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Summary
Not an official document

Summary 2007/4
8 October 2007

Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)

Summary of the Judgment of 8 October 2007

Chronology of the procedure and submissions of the Parties (paras. 1-19)

On 8 December 1999 Nicaragua filed an Application instituting proceedings against Honduras in respect of a dispute relating to the delimitation of the maritime areas appertaining to each of those States in the Caribbean Sea.

In its Application, Nicaragua sought to found the jurisdiction of the Court on the provisions of Article XXXI of the American Treaty on Pacific Settlement (officially known as the "Pact of Bogotá"), as well as on the declarations accepting the jurisdiction of the Court made by the Parties, as provided for in Article 36, paragraph 2, of the Statute of the Court.

Since the Court included upon the Bench no judge of the nationality of either of the Parties, each Party proceeded to exercise its right conferred by Article 31, paragraph 3, of the Statute to choose a judge ad hoc to sit in the case. Nicaragua chose Mr. Giorgio Gaja and Honduras first chose Mr. Julio González Campos, who resigned on 17 August 2006, and subsequently Mr. Santiago Torres Bernárdez.

By an Order dated 21 March 2000 the President of the Court fixed 21 March 2001 and 21 March 2002, respectively, as the time-limits for the filing of the Memorial of Nicaragua and the Counter-Memorial of Honduras. Those pleadings were duly filed within the prescribed time-limits.

By an Order of 13 June 2002, the Court authorized the submission of a Reply by Nicaragua and a Rejoinder by Honduras, and fixed 13 January 2003 and 13 August 2003 as the respective time-limits for the filing of those pleadings. The Reply of Nicaragua and the Rejoinder of Honduras were filed within the time-limits so prescribed.

Public hearings were held between 5 and 23 March 2007. At the conclusion of the oral proceedings, the Parties presented the following final submissions to the Court:

On behalf of the Government of Nicaragua,

> "Having regard to the considerations set forth in the Memorial, Reply and hearings and, in particular, the evidence relating to the relations of the Parties,

May it please the Court to adjudge and declare that:

The bisector of the lines representing the coastal fronts of the two Parties as described in the pleadings, drawn from a fixed point approximately 3 miles from the river mouth in the position 15° 02' 00" N and 83° 05' 26" W, constitutes the single maritime boundary for the purposes of the delimitation of the disputed areas of the territorial sea, exclusive economic zone and continental shelf in the region of the Nicaraguan Rise.

The starting-point of the delimitation is the thalweg of the main mouth of the River Coco such as it may be at any given moment as determined by the Award of the King of Spain of 1906.

Without prejudice to the foregoing, the Court is required to decide the question of sovereignty over the islands and cays within the area in dispute."

On behalf of the Government of Honduras:

"Having regard to the pleadings, written and oral, and to the evidence submitted by the Parties,

May it please the Court to adjudge and declare that:

1. The islands Bobel Cay, South Cay, Savanna Cay and Port Royal Cay, together with all other islands, cays, rocks, banks and reefs claimed by Nicaragua which lie north of the 15th parallel are under the sovereignty of the Republic of Honduras.

2. The starting-point of the maritime boundary to be delimited by the Court shall be a point located at 14° 59.8' N latitude, 83° 05.8' W longitude. The boundary from the point determined by the Mixed Commission in 1962 at 14° 59.8' N latitude, 83° 08.9' W longitude to the starting-point of the maritime boundary to be delimited by the Court shall be agreed between the Parties to this case on the basis of the Award of the King of Spain of 23 December 1906, which is binding upon the Parties, and taking into account the changing geographical characteristics of the mouth of the river Coco (also known as the river Segovia or Wanks).

3. East of the point at 14° 59.8' N latitude, 83° 05.8' W longitude, the single maritime boundary which divides the respective territorial seas, exclusive economic zones and continental shelves of Honduras and Nicaragua follows 14° 59.8' N latitude, as the existing maritime boundary, or an adjusted equidistance line, until the jurisdiction of a third State is reached."

Geography (paras. 20-32)

The Court notes that the area within which the delimitation sought is to be carried out lies in the basin of the Atlantic Ocean between 9° to 22° N and 89° to 60° W, commonly known as the Caribbean Sea. The Nicaraguan coast runs slightly west of south after Cape Gracias a Dios all the way to the Nicaraguan border with Costa Rica except for the eastward protrusion at Punta Gorda. The Honduran coast, for its part, runs generally in an east-west direction between the parallels 15º to 16º of North latitude. The Honduran segment of the Central American coast along the Caribbean continues its northward extension beyond Cape Gracias a Dios to Cape Falso where it begins to swing towards the west. At Cape Camarón the coast turns more sharply so that it runs almost due west all the way to the Honduran border with Guatemala. The two coastlines roughly form a right angle that juts out to sea. The convexity of the coast is compounded by the cape formed at the mouth of the River Coco, which generally runs east as it nears the coast and meets

the sea at the eastern tip of Cape Gracias a Dios. Cape Gracias a Dios marks the point of convergence of both States' coastlines. It abuts a concave coastline on its sides and has two points, one on each side of the margin of the River Coco separated by a few hundred metres.

