line (incidentally, the dashes start after the 82nd meridian) which extends a long way northeast and points towards a third State;

— which is in fact not Colombia, but Jamaica.

[Slide 6: Honduras's judges' folder (LBC 1); map showing the location of oil concessions]

27. And, extraordinarily, *none* of the five sketch-maps Honduras has provided you with shows that line, crucial though it is (with one qualification to which I shall return in a moment).

28. The sketch-map on screen now is particularly interesting. Under the pretext of informing the Court of the "factual . . . reality"[29], Honduras had no hesitation in reproducing a diagram supposed to illustrate the sites of oil concessions, one it had already produced at the time of the 2007 oral arguments, nor in leaving the words "The Honduran Line" on it. This is bold . . . Foolhardy even, when the line from the 2007 Judgment which is *res judicata* is superimposed on it — which shows that Honduras quite clearly could not grant anything whatsoever south of that line. Here we have a particularly striking illustration of Honduras's impugnment of the line decided by the Court.

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[Slide 7: Honduras's judges' folder (CLC 1) (map showing the zone to be delimited between Nicaragua and Honduras in the Application for permission to intervene)]

29. The other sketch-maps given to you on Monday lead to the same conclusions. On this one for example, Honduras has shown the rectangle over which it claims it can assert rights (on which I shall expand presently), but not the line from the Judgment — which we had added. A further small remark: the red line which purportedly represents the line fixed by the 1986 Treaty

[29]CR 2010/18, pp. 52-53, para. 13 (Boisson de Chazournes).

between Colombia and Honduras is shown as passing just above — north — of the 15th parallel. In fact, as I shall explain in a minute, the line established by the Treaty passes slightly below — *south* of that parallel.

[Slide 8: Honduras's judges' folder (MW1) (sketch-map showing the lines in the 1986 Maritime Delimitation Treaty between Honduras and Colombia and in the 1993 Maritime Delimitation Treaty between Colombia and Jamaica)]

30. The same comment applies to Monday's "MW1" sketch-map, which is identical, save for the rectangle, on which the addition of the line from the Judgment is equally eloquent: so much for *res judicata*!

[Slide 9: Honduras's judges' folder (MW2) (reproduction of fig. 3.1 in Nicaragua's Reply of 18 Sep. 2010, Vol. II)]

31. Honduras makes much of this map whose significance it partly outlines, as Costa Rica did last week[30]: this is obviously the relevant zone for the purposes of the delimitation between Colombia and Nicaragua and the horizontal limits of that zone, which is the zone shown in pink on the map, are not the limits Nicaragua sought from the Court — it made no conclusion on that point and the question is not in issue. It is regrettable that Sir Michael Wood has very incompletely quoted what my colleague and friend Paul Reichler said on this topic last week: "The consequence of the adoption by the Court of this boundary with Colombia, is that, as between those two States

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only, the waters on the Nicaraguan, or western side of the boundary would appertain to Nicaragua not Colombia . . ."[31]. Sir Michael stopped there to pose a question, "What does that mean ?"[32], a question which supposedly reflected his "grave concerns" — whereas in fact counsel for Nicaragua had given the answer in advance:

> "the boundary would appertain to Nicaragua not Colombia, except for the enclaved areas around Colombia's islands.
>
> This boundary between Nicaragua and Colombia would not have any impact on the rights of Costa Rica, Panama or any other third State. It is 'relational' — to use Professor Crawford's word — only to Nicaragua and Colombia; it is a boundary *relative* only to Nicaragua and Colombia. Nicaragua has never intended it to be

[30]CR 2010/12, p. 39, para. 26 (Lathrop); *ibid.*, p. 52, para. 13 (Ugalde).

[31]CR 2010/18, p. 36, para. 17 (Wood quoting Reichler, CR 2010/16, p. 22) (original emphasis).

[32]*Ibid.*, (Wood).

> applicable to any third State, as it thought it had made perfectly clear in its written pleadings[33], and certainly emphasized in the first round . . .[34]"[35].

"What does that mean?" Had my opponent cited what Mr. Reichler said in full, he would know, it is very clear: it means that Nicaragua wishes the rights of the third States to be fully safeguarded in this case, as they were by the 2007 Judgment for the countries which were then third States.

