INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

TERRITORIAL AND MARITIME DISPUTE

(NICARAGUA *v.* COLOMBIA)

APPLICATION BY COSTA RICA
FOR PERMISSION TO INTERVENE

JUDGMENT OF 4 MAY 2011

2011

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

DIFFÉREND TERRITORIAL ET MARITIME

(NICARAGUA c. COLOMBIE)

REQUÊTE DU COSTA RICA
À FIN D'INTERVENTION

ARRÊT DU 4 MAI 2011

Official citation:
Territorial and Maritime Dispute (Nicaragua v. *Colombia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2011*, p. 348

Mode officiel de citation:
Différend territorial et maritime (Nicaragua c. Colombie), requête à fin d'intervention, arrêt, C.I.J. Recueil 2011, p. 348

ISSN 0074-4441
ISBN 978-92-1-071130-2

Sales number
N° de vente: **1019**

4 MAY 2011

JUDGMENT

TERRITORIAL AND MARITIME DISPUTE

(NICARAGUA *v.* COLOMBIA)

APPLICATION BY COSTA RICA FOR PERMISSION TO INTERVENE

DIFFÉREND TERRITORIAL ET MARITIME

(NICARAGUA c. COLOMBIE)

REQUÊTE DU COSTA RICA À FIN D'INTERVENTION

4 MAI 2011

ARRÊT

TABLE OF CONTENTS

INTERNATIONAL COURT OF JUSTICE

YEAR 2011

2011
4 May
General List
No. 124

4 May 2011

TERRITORIAL AND MARITIME DISPUTE

(NICARAGUA *v.* COLOMBIA)

APPLICATION BY COSTA RICA FOR PERMISSION TO INTERVENE

Legal framework — Conditions for intervention under Article 62 of the Statute and Article 81 of the Rules of Court.

Article 81, paragraph 2 (a)*, of the Rules of Court — Interest of a legal nature which may be affected by the decision of the Court in the main proceedings — Difference between right and interest of a legal nature in the context of Article 62 of the Statute — Interest of a legal nature to be shown is not limited to the* dispositif *alone of a Judgment but may also relate to the reasons which constitute the necessary steps to the* dispositif.

Article 81, paragraph 2 (b)*, of the Rules of Court — Precise object of intervention certainly consists in informing the Court of the interest of a legal nature which may be affected by the decision of the Court in the main proceedings, but also in contributing to the protection of that interest — Proceedings on intervention are not an occasion for the State seeking to intervene or for the Parties to discuss questions of substance relating to the main proceedings.*

Article 81, paragraph 2 (c)*, of the Rules of Court — Basis and extent of the Court's jurisdiction — Statute does not require, as a condition for intervention, the existence of a basis of jurisdiction between the Parties to the main proceedings and the State which is seeking to intervene as a non-party.*

Article 81, paragraph 3, of the Rules of Court — Evidence in support of the request to intervene — Documents annexed in support of the Application for permission to intervene.

Examination of Costa Rica's Application for permission to intervene.

Whether Costa Rica has set out an interest of a legal nature in the context of Article 62 of the Statute — Costa Rica has claimed to have an interest of a legal nature in the exercise of its sovereign rights and jurisdiction in maritime area in the Caribbean Sea to which it is entitled under international law by virtue of its coast

facing on that sea — Although Nicaragua and Colombia differ in their assessment as to the limits of the area in which Costa Rica may have a legal interest, they recognize the existence of Costa Rica's interest of a legal nature in at least some areas claimed by the Parties to the main proceedings — The Court is not called upon to examine the exact geographical parameters of the maritime area in which Costa Rica considers it has an interest of a legal nature — Costa Rica has indicated the maritime area in which it considers it has an interest of a legal nature which may be affected by the decision of the Court in the main proceedings.

Whether Costa Rica has established that the interest of a legal nature which it has set out is one which may be affected by the decision of the Court in the main proceedings — Costa Rica has contended that the area in which it has an interest of a legal nature overlaps with the area in dispute between the Parties to the main proceedings, and that this is sufficient to demonstrate that the delimitation decision in those proceedings may affect its interest of a legal nature — Costa Rica has further contended that the southern terminus of the boundary to be delimited in the main proceedings may affect its interest of a legal nature inasmuch as that southern endpoint may be placed in its potential area of interest — To succeed with its request, Costa Rica must show that its interest of a legal nature needs a protection that is not provided by Article 59 of the Statute — Costa Rica has not demonstrated that the interest of a legal nature which it has asserted is one which may be affected by the decision in the main proceedings because the Court, when drawing a line delimiting the maritime areas between the Parties to the main proceedings, will, if necessary, end the line in question before it reaches an area in which the interests of a legal nature of third States may become involved.

JUDGMENT

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

In the case concerning the territorial and maritime dispute,

between

the Republic of Nicaragua,

represented by

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

as Agent and Counsel;

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

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

Mr. Paul Reichler, Attorney-at-Law, Foley Hoag LLP, Washington D.C., member of the Bars of the United States Supreme Court and the District of Columbia,
Mr. Antonio Remiro Brotóns, Professor of International Law, Universidad Autónoma, Madrid, member of the Institut de droit international,

as Counsel and Advocates;

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

as Scientific and Technical Advisers;

Mr. César Vega Masís, Director of Juridical Affairs, Sovereignty and Territory, Ministry of Foreign Affairs,
Mr. Julio César Saborio, Juridical Adviser, Ministry of Foreign Affairs,

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

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

as Counsel;

Ms Clara E. Brillembourg, Foley Hoag LLP, member of the Bars of the District of Columbia and New York,
Ms Carmen Martinez Capdevila, Doctor of Public International Law, Universidad Autónoma, Madrid,
Ms Alina Miron, Researcher, Nanterre Centre for International Law (CEDIN), Université de Paris Ouest, Nanterre-La Défense,
Mr. Edgardo Sobenes Obregon, First Secretary, Embassy of Nicaragua in the Kingdom of the Netherlands,

as Assistant Counsel,

and

the Republic of Colombia,

represented by

H.E. Mr. Julio Londoño Paredes, Professor of International Relations, Universidad del Rosario, Bogotá,

as Agent;

H.E. Mr. Guillermo Fernández de Soto, Chair of the Inter-American Juridical Committee, Member of the Permanent Court of Arbitration and former Minister for Foreign Affairs,

as Co-Agent;

Mr. James Crawford, S.C., F.B.A., Whewell Professor of International Law, University of Cambridge, member of the Institut de droit international, Barrister,
Mr. Rodman R. Bundy, *avocat à la cour d'appel de Paris*, member of the New York Bar, Eversheds LLP, Paris,
Mr. Marcelo Kohen, Professor of International Law at the Graduate Institute of International and Development Studies, Geneva, associate member of the Institut de droit international,

as Counsel and Advocates;