The continental margin off the east coast of Nicaragua and Honduras is generally termed the "Nicaraguan Rise". It takes the form of a relatively flat triangular shaped platform, with depths around 20 m. Approximately midway between the coast of those countries and the coast of Jamaica, the Nicaraguan Rise terminates by deepening abruptly to depths of over 1,500 m. Before descending to these greater depths the Rise is broken into several large banks, such as Thunder Knoll Bank and Rosalind Bank (also known as Rosalinda Bank) that are separated from the main platform by deeper channels of over 200 m. In the shallow area of the ridge close to the mainland of Nicaragua and Honduras there are numerous reefs, some of which reach above the water surface in the form of cays.

Cays are small, low islands composed largely of sand derived from the physical breakdown of coral reefs by wave action and subsequent reworking by wind. Larger cays can accumulate enough sediment to allow for colonization and fixation by vegetation. The insular features present on the continental shelf in front of Cape Gracias a Dios, to the north of the 15th parallel, include Bobel Cay, Savanna Cay, Port Royal Cay and South Cay, located between 30 and 40 nautical miles east of the mouth of the River Coco.

With regard to the geomorphology of the mouth of the River Coco, the longest river of the Central American isthmus, the Court notes that it is a typical delta which forms a protrusion of the coastline forming a cape: Cape Gracias a Dios. All deltas are by definition geographical accidents of an unstable nature. Both the delta of the River Coco and even the coastline north and south of it show a very active morpho-dynamism. The result is that the river mouth is constantly changing its shape, and unstable islands and shoals form in the mouth where the river deposits much of its sediment.

Historical background (paras. 33-71)

The Court gives a brief account of the history which forms the background of the dispute between the Parties (only parts of which are referred to below).

It notes that upon gaining independence from Spain in 1821, Nicaragua and Honduras obtained sovereignty over their respective territory including adjacent islands along their coasts, without these islands being identified by name. On 7 October 1894 Nicaragua and Honduras successfully concluded a general boundary treaty known as the Gámez Bonilla Treaty which entered into force on 26 December 1896. Article II of the Treaty, according to the principle of uti possidetis juris, provided that "each Republic is owner of the territory which at the date of independence constituted respectively, the provinces of Honduras and Nicaragua". Article I of the Treaty further provided for the establishment of a Mixed Boundary Commission to demarcate the boundary between Nicaragua and Honduras. The Commission fixed the boundary from the Pacific Ocean at the Gulf of Fonseca to the Portillo de Teotecacinte, which is located approximately one third of the way across the land territory, but it was unable to determine the boundary from that point to the Atlantic coast.

Pursuant to the terms of Article III of the Gámez-Bonilla Treaty, Nicaragua and Honduras subsequently submitted their dispute over the remaining portion of the boundary to the King of Spain as sole arbitrator. King Alfonso XIII of Spain handed down an Arbitral Award on 23 December 1906, which drew a boundary from the mouth of the River Coco at Cape Gracias a Dios to Portillo de Teotecacinte. Nicaragua subsequently challenged the validity and binding character of the Arbitral Award in a Note dated 19 March 1912. After several failed attempts to settle this dispute and a number of boundary incidents in 1957, the Council of the

Organization of American States (OAS) took up the issue that same year. Through the mediation of an ad hoc Committee established by the Council of the OAS, Nicaragua and Honduras agreed to submit their dispute to the International Court of Justice.

In its Judgment of 18 November 1960, the International Court of Justice found that the Award made by the King of Spain on 23 December 1906 was valid and binding and that Nicaragua was under an obligation to give effect to it.

As Nicaragua and Honduras could not thereafter agree on how to implement the 1906 Arbitral Award, Nicaragua requested the intervention of the Inter-American Peace Committee. The Committee subsequently established a Mixed Commission which completed the demarcation of the boundary line with the placement of boundary markers in 1962. The Mixed Commission determined that the land boundary would begin at the mouth of the River Coco, at 14° 59.8' N latitude and 83° 08.9' W longitude.

From 1963 to 1979, Honduras and Nicaragua enjoyed friendly relations. In 1977 Nicaragua initiated negotiations on matters relating to the maritime boundary in the Caribbean. However these negotiations made no progress. In the period that followed relations between the two countries deteriorated. Numerous incidents involving the capture and/or attack by each State of fishing vessels belonging to the other State in the vicinity of the 15th parallel were recorded in a series of diplomatic exchanges. Several mixed commissions were established with a view to finding a resolution to the situation but were unsuccessful in their attempts.