32. But let us return to our sketch-map and the conclusions which Honduras draws from it. It shows the very opposite of what it would have it say. In essence this sketch-map is the only one on which, plainly through inadvertence, Honduras left the 2007 line — yet it is a Nicaraguan map . . . And what it shows is that Nicaragua, for its part, is adhering strictly to the 2007 *res judicata*. Nothing more, nothing less, as the Agent has already just said.

[Slide 10: Honduras's judges' folder (MW4) (reproduction of fig. 3.1 of Nicaragua's Reply of 18 Sep. 2010; Vol. II with the addition of the line in the 1986 Treaty and the median line claimed by Colombia)]

27 33. The next — and last — sketch-map prompts the same comments. Honduras has added the Colombian line allegedly based on equidistance and the line from the 1986 Treaty. This once again strikingly confirms that what is in dispute between the Parties to the principal proceedings — between Nicaragua and Colombia — does not and cannot present any legal interest for Honduras. Everything happens beyond the line decided by *res judicata* in 2007. It is over. The Court has decided. Honduras is no longer concerned at all. If there is a legal interest it can only be north of the line based on the azimuth set by the 2007 Judgment. There cannot be and is no interest of Honduras which "may be affected by the decision" in the dispute which the Court has to determine between Nicaragua and Colombia.

[End of slide 10]

II. THE ABSENCE OF ANY LEGAL INTEREST SUCH AS TO JUSTIFY INTERVENTION BY HONDURAS

34. Members of the Court, the fact that Honduras´s Application for permission to intervene is incompatible with the fundamental principle of *res judicata* precludes you from granting this

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[33]"MN, para. 3.92 ('the only consistent principle to emerge from the case law is the principle that the Court lacks the competence to make determinations which may affect the claims of third States')".

[34]"CR 2010/13, p. 33, para. 16 (Reichler); emphasis added".

[35]CR 2010/18, p. 36, para. 17.

Application. The 1986 Treaty can do nothing to alter that fact. This is very much a secondary argument but one to which Honduras clings as to a raft in a shipwreck — and I have no doubt that Colombia will soon attempt (in vain) to throw it a lifeline. It is therefore only in the interests of absolute clarity that I am going to try to show, briefly, that Honduras cannot, of course, defeat the fundamental principle of *res judicata* by invoking the maritime delimitation treaty it concluded with Colombia in 1986.

35. Honduras claims to justify this as follows:

> "The 1986 Treaty between Honduras and Colombia vests rights in Honduras in [the] maritime zone [north of the 15th parallel over which both these States allegedly hold rights]. Thus, any claim by Nicaragua to maritime areas north of the 15th parallel is liable to affect the rights and interests of Honduras as a third State, as the Court recognized in its Judgment in October 2007. As such, Honduras has an actual, present, direct and concrete interest of a legal nature in the delimitation of the maritime areas in the zone to the north of the boundary line deriving from the 1986 Treaty"[36].

28 36. First of all, I believe, it is necessary to set things properly in context and not to confuse the various roles. In its 2007 Judgment the Court pondered any rights which third States might have in the zone in which the delimitation sought by Nicaragua was to be made. It ensured that its decision did not in any way affect the rights of those third States, which included Colombia. Honduras, meanwhile, was a Party to the proceedings and is bound by the Judgment. Today, it is Colombia which is a Party to the proceedings. Honduras is a third party and, as such, has made an Application for permission to intervene. I am well aware that it is also applying to intervene as a party but I fail to see how that exempts it from the requirement to comply with the 2007 Judgment and to face the ensuing consequences.

37. This moreover is why it is a secondary issue. And since the arguments intended to respond to it broadly rehearse those I have set out hitherto from a more general perspective, I shall be brief.

[Slide 11: Honduras's rectangle]

[36]Honduras's Application for permission to intervene, p. 3, para. 12; see also CR 2010/18, p. 15, para. 7 (López Contreras); *ibid.*, pp. 42-43, para. 38, or pp. 43-44, paras. 40-43 (Wood).

38. And the reasoning is simple, provided one refers to a sketch-map. I am no great hand at sketching maps, Mr. President, nor am I a great admirer of Napoleon, but on this point at least he was right: "a small sketch is worth more than a long report".

39. The slide now being shown reproduces Annex B to Nicaragua's Written Observations. It shows, hatched in green, a rectangle representing the legal interest on which Honduras seeks to rely.