H.E. Mr. Francisco José Lloreda Mera, formerly Ambassador of the Republic of Colombia to the Kingdom of the Netherlands and Permanent Representative of Colombia to the OPCW, former Minister of State,
Mr. Eduardo Valencia-Ospina, Member of the International Law Commission,
H.E. Ms Sonia Pereira Portilla, Ambassador of the Republic of Colombia to the Republic of Honduras,
Mr. Andelfo García González, Professor of International Law, former Deputy Minister for Foreign Affairs,
Ms Victoria E. Pauwels T., Minister-Counsellor, Ministry of Foreign Affairs,

Mr. Julián Guerrero Orozco, Minister-Counsellor, Embassy of Colombia in the Kingdom of the Netherlands,
Ms Andrea Jiménez Herrera, Counsellor, Ministry of Foreign Affairs,

as Legal Advisers;

Mr. Thomas Fogh, Cartographer, International Mapping,

as Technical Adviser;

on the Application for permission to intervene filed by the Republic of Costa Rica,

represented by

H.E. Mr. Edgar Ugalde Alvarez, Ambassador of the Republic of Costa Rica to the Republic of Colombia,

as Agent;

Mr. Coalter G. Lathrop, Lecturing Fellow at Duke University School of Law, member of the North Carolina State Bar, Special Adviser to the Ministry of Foreign Affairs of Costa Rica,
Mr. Sergio Ugalde, Member of the Permanent Court of Arbitration, Senior Adviser to the Ministry of Foreign Affairs, member of the Costa Rican Bar,
Mr. Arnoldo Brenes, Senior Adviser to the Ministry of Foreign Affairs, member of the Costa Rican Bar,
Mr. Carlos Vargas, Director of the Legal Department, Ministry of Foreign Affairs,

as Counsel and Advocates;

H.E. Mr. Jorge Urbina Ortega, Ambassador of the Republic of Costa Rica to the Kingdom of the Netherlands,
Mr. Michael Gilles, Special Adviser to the Ministry of Foreign Affairs,
Mr. Ricardo Otarola, Minister and Consul General of Costa Rica to the Republic of Colombia,
Mr. Christian Guillermet, Ambassador, Deputy Permanent Representative of Costa Rica to the United Nations Office at Geneva,
Mr. Gustavo Campos, Consul General of Costa Rica to the Kingdom of the Netherlands,
Ms Shara Duncan, Counsellor at the Embassy of Costa Rica in the Kingdom of the Netherlands,
Mr. Leonardo Salazar, National Geographic Institute of Costa Rica,

as Advisers,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

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

As a basis for the jurisdiction of the Court, the Application invoked the provisions of Article XXXI of the American Treaty on Pacific Settlement signed on 30 April 1948, officially designated, according to Article LX thereof, as the "Pact of Bogotá" (hereinafter referred to as such), as well as the declarations made by the Parties under Article 36 of the Statute of the Permanent Court of International Justice, which are deemed, for the period which they still have to run, to be acceptances of the compulsory jurisdiction of the present Court pursuant to Article 36, paragraph 5, of its Statute.

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

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

4. Since the Court included upon the Bench no judge of the nationality of either of the Parties, each Party proceeded to exercise its right conferred by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case. Nicaragua first chose Mr. Mohammed Bedjaoui, who resigned on 2 May 2006, and subsequently Mr. Giorgio Gaja. Colombia first chose Mr. Yves Fortier, who resigned on 7 September 2010, and subsequently Mr. Jean-Pierre Cot.

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

6. On 21 July 2003, within the time-limit set by Article 79, paragraph 1, of the Rules of Court, Colombia raised preliminary objections to the jurisdiction of the Court. Consequently, by an Order of 24 September 2003, the Court, noting that by virtue of Article 79, paragraph 5, of the Rules of Court, the proceedings on the merits were suspended, fixed 26 January 2004 as the time-limit for the presentation by Nicaragua of a written statement of its observations and

submissions on the preliminary objections made by Colombia. Nicaragua filed such a statement within the time-limit thus prescribed, and the case thus became ready for hearing in respect of the preliminary objections.

7. Between 2003 and 2006, referring to Article 53, paragraph 1, of the Rules of Court, the Governments of Honduras, Jamaica, Chile, Peru, Ecuador and Venezuela asked to be furnished with copies of the pleadings and documents annexed in the case. Having ascertained the views of the Parties pursuant to that same provision, the Court decided to grant each of these requests. The Registrar duly communicated these decisions to the said Governments and to the Parties.

8. The Court held public hearings on the preliminary objections raised by Colombia from 4 to 8 June 2007. In its Judgment of 13 December 2007, the Court concluded that it had jurisdiction, under Article XXXI of the Pact of Bogotá, to adjudicate upon the dispute concerning sovereignty over the maritime features claimed by the Parties, other than the islands of San Andrés, Providencia and Santa Catalina, and upon the dispute concerning the maritime delimitation between the Parties.

9. By an Order of 11 February 2008, the President of the Court fixed 11 November 2008 as the new time-limit for the filing of Colombia's Counter-Memorial. That pleading was duly filed within the time-limit thus prescribed.

10. On 22 September 2008, referring to Article 53, paragraph 1, of the Rules of Court, the Government of the Republic of Costa Rica (hereinafter "Costa Rica") asked to be furnished with copies of the pleadings and documents annexed in the case. Having ascertained the views of the Parties pursuant to that same provision, the Court decided to grant this request. The Registrar duly communicated this decision to the Costa Rican Government and to the Parties.

11. By an Order of 18 December 2008, the Court directed Nicaragua to submit a Reply and Colombia to submit a Rejoinder and fixed 18 September 2009 and 18 June 2010 as the respective time-limits for the filing of those pleadings. The Reply and the Rejoinder were duly filed within the time-limits thus prescribed.

12. On 25 February 2010, Costa Rica filed an Application for permission to intervene in the case pursuant to Article 62 of the Statute. In this Application, it stated in particular that its intervention "would have the limited purpose of informing the Court of the nature of Costa Rica's legal rights and interests and of seeking to ensure that the Court's decision regarding the maritime boundary between Nicaragua and Colombia does not affect those rights and interests". In accordance with Article 83, paragraph 1, of the Rules of Court, certified copies of Costa Rica's Application were communicated forthwith to Nicaragua and Colombia, which were invited to furnish written observations on that Application.

13. On 26 May 2010, within the time-limit fixed for that purpose by the Court, the Governments of Nicaragua and Colombia submitted Written Observations on Costa Rica's Application for permission to intervene. In its observations, Nicaragua set forth the grounds on which, in particular, it considered that this Application failed to comply with the Statute and the Rules of Court. For its part, Colombia indicated in its observations the reasons for which it had no objection to the said Application. The Court having considered that Nicaragua

had objected to the Application, the Parties and the Government of Costa Rica were notified by letters from the Registrar dated 16 June 2010 that the Court would hold hearings, in accordance with Article 84, paragraph 2, of the Rules of Court, to hear the observations of Costa Rica, the State applying to intervene, and those of the Parties to the case.

