Corrigé
Corrected

CR 2022/26

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2022

Public sitting

held on Tuesday 6 December 2022, at 10 a.m., at the Peace Palace,

President Donoghue, presiding,

***in the case concerning* Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua *v.* Colombia)**

VERBATIM RECORD

ANNÉE 2022

Audience publique

tenue le mardi 6 décembre 2022, à 10 heures, au Palais de la Paix,

sous la présidence de Mme Donoghue, présidente,

***en l'affaire relative à la* Question de la délimitation du plateau continental entre le Nicaragua et la Colombie au-delà de 200 milles marins de la côte nicaraguayenne (Nicaragua c. Colombie)**

COMPTE RENDU

Present:	President	Donoghue
	Vice-President	Gevorgian
	Judges	Tomka
		Abraham
		Bennouna
		Yusuf
		Xue
		Sebutinde
		Bhandari
		Robinson
		Salam
		Iwasawa
		Nolte
		Charlesworth
`		Brant
	Judges *ad hoc*	McRae
		Skotnikov
	Registrar	Gautier

Présents : Mme Donoghue, présidente
M. Gevorgian, vice-président
MM. Tomka
Abraham
Bennouna
Yusuf
Mmes Xue
Sebutinde
MM. Bhandari
Robinson
Salam
Iwasawa
Nolte
Mme Charlesworth,
M. Brant, juges
MM. McRae
Skotnikov, juges *ad hoc*

M. Gautier, greffier

The Government of the Republic of Nicaragua is represented by:

H.E. Mr. Carlos José Argüello Gómez, Permanent Representative of the Republic of Nicaragua to the international organizations based in the Kingdom of the Netherlands, Member of the International Law Commission,

as Agent and Counsel;

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

Mr. Vaughan Lowe, K.C., Emeritus Chichele Professor of Public International Law, University of Oxford, member of the Institut de droit international, member of the Bar of England and Wales,

Mr. Alain Pellet, Emeritus Professor of the University Paris Nanterre, former Chairman of the International Law Commission, President of the Institut de droit international,

as Counsel and Advocates;

Ms Claudia Loza Obregon, Legal Adviser, Ministry of Foreign Affairs of the Republic of Nicaragua,

Mr. Benjamin Samson, PhD, Centre de droit international de Nanterre (CEDIN), University Paris Nanterre,

as Assistant Counsel;

Mr. Robin Cleverly, MA, DPhil, CGeol, FGS, Law of the Sea Consultant, Marbdy Consulting Ltd,

as Scientific and Technical Adviser;

Ms Sherly Noguera de Argüello, Consul General of the Republic of Nicaragua,

as Administrator.

Le Gouvernement de la République du Nicaragua est représenté par :

S. Exc. M. Carlos José Argüello Gómez, représentant permanent du Nicaragua auprès des organisations internationales basées au Royaume des Pays-Bas, membre de la Commission du droit international,

comme agent et conseil ;

M. Alex Oude Elferink, directeur de l'Institut néerlandais du droit de la mer, professeur de droit international maritime à l'Université d'Utrecht,

M. Vaughan Lowe, K.C., professeur émérite de droit international public (chaire Chichele) à l'Université d'Oxford, membre de l'Institut de droit international, membre du barreau d'Angleterre et du Pays de Galles,

M. Alain Pellet, professeur émérite de l'Université Paris Nanterre, ancien président de la Commission du droit international, ***président*** de l'Institut de droit international,

comme conseils et avocats ;

Mme Claudia Loza Obregon, conseillère juridique au ministère des affaires étrangères de la République du Nicaragua,

M. Benjamin Samson, docteur en droit, Centre de droit international de Nanterre (CEDIN), Université Paris Nanterre,

comme conseils adjoints ;

M. Robin Cleverly, MA, DPhil, CGeol, FGS, consultant en droit de la mer, Marbdy Consulting Ltd,

comme conseiller scientifique et technique ;

Mme Sherly Noguera de Argüello, consule générale de la République du Nicaragua,

comme administratrice.

The Government of the Republic of Colombia is represented by:

H.E. Mr. Eduardo Valencia-Ospina, former Registrar and Deputy-Registrar of the International Court of Justice, member and former Special Rapporteur and Chairman of the International Law Commission,

as Agent and Counsel;

.E. Ms Carolina Olarte-Bácares, ***Dean of the school of Law at the Pontificia Universidad Javeriana, member of the Permanent Court of Arbitration,*** Ambassador – ***Designate*** of the Republic of Colombia to the Kingdom of the Netherlands,

H.E. Ms Elizabeth Taylor Jay, former Ambassador of Colombia to Kenya, former Permanent Representative of Colombia to the United Nations Environment Programme and the United Nations Human Settlements Programme,

as Co-Agents;

H.E. Mr. Álvaro Leyva Durán, Minister for Foreign Affairs of the Republic of Colombia,

H.E. Mr. Everth Hawkins Sjogreen, Governor of San Andrés, Providencia and Santa Catalina, Colombia,

as National Authorities;

Mr. W. Michael Reisman, Myres S. McDougal Professor Emeritus of International Law, Yale University, member of the Institut de droit international,

Sir Michael Wood, KCMG, member of the International Law Commission, member of the Bar of England and Wales,

Mr. Rodman R. Bundy, former *avocat à la Cour d'appel de Paris*, member of the Bar of the State of New York, partner at Squire Patton Boggs LLP, Singapore,

Mr. Jean-Marc Thouvenin, Professor at the University Paris Nanterre, Secretary-General of the Hague Academy of International Law, associate member of the Institut de droit international, member of the Paris Bar, Sygna Partners,

Ms Laurence Boisson de Chazournes, Professor of International Law and International Organization, University of Geneva, Professor, Collège de France (2022-2023), member of the Institut de droit international,

Mr. Lorenzo Palestini, PhD, Lecturer at the Graduate Institute of International and Development Studies and at the University of Geneva,

as Counsel and Advocates;

Mr. Andrés Villegas Jaramillo, LLM, Co-ordinator, Group of Affairs before the International Court of Justice at the Ministry of Foreign Affairs of Colombia, ***associate*** of the Instituto Hispano-Luso-Americano de Derecho Internacional,

Mr. Makane Moïse Mbengue, Professor at the University of Geneva, Director of the Department of Public International Law and International Organization, associate member of the Institut de droit international,

Le Gouvernement de la République de Colombie est représenté par :

S. Exc. M. Eduardo Valencia-Ospina, ancien greffier et ancien greffier adjoint de la Cour internationale de Justice, membre et ancien rapporteur spécial et président de la Commission du droit international,

comme agent et conseil ;

SS. Exc. Mme Carolina Olarte-Bácares, ***doyenne de la faculté de droit de la Pontificia Universidad Javeriana, membre de la Cour permanente d'arbitrage,*** ambassadrice – ***désignée*** de la République de Colombie auprès du Royaume des Pays-Bas,

S. Exc. Mme Elizabeth Taylor Jay, ancienne ambassadrice de la Colombie auprès du Kenya et ancienne représentante permanente de la Colombie auprès du Programme des Nations Unies pour l'environnement et du Programme des Nations Unies pour les établissements humains,

comme coagentes ;

S. Exc. M. Álvaro Leyva Durán, ministre des affaires étrangères de la République de Colombie,

S. Exc. M. Everth Hawkins Sjogreen, gouverneur de San Andrés, Providencia et Santa Catalina, Colombie,

comme autorités nationales ;

M. W. Michael Reisman, professeur émérite de droit international à l'Université de Yale, titulaire de la chaire Myres S. McDougal, membre de l'Institut de droit international,

Sir Michael Wood, KCMG, membre de la Commission du droit international, membre du barreau d'Angleterre et du pays de Galles,

M. Rodman R. Bundy, ancien avocat à la cour d'appel de Paris, membre du barreau de l'Etat de New York, associé au cabinet Squire Patton Boggs, LLP (Singapour),

M. Jean-Marc Thouvenin, professeur à l'Université Paris Nanterre, secrétaire général de l'Académie de droit international de La Haye, membre associé de l'Institut de droit international, membre du barreau de Paris, cabinet Sygna Partners,

Mme Laurence Boisson de Chazournes, professeure de droit international et organisation internationale à l'Université de Genève, professeure au Collège de France (2022-2023), membre de l'Institut de droit international,

M. Lorenzo Palestini, PhD, chargé d'enseignement à l'Institut de hautes études internationales et du développement et à l'Université de Genève,

comme conseils et avocats ;

M. Andrés Villegas Jaramillo, LLM, coordonnateur du groupe chargé des affaires portées devant la Cour internationale de Justice au sein du ministère des affaires étrangères de la Colombie, membre associé de l'Instituto Hispano-Luso-Americano de Derecho Internacional,

M. Makane Moïse Mbengue, professeur à l'Université de Genève, directeur du département de droit international public et organisation internationale, membre associé de l'Institut de droit international,

Mr. Eran Sthoeger, Esq., Adjunct Professor of International Law at Brooklyn Law School and Seton Hall Law School, member of the Bar of the State of New York Mr. Alvin Yap, Advocate and Solicitor of the Supreme Court of Singapore, Squire Patton Boggs LLP, Singapore,

Mr. Gershon Hasin, JSD, Visiting Lecturer in Law at Yale University,

Mr. Gabriel Cifuentes, PhD, adviser to the Minister for Foreign Affairs of the Republic of Colombia,

as Counsel;

Ms Jenny Bowie Wilches, First Secretary, Embassy of the Republic of Colombia in the Kingdom of the Netherlands,

Ms Viviana Andrea Medina Cruz, Second Secretary, Embassy of the Republic of Colombia in the Kingdom of the Netherlands,

Mr. Raúl Alfonso Simancas Gómez, Third Secretary, Embassy of the Republic of Colombia in the Kingdom of the Netherlands,

Mr. Oscar Casallas Méndez, Third Secretary, Group of Affairs before the International Court of Justice,

Mr. Carlos Colmenares Castro, Third Secretary, Group of Affairs before the International Court of Justice,

Ministry of Foreign Affairs of the Republic of Colombia;

Rear Admiral Ernesto Segovia Forero, Chief of Naval Operations,

CN Hermann León, Delegate of Colombia to the International Maritime Organization,

CN William Pedroza, National Navy of Colombia, Director of Maritime and Fluvial Interests Office,

Navy of the Republic of Colombia;

Mr. Lindsay Parson, Geologist, Director of Maritime Zone Solutions Ltd, United Kingdom, former member and Chair of the United Nations International Seabed Authority's Legal and Technical Commission,

Mr. Peter Croker, Geophysicist, Consultant at The M Horizon (UK) Ltd, former Chair of the United Nations Commission on the Limits of the Continental Shelf,

Mr. Walter R. Roest, Geophysicist, Director of Roest Consultant EIRL, France, member of the United Nations Commission on the Limits of the Continental Shelf,

Mr. Scott Edmonds, Cartographer, Director of International Mapping,

Mr. Thomas Frogh, Cartographer, International Mapping,

as Technical Advisers.

M. Eran Sthoeger, Esq., professeur adjoint de droit international à la Brooklyn Law School et à la Seton Hall Law School, membre du barreau de l'Etat de New York, M. Alvin Yap, avocat et *solicitor* à la Cour suprême de Singapour, cabinet Squire Patton Boggs, LLP (Singapour),

M. Gershon Hasin, JSD, chargé d'enseignement en droit invité à l'Université de Yale,

M. Gabriel Cifuentes, PhD, conseiller auprès du ministre des affaires étrangères de la République de Colombie,

comme conseils ;

Mme Jenny Bowie Wilches, première secrétaire, ambassade de la République de Colombie au Royaume des Pays-Bas,

Mme Viviana Andrea Medina Cruz, deuxième secrétaire, ambassade de la République de Colombie au Royaume des Pays-Bas,

M. Raúl Alfonso Simancas Gómez, troisième secrétaire, ambassade de la République de Colombie au Royaume des Pays-Bas,

M. Oscar Casallas Méndez, troisième secrétaire, groupe chargé des affaires portées devant la Cour internationale de Justice,

M. Carlos Colmenares Castro, troisième secrétaire, groupe chargé des affaires portées devant la Cour internationale de Justice,

ministère des affaires étrangères de la République de Colombie ;

Le contre-amiral Ernesto Segovia Forero, chef des opérations navales,

Le capitaine de vaisseau Hermann León, représentant de la Colombie auprès de l'Organisation maritime internationale,

Le capitaine de vaisseau William Pedroza, marine nationale de Colombie, chef de la direction chargée des intérêts maritimes et fluviaux,

marine de la République de Colombie ;

M. Lindsay Parson, géologue, directeur de Maritime Zone Solutions Ltd (Royaume-Uni), ancien membre et président de la commission technique et juridique de l'Autorité internationale des fonds marins des Nations Unies,

M. Peter Croker, géophysicien, consultant auprès de The M Horizon (UK) Ltd, ancien président de la Commission des limites du plateau continental des Nations Unies,

M. Walter R. Roest, géophysicien, directeur de Roest Consultant EIRL, France, membre de la Commission des limites du plateau continental des Nations Unies,

M. Scott Edmonds, cartographe, directeur de International Mapping,

M. Thomas Frogh, cartographe, International Mapping,

comme conseillers techniques.

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

The Court meets this morning to hear the first round of oral argument of the Republic of Colombia. I shall now give the floor to the Agent of Colombia, H.E. Mr. Eduardo Valencia-Ospina. You have the floor, Your Excellency.

Mr. VALENCIA-OSPINA:

AGENT'S OPENING SPEECH

Introduction

1. Madam President, Members of the Court. It is a great honour to address you in my capacity of Agent of my country, the Republic of Colombia, in the presence also of its Minister for Foreign Affairs and Peace, H.E. Mr. Álvaro Leyva Durán.

2. May I begin by paying homage to the late Antônio Cançado Trindade, a friend, an admired judge and a distinguished jurist whom I was privileged to succeed as President of the Latin American Society of International Law. May this also be the first opportunity for Colombia to formally salute Judges Hilary Charlesworth and Leonardo Nemer Caldeira Brant and wish them all success during their tenure.

3. Colombia welcomes the novel approach which, "in the circumstances of the case", the Court adopted for these oral proceedings, a ground-breaking decision of the utmost importance in the administration of international justice. As the declarations appended to it demonstrate, the Order of 4 October 2022 was the subject of a thorough debate within the Court, leading to a decision that is thus solidly founded.

4. Colombia's arguments throughout the course of long proceedings have been of a threefold nature: legal, technical and institutional. The Court has decided to focus on the first line of arguments, by requesting the Parties to respond to two questions in connection with two related legal issues that can be described as follows:

— Can a State's claim for a continental shelf beyond 200 nautical miles encroach upon and amputate the rights of another State within its 200-nautical-mile maritime zones? The short but unambiguous answer is no.

— Can the highly technical provisions of Article 76 of UNCLOS transit into the corpus of customary international law? The short but unambiguous answer is, again, no.

5. This is Colombia's position. It is a position that conforms to the modern law of the sea; is firmly supported by State practice; and is in line with the views of the neighbouring States of the Caribbean Sea that have protested Nicaragua's exorbitant claim.

6. The questions posed by the Court, even though they are of general interest, do not arise in a vacuum but from the pleadings already made at various prior stages in a concrete context: in "the circumstances of the case" now being heard with respect to the merits — as the Court explicitly stated in its Order of 4 October 2022 and as Nicaragua pleaded yesterday. This is the case that the Court has aptly entitled *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia)*. In this respect, Madam President, Colombia is of the view that the "Question" mentioned in the title of the case, which is the question of whether the case is a delimitation one, must be answered in the negative. However, what matters, at this stage, is that the two questions posed by the Court are preliminary questions that do not entail discussions about maritime delimitation. I stress this point because yesterday Nicaragua discussed maritime delimitation. There was no reason for the Agent to consider what would constitute an "equitable solution" according to Article 83 of UNCLOS[1] and there was, likewise, no reason for Professor Lowe to enter into a long supposedly "preliminary point" as to what would be a proper delimitation methodology[2].

7. Before we turn to the particulars of the detailed answers to the Court's questions, it is essential to place them in their proper perspective, by briefly recalling the salient phases of the Court's ongoing consideration of Nicaragua's continental shelf claim beyond 200 nautical miles.

A sense of déjà vu

8. Madam President, Members of the Court, discussing Nicaragua's claim cannot but elicit a sense of déjà vu, a feeling that we have already been here before, that its substance has already been raised, discussed and not upheld.