[Slide No. 11-1]

This rectangle has not been invented by Nicaragua. It is precisely described in paragraph 17 of Honduras's Application for permission to intervene:

> "The zone containing the interests of a legal nature which may be affected by the Court's decision in the case lies roughly in a rectangle the starting point of which is the intersection of the 82nd meridian and parallel 14° 59' 08". Running eastwards, the lower boundary follows that parallel to the 80th meridian and the eastern side of the rectangle runs northwards along that meridian to the intersection with parallel 16° 20'; from there the northern boundary runs westwards along that parallel until it intersects with the 82nd meridian and the western side of the rectangle runs down that meridian to the starting point."

I think Napoleon was right. It is clearer on the sketch-map!

29 40. That is how Honduras itself defines its own legal interest in intervening. There is nothing else which concerns us.

[Slide No. 11-2]

41. This rectangle is shared throughout its length between the parties to the case which gave rise to the 2007 Judgment. We are, if I may put it like this, "at the heart of *res judicata*": the 2007 line attributes this rectangle, with the force of *res judicata*, to Honduras — in the northwest — and to Nicaragua — in the southeast.

42. I am well aware, Mr. President, that *res judicata* authority is only relative and that like all judgments of the Court, the 2007 Judgment "has no binding force except between the parties and in respect of that particular case". And that it is therefore not binding on Colombia. For Colombia, it is *res inter alios judicata*, just as the 1986 Honduran-Colombian Treaty is *res inter alios acta* vis-à-vis Nicaragua — as emphasized by Colombia in its Counter-Memorial: "The question of

delimitation between Colombia and Nicaragua is the subject-matter of the present proceedings — a matter which the Colombia-Honduras Agreement did not deal with"[37].

43. But that agreement has a role to play in our case, nonetheless: it indicates the boundary which Colombia recognized was its legal interest in the zone to be delimited. Let us see what the sketch-map tells us on which Mr. John Brown has shown the line described in Article 1 of the 1986 Treaty — which I shall now read out:

> "The maritime boundary between the Republic of Colombia and the Republic of Honduras is formed by geodesic lines which connecting [sic] the points located at the following coordinates:
>
> Point 1: Lat. 14° 59' 08" N Long. 82° 00' 00" W
>
> Point 2: Lat. 14° 59' 08" N Long. 79° 56' 00" W".

In other words, the 1986 Treaty provides, first, that the maritime boundary between Colombia and Honduras follows — for 120 nautical miles — parallel 14° 59' 08" N, which is very slightly south of the southern edge of the rectangle which supposedly illustrates Honduras's legal interest. The line then climbs northwards along meridian of longitude 79º 56' 00" W, "until it reaches the area where the rights of third States may be affected" (*I.C.J. Reports 2007 (II)*, p. 761, para. 321.3, operative part). (I would also point out that the arrow on the Court's diagram extends beyond the 80th meridian), north of the Joint Regime Area established by the Treaty of 12 November 1993 between Colombia and Jamaica, a treaty on which Colombia relies against Nicaragua[38].

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44. Mr. President, Jamaica is not itself present in the proceedings. The Court obviously will not cease safeguarding that country's interests — as, moreover, it safeguarded them in its 2007 Judgment, in which it stated that the maritime boundary between Nicaragua and Honduras "extends beyond the 82nd meridian without affecting third-State rights" (*I.C.J. Reports 2007 (II)*, p. 761, para. 319), but did not indicate the endpoint (*ibid*., and operative part, p. 763, para. 321.3). Patently, although it is not referred to, all of this concerns Jamaica which is not a party to the principal proceedings and has not applied to intervene in them, and which was not a party to the case giving rise to the 2007 Judgment. That decision thereby fully safeguards the rights of that

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[37]CMC, p. 361, para. 8.53.

[38]See CMC, p. 238, para. 4.188; p. 324, para. 7.28; p. 350, para. 8.26 or pp. 358-359, paras. 8.46-8.47; RC, p. 194, para. 5.62; p. 195, para. 5.67; or p. 295, para. 8.45.

country, which is doubly and entirely a third party. It is also why the Court could not, in any event, set a tripoint to mark the endpoint of the maritime boundary between Nicaragua and Honduras. To set such a point would necessarily involve Jamaica which is not a party to the principal proceedings.

45. The boundary established by the 1986 Treaty skirts the rectangle in which Honduras seeks to assert a legal interest. I understand, Mr. President, why Honduras, with disdain for Napoleonic precepts, refrained from annexing to its Application for permission to intervene any sketch-map whatsoever illustrating its alleged legal interests and why the only map which, under duress, it produced for that purpose last Monday (at tab 1 of its judges' folder) takes care not to include the line from the 2007 Judgment. To do so would have shown all too clearly that it has no right to intervene in the case between Nicaragua and Colombia — by its own admission, indeed: the rectangle on which it relies speaks for itself, or rather, speaks against Honduras . . .