14. After ascertaining the views of the Parties, the Court decided that copies of the Written Observations which they had furnished on Costa Rica's Application for permission to intervene would be made accessible to the public on the opening of the oral proceedings.

15. At the public hearings held on 11, 13, 14 and 15 October 2010 on whether to grant Costa Rica's Application for permission to intervene, the Court heard the oral arguments and replies of the following representatives:

For Costa Rica: H.E. Mr. Edgar Ugalde Alvarez, *Agent*,
Mr. Arnoldo Brenes,
Mr. Carlos Vargas,
Mr. Coalter G. Lathrop,
Mr. Sergio Ugalde.

For Nicaragua: H.E. Mr. Carlos José Argüello Gómez, *Agent*,
Mr. Antonio Remiro Brotóns,
Mr. Paul Reichler.

For Colombia: H.E. Mr. Julio Londoño Paredes, *Agent*,
Mr. Rodman R. Bundy,
Mr. James Crawford.

16. At the hearings, questions were put to the Parties and to Costa Rica by Members of the Court, to which replies were given orally and in writing, in accordance with Article 61, paragraph 4, of the Rules of Court. The Parties and Costa Rica each submitted written comments on the written replies provided by the others after the closure of the oral proceedings.

*

17. In its Application for permission to intervene, the Costa Rican Government stated in conclusion that it

> "respectfully requests [the Court's] permission to intervene in the present proceedings between Nicaragua and Colombia for the object and purpose stated in the present Application, and to participate in those proceedings in accordance with Article 85 of the Rules of Court" (para. 31).

In its Written Observations on Costa Rica's Application for permission to intervene, Nicaragua submitted

> "that the Application filed by Costa Rica requesting permission to intervene fails to comply with the Statute and the Rules of Court",

and that it

> "leaves it to the discretion of the Court to adjudge and determine whether Costa Rica has complied with the legal requirements necessary to base a right to intervene in the present proceedings and, hence whether the request of Costa Rica should be granted".

In its Written Observations on Costa Rica's Application for permission to intervene, Colombia concluded as follows:

> "the Government of Colombia has no objection to the intervention of Costa Rica.
>
> Notwithstanding the fact that Colombia considers that Costa Rica has satisfied the requirements of Article 62 of the Statute and Article 81 of the Rules of Court, Colombia wishes to emphasize that it disagrees with certain points raised in Costa Rica's Application. Colombia reserves its position on these points which it will explain at the appropriate stage of the proceedings."

18. At the oral proceedings, the following submissions were presented:

On behalf of the Government of Costa Rica,

at the hearing of 14 October 2010:

> "[The Court is] respectfully request[ed] . . . to grant the Republic of Costa Rica the right to intervene, in order to inform the Court of its interests of a legal nature which might be affected by the decision in this case, according to Article 62 of the Statute.
>
> . . . . . .
>
> [Costa Rica] seek[s] the application of the provisions of Article 85 of the Rules of Court, namely:
>
> — Paragraph 1: 'the intervening State shall be supplied with copies of the pleadings and documents annexed and shall be entitled to submit a written statement within a time-limit to be fixed by the Court', and
> — Paragraph 3: 'The intervening State shall be entitled, in the course of the oral proceedings, to submit its observations with respect to the subject-matter of the intervention.'"

On behalf of the Government of Nicaragua,

at the hearing of 15 October 2010:

> "In accordance with Article 60 of the Rules of Court and having regard to the Application for permission to intervene filed by the Republic of Costa Rica and oral pleadings, the Republic of Nicaragua respectfully submits that:
>
> The Application filed by the Republic of Costa Rica fails to comply with the requirements established by the Statute and the Rules of Court, namely, Article 62, and paragraph 2, *(a)* and *(b)* of Article 81 respectively."

On behalf of the Government of Colombia,

at the hearing of 15 October 2010:

> "In light of the considerations stated during these proceedings, [the] Government [of Colombia] wishes to reiterate what it stated in the Written Observations it submitted to the Court, to the effect that, in Colombia's view, Costa Rica has satisfied the requirements of Article 62 of the Statute and, consequently, that Colombia does not object to Costa Rica's request for permission to intervene in the present case as a non-party."

* * *

19. In its Application for permission to intervene dated 25 February 2010 (see paragraph 12 above), Costa Rica specified that it wished to intervene in the case as a non-party State for the "purpose of informing the Court of the nature of Costa Rica's legal rights and interests and of seeking to ensure that the Court's decision regarding the maritime boundary between Nicaragua and Colombia does not affect those rights and interests". Costa Rica also indicated that it had no intention of intervening in those aspects of the proceedings that relate to the territorial dispute.

20. Referring to Article 81 of the Rules of Court, Costa Rica set out in its Application what it considers to be the interest of a legal nature which may be affected by the Court's decision on the delimitation between Nicaragua and Colombia, the precise object of its intervention, and the basis of jurisdiction which is claimed to exist as between itself and the Parties to the main proceedings.

I. The Legal Framework

21. The legal framework of Costa Rica's request to intervene is set out in Article 62 of the Statute and Article 81 of the Rules of Court.

Under Article 62 of the Statute:

> "1. Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.
>
> 2. It shall be for the Court to decide upon this request."

Under Article 81 of the Rules of Court:

> "1. An application for permission to intervene under the terms of Article 62 of the Statute, signed in the manner provided for in Article 38, paragraph 3, of these Rules, shall be filed as soon as possible, and not later than the closure of the written proceedings. In exceptional circumstances, an application submitted at a later stage may however be admitted.
>
> 2. The application shall state the name of an agent. It shall specify the case to which it relates, and shall set out:
>
> *(a)* the interest of a legal nature which the State applying to intervene considers may be affected by the decision in that case;
>
> *(b)* the precise object of the intervention;
>
> *(c)* any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties to the case.
>
> 3. The application shall contain a list of the documents in support, which documents shall be attached."

22. Intervention being a procedure incidental to the main proceedings before the Court, it is, according to the Statute and the Rules of Court, for the State seeking to intervene to set out the interest of a legal nature which it considers may be affected by the decision in that dispute, the precise

object it is pursuing by means of the request, as well as any basis of jurisdiction which is claimed to exist as between it and the parties. The Court will examine in turn these constituent elements of the request for permission to intervene, as well as the evidence in support of that request.

* *

1. The Interest of a Legal Nature which May Be Affected

23. The Court observes that, as provided for in the Statute and the Rules of Court, the State seeking to intervene shall set out its own interest of a legal nature in the main proceedings, and a link between that interest and the decision that might be taken by the Court at the end of those proceedings. In the words of the Statute, this is "an interest of a legal nature which may be affected by the decision in the case" (expressed more explicitly in the English text than in the French "un intérêt d'ordre juridique . . . pour lui en cause"; see Article 62 of the Statute).