---

[1] CR 2022/25, pp. 24-26, paras. 36-45 (Argüello Gómez).

[2] CR 2022/25, pp. 28-29, paras. 9-13 (Lowe).

9. In its 2001 Application in the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)* case, Nicaragua requested the Court to "determine the course of the single maritime boundary between the areas of continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Colombia"[3].

10. Then, in its Memorial of 2003, Nicaragua submitted that "the appropriate form of delimitation, within the geographical and legal framework constituted by the mainland coasts of Nicaragua and Colombia, is a single maritime boundary in the form of a median line between these mainland coasts"[4].

11. Something was amiss. How could Nicaragua argue for a single maritime boundary when the two continental coasts were more than 400 nautical miles apart[5]?

12. This is why Nicaragua, in 2009, came out with a completely different submission based on the alleged existence of an extended continental shelf. This is Submission I (3), which is now depicted on screen and in tab 2 of your folders.

13. Submission I (3) was a new claim, a claim not originally included in Nicaragua's Application that suddenly, out of thin air, brought natural prolongation at the forefront of the proceedings, drastically transforming them eight years after their institution. Nicaragua's new claim had a markedly negative impact on Colombia at such a late stage of the proceedings. Submission I (3) changed the *Territorial and Maritime Dispute* into a complex case that mixed legal, institutional and scientific questions. This notwithstanding, the new claim was declared admissible both in the reasoning and operative part of the 2012 Judgment.

14. The ghost of Submission I (3) is still with us today, except that the numbering of the submission may have changed. Colombia believed that in the 2012 Judgment, the Court had rejected Nicaragua's extended continental shelf and that it had done so on its merits, because Nicaragua had failed to substantiate its claim. While the Court, in the second paragraph of the operative part, found

---

[3] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, Application of the Republic of Nicaragua, Submission, p. 8, para. 8.

[4] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, Memorial of Nicaragua (2003), Submission No. 9, pp. 266-267.

[5] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, Counter-Memorial of Colombia (2008), Chap. 7, pp. 309-338.

Submission I (3) to be admissible, it nevertheless declared, in the third paragraph of the operative part, that it "cannot uphold" that submission.

15. But this is the past and it should remain so. If we look at the present, Madam President, Members of the Court, Colombia is still before you today. Colombia is the first and hopefully the last State that will have to defend itself in a case in which the entirety of the supposedly relevant area is located closer to its coasts than to those of the Applicant. Yet Colombia is before you because Colombia abides by the rule of law. Colombia participates in judicial proceedings, no matter how unfounded the claims against it may be. Colombia is before you because, when these proceedings are over, it believes the Court will have confirmed what it said already in 1985: natural prolongation can never be a source of title within 200 nautical miles of another State. Only then the past will be truly put to rest.

16. What has changed since the *Territorial and Maritime Dispute* case? Nicaragua based its claim there on technical data that was part of its 2010 Preliminary Information to the Commission on the Limits of the Continental Shelf (CLCS)[6]. In the current case, Nicaragua relies on its 2013 full Submission to CLCS. In this connection the Court — acting pursuant to paragraph 2 of Article 53 of its Rules and after ascertaining the views of the Parties — has decided that copies of the written pleadings and documents annexed shall, for the time being, not be made accessible to the public. Colombia, which had presented its views on this matter, will of course abide by the implications of the Court's decision on the point.

An exorbitant and unprecedented claim

17. I turn then to the exorbitant and unprecedented nature of Nicaragua's claim. Nicaragua's alleged continental shelf supposedly extends as far as 544 nautical miles from the nearest section of its coastline. But the main problem is that this alleged continental shelf is entirely located within 200 nautical miles of either Colombia's mainland or Colombia's Archipelago of San Andrés, Providencia and Santa Catalina. In other words, Nicaragua belongs to the minuscule and exclusive club of States that believes that extended continental shelves can encroach upon the 200-nautical-mile entitlements of other States. Nicaragua in fact proposes the creation of the largest grey zone

[6] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, Reply of Nicaragua (2009), Vol. I, p. 70, para. 2.20 and pp. 89-90, paras. 3.37-3.40.

ever, in which the water column of the exclusive economic zone would be divorced from its sea-bed and subsoil. This grey zone, which would encompass the totality of the maritime area claimed by Nicaragua, violates the very notion of the exclusive economic zone. The exclusive economic zone, unlike fishing zones and continental shelves, was meant to join all the physical layers of the sea under one national jurisdiction in which the coastal State would exercise sovereign rights over both the living and non-living resources. Nicaragua's claim can only be appraised as one of an exorbitant nature because it requests the Court to draw a boundary dividing non-equivalent entitlements.

18. Nicaragua's claim is unprecedented in the history of judicial dispute settlement. This claim finds no support in UNCLOS or customary international law. This claim is rejected by overwhelming State practice that takes the form of delimitation agreements or CLCS submissions. This claim violates the legal interests of the neighbouring third States in the Caribbean Sea. This claim seeks to bypass UNCLOS' procedure for claims before the CLCS, to which Nicaragua remains bound, as stated by the Court[7].

The regional objections and the legal interests of neighbouring third States

19. Colombia has consistently drawn attention to the semi-enclosed nature of the Caribbean Sea. This is not a minor issue. In the Caribbean Sea, there are no maritime areas located further than 200 nautical miles from the nearest coastal territory. This helps explain why none of the Caribbean States but one, Nicaragua, made extended continental shelf claims.

20. As a result, Nicaragua's Submission has met with strong objections by no less than four States: Colombia, Costa Rica, Panama, and Jamaica. Not one of these States has consented to the CLCS' consideration of Nicaragua's extended continental shelf Submission, and all of them have made it clear to the Secretary-General of the United Nations that they do not view Nicaragua's claim as justified[8]. Indeed, after Nicaragua filed its 2013 Submission with the CLCS, these Caribbean States, acting individually or jointly, filed with the United Nations Secretary-General nine public

[7] 2012 Judgment, p. 669, para. 126.

[8] CMC, Vol. II, Anns. 19 to 28.

Notes reserving their position and strongly opposing Nicaragua's Submission[9]. They indicated that this claim violates their legal interests in the Caribbean.

21. Such spirited regional objections to Nicaragua's continental shelf claim can easily be explained by paraphrasing Colombia's earlier pleadings. Nicaragua's claim extends so far from its coastlines and so close to the coastlines of the neighbouring third States that even the most minute of all maritime delimitations would inevitably trespass into areas where, aside from Colombia's sovereign rights, third States also possess legal interests vis-à-vis Nicaragua[10]. In other words, there can be no boundary between the Parties to these proceedings, beyond 200 nautical miles from Nicaragua, because any such boundary no matter its course or length, would immediately encroach into areas where third States have legal interests that are undoubtedly more plausible than those of Nicaragua. On your screens and at tab 3 of your judges' folders, you can see a map with the 200-nautical-mile entitlements in the Caribbean semi-enclosed sea. It does not require much effort to visualize — as the map becomes progressively simplified on the screen — that Nicaragua's foot of the slope points, the outer limit of its alleged extended continental shelf, as well as its delimitation claim against Colombia, all unmistakably encroach into areas where neighbouring States have legal interests vis-à-vis Nicaragua.

22. The question of the legal interest of third States, which is closely related to the two questions to be addressed in this phase of the oral proceedings, is a question that would lead to the full dismissal of Nicaragua's claim. In other words, it is another legal question that can be addressed independently from the science. At this stage, however, I need not say much more about the legal interests of third States. I will only stress two points. The first is that the Court has already rejected Nicaragua's attempt to rely on the agreements negotiated between Colombia and neighbouring third States[11]. Because agreements are *inter partes*, Nicaragua cannot use them as barricades that would allow its alleged natural prolongation to extend into the Caribbean Sea unencumbered. The second point is that the Court has likewise already rejected Nicaragua's suggestion that it could rely on the

---

[9] Preliminary Objections of the Republic of Colombia (POC), Anns. 19 to 27.

[10] CMC, p. 309, para. 6.5; RC, p. 165, para. 5.29.

[11] *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica* v. *Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2018 (I),* p. 189, para. 134; *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Application by Honduras for Permission to Intervene, Judgment, I.C.J. Reports 2011 (II),* p. 444, para. 72.

relativity of *res judicata* with a view to drawing a hypothetical delimitation as if there were no neighbouring third States in the region[12].

The adverse implications around the world

23. Madam President, Members of the Court, the adverse implications of Nicaragua's extended continental shelf claim are not limited to the immediate region; Nicaragua's claim has worldwide implications of the most disturbing kind, which would constitute a regrettable development for the Court in its fundamental role of guarantor of justice and peace.

24. As my friend and mentor, the late Shabtai Rosenne, insightfully observed in his *magnum opus* on the law and practice of the International Court:

> "The Court's status as a principal organ and the principal judicial organ of the United Nations, itself above all a political organization, emphasizes that the judicial settlement of international disputes is a function performed within the general framework of the political organization of the international society. Accordingly, the Court has a task that is directly related to the pacific settlement of international disputes and therefore to the maintenance of international peace and security"[13],

which is the main purpose of the United Nations, enshrined in Article 1, paragraph 1, of the Charter. Colombia, a founding Member of the United Nations, has always acted towards the Court in conformity with the above perception of Rosenne, with full confidence in this Court's own recognition and strict adherence to the pre-eminent position and role it occupies and plays in furtherance of the Charter objective. Such an unchanging attitude is clearly evidenced by the fact of Colombia having been historically the second Member State to have had recourse to the newly established Court on three successive occasions, the *Asylum*, the *Request for Interpretation of the Judgment* thereon, and the *Haya de la Torre* cases, in 1949 and 1950 respectively. And 50 years later, by having regularly appeared, as it still does today, as the Respondent in the three-case saga initiated by Nicaragua before this Court 21 years ago.

25. Colombia remains unswervingly committed to the maintenance of peace through justice, both at the international and domestic levels. Decades of internal strife and violence have taught us Colombians about the importance and necessity of promoting peace by respecting and protecting human rights. We have moved a long way towards securing that paramount goal thanks to the

---

[12] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 25, para. 21.

[13] Shabtai Rosenne, *The Law and Practice of the International Court, 1920-2005*, Vol. I, 2006, p. 3.

successful peace process of 2016, which led to the creation of a special jurisdiction for peace. Building on that achievement, our recently and democratically elected president, Gustavo Petro, has coined a powerful expression as the motto for his mandate: "La Paz Total" or "Absolute Peace". As explained in his recent address to the General Assembly, his is a concept that encompasses not only peace among individuals and groups but also in relation to the natural environment and its ecosystems, in particular the Amazon forest and the Seaflower Biosphere Reserve located around the Archipelago of San Andrés, Providencia and Santa Catalina. At the same time, it safeguards the human rights of indigenous and vulnerable peoples such as the Raizales of the Archipelago, whose heritage and ancestral customs are intimately linked to the Caribbean Sea, creating a bond that must be understood as a dynamic whole, inseparable, indivisible and integrated.

26. In the light of all of the foregoing, it should be readily appreciated that the implications of Nicaragua's case are profoundly unsettling not only for the whole of the Colombian nation but also for the region and the world. Nicaragua's delimitation claim would produce a disorderly pattern of jurisdictional patches in the Caribbean Sea, all while wreaking havoc on the orderly management of maritime resources, policing and the public order of the oceans in general. This alone should be enough reason for that claim to be rejected in its entirety by the Court.

27. Madam President, Members of the Court. With the aforementioned considerations in mind, Colombia's first-round speeches, which intended to respond to the Court's two questions and not to rebut at this stage the arguments made by Nicaragua yesterday, will be delivered by counsel in the following order:

Regarding the first question,

— Sir Michael Wood will begin by explaining that, under both customary international law and UNCLOS, the continental shelf beyond 200 nautical miles was never meant to encroach upon the 200-nautical-mile entitlements of neighbouring countries. Sir Michael Wood will make two contentions. The first is that there cannot be an exclusive economic zone without a corresponding continental shelf. The second is that the preparatory works of UNCLOS, as well as its text, demonstrate that natural prolongation is only meant to be a source of title vis-à-vis the international sea-bed area, not within the 200-nautical-mile entitlements of other States.

— He will be followed by Mr. Rodman Bundy, who will demonstrate and visually show that the overwhelming State practice that takes the form of CLCS submissions confirms the contentions made by Sir Michael Wood. Indeed, State practice from across the world undoubtedly shows that States claiming a continental shelf beyond 200 nautical miles consciously avoid encroaching upon the 200-nautical-mile entitlements of mainland or insular territories belonging to other States.

— Dr. Lorenzo Palestini will conclude on the first question with an explanation as to why grey areas are exceptional features that do not support Nicaragua's claim. He will explain that modest grey areas can only be tolerated when they are the incidental result of adjustments made to provisional lines of equidistance where a boundary of two 200-nautical-mile entitlements transitions to a boundary of two extended continental shelves.

Concerning the second question,

— Professor Jean-Marc Thouvenin will demonstrate that paragraphs 2 to 6 of Article 76 of UNCLOS do not reflect customary rules that Nicaragua can oppose to Colombia in order to determine an alleged entitlement to an extended continental shelf within Colombia's 200-nautical-mile entitlements, and that, more generally, they are not reflective of customary international law. He will also explain that there are no criteria in customary international law to establish outer limits of an alleged extended continental shelf located within the 200-nautical-mile zones of another State. And that if Nicaragua's case were to establish the outer limits of its extended continental shelf in a maritime zone that would otherwise pertain to the Area, it would then have to fully respect its obligations under UNCLOS.

— Lastly, Professor Laurence Boisson de Chazournes will make some concluding remarks on the damaging effects of upholding Nicaragua's claim.

28. Madam President, Members of the Court, I thank you for your attention. May I ask you, Madam President, that the floor be now given to Sir Michael Wood.

The PRESIDENT: I thank the Agent of Colombia for his statement. I now invite Sir Michael Wood to take the floor. You have the floor, Sir.

Sir Michael WOOD:

THE COURT'S FIRST QUESTION: A STATE'S CONTINENTAL SHELF BEYOND 200 NAUTICAL MILES MAY NOT EXTEND WITHIN ANOTHER STATE'S 200-NAUTICAL-MILE EXCLUSIVE ECONOMIC ZONE AND ATTENDANT CONTINENTAL SHELF

I. Introduction

1. Madam President, Members of the Court, it is an honour to appear before you once again on behalf of Colombia.

2. Madam President, the Court's two questions are about customary international law. Despite Nicaragua's somewhat cavalier attitude to the determination of the law, I shall not rehearse the Court's well-established position, which incidentally formed the basis of the International Law Commission's 2018 Conclusions on the matter[14].

3. As the Agent has just explained, I shall address the first question. I shall *first* consider the nature of the exclusive economic zone (EEZ) and the continental shelf, and the relationship between the two. In doing so I will explain that, under customary international law as reflected in the Convention, an extended continental shelf may not extend within the 200-nautical-mile zone of another State. This is confirmed by the negotiating history of the 1982 Convention.

4. *Second*, I shall explain that Nicaragua has said nothing to cast doubt on Colombia's position. Its reliance upon case law and upon the "single continental shelf" concept is of no avail.

5. *Third*, Colombia's counsel will show that State practice and *opinio juris* overwhelmingly support Colombia's position. I will briefly address the practice of States when concluding maritime delimitation agreements. Mr. Bundy will then address the extensive State practice to be found in submissions to the CLCS. Dr. Palestini will speak about "grey areas".

II. The EEZ and continental shelf régimes under customary international law

6. Madam President, simply put, under customary international law, and indeed under the Convention, the extended continental shelf of one State may not extend within another State's 200-nautical-mile EEZ, with its accompanying continental shelf. What was most striking about

[14] International Law Commission, Conclusions on Identification of Customary International Law, with commentaries, *Yearbook of the International Law Commission*, 2018, pp. 119-156, annexed to UN General Assembly resolution 73/203 of 20 Dec. 2018 (hereinafter the "ILC 2018 Conclusions").

Nicaragua's presentation yesterday was that they hardly mentioned the EEZ, the existence of which is central to your first question. And they did not refer to your case law on the relationship between the EEZ and the shelf. They did not refer to the inseparable nature of EEZ and continental shelf rights within 200 nautical miles. At the Conference, the extended continental shelf was only ever discussed in terms of allowing wide-margin States to extend their shelf into the international sea-bed area, not within other States' 200-nautical-mile zones or entitlements. And this is evident from the overwhelming State practice since the Conference, accompanied by *opinio juris***,** and from the Court's jurisprudence.