On 29 November 1999, Nicaragua filed an application instituting proceedings against Honduras as well as a request for the indication of provisional measures before the Central American Court of Justice. This followed Honduras's expressed intention to ratify a 1986 Treaty on maritime delimitation with Colombia in which the parallel 14° 59' 08" to the east of the 82nd meridian is given as the boundary line between Honduras and Colombia. In its Application, Nicaragua asked the Central American Court of Justice to declare that Honduras, by proceeding to the approval and ratification of the 1986 Treaty, was acting in violation of certain legal instruments of regional integration, including the Tegucigalpa Protocol to the Charter of the Organization of Central American States. In its request for the indication of provisional measures, Nicaragua asked the Central American Court of Justice to order Honduras to abstain from approving and ratifying the 1986 Treaty, until the sovereign interests of Nicaragua in its maritime spaces, the patrimonial interests of Central America and the highest interests of the regional institutions had been "safeguarded". By Order of 30 November 1999 the Central American Court of Justice ruled that Honduras suspend the procedure of ratification of the 1986 Treaty pending the determination of the merits in the case.

Honduras and Colombia continued the ratification process and on 20 December 1999 exchanged instruments of ratification. On 7 January 2000, Nicaragua made a further request for the indication of provisional measures asking the Central American Court of Justice to declare the nullity of Honduras's process of ratification of the 1986 Treaty. By Order of 17 January 2000, the Central American Court of Justice ruled that Honduras had not complied with its Order on provisional measures dated 30 November 1999 but considered that it did not have jurisdiction to rule on the request made by Nicaragua to declare the nullity of Honduras's ratification process. In its judgment on the merits, on 27 November 2001 the Central American Court of Justice confirmed the existence of a "territorial patrimony of Central America". It further held that, by having ratified the 1986 Treaty, Honduras had infringed a number of provisions of the Tegucigalpa Protocol to the Charter of the Organization of Central American States, which set out, inter alia, the fundamental objectives and principles of the Central American Integration System, including the concept of the "territorial patrimony of Central America".

Throughout the 1990s several diplomatic Notes were also exchanged with regard to the Parties' publication of maps concerning the area in dispute.

Positions of the Parties (paras. 72-103)

— Subject-matter of the dispute

In its Application and written pleadings Nicaragua asked the Court to determine the course of the single maritime boundary between the areas of territorial sea, continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Honduras in the Caribbean Sea. Nicaragua states that it has consistently maintained the position that its maritime boundary with Honduras in the Caribbean Sea has not been delimited. During the oral proceedings, Nicaragua also made a specific request that the Court pronounce on sovereignty over islands located in the disputed area to the north of the boundary line claimed by Honduras running along the 15th parallel (14° 59.08' N latitude).

According to Honduras, there already exists in the Caribbean Sea a traditionally recognized boundary between the maritime spaces of Honduras and Nicaragua "which has its origins in the principle of uti possidetis juris and which is firmly rooted in the practice of both Honduras and Nicaragua and confirmed by the practice of third States". Honduras agrees that the Court should "determine the location of a single maritime boundary" and asks the Court to trace it following the "traditional maritime boundary" along the 15th parallel "until the jurisdiction of a third State is reached". During the oral proceedings Honduras also asked the Court to adjudge that "[t]he islands Bobel Cay, South Cay, Savanna Cay and Port Royal Cay, together with all other islands, cays, rocks, banks and reefs claimed by Nicaragua which lie north of the 15th parallel are under the sovereignty of the Republic of Honduras". For the claims of the Parties, see sketch-map No. 2 in the Judgment.

— Sovereignty over the islands in the area in dispute

Nicaragua claims sovereignty over the islands and cays in the disputed area of the Caribbean Sea to the north of the 15th parallel, including Bobel Cay, Savanna Cay, Port Royal Cay and South Cay. Honduras claims sovereignty over Bobel Cay, Savanna Cay, Port Royal Cay and South Cay, in addition to claiming title over other smaller islands and cays lying in the same area.

Both States agree that none of the islands and cays in dispute were terra nullius upon independence in 1821. However the Parties disagree on the situation thereafter. Nicaragua asserts that these features were not assigned to either of the Republics and that it is impossible to establish the uti possidetis juris situation of 1821 with respect to the cays. It concludes that recourse must be had to "other titles" and in particular, contends that it holds original title over the cays under the principle of adjacency. Honduras, for its part, claims that it has an original title over the disputed islands from the doctrine of uti possidetis juris and that its title is confirmed by many effectivités.