31 46. Are treaties sacrosanct? Indeed they are. But only on condition that they do not affect the rights of third parties — regarding which they are *res inter alios acta*. Since although *pacta sunt servanda*[39], it is also just as well established that *pacta nec prosunt, nec nocent*[40]. It is valid treaties which must be upheld, not treaties which seek to dispose of the rights or, worse still, the territory, of others. The 1986 Treaty could not be relied on against Nicaragua since, far from "objectively" establishing a boundary dividing territories which are not subject to any claim by a third party, it encroaches on the sovereign rights of that party — as the Court stated in its 2007 Judgment, which is *res judicata* for Honduras.

47. My friend and opponent Sir Michael Wood can but lament:

> "assuming *arguendo* that Nicaragua's claim were correct, Honduras would then find itself with conflicting bilateral obligations. On the one hand, it has legal rights vis-à-vis Colombia under the 1986 Treaty. On the other, it could have conflicting obligations under the 2007 Judgment vis-à-vis Nicaragua."[41]

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[39]Cf. Art. 26 of the 1969 Vienna Convention on the Law of Treaties. See CR 2010/18, p. 14, para. 4 (López Contreras).

[40]Cf. Art. 34 of the Vienna Convention.

[41]CR 2010/18, p. 43, para. 39 (Wood).

That may be so . . . But there is nothing the Court can do to console Sir Michael! It is his client, Honduras, which has put itself in that position by concluding the 1986 Treaty to the detriment of Nicaragua, which this Court has already held that it should not have done.

48. As for Colombia, its concern is with *its side* of the 1986 line, which runs along parallel 14° 59' 08", that is to say, by the zone south of that line[42]. In that zone, Colombia can in these proceedings assert the rights it believes it holds and Nicaragua can dispute them. But no legal interest of Honduras is affected thereby. The Judgment of 8 October 2007 clearly, firmly and definitively circumscribed that alleged interest of Honduras — it is not in issue in the case which Nicaragua has brought before the Court against Colombia and in respect of which the Court ruled that it had jurisdiction in its 2007 Judgment — also a judgment of 2007, but of 13 December 2007. [End of slide 11]

32 49. Mr. President, as the Court has forcefully stated of the of *res judicata* principle — it is hard to understand how it can be characterized as "legal subterfuges"[43] — its "fundamental character appears from the terms of the Statute of the Court and the Charter of the United Nations":

> **"**That principle signifies that the decisions of the Court are not only binding on the parties, but are final, in the sense that they cannot be reopened by the parties as regards the issues that have been determined, save by procedures [Articles 60 and 61 of the Statute], of an exceptional nature, specially laid down for that purpose . .
>
> 116. Two purposes, one general, the other specific, underlie the principle of *res judicata*, internationally as nationally. First, the stability of legal relations requires that litigation come to an end. The Court's function, according to Article 38 of its Statute, is to 'decide', that is, to bring to an end, 'such disputes as are submitted to it'. Secondly, it is in the interest of each party that an issue which has already been adjudicated in favour of that party be not argued again." (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (II)*, pp. 90-91, paras. 115-116).

50. By seeking to challenge the Judgment of 8 October 2007, in disregard of Article 59 of the Statute, Honduras is jeopardizing the stability of legal relations and is unfortunately forgetting that "the terms of the Court's Judgment are definitive and binding" and that "they stand, not as something proposed to the Parties by the Court, but as something established by the Court" (*Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case*

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[42] *I.C.J. Reports* 2007 *(II)*, p. 759, para. 316.

[43] CR 2010/18, 18 October 2010, p. 19, para. 2 (Boisson de Chazournes).

concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1985*, p. 219, para. 48). The 2007 rulings are not recommendations or proposals made to the parties. They are binding on them and the proceedings between Nicaragua and Colombia cannot serve as a pretext offered to Honduras for escaping them.

51. Members of the Court, I am most grateful to you for listening to what I have had to say, which marks the end of the first round of oral argument of the Republic of Nicaragua.

33 Le PRESIDENT : Je vous remercie, Monsieur Allain Pellet. Votre exposé vient clore le premier tour de plaidoiries du Nicaragua.

L'audience est levée à 10 h 40.