***(a)* The EEZ and the continental shelf**

7. The Court's case law, most recently in the *Alleged Violations* case[15], indicates that many of the provisions of UNCLOS may now be taken to reflect customary international law. In particular, the text of UNCLOS may be looked at to identify the customary international law regarding the nature of the institution of the EEZ, and the relationship between the EEZ and the continental shelf.

8. Five points may be noted in this regard. *First*, the text of Article 76 (1) defines two bases of entitlement to the continental shelf: distance (200 nautical miles), and beyond that, natural prolongation. That is the content of Article 76 (1) and its purpose. Contrary to what Professor Lowe said yesterday[16], the text of Article 76 does not answer the Court's first question or indeed any question of encroachment or delimitation.

9. *Second*, under both the Convention and customary international law, within the EEZ the rights of the coastal State relating to the sea-bed and its subsoil are not only continental shelf rights; out to 200 nautical miles, the sea-bed and subsoil form part of the EEZ in which the coastal State's rights are also EEZ rights. This is set out in Article 56, paragraph 1 *(a)* of UNCLOS: a coastal State's EEZ sovereign rights relate to all of the natural resources of the zone, whether living or non-living, and those of the sub-soil~~,~~ as well as those of the water column. Article 56, paragraph 3, goes on to provide that the rights set out in Article 56 (rights in the EEZ) with respect to the sea-bed and the subsoil are to be exercised in accordance with Part VI. In other words, Part V incorporates by

[15] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Judgment of 21 April 2022*, para. 57.

[16] CR 2022/25, p. 40, paras. 60-62 (Lowe).

reference the rules of Part VI into the EEZ régime. As Finland put it during the negotiations, "the continental shelf situated within the proposed 200-mile economic zone would in practice be absorbed into that zone and would no longer exist as a special regime"[17]. Other delegations, such as the People's Republic of Congo[18], Switzerland[19], Malta[20] and Guinea-Bissau[21], took similar positions.

10. The relationship between the EEZ and continental shelf rights was well expressed by the Court in *Libya/Malta* — it is on the screen and at tab 4 in the folders:

> "Although the institutions of the continental shelf and the exclusive economic zone are different and distinct, the rights which the exclusive economic zone entails over the sea-bed of the zone are defined by reference to the régime laid down for the continental shelf. Although there can be a continental shelf where there is no exclusive economic zone, there cannot be an exclusive economic zone without a corresponding continental shelf."[22]

11. *Third*, and contrary to what Nicaragua asserts[23], the way in which such rights come into being has no bearing on whether a State's extended continental shelf may extend within another State's 200-nautical-mile zone. Ultimately, each coastal State has a right under the law to an EEZ and, according to the Court, that right is decisive even when the parties have not declared an EEZ, as was the case in *Libya/Malta*[24]. The fact that continental shelf rights do not depend on any express proclamation[25] has no significance for the issue before us today. And in any event, sea-bed rights within 200 nautical miles are continental shelf rights — though they are also EEZ rights — and they too arise *ipso facto* and do not have to be proclaimed.

12. *Fourth*, and again contrary to what Nicaragua repeated yesterday[26], natural prolongation is not a source of title within 200 nautical miles. This understanding of the law is reflected in the overwhelming practice of States, and in the case law. Within 200 nautical miles, entitlement depends

---

[17] CMC, para. 3.17 and fn. 128. UNCLOS III, Official Documents, Second Committee Meetings, 17th Meeting, UN doc. A/CONF.62/C.2/SR.17, para. 3.

[18] Now Congo-Brazzaville: UNCLOS III, Official Documents, Plenary Meetings, 28th Meeting, UN doc. A/CONF.62/SR.28, para. 52.

[19] UNCLOS III, Official Documents, Plenary Meetings, 35th Meeting, UN doc. A/CONF.62/SR.35, para. 21.

[20] UNCLOS III, Official Documents, Plenary Meetings, 37th Meeting, UN doc. A/CONF.62/SR.37, para. 56.

[21] UNCLOS III, Official Documents, Plenary Meetings, 40th Meeting, UN doc. A/CONF.62/SR.40, para. 28.

[22] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 33, para. 34.

[23] RN, paras. 5.7-5.10; CR 2022/25, 5 Dec. 2022, p. 39 (Lowe).

[24] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 22, para. 17.

[25] UNCLOS, Art. 77.2.

[26] CR 2022/25, 5 Dec. 2022, pp. 35-36 (Lowe).

upon distance; geology and geomorphology are not relevant. The Court could not have been clearer in *Libya/Malta* — this is on the screen and at tab 5:

> "where verification of the validity of title is concerned, since, at least in so far as those areas are situated at a distance of under 200 miles from the coasts in question, title depends solely on the distance from the coasts of the claimant States of any areas of sea-bed claimed by way of continental shelf, and the geological or geomorphological characteristics of those areas are *completely immaterial*. It follows that, since the distance between the coasts of the Parties [in that case] is less than 400 miles, so . . . no geophysical feature can lie more than 200 miles from each coast",

and the geomorphological feature in question in that case could not affect the extension of Malta's shelf[27]. The Court proceeded to quote from *Tunisia/Liby*a and *North Sea Continental Shelf* to explain that the régime which once might have supported title based on natural prolongation, within 200 nautical miles from another State's coasts, was now a relic of the past. The Court stated that — and this is at tab 6:

> "to rely on this jurisprudence would be to overlook the fact that where such jurisprudence appears to ascribe a role to geophysical or geological factors in delimitation, it finds warrant for doing so in a régime of the title itself which used to allot those factors a place which now belongs to the past, in so far as sea-bed areas less than 200 miles from the coast are concerned"[28].

Professor Lowe's citation yesterday from *North Sea* itself belongs to a régime of title which belongs to the past[29]. Professor Lowe attempts to create an artificial link to the past by referring to the "natural shelf". But natural prolongation is a legal, not a scientific concept. As three eminent authors put it, in a recently published book on the law of the sea, the definition of the continental shelf recognized by the Court as customary in 2012 "*replaced*" — that is their word — the definition identified by the Court as customary in 1969[30]. According to those distinguished authors, the ITLOS in *Bangladesh/Myanmar*, on which Professor Oude Elferink placed much emphasis, "*supplanted* the concept of 'natural prolongation'" altogether[31].

---

[27] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 35, para. 39, emphasis added; judges' folder, tab 5.

[28] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 36, para. 40, judges' folder, tab 6.

[29] CR 2022/25, pp. 34-35, paras. 34-41 (Lowe).

[30] R. Churchill, V. Lowe and A. Sander, *The Law of the Sea* (2022), 4th ed., Manchester: Manchester University Press, p. 230, emphasis added.

[31] *Ibid.*

(b) **The negotiating history of the EEZ and the extent of the continental shelf at the Third United Nations Conference on the Law of the Sea**

13. Madam President, I now turn to the negotiating history of the EEZ and of the breadth of the continental shelf at the Third United Nations Conference on the Law of the Sea. We dealt with this at some length in our Counter-Memorial[32] and it is very relevant to the Court's questions. Professor Lowe, yesterday, gave us a fine lecture on developments up to the Third Conference but he said very little about the work of the Conference. It was as though the law froze before the Conference and the rapid crystallization of the EEZ never took place. In fact, as is well known, the institution of the EEZ, and the outer limit of the continental shelf, were two of the most fiercely negotiated issues at the Conference. The course of the negotiations shows that there was no way that the negotiators could have intended that the extended continental shelf would extend within the 200-nautical-mile EEZ, and thus strip another State of its hard-fought sea-bed and subsoil rights within 200 nautical miles.

14. It will be recalled that certain coastal States had long claimed a 200-nautical-mile territorial sea. A 200-nautical-mile territorial sea, which would of course include the sea-bed and subsoil, was particularly favoured by those without a continental margin. Other States, however, were adamant that they would not accept a territorial sea extending more than 12 nautical miles. In the end, as the Virginia Commentary puts it, "proposals from developing nations sought unrestricted sovereign rights over natural resources to a distance of 200 nautical miles"[33]. They sought *exclusive* resource rights within 200 nautical miles of their coast, hence the name of the new institution, the *exclusive* economic zone. The compromise that we find today in the Convention, and in customary international law, took account of proposals from Latin American States — the Declaration of Santo Domingo of 1972[34], which Nicaragua itself mentioned yesterday in a different context[35] — and from African States[36]. These important documents have been placed at tab 7 in your folders. These proposals were for a new *sui generis* 200-nautical-mile zone with a "specific legal regime",

---

[32] CMC, Chap. 3.

[33] Virginia Commentary, Vol II, p. 497.

[34] UN doc. A/AC.138/80, in Seabed Committee Report 1972, p. 70.

[35] CR 2022/25, p. 20, paras. 19-22 (Argüello Gómez).

[36] Conclusions in the General Report of the African States Regional Seminar on the Law of the Sea, A/AC.138/79 (1972), in Seabed Committee Report 1972, p. 73.

that would be neither territorial sea nor high seas, but in which the coastal State would have exclusive sovereign rights over all the living and non-living resources of the water column, the sea-bed and the subsoil[37]. The high importance attached by many coastal States, particularly developing coastal States, to the institution of the EEZ is well documented.

15. The provisions on the 200-nautical-mile EEZ were agreed early in the negotiations. It is undisputed that the institution of the EEZ has been part of customary international law since the mid-1970s, well before the provisions on the extended continental shelf were agreed and implemented. Already in 1985, the Court said that it was "incontestable that . . . the institution of the exclusive economic zone, with its rule on entitlement by reason of distance, is shown by the practice of States to have become a part of customary law"[38].

16. Madam President, the second issue, which was agreed in detail only late in the Conference, after protracted negotiations, was whether rights in the sea-bed and subsoil could at all extend beyond 200 nautical miles, and — if so — how the outer limit of such rights was to be defined vis-à-vis the international sea-bed area. The concern here was that a "clearly open-ended" definition, as the Court had described Article 1 of the 1958 Convention[39], would exclude deep sea-bed resources from the area so recently proclaimed by the General Assembly as the common heritage of mankind[40]. Moreover, at the time of the Third Conference, the customary status of what became the conventional rule on the extended continental shelf was anything but clear. During the negotiations, some States, including members of the Landlocked and Geographically Disadvantaged States Group, which could have blocked agreement, remained firmly of the view that the coastal State's sea-bed mineral resource rights should not extend beyond 200 nautical miles, just as rights to the living resources of the water column did not extend beyond that distance. A small but powerful group of broad-margin States — the so-called "margineers" — were adamant, however, that they could not accept a convention that took away what, in their eyes, was already theirs under the vague formula of the

---

[37] CMC, paras. 3.8-3.14.

[38] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 33, para. 34; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Judgment of 21 April 2022*, para. 56.

[39] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, pp. 45-46, para. 42.

[40] UN doc. A/RES/25/2749, 12 Dec. 1970.

1958 Convention. Ultimately, the "margineers" prevailed, but at the price of a complex "package deal".

17. That deal was highly technical and consisted of four main elements:

(i) first, a set of detailed provisions of a scientific and technical nature for States parties to establish, under the Convention, the continental shelf beyond 200 nautical miles from their baselines. The aim was to ensure that the shelf could not encroach indefinitely or arbitrarily upon the international sea-bed area[41];

(ii) second, a procedure involving a new institution, to be established by the States parties to the Convention, the CLCS. A coastal State may not delineate the outer limits of its continental shelf beyond 200 nautical miles, with final and binding effect, except on the basis of recommendations from the CLCS[42];

(iii) third element of the package, a specific requirement for States parties to deposit charts and relevant information describing the outer limits of their continental shelf not only with the Secretary-General of the United Nations[43], but also with the Secretary-General of the International Seabed Authority[44]; and

(iv) fourth, the requirement to make royalty payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles. These payments are to be made through the International Seabed Authority for distribution to States parties to the Convention.

18. These four elements show beyond doubt that the concern of the negotiating States was with the delineation of the outer limits of the continental margin of wide-margin States vis-à-vis the international sea-bed area. As Nicaragua itself wrote in its written pleadings, the "role of the CLCS is to ensure a clear identification between the zones within national jurisdiction and *those beyond national jurisdiction (the 'Area')*"[45]. The requirement to make payments in respect of minerals taken from the area beyond 200 nautical miles reflects the fact that the extension of the shelf beyond that

---

[41] UNCLOS, Art.76, paras. 2-6.

[42] UNCLOS, Art. 76, paras. 7-8, and Ann. II.

[43] UNCLOS, Art. 76, para. 9.

[44] UNCLOS, Art. 84, para. 2.

[45] RN, para. 2.54, 2.52; emphasis added.

distance was seen to detract from the international sea-bed area**,** from the common heritage of mankind. These elements would make no sense if the extended continental shelf were to encroach upon other State's 200-nautical-mile zones. What, for example, would be the logic of requiring one coastal State to pay royalties to the International Seabed Authority in respect of minerals taken from another State's EEZ?

19. Madam President, there was no suggestion, over all the years of the Conference, that extended continental shelf claims could detract from a coastal State's hard-fought rights within its 200-nautical-mile zone. Nicaragua would have the Court believe that during the UNCLOS negotiations, States voiced their objections to the extended continental shelf infringing upon the international sea-bed area and, at the same time, accepted that the extended continental shelf could infringe on their own EEZs, with their attendant continental shelf[46].

20. Madam President, Professor Lowe asserted yesterday, most emphatically, that there is nothing in the legislative history of UNCLOS to support Colombia's conclusion. That is incorrect, as I have just explained. But in addition, I would draw attention to an important conference document, the preliminary study illustrating various proposed formulae for the definition of the continental shelf, which included a detailed map, known as the "Lamont Map". This map can be found at tab 8 of your folders and is now on the screen[47].

21. The map was commissioned in 1977 by the UN Secretariat at the request of the Conference's Second Committee. The aim was to provide the negotiating States with the information necessary to make an informed decision about the various formulae, then under discussion, for defining the outer edge of the continental margin. The document and this map show beyond doubt that at the Conference, States were acting on the basis that the formulae proposed to define the continental margin applied only beyond 200 nautical miles from baselines, and that 200-nautical-mile zones were not to be affected by the extended continental shelf. As I hope the Court can see from the outer margin limits, shown here as red and orange lines, none extend within the 200-nautical-mile zones of coastal States. The concession made to broad-margin States was only

---

[46] RN, para. 5.27.

[47] UNCLOS III, Official Documents, Second Committee, Vol. IX, A/CONF.62/C.2/L.98/ADD.1, A/CONF.62/C.2/L.98 and Add 1-3, *Preliminary Study illustrating various formulae for the definition of the continental shelf*, 18 Apr. 1978.

ever intended to provide them with a potential source of title in areas which lie beyond 200 nautical miles from all States.

22. To illustrate the point further, we will zoom in to the area around southern South America. Madam President, Members of the Court, as again I hope you can see from this enlargement, the limit of the geological continental margin, the blue line, is continuous both inside and beyond the 200-nautical-mile limit. It represents a geological fact indicating where the scientific margin, if you like, is located and which naturally cannot "stop" at a 200-nautical-mile limit. But for the extended continental shelf entitlement, on the other hand, which are the red and orange lines, that indicate the location of the outer edge of the continental margin derived from the proposed formulae which became paragraph 4 *(a)* (i) and (ii) of Article 76, they only served to delineate vis-à-vis the international sea-bed area and those lines never enter within the 200-nautical-mile zones of coastal States.

23. This map was attached to an official document. ~~*An*~~ Addendum 2 of that 1978 document accompanying the map is now on your screen and at tab 9. As you will see, it is entitled "Calculation of areas illustrated beyond 200 miles". The calculations are all expressed in terms of areas beyond 200 nautical miles from baselines. It is clear from the map and from the document, which we have put in the tab, that States were negotiating in the knowledge that the extended continental shelf would not encroach upon 200-nautical-mile zones.

III. Nicaragua has produced no argument to cast doubt on the position that a State's extended continental shelf may not extend within another State's EEZ

24. Madam President, Nicaragua has not put forward any convincing argument to rebut Colombia's position. Yesterday, Professor Lowe focused exclusively on the ordinary meaning — or what he said was the ordinary meaning — of Article 76 (1), completely ignoring the other elements of the customary rules of treaty interpretation. Nicaragua has not made any convincing arguments based on the text of UNCLOS. Nicaragua also finds no support in the negotiating history of UNCLOS. And, as I shall now briefly explain, Nicaragua's reliance on the concept of the "single continental shelf" is misplaced; its reliance upon case law is simply not on point.