24. The finding by the Court of the existence of these elements is therefore a necessary condition to permit the requesting State to intervene, within the limits that it considers appropriate:

> "If a State can satisfy the Court that it has an interest of a legal nature which may be affected by the decision in the case, it may be permitted to intervene in respect of that interest." (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application for Permission to Intervene, Judgment, I.C.J. Reports 1990*, p. 116, para. 58.)

25. It is indeed for the Court, being responsible for the sound administration of justice, to decide in accordance with Article 62, paragraph 2, of the Statute on the request to intervene, and to determine the limits and scope of such intervention. Whatever the circumstances, however, the condition laid down by Article 62, paragraph 1, shall be fulfilled.

26. The Court observes that, whereas the parties to the main proceedings are asking it to recognize certain of their rights in the case at hand, a State seeking to intervene is, by contrast, contending, on the basis of Article 62 of the Statute, that the decision on the merits could affect its interests of a legal nature. The State seeking to intervene as a non-party therefore does not have to establish that one of its rights may be affected; it is sufficient for that State to establish that its interest of a legal nature may be affected. Article 62 requires the interest relied upon by the State seeking to intervene to be of a legal nature, in the sense that this interest has to be the object of a real and concrete claim of that State, based on law, as opposed to a claim of a purely political, economic or strategic nature. But this is not just any kind of interest of a legal nature; it must in addition be possible for it to be affected, in its content and scope, by the Court's future decision in the main proceedings.

Accordingly, an interest of a legal nature within the meaning of Article 62 does not benefit from the same protection as an established right and is not subject to the same requirements in terms of proof.

27. The decision of the Court granting permission to intervene can be understood as a preventive one, since it is aimed at allowing the intervening State to take part in the main proceedings in order to protect an interest of a legal nature which risks being affected in those proceedings. As to the link between the incidental proceedings and the main proceedings, the Court has previously stated that "the interest of a legal nature to be shown by a State seeking to intervene under Article 62 is not limited to the *dispositif* alone of a judgment. It may also relate to the reasons which constitute the necessary steps to the *dispositif*." (*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2001*, p. 596, para. 47.)

28. It is for the Court to assess the interest of a legal nature which may be affected that is invoked by the State that wishes to intervene, on the basis of the facts specific to each case, and it can only do so "*in concreto* and in relation to all the circumstances of a particular case" (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application for Permission to Intervene, Judgment, I.C.J. Reports 1990*, p. 118, para. 61).

2. The Precise Object of the Intervention

29. Under Article 81, paragraph 2 *(b)*, of the Rules of Court, an application for permission to intervene must set out "the precise object of the intervention".

30. Costa Rica asserts that the purpose of it requesting permission to intervene as a non-party is to protect the rights and interests of a legal nature of Costa Rica in the Caribbean Sea by all legal means available and, therefore, to make use of the procedure established for this purpose by Article 62 of the Statute of the Court. It thus seeks to inform the Court of the nature of Costa Rica's rights and interests of a legal nature that could be affected by the Court's maritime delimitation decision between Nicaragua and Colombia. Costa Rica has pointed out that, in order to inform the Court of its rights and interests of a legal nature and ensure that they are protected in the forthcoming judgment, it is not necessary "to establish the existence of a dispute or to resolve one with the Parties to this case".

31. Nicaragua asserts that Costa Rica has failed to identify the precise object of its intervention, and that its "vague" object of informing the Court of its alleged rights and interests in order to ensure their protection is insufficient.

32. Colombia, on the other hand, considers that Costa Rica has satisfied the requirements of Article 62 of the Statute and Article 81 of the Rules of Court.

*

33. In the opinion of the Court, the precise object of the request to intervene certainly consists in informing the Court of the interest of a legal nature which may be affected by its decision in the dispute between Nicaragua and Colombia, but the request is also aimed at protecting that interest. Indeed, if the Court acknowledges the existence of a Costa Rican interest of a legal nature which may be affected and allows that State to intervene, Costa Rica will be able to contribute to the protection of such an interest throughout the main proceedings.

34. The Court recalls that the Chamber formed to deal with the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, when considering the request for permission to intervene submitted by Nicaragua in that case, stated that "[s]o 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" (*Judgment, I.C.J. Reports 1990*, p. 130, para. 90). The Chamber also considered Nicaragua's second purpose "of seeking to ensure that the determinations of the Chamber did not trench upon the legal rights and interests of the Republic of Nicaragua", and concluded that, even though the expression "trench upon the legal rights and interests" is not found in Article 62 of the Statute, "it is perfectly proper, and indeed the purpose of intervention, for an intervener to inform the Chamber of what it regards as its rights or interests, in order to ensure that no legal interest may be 'affected' without the intervener being heard" *(ibid.)*.

35. The Court is of the view that the object of the intervention, as indicated by Costa Rica, is in conformity with the requirements of the Statute and the Rules of Court, since Costa Rica seeks to inform the Court of its interest of a legal nature which may be affected by the decision in the case, in order to allow that interest to be protected.

36. The Court points out, moreover, that the written and oral proceedings concerning the Application for permission to intervene must focus on demonstrating the interest of a legal nature which may be affected; these proceedings are not an occasion for the State seeking to intervene or for the Parties to discuss questions of substance relating to the main proceedings, which the Court cannot take into consideration during its examination of whether to grant a request for permission to intervene.

3. The Basis and Extent of the Court's Jurisdiction

37. As regards the basis of jurisdiction, Costa Rica, while informing the Court that it has made a declaration under Article 36, paragraph 2, of the Statute and is a party to the Pact of Bogotá, specified that it is seeking to intervene as a non-party State and that, accordingly, it has no need to set out a basis of jurisdiction as between itself and the Parties to the dispute.

38. In this respect the Court observes that its Statute does not require, as a condition for intervention, the existence of a basis of jurisdiction between the parties to the proceedings and the State which is seeking to intervene as a non-party.

As the Chamber of the Court formed to deal with the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)* stated:

> "It . . . follows . . . from the juridical nature and from the purposes of intervention that the existence of a valid link of jurisdiction between the would-be intervener and the parties is not a requirement for the success of the application. On the contrary, the procedure of intervention is to ensure that a State with possibly affected interests may be permitted to intervene even though there is no jurisdictional link and it therefore cannot become a party." (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application for Permission to Intervene, Judgment, I.C.J. Reports 1990*, p. 135, para. 100.)

39. By contrast, such a basis of jurisdiction is required if the State seeking to intervene intends to become itself a party to the case (see *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2001*, p. 589, para. 35).