***(a)* Irrelevance of the "single continental shelf" concept**

25. Madam President, Nicaragua's reliance upon dicta to the effect that there is only a "single continental shelf" does not advance its case[48].

26. In considering references to a "single continental shelf", one has to distinguish between, on the one hand, the substantive content of the *institution* of the continental shelf, which is — in general — the same within and beyond 200 nautical miles and, on the other hand, the rules for the determination of a coastal State's *entitlement* to a shelf, which are, of course, completely different within and beyond that distance. Within 200 nautical miles, distance is the only criterion as we have seen; beyond 200 nautical miles the criterion is natural prolongation.

27. The *dicta* relied upon by Nicaragua, out of context, do not concern the manner in which the breadth of the ~~***territorial sea***~~ ***continental shelf*** is determined. They do not concern the uncontroversial fact that there are now different sources of legal title to the sea-bed and subsoil within and beyond 200 nautical miles[49].

***(b)* Case law**

28. I turn now briefly to the cases relied upon by Nicaragua. Nicaragua contends that the cases demonstrate that there is no problem with the Court delimiting its claim to a continental shelf beyond 200 nautical miles vis-à-vis Colombia. It refers to the two *Bay of Bengal* cases and to the *Ghana/Côte d'Ivoire* case. These few cases where a court or tribunal has delimited the continental shelf beyond 200 nautical miles do not begin to support Nicaragua's proposition that the extended continental shelf may extend within another State's 200-nautical-mile zone.

29. As was explained in our written pleadings[50], there are several critical differences between the present case and those invoked by Nicaragua. First and foremost, Nicaragua's cases did not concern delimitation between a 200-nautical-mile entitlement of one State and the extended continental shelf claim of another. Second, the cases concerned the delimitation of extended continental shelf entitlements of States with adjacent coasts, not opposite coasts.

---

[48] RN, para. 5.32.

[49] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya), Judgment of 12 October 2021*, separate opinion of Judge Donoghue, paras. 11-12.

[50] CMC, paras. 2.45-2.49; RC, paras. 3.58-3.59, 6.8-6.16.

30. The cases relied upon by Nicaragua, if anything, highlight the practical impossibility of Nicaragua's position. Nicaragua's position would require the delineation of the outer limit of its continental margin, as a prerequisite to delimitation between — what it claims — are overlapping entitlements. But according to Article 76, paragraph 8, a State party does not have the authority to establish as final and binding the outer limit by itself. It may only do so based on the recommendations of the CLCS. It surely cannot be that UNCLOS provides for the Court to delineate the outer margin without a CLCS recommendation where States themselves cannot do so. You addressed this in *Somalia* v. *Kenya*[51].

IV. State practice

31. Madam President, I now turn to State practice. In this connection, it is important to note that practice may sometimes be evidence of acceptance as law *(opinio juris)*. In the *Right of Passage* case and also in *Nottebohm*, for example, the Court was satisfied that the practice in question itself manifested the views of the States concerned that the practice was accepted as law[52]. That an inference of *opinio juris* may sometimes be drawn from practice was also recognized in the *Military and Paramilitary Activities* case, where the Court had to "consider whether there might be indications of a practice illustrative of belief in a kind of general right for States"[53]. In *Gulf of Maine*, too, a chamber of the Court referred to "customary rules whose presence in the *opinio juris* of States can be tested by induction based on the analysis of a sufficiently extensive and convincing practice"[54]. In certain circumstances a general practice may, indeed, indicate a conviction as to what the law is, especially when the matter at issue is clearly governed by international law or where the conduct in question is against the interests of the acting State.

32. The principle that natural prolongation cannot support a claim to title within the 200-nautical-mile zones of *any* other State has been followed by the great majority of States, both in

---

[51] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya), Judgment of 12 October 2021*, para. 188.

[52] *Right of Passage over Indian Territory (Portugal* v. *India), Merits, Judgment, I.C.J. Reports 1960*, p. 40; *Nottebohm (Liechenstein* v. *Guatemala), Second Phase, Judgment, I.C.J. Reports 1955*, p. 22.

[53] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment. I.C.J. Reports 1986*, p. 108, para. 206.

[54] *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 299, para. 111.

their delimitation practice and, as Mr. Bundy will shortly explain, in their CLCS submissions. This practice is indeed accompanied by *opinio juris*.

33. Nicaragua argues that it is Colombia that has failed to prove the existence of a rule *denying* title based on natural prolongation in another State's 200-nautical-mile zones. By saying that, Nicaragua is attempting to divest itself of some kind of burden of proof and to transfer it to Colombia. Yet it is Nicaragua, in these circumstances, that will be required to show that general State practice supports its claim.

34. In any event, the review of State practice assembled by Colombia demonstrates that distance prevails over natural prolongation within 200 nautical miles from any coast. Regardless of the distance between coasts, the great majority of delimitations between States have disregarded geological and geomorphological features within the 200-nautical-mile zone of another State[55].

35. Nicaragua's pleadings do not question the factual findings of Colombia's review. Professor Lowe admitted yesterday that the general practice supports Colombia's position[56]. Nicaragua has not adduced significant contrary practice.

36. But it mounts three arguments about delimitation practice. First, it attempts to discredit the relevance of all practice where there is less than 400 nautical miles between coasts. Yet if natural prolongation really was, as Nicaragua claims, an equally valid source of legal title within 200 nautical miles from another State's baselines, then States would have claimed such title, whether the distance between the coasts was more than 400 nautical miles or less. Because the question is whether natural prolongation may serve one State as a source of title within 200 nautical miles of another State, practice where coasts are less than 400 nautical miles apart is as pertinent as practice where the coasts are more than 400 nautical miles apart. In either case, it would allow for a potential claim of more than 200 nautical miles for at least one State. Yet even where plausible geological and geomorphological features exist and could have been raised as the basis for a claim of title within 200 nautical miles from another State, the vast majority of States refrained from doing so. This is

[55] See CMC, Chap. 3 (B).

[56] CR 2022/25, p. 41, paras. 63-68 (Lowe).

true of States from Africa, the Americas, Asia, Europe and Oceania as we have shown in our Counter-Memorial[57].

37. Let me demonstrate the overwhelming State practice with a couple of examples. As seen on your screen and at tab 10, in the agreement between Denmark and Iceland on their continental shelf boundary east of Greenland, Iceland accepted that its extended shelf entitlement is constrained by the 200-nautical-mile limit of Greenland. This, despite the fact that its extended continental shelf claim, scientifically speaking, could have expanded further to the west[58].

38. The delimitation between Australia and New Zealand is also instructive.

39. As the Court can see now on the screen and at tab 11, natural prolongation was not used as a source of title within each State's 200-nautical-mile entitlement. Each State was recognized as having 200-nautical-mile entitlements from both mainland and islands, without regard to any geological or geomorphological considerations[59]. Only where the distance was greater than 200 nautical miles from *both* coasts, did natural prolongation play a role in the delimitation[60].

40. Many other examples are set out in our written pleadings[61].

41. I now turn very briefly to Nicaragua's two other arguments about practice. Nicaragua's second argument about practice, that a few negotiated deviations undermine the authority of otherwise overwhelming practice, also fails. For customary international law, it is sufficient to establish a *general* practice; unanimity, the Court has held, is not required[62].

42. Third, Nicaragua argues — with no supporting evidence — that the extensive delimitation practice only indicates what the States concerned considered equitable in the circumstances. Yesterday, Professor Lowe said State practice reflects what States find "convenient" or out of

---

[57] See CMC, Chap. 3, Sec. C; RC, Chap. 3, Sec. 2.

[58] *International Maritime Boundaries*, Vol. VII, Denmark (Greenland)-Iceland, Rep. 9-22 (2), 5259, 5268.

[59] *International Maritime Boundaries*, Vol. V, *Australia-New Zealand*, Rep. 5-26, 3759; See Victor Prescott & Gillian Triggs, *Islands and Rocks and their Role in Maritime Delimitation*, *in Id.*, Vol. V, 3245, 3255; see also Cissé Yacouba & Donald McRae, *The Legal Regime of Maritime Boundary Agreements*, *in Id.*, Vol. V, 3281, 3289.

[60] *International Maritime Boundaries*, Vol. V, *Australia-New Zealand*, Rep. 5-26, p. 3764.

[61] See CMC, Chap. 3, Sec. C; RC, Chap. 3, Sec. 2.

[62] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment. I.C.J. Reports 1986*, p. 98, para. 186; ILC 2018 Conclusions, pp. 136-137, Conclusion 8, commentary, para. 7.

"neatness"[63]. With respect, Members of the Court, States do not forgo large areas of maritime entitlements for the sake of "tidiness".

V. Conclusion

43. To conclude, Madam ~~***Chairman***~~ ***President***, the legislative history, State practice and case law confirm that, for title within 200 nautical miles from *any* coast, distance supersedes geology and geomorphology.

44. Madam President, Members of the Court, our answer to the Court's first question is that, under customary international law, a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured may not extend within 200 nautical miles from the baselines of another State.

I thank you for your attention. I request that you invite Mr. Bundy to the podium.

The PRESIDENT: I thank Sir Michael Wood. I now invite Mr. Rodman Bundy to address the Court. You have the floor, Sir.

Mr. BUNDY:

STATE PRACTICE DEMONSTRATES THAT A STATE'S CONTINENTAL SHELF ENTITLEMENT BEYOND 200 NAUTICAL MILES FROM ITS BASELINES MAY NOT EXTEND WITHIN 200 NAUTICAL MILES OF THE BASELINES OF ANOTHER STATE

Introduction

1. Thank you, Madam President, as always, it is an honour to appear before the Court and to represent once again the Republic of Colombia. Following Sir Michael, my presentation will also be directed to the first question posed by the Court. I will address a critical aspect of that question: namely, the State practice which is to be found in the submissions to the CLCS. Yesterday, Professor Lowe said that his understanding was that the Court does not want to hear further detailed analysis of State practice and he declined to discuss any State practice[64]. We do not share that understanding. I would simply recall what the Court said in its Judgment in the *Libya/Malta* case:

---

[63] CR 2022/25, pp. 39-41 (Lowe).

[64] CR 2022/25, p. 27, para. 4 (Lowe).

> "It is of course axiomatic that the material of customary international law is to be looked for primarily in the actual practice and *opinio juris* of States, even though multilateral conventions may have an important role to play in recording and defining rules deriving from custom, or indeed in developing them."[65]

2. My presentation therefore will address these two elements of customary international law — practice and *opinio juris* — in connection with the Court's first question. And my presentation will be in three parts.

— *First*, I will provide an overview of State practice in order to place its relevance in perspective. Based on a comprehensive analysis of the extended continental shelf submissions that States have filed with the CLCS, it is evident that the overwhelming majority of States that have made such submissions do not claim a continental shelf that extends within 200 nautical miles of another State's baselines, even though their submissions could have gone further on technical grounds.

— *Second*, I will discuss some specific examples of this practice in order to illustrate how such States have limited their extended continental shelf claims so as not to encroach on the 200-nautical-mile entitlements of other States.

— And *third*, perhaps after the coffee break, I will explain that this widespread practice reflects customary international law.

3. With that road map, let me start by making some general comments about the relevant State practice.

I. An overview of State practice before the CLCS

4. There are 168 parties to UNCLOS. By my count, 142 of those parties are coastal States. However, the geology and geomorphology of about one-third of those parties would not lend itself to claiming an extended shelf.

5. In contrast, some 30 States are not parties to UNCLOS. And about half of those States are landlocked States.

6. According to the list maintained by the United Nations Division for Ocean Affairs and the Law of the Sea (DOALOS) — which you will find under tab 12 of your folders — 93 extended continental shelf submissions have been made to the CLCS. Some of those submissions are joint

---

[65] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, pp. 29-30, para. 27.

submissions made by two or more States and a few of them have been revised. Of those 93 submissions, 38 involve claims to an extended continental shelf that do not reach the 200-nautical-mile entitlement of another State. They are shaded in grey on the list.

7. The remaining 55 submissions could have extended within the 200-nautical-mile zones of other States. But the key point is that *51 of those 55 submissions* — 51 out of 55 — stopped at the 200-nautical-mile entitlements of neighbouring States when they could have gone further on technical grounds. These are shaded in green on your list.

8. In contrast, there are only four submissions, highlighted in pink on the list, that extend within the 200-nautical-mile zones of neighbouring States. One of these is Nicaragua's submission. Each of these submissions has either been protested by the immediately affected State or States, or such States have reserved their position and have not consented to the consideration of the submission by the CLCS.

9. I will take you to some representative examples of this practice in a few moments. For present purposes, I would like to highlight four key points that emerge from the practice.

— *First*, it is a dominant practice that is by now well settled. Over 92 per cent of the submissions to the CLCS that could have extended into areas situated within 200 nautical miles of another State's baselines do not do so.

— *Second*, the practice is global in nature. Examples of submissions that do not encroach on the 200-nautical-mile limits of neighbouring States come from all parts of the world.

— *Third*, States almost invariably respect the 200-nautical-mile zones of other States when making extended continental shelf submissions, whether those 200-nautical-mile zones are measured from mainland territory or from islands.

— *Fourth*, the relevant practice spans a significant time period: from a submission by Australia in 2004, to submissions by Ecuador, the Federated States of Micronesia and Indonesia just this year, none of which trespassed on a neighbouring State's 200-nautical-mile maritime zones when on technical grounds they could have.

10. As for States that are not party to UNCLOS, no such State has claimed an extended continental shelf that reaches within 200 nautical miles of another State's baselines.

II. Examples of State practice where extended continental shelf submissions stop at the 200-nautical-mile entitlements of another State

11. Madam President, I now turn to some examples of State practice to show the way in which States have respected the 200-nautical-mile entitlements of other States. ~~***And***~~ I should emphasize that each example that I will discuss, with the accompanying maps, is taken from the executive summaries of the submissions that are published and readily available on the DOALOS website[66]. In some instances, we have merely placed some arrows on the executive summary maps to point out the relevant areas.

12. I will start with a number of submissions with respect to which Nicaragua's experts, Dr. Murphy and Dr. Haworth, advised the submitting State. There are seven such submissions where the outer limits claimed stop at the 200-nautical-mile limits of neighbouring States when the geology and geomorphology would have justified a more extensive submission.

13. The map now appearing on the screen, which is also in tab 13 of your folders, shows an area covered by Canada's 2019 submission in the Arctic Ocean. As can be seen by the yellow arrows placed on the map, the extended shelf claimed by Canada goes right up to, but not beyond, the 200-nautical-mile entitlements of Alaska on the west, hence avoiding to encroach on the United States' 200-nautical-mile zone. Similarly, on the east, the outer limits track the 200-nautical-mile entitlements drawn from Denmark's baselines on Greenland. This is confirmed in Section 5 *(b)* of the executive summary, which states that the fixed points for delineating these segments of the outer limits of the continental shelf are located on the "200 M line measured from the territorial sea baselines of the United States of America" and the territorial sea baselines measured from "Greenland (Kingdom of Denmark)".

14. The next figure displayed on the screen, which is in tab 14, shows Canada's submission with respect to the Atlantic. Once again, the Court will observe that Canada's submission in the north, where you see the arrow pointing, stopped at Greenland's 200-nautical-mile zone without extending into that zone even though the continental margin went further. The Executive Summary makes this clear. It states: "[S]ince the outer edge of the continental margin extends into the 200 M zone of the

[66] Available at www.un.org/depts/los/clcs_new/commission_submissions.htm.

Kingdom of Denmark, Canada has used a segment of that 200 M limit to define the outer edge of its continental shelf in this region."[67]

15. Moving east, another submission that at least one of Nicaragua's experts advised on is the Maldives' 2010 submission. As you can see from the map on the screen — it is also in tab 15 of your folders, it is taken from the Executive Summary — the yellow lines are identified in the legend as corresponding to "Other States 200 M". Maldives limited its extended continental shelf submission to the 200-nautical-mile zone of India in the north-west where the arrow is pointing, and similarly the submission stopped 200 nautical miles from Sri Lanka's baselines in the north-east.

16. The next example is taken from an area further north-west in the Arabian Sea. It concerns Pakistan's submission to the CLCS in 2009. In order to visualize the situation, a map taken from Pakistan's Executive Summary is now on the screen. It is also under tab 16 of your folders.

17. As is apparent from the map, Pakistan limited its submission on the west so as not to extend within 200 nautical miles of Oman.

18. Thus far I have addressed submissions that respected the 200-nautical-mile entitlements measured from a neighbouring State's mainland coast or, in the case of-Sri Lanka, from the coast of a large island State. I now turn to three submissions in the Pacific region that respected the 200-nautical-mile entitlements measured from small islands. Nicaragua's expert, Dr. Murphy, advised on each of these submissions.

19. The first is the 2009 submission of the Cook Islands, which is now on the screen and also at tab 17.

20. In this example, you will observe that, in the north-west, the Cook Islands' submission did not encroach on the 200-nautical-mile zones of either Tokelau, which is a dependent territory of New Zealand, or the Republic of Kiribati. In both instances, the 200-nautical-mile limits of those States were drawn from the baselines of islands. Similarly, in the north, the submission did not extend into the 200-nautical-mile limit of Jarvis Island, which is a small island belonging to the United States. This is shown by the map, which labels the yellow arc lines where the extended continental shelf stops as "Other States EEZ". It is also apparent from the list of co-ordinates of the

[67] Executive summary, Sec. 6.

fixed points defining outer limits in the Executive Summary, which indicates that the relevant points are located on "Other States 200 M".

21. Two other submissions from this region are also worth mentioning. The first concerns a joint submission made by the Federated States of Micronesia, Papua New Guinea and the Solomon Islands in 2009. The second is a separate submission by the Federated States of Micronesia in 2013. Because time is short, I will not display these on the screen, but you can find the maps from the Executive Summaries under tabs 18 and 19 of your folders.

22. A glance at those maps will show that the joint submission stops at the 200-nautical-mile limits drawn from both the Republic of Nauru's baselines and from Tuvalu's baselines, while the separate submission of the Federated States of Micronesia extends up to, but does not encroach within, 200 nautical miles of the baselines of Indonesia and Papua New Guinea.

23. To summarize at this stage, therefore, none of the submissions on which Nicaragua's experts advised that could have extended into the 200-nautical-mile zones of other States did so. The practice was remarkably consistent, and it stands in stark contrast to Nicaragua's submission to the CLCS and its claims in this case.

24. I assure the Court that I do not intend to canvass each of the 51 submissions that respected the 200-nautical-mile limits of other States, but I would like to mention a few other examples to illustrate the wide geographic scope and consistency of this practice. I will start with Australia's submission made in 2004. It was one of the earliest submissions to the CLCS.

25. Australia's submission concerned a number of areas where extended continental shelf entitlements were claimed. Two of these areas are relevant in connection with the first question posed by the Court.

26. The first area concerns Australia's submission with respect to an area situated to the east of Norfolk Island, which is Australian territory located beween New Zealand and the French Overseas Territory of New Caledonia. You can also find this in tab 20. The light-blue line — which is not easy to see on this map, it is quite faint — but the light-blue line to which the arrow on the map is pointing is the 200-nautical-mile limit drawn from New Caledonia. The Court will observe that Australia limited its submission so as not to intrude within 200 nautical miles of New Caledonia's

baselines. As the legend to the map, which we have blown up on the screen, indicates, the light-blue line is "200 M from the territorial sea baseline of an opposite or adjacent State".

27. Australia adopted the same practice off its north-west coast in an area that lies beween Australia and Indonesia. You will find this map in tab 21 and it is now on the screen.-And as you can see from the map and from the legend, the light-blue line again, which in this case is quite short, delineates the outer limits of Australia's extended continental shelf along a line that is 200 nautical miles from Indonesia's archipelagic baselines, without intruding on Indonesia's 200-nautical-mile zone.

28. While I am in the same region, I should mention Indonesia's Submission, filed just this year with the CLCS with respect to its extended continental shelf near Christmas Island, another island belonging to Australia. Let me refer you to that: you will find it under tab 22 of your folders, a map taken from the Executive Summary. Not only did Indonesia stop its extended continental shelf generated by the long island of Java so as not to encroach on the 200-nautical-mile entitlement of Christmas Island, it also stated in its Executive Summary that its submission was limited by three *constraint lines*:

— The first was a "[m]aximum distance of 60 M between the two adjacent fixed points". That constraint comes from Article 76, paragraph 4, of UNCLOS.

— The second constraint was "[t]he 350 M projection line from Indonesian Archipelagic baseline": that is the constraint set out in paragraphs 5 and 6 of Article 76.

— But then there is a third constraint, "[t]he projection of 200 M of the continental shelf of Christmas Island, Australia"[68].

So Indonesia viewed as a constraint the 200-nautical-mile limits of Christmas Island. Now yesterday, Professor Oude Elferink told us that paragraphs 4, 5 and 6 of Article 76 are customary international law. Those were the first two constraints of Indonesia. But by the same token, Indonesia's third constraint is also a legal constraint, and it reflects Indonesia's *opinio juris* in respecting the 200-nautical-mile entitlements of neighbouring States even if those entitlements are generated by a small island. And there are several other submissions that also refer to the 200-nautical-mile limits

[68] Executive summary, p. 5.

drawn from another State's baselines as constraint lines — or as limits pursuant to Article 76, paragraph 1.

29. If we move further north, it will be seen that Japan follows the same practice.

30. In 2008, Japan filed an extended continental shelf submission that covered seven regions. Three of those regions are relevant here, where Japan limited the extent of its submission to a distance of 200 nautical miles from the baselines of territory belonging to another State where, otherwise, the submission would have encroached on those 200-nautical-mile zones.

31. The map that is now on the screen, which is also in tab 23, depicts the 200-nautical-mile limits drawn from the territorial sea baselines of neighbouring States in a dark green colour. In the south of the region labelled "KPR" on the map, Japan stopped its submission at the 200-nautical-mile limits of both Palau and the Federated States of Micronesia. In the middle of the map, the submission in the "MIT" area is limited on the east by the 200-nautical-mile entitlements of one of the Northern Mariana Islands, a commonwealth territory of the United States. And further east, along the southern edge of the "OGP" region, Japan also stopped its submission at the 200-nautical-mile zone of the Northern Marianas.

32. Let me now turn to practice in the European region.

33. In 2006, Norway made a submission that covered the "Loop Hole" in the Barents Sea, the "Banana Hole" in the Norwegian Sea — rather colourful names — and the Western Nansen Basin in the Arctic Ocean. The map now on the screen which is also in tab 24 will give the Court an idea of the general geographical context within which this submission was made. I am going to focus on the "Loop Hole" and the "Banana Hole".

34. The next map shows the "Loop Hole" area as it is depicted in the executive summary on a larger scale. As with the other examples I have discussed, Norway's submission stopped along the east at the 200-nautical-mile entitlements of the Russian Federation even though the continental margin could extend further. That is the yellow line on the map to which the arrows are pointing. This map is also in tab 25.

35. The same is true with respect to the "Banana Hole" which is now on the screen and in tab 26. And once again, ***~~this~~ as*** can be seen — the outer limits set out in that submission track the

yellow lines in the south, which are 200 nautical miles from Iceland and the Faroe Islands, respectively.

36. If we turn to the Faroe Islands, in 2010, Denmark together with the Government of the Faroe Islands, lodged a submission covering the Faroe-Rockall Plateau, which is depicted in dark shading on the map now on the screen and at tab 27. Significantly, the submission did not extend within 200 nautical miles of Iceland, the United Kingdom or Ireland. Those are the red lines on the map. As the executive summary makes clear:

> "To the north, east and south-east, the Southern Continental Shelf of the Faroe Islands is limited by the 200 nautical mile limits of Iceland, the United Kingdom of Great Britain and Northern Ireland, and Ireland, respectively (Fig. 1)."[69]

37. If we move further south in Europe, in 2009, Portugal filed a submission with the CLCS which set out its extended continental shelf claims measured from the Azores Archipelago, the Madeira Archipelago and the Galicia Bank region. It is the area around the Madeira Archipelago that is relevant for this demonstration.

38. On the map now being displayed, which is under tab 28, the Court will notice three red lines in the north and east that indicate the limits of Portugal's extended continental shelf in those areas. Those lines are labelled in the legend "200 M from territorial sea baselines of other States".

39. That is confirmed by the final three entries in the list of co-ordinates defining the outer limits contained in the executive summary. As noted there, these limits are located 200 nautical miles from Spain's territorial sea baselines in the north and south, and 200 nautical miles from Morocco's territorial sea baselines in the east.

40. If I turn to Africa, an example is Mozambique's 2010 submission. This example of State practice is noteworthy because the extended continental shelf generated by Mozambique's mainland coast does not extend within 200 nautical miles of a small, neighbouring island.

41. As you can see from the map on the screen, which is also at tab 29, Mozambique limited its submission in the north to a line that is 200 nautical miles from the French island of Europa. The first entry on the list of co-ordinates defining the outer limit of Mozambique's extended shelf in the executive summary states that Point MOZ-OL-01, which is labelled on the map just to the right of

[69] Executive summary, p. 14.

the arrow, was placed on a point that is 200 nautical miles from Europa. Those outer limits then proceed in a gentle arc towards the west along that 200-nautical-mile limit.

42. In the south, Mozambique also did not extend its submission beyond Point MOZ-OL-92, which is identified in the list of co-ordinates as being 200 nautical miles from South Africa. Nicaragua has argued that States stopped their extended continental shelf submissions at the 200-nautical-mile limits of other States because it was "equitable" to do so[70]. If that is so, then presumably Mozambique considered that it would *not be* equitable to extend its continental shelf into the 200-nautical-mile zone of a neighbouring island even though Mozambique's shelf was generated by a long coast, just as in the example between Indonesia and Christmas Island I discussed earlier.

43. The last example I shall discuss is taken from Latin America. It concerns one of the most recent submissions to the Commission filed this year by Ecuador. It relates to Ecuador's claimed extended continental shelf generated from the Galapagos Islands.

44. The Court will notice a red line on the map in the south that is labelled "Outer Limit of the Continental Shelf" — this is also at tab 30. With respect to this limit, Ecuador states in its executive summary the following:

> "The eastern endpoint of this outer limit in the region remains deliberately short of the outer limit of the exclusive economic zone of Perú. This action was taken with great caution in order to avoid any potential prejudice to the determination of the outer limits of any maritime spaces under the national jurisdiction of Perú at a distance of 200 nautical miles."[71]

45. In other words, as in the previous examples of State practice I have discussed, Ecuador's submission deliberately did not extend within 200 nautical miles of a neighbouring State's baselines because that area was considered to be under that other State's jurisdiction. This again reflects *opinio juris.*

46. There are many other examples of State practice that have respected the 200-nautical-mile maritime zones of opposite or adjacent States. The Court will find these listed in the table under tab 12 of your folders.

47. But I think the point is clear. The overwhelming majority of States that claim an extended continental shelf that could have encroached within 200 nautical miles of the baselines of other States

---

[70] RN, para. 3.57.

[71] Executive summary, Section 6, p. 16.

have not done so. This represents a practice that is not only long-standing and consistent, but it also spans the globe in a wide spectrum of geographic situations. Given those realities, I can well understand the reluctance of Nicaragua to discuss State practice yesterday.

Madam President, perhaps that would be an appropriate time for the break.

The PRESIDENT: I thank Mr. Bundy and, indeed this is a good time for the Court to take a coffee break of 10 minutes**,** after which I shall give the floor again to Mr. Bundy. The sitting is adjourned.

The Court adjourned from 11.35 a.m. to 11.50 a.m.

The PRESIDENT: Please be seated. The sitting is resumed. I give the floor again to Mr. Bundy to finish his speech.

III. State practice reflecting customary international law

48. Thank you, Madam President. I now turn to the final part of my presentation in which I will discuss how the practice I have referred to reflects customary international law, in addition to the remarks that Sir Michael made earlier on *opinio juris.*

49. ~~***Now,***~~ Sir Michael has already noted that a general practice and the acceptance of this practice as law are the constituent elements of customary international law[72].

50. With respect to the first element, the fact that the vast majority of States have not claimed an extended continental shelf that reaches within 200 nautical miles of another State's baselines when the geology and geomorphology would have justified a more extensive submission clearly constitutes a "well settled" practice. To recall, 51 of the 55 submissions to the CLCS have respected the 200-nautical-mile zones of adjacent or opposite States when those submissions could have extended further. None of the submissions of the four others have received recommendations from the CLCS on the basis of which the outer limits claimed would be final and binding. Moreover, no ***non-***State

[72] *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 44, para. 77. See also *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, p. 122, para. 55.

party to UNCLOS has laid claim to an extended continental shelf that encroaches on the 200-nautical-mile zones of another State.

51. As Sir Michael has also recalled, during the Third Conference, no State suggested that the extended continental shelf of one State should be able to intrude into the 200-nautical-mile zones of other States. The position was cogently put by the representative of Pakistan during the negotiations who stated that the rights of coastal States whose continental shelves extended beyond 200 nautical miles should be safeguarded "*so long as they did not cause prejudice to the rights and jurisdiction of the continental shelf coast States which the concept of economic zone or patrimonial sea sought to establish*"[73]. Once again, no State took issue with this statement of legal principle: that the extended continental shelf claims of one State should not prejudice the exclusive economic zone rights of another State.

52. States do not readily refrain from claiming areas over which they consider that they have a legal entitlement. Indeed, the practice of States before the CLCS is to claim an extensive a shelf as possible on technical grounds so long as such claims do not encroach on another State's 200-nautical-mile entitlements.

53. This practice is consistent, and it reflects the considered views of the vast majority of States. Moreover, it has led to a large degree of predictability with respect to extended continental shelf submissions. It follows that the States that, against what might be perceived as in their interest, did not seek to extend their submissions within 200 nautical miles of another State's baselines because they considered it to represent a correct application of the law reflected in Article 76 (1). In contrast, there is no rule of customary international law that supports the proposition that a State's extended continental shelf may reach within 200 nautical miles of another State's baselines.

54. While the practice before the CLCS is that of States parties to the Convention, that does not detract from its relevance to the present case. As Professor Oude Elferink acknowledged yesterday, the "practice of States that are a party to the Convention is also relevant in determining the content of customary international law".[74] In so far as an extended continental shelf may exist

---

[73] Third United Nations Conference on the Law of the Sea, 1973-1982, Vol. II, Summary Records of the Second Committee, 18th meeting, A/CONF.62.C.2/SR.18, para. 74, emphasis added.

[74] CR 2022/25, p. 54, para. 34 (Oude Elferink).

under customary international law, the practice of States and their *opinio juris* under the relevant provisions of the Convention are good evidence of the content of parallel rules of customary international law, particularly when there is no contradictory practice by non-parties to UNCLOS.

55. Nicaragua contends that States stopped their submissions at the 200-nautical-mile limits of other States because they were concerned that those other States would protest[75]. But even if this were the case (and it is entirely speculative on Nicaragua's part), it would simply confirm the point that States as a rule do not consider that extended continental shelf submissions should encroach within 200 nautical miles of their baselines. As I noted earlier, and in accordance with paragraph 5 *(a)* of Annex I of the Commission's Rules of Procedure, each of the submissions made to the CLCS that do extend within 200 nautical miles of another State's baselines were either protested or those States did not consent to the CLCS considering the submission, as they were fully entitled to do under the Commission's rules.

56. Colombia's Agent has already recalled the reactions of neighbouring States in the Caribbean to Nicaragua's 2013 submission. For its part, Japan objected to the submissions of China and the Republic of Korea that extended within 200 nautical miles of Japan's baselines because the distance between the coasts of the parties of the States concerned is less than 400 nautical miles[76]. This simply echoed the Court's ruling in the *Libya/Malta* case that geology and geomorphology are irrelevant for purposes both of title and of delimitation in areas where the coasts of the parties in question are less than 400 nautical miles apart, as is the situation in the present case.

57. As the 2018 Commentary to the ILC's draft conclusions on the identification of customary international law points out, "acceptance as law (*opinio juris*) is to be sought with respect not only to those taking part in the practice *but also to those in a position to react*"[77]. There has been such reaction — and it is a negative reaction — to those very few exceptions that extend into the 200-nautical-mile zones of other States.

58. Madam President, distinguished judges; that brings me to the end of my presentation. For the reasons I have explained, State practice on the question is well settled and reflects the *opinio juris*.

---

[75] NR, para. 5.62.

[76] Available at https://www.un.org/depts/los/clcs_new/submissions_files/submissions_chn_2012.htm.

[77] UN doc. A/73/10, 2018, p. 129, emphasis added.

Under customary international law, a State's entitlement to a continental shelf beyond 200 nautical miles from its baselines may not extend within 200 nautical miles from the baselines of another State.

I thank the Court for its attention, and I would respectfully ask that the floor now be given to Dr. Palestini. Thank you.