40. Nicaragua did not contest, on jurisdictional grounds, the right of Costa Rica to seek protection of its interest on the basis of Article 62 of the Statute. It has merely recalled that "the relative effect of the Court's decision which, according to Article 59 of the Statute, 'has no binding force except between the parties and in respect of that particular case', is that it helps to protect third States' interests of all kinds". In addition, Nicaragua has pointed out that Costa Rica has the choice to institute principal proceedings, which would enable it to ensure the recognition of its legal interests going beyond their mere protection.

41. As regards the relative effect of the Court's decision in a case which is brought before it, the Court has previously observed that "the protection afforded by Article 59 of the Statute may not always be sufficient" (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 421, para. 238).

42. As for the possibility available to a State of bringing principal proceedings before the Court, that in no way removes its right under Article 62 of the Statute to apply to the Court for permission to intervene.

Where the Court permits intervention, it may limit the scope thereof and allow intervention for only one aspect of the subject-matter of the Application which is before it. As the Chamber of the Court formed to deal with the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)* noted: "[t]he scope of the intervention in this particular case, in relation to the scope of the case as a whole, necessarily involves limitations of the right of the intervener to be heard" (*Judgment, I.C.J. Reports 1990*, p. 136, para. 103; see also *ibid.*, para. 104).

43. Thus, Article 85, paragraph 3, of the Rules of Court provides that, if an application is granted, "[t]he intervening State shall be entitled, in the course of the oral proceedings, to submit its observations with respect to the subject-matter of the intervention". Clearly, this applies to the subject-matter as defined by the Court, for the purposes of its decision permitting intervention.

4. The Evidence in Support of the Request to Intervene

44. Article 81, paragraph 3, of the Rules of Court provides that "[t]he application shall contain a list of the documents in support, which documents shall be attached".

45. In its Written Observations on Costa Rica's Application for permission to intervene, Nicaragua points out that Costa Rica

> "did not attach documents or any clear elements of proof of its contentions. This lack of supporting documentation, or even illustrations, makes it even more difficult to determine exactly what are the legal interests claimed by Costa Rica."

46. Costa Rica, for its part, states that the attachment of documents to an Application for permission to intervene is not an obligation and that, in any event, it is a matter for it to choose the evidence in support of its Application.

Moreover, Costa Rica distinguishes between two stages of the proceedings in terms of the standard of proof which is required of it: submission of the Application for permission to intervene and, once that Application has been granted by the Court, participation in the oral proceedings on the merits of the case. According to Costa Rica, it is not obliged, at the current stage of the proceedings, to set forth in full every argument that will be made in the subsequent stage. It is thus sufficient for it to demonstrate the existence of a legal interest that may be affected by the decision of the Court, without going any further.

Accordingly, Costa Rica argues that it is not its purpose to inform the Court, at this stage, of the full extent of its interest, which will occur in the second stage of the intervention proceedings, when it will inform the Court on the subject in detail and in full. In any event, for Costa Rica, the initial stage cannot be a substitute for the second stage in providing the Court with information.

47. Nicaragua, by contrast, takes the view that Costa Rica has informed the Court, at this stage of the proceedings, of the content and scope of what it considers to be its interests of a legal nature which may be affected by the decision in the dispute brought before the Court, and that it has thereby accomplished the mission which it had set for itself.

*

48. The Court recalls that, since the State seeking to intervene bears the burden of proving the interest of a legal nature which it considers may

be affected, it is for that State to decide which documents, including illustrations, are to be attached to its application. Article 81, paragraph 3, of the Rules of Court only obliges the State in question, should it decide to attach documents to its application, to provide a list thereof (see *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2001*, p. 587, para. 29).

49. The evidence required from the State seeking to intervene cannot be described as restricted or summary at this stage of the proceedings, because, essentially, the State must establish the existence of an interest of a legal nature which may be affected by the decision of the Court. Since the object of its intervention is to inform the Court of that legal interest and to ensure it is protected, Costa Rica must convince the Court, at this stage, of the existence of such an interest; once that interest has been recognized by the Court, it will be for Costa Rica to ensure, by participating in the proceedings on the merits, that such interest is protected in the judgment which is subsequently delivered.

50. Consequently, it is for the State seeking to intervene to produce all the evidence it has available in order to secure the decision of the Court on this point.

51. This does not prevent the Court, if it rejects the application for permission to intervene, from taking note of the information provided to it at this stage of the proceedings. As the Court has already stated, "[it] will, in its future judgment in the case, take account, as a fact, of the existence of other States having claims in the region" (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, p. 26, para. 43).

II. Examination of Costa Rica's Application for Permission to Intervene

52. The Court recalls that, in its Application, Costa Rica requests the Court's permission to intervene as a non-party (see paragraph 37 above) and maintains that its Application satisfies the requirements of Article 62 of the Statute and of Article 81 of the Rules of Court.

* *

The Interest of a Legal Nature Claimed by Costa Rica

53. The Court will now turn to consider whether Costa Rica has sufficiently set out an "interest of a legal nature" which may be affected by the decision of the Court in the main proceedings. The Court will examine both of the elements, namely the existence of an interest of a legal nature on the part of Costa Rica and the effects that the Court's eventual decision on the merits might have on this interest, in order for the request for inter-

vention to succeed (see *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Application for Permission to Intervene, Judgment, I.C.J. Reports 1981*, p. 19, para. 33).

54. In its Application, Costa Rica states that its:

> "interest of a legal nature which may be affected by the decision of the Court is Costa Rica's interest in the exercise of its sovereign rights and jurisdiction in the maritime area in the Caribbean Sea to which it is entitled under international law by virtue of its coast facing on that sea".

It takes the view that the arguments developed by Nicaragua and Colombia in their delimitation dispute affect its legal interest, which it wishes to assert before the Court. According to Costa Rica, such interest is established in reference to the "hypothetical delimitation scenario between Costa Rica and Nicaragua" and, consequently, if it does not intervene, "the delimitation decision in this case may affect the legal interest of Costa Rica".

55. Costa Rica has indicated that the area in question is bounded in the north by a putative equidistance line with Nicaragua and in the east by a line that is 200 nautical miles from Costa Rica's coast, which was identified as the "minimum area of interest" of Costa Rica.

At the hearings, the geographical scope of Costa Rica's claimed interest was clearly depicted through several illustrations, in many of which the area in dispute in the main proceedings and the "minimum area of interest" of Costa Rica were shown in distinctive colours, used as references in later submissions (see sketch-map, p. 366). Costa Rica has explained that

> "[the] set, in light red, is the part of the Caribbean Sea in dispute between the Parties in this case, and is the very subject-matter of the delimitation case between Nicaragua and Colombia . . . The other set, in blue, is the part of the Caribbean Sea in which Costa Rica has an interest of a legal nature. It is bounded by an agreed boundary with Panama, a notional boundary with Nicaragua and the outer limits of Costa Rica's EEZ entitlement. The purple or the dark blue area is the intersection of the two sets. It represents the area in dispute in this case in which Costa Rica has a legal interest."

56. The Court notes that Costa Rica initially claimed to have an interest in ensuring that its rights and interests under the 1977 Facio-Fernández Treaty with Colombia, which it signed but did not ratify, are not affected by the Court's decision. However, in response to a question put by a Member of the Court, it acknowledged that neither the assumptions underlying the 1977 Treaty, referred to in its Application and oral submissions, nor the "1977 agreement itself constitute an interest of a legal

nature that may be affected by the decision in this case *per se*". Costa Rica clarified therein that it

> "has not asked the Court to adjudicate the legal merits of the notions underpinning the 1977 agreement. Instead, Costa Rica has simply brought to the Court's attention the implications for the geographic scope of Costa Rica's legal interest, should the Court's decision affect its neighbourly relationships in the vicinity of the 1977 agreement. . . ." (See sketch-map, p. 366.)

Finally, Costa Rica states that "it does not seek any particular outcome from this case in relation to this Treaty".

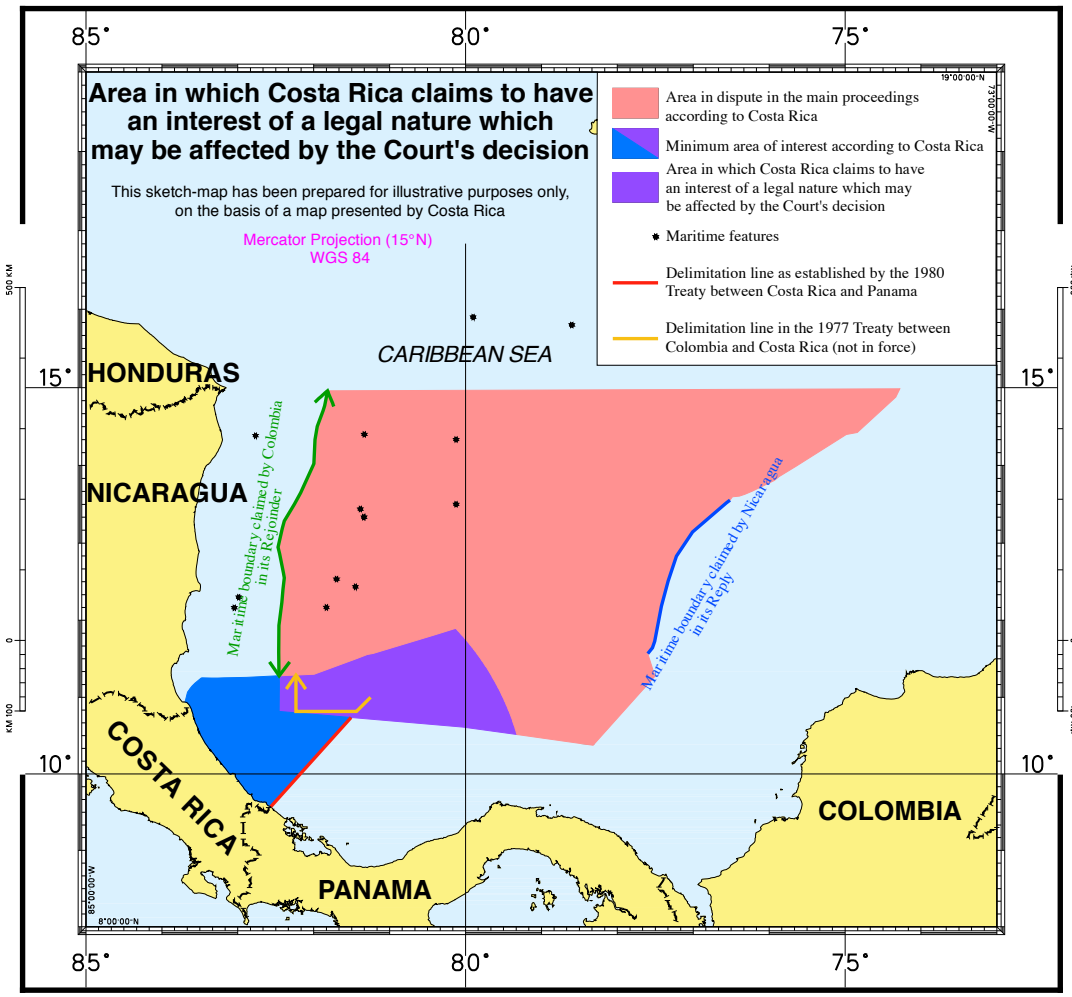
57. Costa Rica contends that its interest is of a legal nature because it is manifest in its Constitution, its domestic laws and regulations, and the international agreements it has concluded.

58. For its part, Nicaragua asserts that the mere fact that Costa Rica and Nicaragua are neighbours and the absence of a lateral maritime delimitation line are not enough to justify the existence of a relevant interest for intervening in the delimitation between the opposite coasts of Nicaragua and Colombia. For Nicaragua,

> "[s]imply voicing a legal claim is not enough for that application to be granted. It is necessary, absolutely necessary, that this claim, proper, real and present, should be affected by the decision which the Court will one day deliver to settle the dispute before it . . . To some extent it is speculation, but speculation based on plausible arguments."

59. Concerning Costa Rica's "minimum area of interest", Nicaragua claims that "Costa Rica's legal interests are confined to a smaller area", which must be bounded by the lines agreed in the treaties with Colombia and Panama (see sketch-map, p. 366). Although Nicaragua recognizes that Costa Rica is not formally bound by the 1977 Treaty, in the absence of its ratification, it asserts that Costa Rica is bound, by its consistent conduct for over 30 years, to its obligations under the treaty; consequently, Costa Rica's interests stop at that treaty line.

60. Nicaragua emphasizes that "the Statute requires the existence of an interest of a legal nature, which excludes interests of all other kinds, whether political, economic, geostrategic or simply material, unless they are connected with a legal interest". Nicaragua concludes that Costa Rica "has not . . . managed to show the existence of a direct, concrete and present legal interest of its own, which is a necessary premise of any intervention. It has not managed to show that this exists in the context of the dispute between Nicaragua and Colombia", but has rather shown that it has



> "legal interests in the delimitation with its neighbour Nicaragua . . . [and] that it is presenting itself as a party — not to the dispute between Nicaragua and Colombia — but to a dispute between itself and Nicaragua regarding the maritime delimitation between the two countries".

61. Colombia, for its part, shares Costa Rica's conclusion that the latter has rights and interests of a legal nature which may be affected by the decision in the main proceedings. Colombia contends that "[t]he legal rights and interests of Costa Rica . . . include the legal rights and obligations that [the latter has] subscribed to in the delimitation agreements with Colombia". Therefore, according to Colombia, Costa Rica has a legal interest relating to the maritime areas delimited by the 1977 Treaty, as well as in the delimitation of an eventual tripoint between Costa Rica, Colombia and Nicaragua.