The PRESIDENT: I thank Mr. Bundy. I now invite Mr. Palestini to take the floor. You have the floor, Sir.

Mr. PALESTINI:

THE QUESTION OF "GREY AREAS"

1. Madam President, Members of the Court, it is a privilege to appear before you today, and it is an honour to have been appointed by the Republic of Colombia to defend its interests. My presentation, which also addresses the first question, is devoted to the question of so-called "grey areas". It is devoted to this question because Nicaragua relies on the existence of grey areas to make the contention that natural prolongation-based entitlements can overlap with 200-nautical-mile entitlements[78]. It is devoted to this question *also* because Nicaragua relies on the existence of grey areas to ~~***advance and***~~ contradict your finding that "there cannot be an exclusive economic zone without a corresponding continental shelf"[79]. Let me start with a clarification. The Colombian position is that grey areas are exceptional occurrences that can only be justified under special circumstances that have nothing to do with the present case.

2. To be more precise, grey areas are exceptional occurrences, not because they are the rarest of occurrences, but because they are exceptions to the rules governing the ranking and delimitation of maritime entitlements. This explains what the name — grey area~~***s***~~ — already reveals. Grey areas are by-products. They are side effects of adjustments made during the maritime delimitation process. They are incidental outcomes that flow from the fact that the law of maritime delimitation does not rest, at least not entirely, upon equidistance. Thus, in a dispute involving two adjacent States that both claim 200-nautical-mile and natural prolongation-based entitlements, a small, wedge-shaped

[78] RN, para. 5.58; CR 2022/25, p. 42, para. 72 (Lowe).

[79] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 33, para. 34.

grey area will arise whenever the single maritime boundary of the 200-nautical-mile entitlements departs from equidistance. It will arise whenever the single maritime boundary, which is on your screens, fails to meet the point of intersection of the 200-nautical-mile limits of two States.

3. Madam President, Members of the Court, Nicaragua has not even begun to explain why a grey area would be possible in the context of these proceedings. In fact, Nicaragua has said little about the concept of grey areas and its application in the *Bay of Bengal* and *Indian Ocean (Somalia* v. *Kenya)* cases[80]. It has said little because this concept and these cases do not support its claim. These cases differ from the present proceedings for many reasons, but let me stress the two that are the most important for the sake of answering to the first question.

— First of all, each of these cases concerned adjacent States, both of which, not just one of them, were claiming an extended continental shelf;

— Secondly, in each of these cases, the natural prolongation-based entitlements overlapped with each other in areas situated beyond 200 nautical miles of all the neighbouring States; in other words, in each of these cases, the *Bay of Bengal* and *Indian Ocean* cases, the extended continental shelves encroached upon the international sea-bed area, not upon other States' 200-nautical-mile entitlements.

What this means is quite simple. These cases involved the delimitation of two sets of 200-nautical-mile entitlements and two extended continental shelf entitlements. The modest grey areas that were created in the *Bay of Bengal* cases, or envisaged in the *Indian Ocean* case, were not deliberate outcomes; they were incidental results of adjustments made to provisional equidistance lines during the delimitation of 200-nautical-mile entitlements. Significantly, none of the parties to these cases filed CLCS submissions in which the outer limits of their continental shelves encroached upon 200-nautical-mile entitlements. Thus, there is a fundamental difference in degree, but more importantly a fundamental difference in kind, between the grey areas at stake in these proceedings and the huge grey area that Nicaragua seeks to create in the present one.

---

[80] RN, paras. 5.58-5.59; CR 2022/25, p. 42, para. 72 (Lowe); *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya), Judgment of 12 October 2021*, para. 197; *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, pp. 119-21, paras. 463-476; *The Bay of Bengal Maritime Boundary Arbitration between the People's Republic of Bangladesh and the Republic of India, Award of 7 July 2014, RIAA*, Vol. XXXII, pp. 147-149, paras. 498-508.

4. The two grey areas that you see on your screens are not the outcome of natural prolongation-based claims that deliberately infringed upon the 200-nautical-mile zones of Myanmar and India. The outer limit of Bangladesh's extended continental shelf, unlike the one claimed by Nicaragua, is not located within 200 nautical miles of neighbouring States. These grey areas are the incidental outcome of adjustments made to alleviate the cut-off effect suffered by Bangladesh within 200 nautical miles of its baselines[81]. The same can be said of the grey area that the Court foreshadowed in the *Indian Ocean* case, which now appears on your screens[82]. This grey area is not the outcome of an attempt by Kenya to invoke natural prolongation within 200 nautical miles of Somalia. It is merely a by-product of the adjustment from strict equidistance that the Court made to the single maritime boundary[83]. In other words, these cases do not stand for the extraordinary proposition according to which natural prolongation-based entitlements can in principle overlap with distance-based entitlements. These cases stand for the proposition according to which grey areas will arise when these are the incidental outcome of adjustments made to single maritime boundaries of 200-nautical-mile entitlements. Grey areas will arise in the small wedge-shaped sectors where single maritime boundaries transition to delimitations of two extended continental shelves.

5. Madam President, Members of the Court, what is on your screens can by no stretch of the imagination be described as a small wedge-shaped grey area. What Nicaragua seeks to create bears no relation whatsoever with the grey areas that have been established in other cases. It is not a by-product of adjustments made to a single maritime boundary within 200 nautical miles. This grey area is the very objective of the Nicaraguan claim. It indeed covers the totality of the claim made by Nicaragua in the present proceedings and overlaps completely with the 200-nautical-mile zones of Colombia — a point to which we will revert later this week. It is the entirety of the area that Nicaragua claims for itself that would presuppose the vertical superimposition of distinct national jurisdictions for distinct physical layers of the sea. Thus, the grey area that Nicaragua seeks to create is not a minor occurrence that can be countenanced without completely overthrowing the rule that

---

[81] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, pp. 80-90, paras. 323-340; *The Bay of Bengal Maritime Boundary Arbitration between the People's Republic of Bangladesh and the Republic of India, Award of 7 July 2014, RIAA*, Vol. XXXII, p. 142, paras. 476-480.

[82] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya), Judgment of 12 October 2021*, para. 197; judges' folder, tab 33.

[83] *Ibid.*, paras. 147-174.

natural prolongation is not a source of title within 200 nautical miles of other States. This grey area is exceptional, but not for the right reasons.

6. As mentioned in the Colombian Rejoinder, what we are dealing with, in the present case, is not a *grey area* in the accepted meaning of the term, but a new controversial maritime space that Nicaragua aptly calls a *grey zone*[84]. This suggestive neologism, which does not seem so obvious in French, reminds us that there is a difference in kind between the *grey areas* established in the Bay of Bengal and the *grey zone* envisaged in the present case. Grey areas are the exception that proves the rule according to which natural prolongation-based entitlements cannot extend within 200-nautical-mile zones. It is one thing to create a grey area when two States are both claiming an extended continental shelf. It is an altogether different one, which would completely subvert the aforementioned rule, to suggest that a State can rely on natural prolongation with a view to encroaching solely upon the 200-nautical-mile entitlements of its neighbours.

7. Madam President, Members of the Court, an exclusive economic zone whose water column is divorced from its sea-bed and subsoil is no longer an exclusive economic zone. One can understand why grey areas were not addressed by the negotiators who participated in the Third United Nations Conference on the Law of the Sea. Small grey areas, properly understood, are analytically interesting, but not of vital practical importance. However, it is disingenuous to suggest, as Nicaragua does, that because the delegates of the Third United Nations Conference did not discuss and, thus, did not expressly prohibit the *grey zone* that is on your screens, it follows that this exorbitant claim is legally possible. If this different kind of *grey area*, this extraordinary *grey zone*, was not discussed, it is because delegates did not even imagine that extended continental shelves could ever encroach upon 200-nautical-mile entitlements. This says a lot. If this *grey zone* was not expressly prohibited, it is because of two arguments made by Sir Michael Wood. These arguments mutually reinforce each other. If the preparatory works and the text of UNCLOS suggest that the extended continental shelf was only meant to encroach upon the international sea-bed area, it is also because to suggest otherwise would entail contradicting the Court's finding that "there cannot be an exclusive economic zone without a corresponding continental shelf"[85]. If the water column of the exclusive economic

---

[84] RC, para. 3.54; RN, para. 5.59.

[85] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 33, para. 34.

zone cannot in principle be divorced from its sea-bed and subsoil, unless one is dealing with a genuine grey area like the one we saw in the *Bay of Bengal* cases, it follows that the extended continental shelf can only extend in what would otherwise have been the common heritage of mankind.

8. This concludes my presentation. The possibility of incidental grey areas cannot change our answer according to which a State's continental shelf beyond 200 nautical miles cannot extend within 200 nautical miles of another State. Grey areas are a limited exception that clearly has nothing to do with the present proceedings. I thank the Court for its attention and I respectfully ask you, Madam President, to give the floor to Professor Thouvenin.

The PRESIDENT: I thank Mr. Palestini. I now invite Professor Jean-Marc Thouvenin to address the Court. You have the floor, Professor.

M. THOUVENIN : Merci beaucoup, Madame la présidente.

RÉPONSES DE LA COLOMBIE À LA DEUXIÈME QUESTION

1. Madame la présidente, Mesdames et Messieurs les juges, c'est un honneur de représenter la Colombie dans la présente affaire, et je la remercie vivement pour la confiance dont elle me gratifie à nouveau.

2. Il me revient d'éclairer la Cour sur la seconde question. Je commencerai par évoquer la portée des paragraphes 2 à 6 de l'article 76 de la convention de 1982, pour ensuite évoquer la question des éventuels critères coutumiers permettant de déterminer les limites du plateau continental au-delà de 200 milles marins. L'article 76 de la convention est reproduit à l'onglet n° 35 du dossier des juges afin que vous en disposiez à votre aise.

Section 1. Les paragraphes 2 à 6 de l'article 76 de la convention des Nations Unies sur le droit de la mer ne reflètent pas le droit international coutumier opposable à la Colombie

3. Madame la présidente, Mesdames et Messieurs les juges, la Colombie affirme que, coutumières ou non, les formules que contiennent les paragraphes 2 à 6 de l'article 76 sont sans pertinence dans la présente affaire. Ces formules ne pourraient servir qu'à déterminer la limite entre, d'une part, le prétendu titre du Nicaragua au-delà de 200 milles marins, et, d'autre part, la Zone

— Zone avec une majuscule. Or, ce n'est pas la question dont la Cour est saisie dans la présente affaire.

A. Même si les paragraphes 2 à 6 de l'article 76 de la convention reflétaient le droit coutumier, ils ne seraient pas pertinents dans le cas d'espèce

4. Madame la présidente, il est bien connu que la définition du plateau continental posée par la convention de 1958 faisait la part un peu trop belle au critère instable de l'exploitabilité. Désormais, le droit international permet l'établissement de limites définitives. A cet égard, il est heureux, et la Colombie s'en félicite, que la limite des 200 milles marins fixée pour la zone économique exclusive (ZEE) et le plateau continental qui lui correspond se soit rapidement et très fermement imposée en droit coutumier.

5. Pour ce qui concerne les Etats parties à la convention de Montego Bay, les paragraphes 2 et suivants de son article 76 ont été conçus pour répondre à la préoccupation formulée par l'Assemblée générale des Nations Unies dans sa résolution 2749 (XXV) du 17 décembre 1970 dans laquelle elle faisait valoir qu'«il existe une zone du fond des mers et des océans, ainsi que de leur sous-sol, au-delà des limites de la juridiction nationale, dont les limites exactes doivent encore être déterminées»[86].

6. De là, les négociations relatives aux paragraphes 2 et suivants de l'article 76 ont précisément visé à permettre de déterminer une limite fixe entre, d'une part, la Zone, patrimoine commun de l'humanité, et, d'autre part, les prétentions de certains Etats à exercer leur juridiction au-delà de la limite des 200 milles marins de leur ZEE. L'objet de ces paragraphes n'a donc jamais été, et n'est jamais devenu, d'autoriser un Etat à revendiquer des droits à l'intérieur ***~~même~~*** de la ZEE d'un autre Etat.

7. Ceci est confirmé par un arrêt de 2012 sur lequel le Nicaragua s'est abondamment appuyé, y compris hier, mais dans un développement sans aucun rapport avec les questions posées par la Cour[87], arrêt dans lequel le Tribunal international du droit de la mer confirme que «l'un des principaux objets et buts de l'article 76 est de définir la limite extérieure précise du plateau continental, au-delà de laquelle se trouve la Zone»[88].

---

[86] Dossier des juges, onglet nº 36.

[87] CR 2022/25, p. 45-48, par. 10-15 (Oude Elferink).

[88] *Différend relatif à la délimitation de la frontière maritime entre le Bangladesh et le Myanmar dans le golfe du Bengale (Bangladesh/Myanmar)*, TIDM, affaire nº 16, arrêt, 14 mars 2012, p. 113, par. 435.

8. Dans le même sens, le juge Wolfrum s'était interrogé en 2008, alors qu'il était président du Tribunal international du droit de la mer, sur la question de savoir qui pourrait éventuellement contester la fixation par un Etat côtier de la limite de son plateau continental étendu établie en application de l'article 76, paragraphes 2 et suivants[89]. A aucun moment il n'a songé qu'un contentieux puisse naître entre deux Etats à propos de l'application de l'article 76, paragraphes 2 et suivants, qui serait sans rapport avec la Zone.

9. La doctrine va dans le même sens.

10. Le professeur Marotta Rangel, fin connaisseur du sujet puisqu'il fut juge au Tribunal international du droit de la mer de 1996 à 2015 après avoir participé aux négociations de la troisième conférence sur le droit de la mer, note dans son cours donné à l'Académie de La Haye que «la limite extérieure du plateau continental définit, d'après la convention de 1982, la frontière entre la juridiction d'un Etat côtier et celle de l'Autorité des fonds marins»[90].

11. Selon le professeur Oude Elferink, le compromis reflété par l'article 76 «result[s] in a formula that would both require and make it possible for states to define the outer limits of their continental shelf unequivocally in relation to the international sea-bed area»[91].

12. Plus récemment, un auteur écrit dans le *Traité d***e** *droit international de la mer****, en francais celui-là,*** que «[l]a limite extérieure du plateau continental ne détermine pas seulement la frontière des droits souverains de l'Etat côtier. Elle constitue également la limite de la Zone.»[92]

13. Autrement dit, il est clair que l'article 76 entend, à travers ses paragraphes 2 et suivants, définir de manière précise ce qui ne relève pas de la Zone, mais du plateau continental étendu que les Etats parties à la convention se reconnaissent le droit de revendiquer dans l'espace en principe considéré comme patrimoine commun de l'humanité. La limite extérieure du plateau continental étendu n'existe donc que par rapport à la Zone.

---

[89] "The Outer Continental Shelf: Some Considerations Concerning Applications and the Potential Role of the International Tribunal for the Law of the Sea", Statement by H.E. Judge Rüdiger Wolfrum, President of the International Tribunal for the Law of the Sea at the 73rd Biennial Conference of the International Law Association, Rio de Janeiro, Brazil, 21 August 2008, p. 12-15 (dossier des juges, onglet n° 41).

[90] V. Marotta Rangel, «Le plateau continental dans la convention de 1982 sur le droit de la mer», *Recueil des cours de l'Académie de droit international de La Haye*, vol. 194, p. 342.

[91] A. G. Oude Elferink, "Article 76 of the LOSC on the Definition of the Continental Shelf: Questions concerning Its Interpretation from a Legal Perspective", 21 INT'l J. MARINE & COASTAL L. 269 (2006), p. 274 ; voir aussi p. 285.

[92] D. Müller, «Les limites des espaces maritimes», *in* M. Forteau, Jean-Marc Thouvenin (sous la dir. de), *Traité de droit international de la mer*, Pedone, 2017, p. 550.

14. Dans la présente affaire, le Nicaragua prétend que les paragraphes 2 et suivants de cet article, qu'il dit refléter le droit coutumier — ce qui n'est pas l'avis de la Colombie —, peuvent être utilisés pour établir les limites d'un prétendu plateau continental étendu qui pénétrerait non pas dans ce qui relèverait autrement de la Zone — Zone avec une majuscule — mais au beau milieu de la zone économique exclusive et du plateau continental d'autres Etats, dans la limite de leurs 200 milles marins. Or, les paragraphes 2 et suivants de l'article 76 ne poursuivent pas un tel objet et but, quand bien même, *quod non,* ils refléteraient le droit coutumier. Il en découle qu'il est impensable que le droit coutumier, à supposer qu'il soit reflété par ces paragraphes, permette au Nicaragua de faire valoir un prétendu plateau continental étendu au beau milieu des 200 milles marins d'autres Etats, et en particulier de la Colombie.