62. With reference to Costa Rica's "minimum area of legal interest" as depicted at the hearings, Colombia deems this claimed maritime area to be "in acute tension with the long-standing position of Costa Rica as to the maritime entitlements of Colombia's islands".

63. Colombia disputes Nicaragua's assertion that Costa Rica has no interest in areas going beyond the line of the 1977 Treaty. In Colombia's view, while Costa Rica's claims are limited to the areas defined by the treaty vis-à-vis Colombia, it is not limited to claiming only these areas vis-à-vis Nicaragua. In its comments on Costa Rica's response to a question put to it by a Member of the Court, Colombia reaffirms the validity of the 1977 Treaty's boundary lines, despite its non-ratification, since the treaty "has been given effect for more than 30 years".

64. Colombia concludes 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".

*

65. The Court notes that, although Nicaragua and Colombia differ in their assessment as to the limits of the area in which Costa Rica may have a legal interest, they recognize the existence of Costa Rica's interest of a legal nature in at least some areas claimed by the parties to the main proceedings. The Court however is not called upon to examine the exact geographical parameters of the maritime area in which Costa Rica considers it has an interest of a legal nature.

66. The Court recalls that the Chamber in the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, when rejecting Nicaragua's Application for permission to intervene with respect to any question of delimitation within the Gulf of Fonseca, stated that

> "the essential difficulty in which the Chamber finds itself, on this matter of a possible delimitation within the waters of the Gulf, is that Nicaragua did not in its Application indicate any maritime spaces in

> which Nicaragua might have a legal interest which could be said to be affected by a possible delimitation line between El Salvador and Honduras" (*Judgment, I.C.J. Reports 1990*, p. 125, para. 78).

In the present case, by contrast, Costa Rica has indicated the maritime area in which it considers it has an interest of a legal nature which may be affected by the decision of the Court in the main proceedings (see paragraphs 54-55 above).

* *

67. The indication of this maritime area is however not sufficient in itself for the Court to grant Costa Rica's Application for permission to intervene. Under Article 62 of the Statute, it is not sufficient for a State applying to intervene to show that it has an interest of a legal nature which is the object of a claim based on law, in the maritime area in question; it must also demonstrate that this interest may be affected by the decision in the main proceedings, as the Court has pointed out in paragraph 26 of this Judgment.

68. Costa Rica contends that it need only show that a delimitation decision could affect its legal interest, and that such would be the case if it is shown that there is any "overlap whatsoever between the area in which Costa Rica has a legal interest . . . and the area in dispute between the Parties to this case". In Costa Rica's view, there is a rather large overlap between these two areas, of approximately 30,000 km^2. Costa Rica submits that this area of overlap, which was depicted in purple at the hearings, is sufficient to demonstrate that the delimitation decision in this case may affect the legal interest of Costa Rica (see sketch-map, p. 366). It also contends that Nicaragua has failed to clarify where the line representing the southern limit of its claims would be located, thus leaving Costa Rica in uncertainty. Specifically, Costa Rica asserts that even the most northerly southern limit of the areas claimed by Nicaragua in its written pleadings would encroach on Costa Rica's entitlements.

69. Costa Rica further contends that the location of the southern terminus of the boundary between Nicaragua and Colombia which, in its view, will be decided by the Court may also affect its legal interest in the area, inasmuch as the southern endpoint may be placed in Costa Rica's potential area of interest.

70. Initially, Costa Rica argued that the relationship between its area of interest and the 1977 Treaty's line may be affected by the Court's decision in the main proceedings. It claimed at the time that Nicaragua's asserted boundary claims against Colombia, should they prevail, would not only have the effect of eliminating Costa Rica's boundary relationships with Colombia in the Caribbean Sea, but would also affect the location of Costa Rica's tripoint with Colombia and Nicaragua. Under such a ruling, Costa Rica contended, "the entire basis on which the 1977 line was negotiated would be eliminated by creating a zone of non-Colombian

waters immediately north and east of the 1977 line, thus rendering the agreement between Costa Rica and Colombia without purpose". Costa Rica asserted as well that Colombia has also made a boundary claim in the case that could affect Costa Rica's rights and interests in relation with the 1977 Treaty's line. The boundary claimed by Colombia against Nicaragua, in Costa Rica's view, "is situated west of the line of longitude agreed to separate Costa Rican and Colombian maritime areas and, thereby, encompasses area that would go to Costa Rica under the terms of their 1977 agreement". If Colombia's claims were to prevail, the decision would affect Costa Rica's rights under the 1977 Treaty, as well as the location of Costa Rica's tripoint with Colombia and Nicaragua.

71. However, in its response to a question put to it by a Member of the Court, Costa Rica has acknowledged that the 1977 Treaty does not itself constitute an interest of a legal nature that may be affected by the decision in this case and that it does not seek any particular outcome from this case in relation to this Treaty (see paragraph 56 above).

72. Accordingly, there is no need for the Court to consider Costa Rica's arguments contained in paragraph 70 above or the contentions set forth by Nicaragua and Colombia in response to those arguments.

73. Finally, Costa Rica asserts that its interests could be affected even if the Court places a directional arrow at the end of the boundary line between Nicaragua and Colombia that does not actually touch Costa Rica's potential interests. Costa Rica contends that the Court cannot be sure to place such a directional arrow a safe distance away from Costa Rica's area of interests without it providing "full information about the extent of [its] interests" to the Court by way of intervention.

74. Nicaragua, for its part, notes that since the Parties do not seek delimitation in Costa Rica's area of interest, "Costa Rica's interests will not — cannot — be affected by the decision in this case".

75. Nicaragua reiterates that "it does not seek from the Court any delimitation in the area in which Costa Rica now considers itself to have legal interests". Nicaragua explains that Nicaragua's boundary claims, if adopted by the Court, would not impact this area because the enclaves Nicaragua has placed around San Andrés or any other Colombian islands do not encroach on Costa Rica's area of interest and the line claimed by Nicaragua does not impact the said area either. Nicaragua does not read Colombia's written pleadings as calling for delimitation of, or within, the areas in which Costa Rica has expressed an interest, either.

76. Nicaragua asserts that

> "even if the Court were to take Costa Rica's new definition of its legal interest into consideration, the result would be the same . . . Even the

> expanded area now claimed by Costa Rica as its area of legal interest cannot be affected by the decision of the Court in this case, under any circumstances, because the Court cannot and does not delimit in any area claimed by a third State."

77. Colombia disputes Costa Rica's contention that Colombia's own claims in the case would affect Costa Rica's interests. Colombia asserts that its claims leave open the endpoints of the delimitation so as not to affect third-State interests.

78. Nicaragua contends that Costa Rica is protected by Article 59 of the Statute and the practice of the Court in maritime delimitation cases in that third States' interests are left unaffected. Nicaragua has argued that Costa Rica's intervention should be disallowed because the interest of a legal nature it claims to have would not be affected by the decision of the Court.

79. Costa Rica considers this argument to be flawed for three reasons:

> "[F]irst, Article 59 protection is, in practical terms, insufficient. Second, the avenues suggested by Nicaragua do not provide the Court with what it needs, namely, complete and correct information about Costa Rica's interests that may be affected by the decision of the Court. And third, bringing new claims to protect legal interests, that otherwise could be protected by means of Article 62, is inefficient, unnecessary and only serves to compound the problem faced by the Court in this case, which is, lack of information about the true extent of Costa Rica's interests."

Costa Rica relies in this regard on the Court's finding in the case concerning *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening)* (see paragraph 41 above).

80. Costa Rica argues that Article 59 does not offer sufficient protection in practical terms because

> "[a] judgment by this Court, delimiting maritime areas between Nicaragua and Colombia, implies much more than the allocation of the column of water and sea-bed to the Parties. It entails title to maritime areas, the right to exercise their sovereign rights and jurisdiction under international law in those areas, the right to exclude others from them and the right of enjoyment"

and may prompt States to "incorporate into their own legal framework that final and binding judgment".

81. Although Nicaragua acknowledges that a judgment by the Court may have legal consequences for third States, it nevertheless considers that in order to be allowed to intervene, a State must establish that the decision by the Court will affect its legal interest, which Costa Rica has

failed to do. Nicaragua emphasizes that the test for intervention, as the Court stated when it ruled on Italy's Application to intervene,

> "is not whether the participation of Italy may be useful or even necessary to the Court; it is whether, assuming Italy's non-participation, a legal interest of Italy is *en cause*, or is likely to be affected by the decision" (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, p. 25, para. 40).

82. Nicaragua asserts that the only effect of a Court judgment favourable to Nicaragua is that Costa Rica could attempt to claim a delimitation vis-à-vis Nicaragua that would extend beyond the limits it accepted with Colombia. If, in contrast, Colombia is favoured, the 1977 Treaty would dictate the obligations of the parties in this respect.

83. In any event, according to Nicaragua, "Article 59, and the consistent practice of the Court in avoiding running into third States' interests, assure the relational nature of the delimitation in question in this case".

84. Colombia, for its part, contends that Article 62 co-exists in the Statute with Articles 59 and 63 and that each of these provisions has its own role to play. While Colombia agrees that Article 59 affords some protection, it believes that States which comply with the requirements of Article 62 should be allowed to intervene.

*

85. The Court recalls that it has stated in the past that "in the case of maritime delimitations where the maritime areas of several States are involved, the protection afforded by Article 59 of the Statute may not always be sufficient" (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 421, para. 238).

At the same time, it is equally true, as the Chamber of the Court noted in its Judgment on the Application by Nicaragua for permission to intervene in the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, that

> "the taking into account of all the coasts and coastal relationships . . . as a geographical fact for the purpose of effecting on eventual delimitation as between two riparian States . . . in no way signifies that by such an operation itself the legal interest of a third . . . State . . . may be affected" (*Judgment, I.C.J. Reports 1990*, p. 124, para. 77).

Furthermore, in the case concerning *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)*, the Court, after noting that "the delimitation

[between Romania and Ukraine] will occur within the enclosed Black Sea, with Romania being both adjacent to, and opposite Ukraine, and with Bulgaria and Turkey lying to the south" (*Judgment, I.C.J. Reports 2009*, p. 100, para. 112), stated that "[i]t will stay north of any area where third party interests could become involved" *(ibid.)*.

86. It follows that a third State's interest will, as a matter of principle, be protected by the Court, without it defining with specificity the geographical limits of an area where that interest may come into play (see also paragraph 65 above). The Court wishes to emphasize that this protection is to be accorded to any third State, whether intervening or not. For instance, in its Judgment concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening)*, the Court adopted the same position with regard to Equatorial Guinea, which had intervened as a non-party, and to Sao Tome and Principe, which had not (*I.C.J. Reports 2002*, p. 421, para. 238).

87. The Court, in its above-mentioned Judgment, had occasion to indicate the existence of a certain relationship between Articles 62 and 59 of the Statute. Accordingly, to succeed with its request, Costa Rica must show that its interest of a legal nature in the maritime area bordering the area in dispute between Nicaragua and Colombia needs a protection that is not provided by the relative effect of decisions of the Court under Article 59 of the Statute, i.e., Costa Rica must fulfil the requirement of Article 62, paragraph 1, by showing that an interest of a legal nature which it has in the area "may be affected" by the decision in the case (see paragraph 26 above).

88. The Court recalls in this connection that, in the present case, Colombia has not requested that the Court fix the southern endpoint of the maritime boundary that it has to determine. Indeed, as the Court noted earlier (para. 77), Colombia asserts that its claims deliberately leave open the endpoints of the delimitation so as not to affect third State's interests. The Court further recalls that Nicaragua has agreed "that any delimitation line established by the Court should stop well short of the area [in which, according to Costa Rica, it has an interest of a legal nature,] and terminate [with] an arrow pointing in the direction of Costa Rica's area".

89. In the present case, Costa Rica's interest of a legal nature may only be affected if the maritime boundary that the Court has been asked to draw between Nicaragua and Colombia were to be extended beyond a certain latitude southwards. The Court, following its jurisprudence, when drawing a line delimiting the maritime areas between the Parties to the main proceedings, will, if necessary, end the line in question before it reaches an area in which the interests of a legal nature of third States may be involved (see *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 100, para. 112).

90. In view of the above, the Court concludes that Costa Rica has not demonstrated that it has an interest of a legal nature which may be affected by the decision in the main proceedings.

* * *

91. For these reasons,

THE COURT,

By nine votes to seven,

Finds that the Application for permission to intervene in the proceedings filed by the Republic of Costa Rica under Article 62 of the Statute of the Court cannot be granted.

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Xue; *Judge* ad hoc Cot;

AGAINST: *Judges* Al-Khasawneh, Simma, Abraham, Cançado Trindade, Yusuf, Donoghue; *Judge* ad hoc Gaja.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this fourth day of May, two thousand and eleven, in four copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Nicaragua, the Government of the Republic of Colombia, and the Government of the Republic of Costa Rica, respectively.

(Signed) Hisashi OWADA,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judges AL-KHASAWNEH and ABRAHAM append dissenting opinions to the Judgment of the Court; Judge KEITH appends a declaration to the Judgment of the Court; Judges CANÇADO TRINDADE and YUSUF append a joint dissenting opinion to the Judgment of the Court; Judge DONOGHUE appends a dissenting opinion to the Judgment of the Court; Judge *ad hoc* GAJA appends a declaration to the Judgment of the Court.

(Initialled) H.O.
(Initialled) Ph.C.