15. Une première réponse à la deuxième partie de la deuxième question de la Cour, qui s'interroge sur le caractère coutumier ou non des paragraphes 2 et suivants de l'article 76 de la convention, s'impose donc : même s'ils avaient ce caractère, ils ne seraient d'aucune utilité pour le Nicaragua vis-à-vis de la Colombie.

16. Ceci confirme au passage la réponse de la Colombie à la première question posée par la Cour, développée aujourd'hui par mes collègues.

B. Les paragraphes 2 à 6 de l'article 76 de la convention ne reflètent aucune règle de droit coutumier qui soit opposable à la Colombie dans la présente affaire

17. Madame la présidente, j'en viens maintenant à la question de savoir si, indépendamment de ce qui vient d'être soutenu, les paragraphes 2 à 6 de l'article 76 reflètent des règles de droit coutumier opposables à la Colombie dans la présente affaire.

18. Si j'insiste sur le fait que la question qui se pose porte sur les règles «opposables à la Colombie dans la présente affaire», c'est, bien évidemment, que les questions ne se posent que dans la mesure nécessaire à la résolution du cas dont la Cour est saisie.

19. Remise dans ce contexte, la question revient à se demander si, en ne devenant pas parties à la convention, mais par leur comportement subséquent, les Etats non parties à la convention, dont la Colombie, ont, d'une manière ou d'une autre, accepté comme étant le droit des règles aux termes desquelles d'autres Etats, en faisant valoir un plateau continental étendu, pourraient se lancer à la

conquête d'une partie de leur plateau continental et ZEE dans la limite des 200 milles marins de leurs côtes.

20. Madame la présidente, qui peut imaginer qu'un Etat, qui considère avoir droit à une ZEE et à un plateau continental dans la limite des 200 milles marins de ses côtes, en vertu du droit coutumier très établi, serait en même temps convaincu de l'existence d'une autre règle grâce à laquelle un autre Etat, disons, son voisin d'en face, en plus de son propre titre jusqu'à 200 milles marins, pourrait lui «prendre» ce qui est à lui dans la limite de ses 200 milles marins, par le simple jeu de l'application des formules techniques des paragraphes 2 et suivants de l'article 76 ? Est-ce simplement crédible ? La réponse est évidente, non, ça ne l'est pas.

21. Ce qui est absolument certain est que la Colombie n'a jamais adhéré à une règle aussi improbable, contrairement à ce que l'on semble vouloir vous faire croire de l'autre côté de la barre[93], et qu'elle s'y est, au contraire, constamment opposée lorsque l'idée en a été avancée. Et je rappelle qu'elle a déjà formulé ses vues dans sa réponse du 10 mai 2012 faite à la Cour en réponse à une question comparable posée par le juge Bennouna dans le cadre de l'affaire jugée en 2012.

The PRESIDENT : Sorry, if you would back up just a bit? Apparently, the translation into English was lost just about a minute ago. If you would just back up a minute, please.

Mr. THOUVENIN : You want me to say again perhaps… from, I don't know where. What was lost?

The PRESIDENT : Just back up about one minute, I think that would be sufficient.

Mr. THOUVENIN : One minute? It's difficult to… I will come to words.

17. Si j'insiste sur le fait… — je reprends un petit peu avant et, si je vais trop vite, dites-le moi, bien sûr. J'en viens à la question de savoir si, indépendamment de ce qui vient d'être soutenu, les paragraphes 2 à 6 de l'article 76 reflètent des règles de droit coutumier opposables à la Colombie dans la présente affaire.

[93] CR 2022/25, p. 18-19, par. 12-16 (Argüello Gómez) ; CR 2022/25, p. 44-45, par. 6-7 (Oude Elferink).

18. J'insiste sur le fait que la question qui se pose porte sur les règles «opposables à la Colombie dans la présente affaire» parce que, bien évidemment, les questions ne se posent que dans la mesure nécessaire à la résolution du cas dont la Cour est saisie.

19. Et remise dans ce contexte, la question revient à se demander si, en ne devenant pas parties à la convention, mais par leur comportement subséquent, les Etats non parties à la convention, dont la Colombie, ont, d'une manière ou d'une autre, accepté comme étant le droit des règles au terme desquelles d'autres Etats, en faisant valoir un plateau continental étendu, pourraient se lancer à la conquête d'une partie de leur plateau continental et ZEE dans la limite des 200 milles marins de leurs côtes.

20. Et, je demandais, Madame la présidente, qui peut imaginer qu'un Etat, qui considère avoir droit à une ZEE et à un plateau continental dans la limite des 200 milles marins de ses côtes, en vertu du droit coutumier le plus établi, serait en même temps convaincu de l'existence d'une autre règle grâce à laquelle un autre Etat, son voisin d'en face par exemple, en plus de son propre titre jusqu'à 200 milles marins, pourrait lui «prendre» ce qui est à lui dans la limite de ses 200 milles marins, par le simple jeu de l'application des formules techniques des paragraphes 2 et suivants de l'article 76 ? Et je demandais, Madame la présidente, est-ce crédible ? Et, je proposais la réponse négative à cette question.

21. Ce qui est, en revanche, absolument certain est que la Colombie n'a jamais adhéré à une règle aussi improbable, contrairement à ce que l'on semble vouloir vous faire croire de l'autre côté de la barre[94], et qu'elle s'y est constamment opposée lorsque l'idée en a été avancée. Et je rappelais que la Colombie a déjà formulé ses vues dans sa réponse du 10 mai 2012 faite à la Cour en réponse à une question comparable posée par le juge Bennouna dans le cadre de l'affaire jugée en 2012.

22. Et contrairement à ce que prétend le Nicaragua, la Colombie n'était alors certainement pas seule à considérer que les paragraphes 2 et suivants de l'article 76 ne sauraient refléter le droit coutumier.

23. Cette opinion s'est en effet fermement implantée dans les esprits depuis le discours de l'ambassadeur Tommy Koh, président de la troisième conférence sur le droit de la mer, lors de la

[94] CR 2022/25, p. 18-19, par. 12-16 (Argüello Gómez) ; CR 2022/25, p. 44-45, par. 6-7 (Oude Elferink).

session finale de cette conférence tenue le 10 décembre 1982 — je cite cette formule qui est restée dans les mémoires : «a State which is not a party to this Convention cannot invoke the benefits of article 76»[95].

24. Bien entendu, si, comme l'affirmait l'ambassadeur Koh, un Etat non partie à la convention ne peut invoquer «le bénéfice» de l'article 76, à l'inverse, aucun Etat ne peut lui opposer les règles de l'article 76. Prononcée par une personnalité clé de la troisième conférence sur le droit de la mer, le président lui-même, cette formule ne pouvait que forger durablement l'*opinio juris* quant à ce que le droit coutumier dit. Elle donnait l'assurance aux Etats non parties à la convention que les termes de l'article 76, dont ils ne peuvent invoquer le bénéfice, ne leur seraient pas non plus opposés, pas même par le truchement de la coutume. Elle leur donnait l'assurance qu'une réclamation comme celle du Nicaragua serait automatiquement rejetée.

25. La doctrine a largement continué à suggérer l'absence d'un quelconque processus subséquent de formation progressive d'une règle de droit coutumier qui refléterait le contenu des paragraphes 2 et suivants de l'article 76.

26. Le professeur William T. Burke fit valoir dès 1989, en substance, qu'il était impossible de voir dans les formules de l'article 76 portant sur le pied du talus et l'épaisseur des roches sédimentaires quoi que ce soit qui puisse relever de la coutume, sauf à considérer également que le paragraphe 8 de l'article 76, qui fixe les prérogatives de la Commission des limites du plateau continental, est lui-même coutumier, alors qu'il est évident que ce n'est pas le cas[96].

27. En 1991, la professeure Barbara Kwiatkowska, alors directrice adjointe de l'Institut du droit de la mer de l'Université d'Utrecht, écrivait que les stipulations très techniques de l'article 76 ne sont pas même capables de devenir coutumières[97].

---

[95] 193rd Plenary Meeting, Closing Statement by the President, Vol. XVII, Official Records p. 135-136, UN Doc. A/CONF.62/SR.193 (1982), par. 48 (dossier des juges, onglet nº 37).

[96] W. Burke, "Customary Law as Reflected in the LOS Convention: A Slippery Formula", *in* J. P. Craven, J. Schneider, C. Stimson (eds), *The International Implications of Extended Maritime Jurisdiction in the Pacific*, Law of the Sea Institute, 1989, p. 405.

[97] B. Kwiatkowska, "Creeping Jurisdiction Beyond 200 Miles in the Light of the 1982 Law of the Sea Convention and State Practice", 22 *Ocean Dev't & Int'l L.* 153, 157–58 (1991).

28. En 1995, le professeur Ted McDorman était d'avis qu'il serait «difficult to accept that … the technical criteria of Article 76 … have emerged as customary international law»[98].

29. En 2006, le professeur Tullio Treves, qui était alors juge au Tribunal international du droit de la mer, soutenait que «it remains open how many of the details and figures set out in these rules partake in this transmigration into customary law»[99].

30. Le professeur Oude Elferink s'exprimait ainsi en 2008 : «Can the detailed provisions of article 76 be considered to be customary law? Probably not.»[100]

31. En 2009 le juge Golitsyn, juge au Tribunal international du droit de la mer, écrivait : «Article 76 can hardly be viewed as a reflection of customary international law.»[101]

32. En 2017, la contribution sur le plateau continental du *Traité de droit international de la mer*, que j'évoquais tout à l'heure, concluait :

> «Il demeure cependant très incertain d'affirmer que les dispositions relatives à la limite externe de la marge continentale et du plateau continental au-delà de 200 milles, très techniques et assorties des garanties procédurales nécessaires à leur application, font partie intégrante du droit international général. … En raison du caractère très détaillé et précis de ces règles, une consécration coutumière reste difficile à concevoir.»[102]

33. Il y aurait d'autres exemples, mais l'image est claire, nombreux sont les spécialistes du droit de la mer qui n'ont vu ni pratique, ni *opinio juris* à propos des paragraphes 2 et suivants de l'article 76 ; ils n'ont pas même imaginé qu'ils puissent cristalliser des règles de droit coutumier.

34. Cette conviction, de bon sens, se nourrit sans doute en partie de la célèbre condition posée par votre Cour dans l'affaire du *Plateau continental de la mer du Nord*, qui postule que pour qu'une nouvelle disposition conventionnelle ait vocation à refléter par la suite une règle coutumière, il faut,

---

[98] T. L. McDorman, "The Entry into Force of the 1982 LOS Convention and the Article 76 Outer Continental Shelf Regime", 10 *Int'l J. Marine & Coastal L*. 165, 168 (1995).

[99] T. Treves, "Remarks on Submissions to the Commission on the Limits of the Continental Shelf in Response to Judge Marotta's Report", 21 *Int'l J. Marine & Coastal L*. 363, 363 (2006).

[100] A.G. Oude Elferink, "The Outer Limits of the Continental Shelf Beyond 200 Nautical Miles Under the Framework of Article 76 of the United Nations Convention on the Law of the Sea (LOSC)", at 10–11 (Ocean Policy Research Foundation, 2008).

[101] V. Golitsyn, "Continental Shelf Claims in the Arctic Ocean: A Commentary", 24 *Int'l J. Marine & Coastal L*. 401, 405 (2009).

[102] D. Müller, « Les limites des espaces maritimes », *in* M. Forteau, Jean-Marc Thouvenin (sous la dir. de), *Traité de droit international de la mer*, Pedone, 2017, p. 552.

entre autres conditions, «que la disposition en cause ait, en tout cas virtuellement, un caractère fondamentalement normatif et puisse … constituer la base d'une règle générale de droit»[103].

35. Appliquons le même standard à l'article 76, paragraphe 4. Cet article propose deux formules différentes pour le calcul des limites du plateau continental. L'Etat côtier choisit souverainement l'une «ou» l'autre, ou un peu des deux. Or, des formules alternatives qui sont au choix souverain de chaque Etat côtier n'ont rien de «fondamentalement normatives».

36. Elles ont d'autant moins ce caractère que, en premier lieu, il existe des exceptions aux règles de calcul de ces limites. La Cour se rappelle bien sûr que, dans l'affaire du *Plateau continental de la mer du Nord*, pour rejeter le caractère coutumier des dispositions de l'article 6 de la convention de Genève, elle avait tenu compte de la dérogation que cet article contient, en disant :

> «[si l']on doit admettre qu'en pratique il est possible de déroger par voie d'accord aux règles de droit international dans des cas particuliers ou entre certaines parties, … cela ne fait pas normalement l'objet d'une disposition expresse comme dans l'article 6 de la Convention de Genève»[104].

37. Or, le même raisonnement vaut s'agissant de l'article 76, paragraphe 4, lettre *b)*, qui contient une dérogation expresse au profit de l'Etat qui apporte la «preuve du contraire» de ce que dit cet article : «*b)* Sauf preuve du contraire, le pied du talus continental coïncide avec la rupture de pente la plus marquée à la base du talus.»

38. L'article 76, paragraphe 4, lettre *a)*, de la convention de 1982 connaît lui aussi une dérogation. L'annexe II de l'acte final de la conférence prévoit en effet une autre méthode de calcul des limites du plateau continental étendu, différente de celles mentionnées à l'article 76, paragraphe 4. Initialement réclamée par le Sri Lanka pour ce qui concerne le golfe du Bengale, cette dérogation a été invoquée depuis lors par le Kenya[105]. Là encore, le caractère «fondamentalement normatif» du paragraphe 4 de l'article 76 apparaît douteux.

39. En deuxième lieu, et plus fondamentalement, les formules et présomptions de l'article 76, paragraphe 4, ne produisent un résultat définitif et obligatoire, donc «fondamentalement normatif», que si la Commission des limites du plateau continental les entérine dans une recommandation.

---

[103] *Plateau continental de la mer du Nord (République fédérale d'Allemagne/Danemark ; République fédérale d'Allemagne/Pays-Bas), arrêt, C.I.J. Recueil 1969*, p. 41-42, par. 72 (dossier des juges, onglet n° 38).

[104] *Ibid*.

[105] D. Müller, «Les limites des espaces maritimes», *in* M. Forteau, Jean-Marc Thouvenin (sous la dir. de), *Traité de droit international de la mer*, Pedone, 2017, p. 557.

Autrement dit, une limite fixée sur la base de l'article 76, paragraphe 4, qui n'est pas fondée sur une recommandation de la Commission des limites, n'a rien ni de définitif ni d'obligatoire. L'article 76, paragraphe 4, n'a par conséquent, en soi, aucun caractère «fondamentalement normatif».

40. Non seulement personne n'a vu, ou presque personne n'a vu, au cours de toutes ces années, poindre un processus coutumier mais, en outre, la doctrine le pensait hors de propos à l'égard des paragraphes 2 et suivants de l'article 76.

41. Et on le comprend d'autant plus facilement que, pour reprendre encore une fois le cas du paragraphe 4 de l'article 76, ce dernier débute par les termes «[a]ux fins de la Convention». On voit mal comment un texte débutant par ces mots pourrait refléter le droit coutumier, sauf à prétendre que le droit coutumier s'applique «aux fins de la Convention», ce qui serait absurde. La portée de ce texte est explicitement limitée aux parties à la convention, ce qui résout la question. Du reste, son contenu est le fruit typique de concessions *inter partes*.

42. La formule de l'article 76, paragraphe 4, lettre *a)*, alinéa ii) — que l'on voit projetée à l'écran mais que je ne lis pas — est issue des travaux d'un scientifique américain ; c'est la formule Hedberg. Comme l'a souligné, durant les négociations, un membre de la délégation brésilienne qui fut par la suite juge au TIDM, cette formule fut adoptée parce qu'elle avait «l'avantage d'offrir à l'Etat côtier des solutions plus précises, simples et moins coûteuses»[106]. La formule de l'article 76, paragraphe 4, lettre *a)*, alinéa i), dite formule Gardiner, du nom d'un membre de la délégation irlandaise, est pour sa part issue d'un amendement que l'Irlande a fait valoir notamment pour son propre intérêt, même s'il bénéficie à d'autres Etats.

43. L'Irlande en est pour sa part très satisfaite. Dans un discours prononcé en 2011, le ministre des affaires étrangères d'Irlande a reconnu que

> «Ireland continues to benefit from the work done by its delegation at the Law of the Sea Conference. … Ireland's continental shelf is approximately 10 times larger than its land territory. The «Irish formula» has been successfully used to help extend the State's continental shelf by 39,000 square kilometres in the area of the Porcupine Bank.»[107]

---

[106] V. Marotta Rangel, « Le plateau continental dans la convention de 1982 sur le droit de la mer », *Recueil des cours de l'Académie de droit international de La Haye*, vol. 194, p. 351-352.

[107] Launch of The Law of the Sea – The Role of the Irish Delegation at the Third UN Conference Remarks of the Tánaiste and Minister for Foreign Affairs & Trade, Eamon Gilmore, T.D. Royal Irish Academy 14 April 2011; https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/internationallaw/statement-law-of-the-sea-april-2011.pdf (dossier des juges, onglet n° 40).

44. L'un des négociateurs irlandais, Mahon Hayes, dans un livre, publié en 2011[108], raconte fort bien les négociations complexes qui ont conduit au texte de l'article 76, parfois tâtonnantes, parfois tendues, entre Etats dont aucun n'entendait renoncer à ses intérêts.

45. Madame la présidente, Mesdames et Messieurs les juges, on voit mal comment les formules de l'article 76, qui sont le fruit d'un compromis conventionnel âprement négocié, pourraient refléter des règles «fondamentalement normatives» de droit international général. Elles sont alternatives, éventuelles, au choix souverain des Etats ; elles sont sujettes à des exceptions et dérogations ; et leur application est soumise à un contrôle strict de la Commission des limites, laquelle est seule à en déterminer l'effet normatif. Elles apparaissent très clairement comme un croisement de concessions réciproques. Il n'y a donc rien là de «fondamentalement normatif», susceptible de générer du «droit international général».

46. L'opinion du juge Wolfrum, alors président du Tribunal international du droit de la mer, ne peut dès lors que susciter l'adhésion :

> «article 76, paragraphs 4 to 8 of the Convention, including the Statement of understanding concerning a specific method to be used in establishing the outer edge of the continental margin, constitutes a compromise. It may even be said that these parts of the Convention do not contain an agreement in substance but rather provide for a procedure through which the outer limits of the continental shelf is to be defined in future and on a case-by-case basis.»[109]

47. Sur ces bases, la réponse de la Colombie à la seconde partie de la seconde question est que les paragraphes 2 à 6 de l'article 76 ne lui sont pas opposables au titre du droit international coutumier.

Section 2. Quels sont, en droit international coutumier, les critères sur la base desquels il convient de déterminer les limites du plateau continental au-delà de 200 milles marins

48. Madame la présidente, j'aborde maintenant la première partie de la question, qui interroge sur la question des critères sur la base desquels il conviendrait, en droit coutumier, de déterminer les limites du plateau continental au-delà de 200 milles marins.

---

[108] Mahon Hayes, *The Law of the Sea: The Role of the Irish Delegation in the Third UN Conference*, Royal Irish Academy (11 octobre 2011).

[109] R. Wolfrum, *op. cit*., p. 2 (dossier des juges, onglet n° 41).

49. Là encore, la question ne peut se comprendre que dans le cadre spécifique du litige dont la Cour est dûment saisie. Elle revient à se demander quels sont, en droit coutumier, les critères sur la base desquels le Nicaragua pourrait déterminer la limite de son prétendu plateau continental au-delà de 200 milles marins de ses lignes de base, qui pénétrerait dans la zone des 200 milles marins de la Colombie. Or, comme la Colombie l'a déjà amplement montré, le Nicaragua ne peut tout simplement pas prétendre à un titre à un plateau continental étendu dans la zone des 200 milles marins de la Colombie. Dès lors, aucun critère ne saurait être appliqué.

50. Mais supposons que la question soit d'ordre hypothétique, qu'elle sorte du cadre de la présente affaire qui oppose le Nicaragua à la Colombie, et qu'il s'agisse de savoir quels sont les critères que le Nicaragua devrait faire valoir pour déterminer les limites de son plateau continental étendu par rapport à la Zone. Dans ce cas, la question se poserait *a priori* en termes de droit conventionnel puisque, comme Etat partie à la convention, le Nicaragua devrait nécessairement appliquer l'ensemble de l'article 76, et tous les autres articles pertinents de la convention.

51. Faut-il finalement supposer que le Nicaragua ne soit pas partie à la convention, mais fasse tout de même valoir un plateau continental étendu dans la Zone, et faut-il se demander quels seraient les critères relatifs à la limite de ce plateau continental étendu, en droit coutumier ? Cette question est tellement éloignée de la situation des Parties à la présente affaire que l'on voit mal comment la Cour pourrait s'en emparer.

52. Madame la présidente, Mesdames et Messieurs les juges, ceci conclut ma présentation de ce jour. Je vous remercie de votre attention et vous prie de bien vouloir appeler à la barre la professeure Laurence Boisson de Chazournes.

The PRESIDENT: I thank Professor Thouvenin. I now invite Professor Laurence Boisson de Chazournes to address the Court. You have the floor, Professor.

Mme BOISSON DE CHAZOURNES : Merci.

LA REVENDICATION DU NICARAGUA EST CONTRAIRE À LA PRATIQUE LARGEMENT ACCEPTÉE DES ÉTATS ET IMPLIQUE DES RISQUES SYSTÉMIQUES POUR L'ORDRE PUBLIC DES OCÉANS

1. Madame la présidente, Mesdames et Messieurs les juges, c'est un honneur de me présenter de nouveau devant vous au nom de la République de Colombie.

2. Madame la présidente, vous l'aurez constaté, en réponse à la première question posée par la Cour, le Nicaragua n'a apporté, tout au long de ses écritures et hier lors de son premier tour de plaidoiries, aucune preuve — ni même un commencement de preuve — de l'existence d'une quelconque règle de droit international coutumier qui permettrait au Nicaragua par le biais d'un prétendu plateau continental étendu de revendiquer des droits dans la ZEE — et partant sur le plateau continental — de la Colombie. Il n'existe à vrai dire pas de droit coutumier même, *in statu nascendi*, pour ce qui constituerait de toute évidence une aberration pour l'ordre public des océans.

3. En réalité, la Cour est en présence d'une situation dans laquelle il existe «une pratique *acceptée si largement* par les Etats»[110], qu'elle doit en tirer toutes les conséquences et rejeter *in toto* la revendication du Nicaragua. En effet, s'il y a «une pratique [qui est] acceptée si largement par les Etats» dans le domaine des revendications en matière de plateau continental étendu, c'est celle *de se refuser systématiquement* à pénétrer les espaces marins que le droit international coutumier reconnaît aux autres Etats en deçà de 200 milles marins de leurs lignes de base. Cela ressort clairement de la carte qui va apparaître maintenant à l'écran et qui figure à l'onglet n° 42 du dossier des juges.

4. Cette carte montre, en effet, que sur 93 demandes faites à la Commission des limites du plateau continental en vertu de l'article 76 de la convention, 55 se situent à proximité des 200 milles marins d'Etats voisins. Parmi ces demandes, *toutes* respectent les limites des espaces marins que le droit international coutumier reconnaît aux autres Etats en deçà de 200 milles marins de leurs lignes de base. *Toutes* sauf un très petit nombre de demandes ainsi que M. Bundy l'a indiqué.

5. C'est là une preuve patente que les Etats concernés par des revendications de plateau continental étendu sont profondément convaincus qu'ils n'ont aucun droit de revendiquer un plateau continental s'étendant au-delà de 200 milles marins quand celui-ci pénètre dans la zone des 200 milles marins d'un autre Etat. Cela est suffisant en soi, contrairement à ce qu'avance le

---

[110] *Usines de pâte à papier sur le fleuve Uruguay (Argentine c. Uruguay), arrêt, C.I.J. Recueil 2010 (I)*, p. 83, par. 204 (les italiques sont de nous).

Nicaragua, pour prouver l'existence d'une règle coutumière rejetant ou niant, pour paraphraser la Cour, un droit pour un Etat d'étendre son plateau continental au-delà de 200 milles marins des lignes de base à partir desquelles est mesurée la largeur de sa mer territoriale, à des espaces maritimes en deçà de 200 milles marins des lignes de base d'un autre Etat. La carte à l'écran le montre de façon éclairante.

6. Les Etats dans leur écrasante majorité sont attachés au respect du droit international coutumier et ont toujours considéré que le droit d'un Etat côtier à une zone économique exclusive et un plateau continental en deçà de ses 200 milles marins l'emporte, nécessairement et naturellement, sur celui d'un autre Etat à un plateau continental étendu au-delà de ses propres 200 milles marins. Cela explique que, contrairement au Nicaragua, les Etats qui font de telles revendications les orientent vers la haute mer. La carte qui apparaît maintenant à l'écran et qui figure à l'onglet n° 43 du dossier des juges met en relief cet aspect crucial.

7. Cette carte révèle le contraste manifeste entre la revendication de chevauchement du Nicaragua et celles d'autres Etats comme le Mexique, Cuba, la France, la Barbade et Trinité-et-Tobago. Les revendications de plateau continental étendu (en bleu foncé sur votre écran), contrairement à celle en rouge du Nicaragua — qui, comme vous pouvez le voir, est bien seul et isolé dans son approche — se dirigent toutes, sans exception, vers des zones de haute mer et non vers les espaces maritimes d'autres Etats situés en deçà de leurs 200 milles marins.

8. Il en résulte, Mesdames et Messieurs les juges, que même si — *quod non* — le Nicaragua pouvait établir que sa marge continentale s'étendait au-delà des limites de ses 200 milles marins, aucun titre ou droit n'en découlerait dans la limite de la zone économique exclusive et du plateau continental correspondant de la Colombie. C'est là la pratique générale et l'*opinio juris* des Etats côtiers, pratique sans équivoque à l'échelle universelle. Autrement dit, l'empiètement n'est pas de mise ; le non-chevauchement est, lui, la règle.

9. Le Nicaragua aurait pu esquisser le dessein de se réfugier derrière une pratique régionale pour tenter de justifier sa demande inédite et infondée en vertu du droit international coutumier et de la convention — notamment de l'article 76. Mais, là encore, nulle pratique régionale ne vient, même à titre exceptionnel, valider ou corroborer la position anti-coutumière du Nicaragua.

10. Dans la mer des Caraïbes comme dans d'autres espaces maritimes, la pratique a constamment et systématiquement été de ne pas revendiquer des plateaux continentaux étendus. Cela s'explique en raison de la nécessité de préserver tant les droits existants que les droits potentiels reconnus aux autres Etats par le droit international coutumier dans leurs espaces marins en deçà de 200 milles marins.

11. Or, la réécriture aberrante du droit international coutumier que fait le Nicaragua est en soi contraire aux droits existants et potentiels reconnus aux autres Etats de la mer des Caraïbes dans leurs espaces marins en deçà de 200 milles marins, y compris la Colombie. La carte qui apparaît à l'écran et qui figure à l'onglet n° 44 du dossier des juges montre clairement qu'il existe de nombreux droits et intérêts juridiques au sein de la mer des Caraïbes.

En effet, les limites de 200 milles marins découlant des lignes de base mesurées à partir des côtes continentales et des îles montrent clairement la multiplicité des droits potentiels dans la mer des Caraïbes. Ces nombreux droits concernent tant la Colombie que des Etats tiers qui peuvent faire valoir des intérêts juridiques vis-à-vis du Nicaragua au sein de la mer des Caraïbes. Vous pouvez voir cela sur l'écran et à l'onglet n° 44 du dossier des juges, notamment en ce qui concerne les îles qui relèvent de la souveraineté colombienne.

12. Mesdames et Messieurs les juges, le Nicaragua invite la Cour à instaurer une sorte de chaos au sein de la mer des Caraïbes ; un chaos qui permettrait, comme cela apparaît à l'écran et à l'onglet n° 44 du dossier des juges, de tout simplement effacer des espaces de la mer des Caraïbes tout droit et intérêt juridique reconnus aux autres Etats en vertu du droit international coutumier. Madame la présidente, comment le droit international coutumier pourrait-il permettre une telle situation dans laquelle les droits et intérêts d'Etats tiers en vertu du droit international coutumier seraient annihilés par la prétention d'un Etat comme le Nicaragua ? C'est pour éviter un tel chaos que *tous* les Etats des Caraïbes qui ont fait une soumission à la Commission des limites du plateau continental se sont abstenus de toute incursion dans le plateau continental de leurs voisins ; *tous* sauf, comme on le sait, le Nicaragua. Il est dès lors pour le moins difficile de prendre au sérieux les prophéties de chaos annoncées hier par l'agent et les conseils du Nicaragua[111], lorsque l'on sait que

[111] CR 2022/25, p. 20, par. 19, et p. 22, par. 28 (Argüello Gómez) ; p. 57, par. 45 (Oude Elferink).

c'est le Nicaragua lui-même qui s'est engagé sur une pente — je devrais dire une pratique — très chaotique !

13. Au lieu de s'inscrire dans la même logique que les autres Etats côtiers de la mer des Caraïbes, le Nicaragua veut voir dans sa revendication une pratique à même d'établir le droit international coutumier ! En plus de vouloir réinventer le droit coutumier applicable au plateau continental et, par delà lui, à la zone économique exclusive, le Nicaragua souhaite également réinventer le droit international coutumier lui-même. Mais, le droit coutumier ne peut pas reposer sur des pratiques volatiles, éparses et, qui plus est, irrespectueuses des droits existants et potentiels reconnus par le droit international aux Etats. Or, c'est précisément une telle approche *contra legem* que le Nicaragua invite la Cour à reconnaître comme conforme au droit international coutumier.

14. Cette invite, en plus des risques de chaos qu'elle pourrait entraîner au sein de la mer des Caraïbes, est de nature à créer des incertitudes au sein de nombreux autres mers et océans. En effet, d'autres Etats parties à la convention et malencontreusement inspirés par le précédent nicaraguayen pourraient eux aussi songer à soumettre des demandes similaires et nouvelles à la Commission des limites du plateau continental et engendrer ainsi une instabilité continue. Par exemple, le Portugal, pour ne citer que cet exemple, pourrait, après s'en être abstenu comme le montre la carte à l'écran et qui figure à l'onglet n° 45 du dossier des juges, réviser sa soumission à la Commission et revendiquer un plateau continental étendu dans les espaces maritimes en deçà de 200 milles marins du Maroc et de l'Espagne.

15. Il est donc primordial que la Cour accorde une attention particulière et un poids significatif à la pratique si largement acceptée des Etats. Cela permettra de préserver les droits des non-parties à la convention, de garantir la sécurité nécessaire aux relations juridiques entre Etats dans les diverses régions du monde, de préserver l'objet et le but de la convention et de «tuer dans l'œuf» le risque de répétition pernicieuse de revendications similaires à celle du Nicaragua dans la présente instance. Ce faisant, la Cour préviendrait et empêcherait des abus dans les demandes adressées à la Commission des limites du plateau continental, lesquels sont, sans aucun doute, de nature à perturber de façon durable le fonctionnement effectif de la Commission.

16. Par conséquent, à la question générale de savoir si la Cour peut procéder, en vertu du droit international coutumier, à une délimitation dans les «circonstances de l'espèce», la réponse en droit est bien évidemment : non !

17. Madame la présidente, Mesdames et Messieurs les juges, je vous remercie de votre attention. Cet exposé clôt le premier tour de plaidoiries orales de la Colombie.

The PRESIDENT: I thank Professor Boisson de Chazournes, whose statement brings to an end the first round of oral argument of Colombia.

The oral proceedings in the case will resume at 4.30 p.m. tomorrow, Wednesday 7 December, when Nicaragua will present its second round of pleadings. At the end of that sitting, Nicaragua will present its final submissions.

Colombia will present its second round of oral argument on Friday 9 December at 10 a.m. At the end of that sitting, Colombia will also present its final submissions. I recall that for the second round, each Party will have a maximum of one and a half hours to present its arguments.

As the Parties and their counsel turn to their preparation for the second round of oral proceedings, I take this opportunity to remind them of Article 60, paragraph 1, of the Rules of Court, pursuant to which the oral statements of the second round are to be as succinct as possible. The Court has emphasized this requirement in Practice Direction VI. The Parties should not use the second round to repeat statements that they have previously made. The second round is an opportunity to respond to points that were made earlier in the oral proceedings. Moreover, the Parties are not obliged to use all the time allotted to them.

The sitting is adjourned.

The Court rose at 1 p.m.