— Maritime delimitation beyond the territorial sea

Nicaragua's line: bisector method

The Court notes that Nicaragua proposes a method of delimitation consisting of "the bisector of the angle produced by constructing lines based upon the respective coastal frontages and producing extensions of these lines". Such a bisector is calculated from the general direction of the Nicaraguan coast and the general direction of the Honduran coast. These coastal fronts generate a bisector which runs from the mouth of the River Coco as a line of constant bearing (azimuth 52° 45' 21") until intersecting with the boundary of a third State in the vicinity of Rosalind Bank.

Sketch-map No. 2 in the Judgment

Honduras's line: "traditional boundary" along the 15th parallel

Honduras, for its part, asks the Court to confirm what it claims is a traditional maritime boundary based on uti possidetis juris running along the 15th parallel between Honduras and Nicaragua in the Caribbean Sea and to continue that existing line until the jurisdiction of a third State is reached. Were its contentions as to the 15th parallel not to be accepted by the Court, Honduras asks alternatively that the Court trace an adjusted equidistance line, until the jurisdiction of a third State is reached.

— Starting-point of the maritime boundary

Both Parties agree that the terminus of the land boundary between Nicaragua and Honduras was established by the 1906 Arbitral Award at the mouth of the principal arm of the River Coco. The Mixed Boundary Commission determined in 1962 that the starting-point of the land boundary at the mouth of the River Coco was situated at 14° 59.8' N latitude and 83° 08.9' W longitude. Both Parties also agree that due to the accretion of sediments, this point has moved since 1962.

Nicaragua proposes, in its written pleadings, that the starting-point of the maritime boundary be set "at a prudent distance", namely 3 nautical miles out at sea from the actual mouth of the River Coco on the bisector line. Nicaragua initially suggested that the Parties would have to negotiate "a line representing the boundary between the point of departure of the boundary at the mouth of the River Coco and the point of departure from which the Court will have determined the [maritime] boundary line". While leaving that proposal open, Nicaragua, in its final submissions, asked the Court to confirm that: "[t]he starting-point of the delimitation is the thalweg of the main mouth of the River Coco such as it may be at any given moment as determined by the Award of the King of Spain of 1906". Honduras accepts a starting-point of the boundary "at 3 miles from the terminal point adopted in 1962" but argues that the seaward fixed-point should be measured from the point established by the 1962 Mixed Commission and located on the 15th parallel.

— Delimitation of the territorial sea

Nicaragua states that the delimitation of the territorial sea between States with adjacent coasts must be effected on the basis of the principles set out in Article 15 of the United Nations Convention on the Law of the Sea (UNCLOS). In the view of Nicaragua, in the present case however, it is technically impossible to draw an equidistance line because it would have to be entirely drawn on the basis of the two outermost points of the mouth of the river, which are extremely unstable and continuously change position. Thus, according to Nicaragua, the bisector line should also be used for the delimitation of the territorial sea.

Honduras agrees with Nicaragua that there are "special circumstances" which, under Article 15 of UNCLOS "require a delimitation by a line other than a strict median line". However, according to Honduras, while the configuration of the continental landmass may be one such "special circumstance", of far greater significance "is the established practice of the Parties in treating the 15th parallel as their boundary from the mouth of the River Coco". Honduras also identifies as a factor of "the greatest significance . . . the gradual movement eastwards of the actual mouth of the River Coco". Honduras therefore suggests that from the fixed seaward starting-point the maritime boundary in the territorial sea should follow in an eastward direction the 15th parallel.

Admissibility of the new claim to sovereignty over the islands in the area in dispute (paras. 104-116)

The Court observes that, from a formal point of view, the claim relating to sovereignty over the islands in the maritime area in dispute, as presented in the final submissions of Nicaragua, is a new claim in relation to the claims presented in the Application and in the written pleadings.

However, the mere fact that a claim is new is not in itself decisive for the issue of admissibility. In order to determine whether a new claim introduced during the course of the proceedings is admissible the Court needs to consider whether, "although formally a new claim, the claim in question can be considered as included in the original claim in substance" (Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992, pp. 265-266, para. 65). For this purpose, to find that the new claim, as a matter of substance, has been included in the original claim, it is not sufficient that there should be links between them of a general nature. Moreover,

> "[a]n additional claim must have been implicit in the application (Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962, p. 36) or must arise 'directly out of the question which is the subject-matter of that Application' (Fisheries jurisdiction (Federal Republic of Germany v. Iceland), Merits, I.C.J. Reports 1974, p. 203, para. 72)" (Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 266, para. 67).

Recalling that on a number of occasions it has emphasized that "the land dominates the sea", the Court observes that in order to draw a single maritime boundary line in an area of the Caribbean Sea where a number of islands and rocks are located, it would have to consider what influence these maritime features might have on the course of that line. To plot that line the Court would first have to determine which State has sovereignty over the islands and rocks in the disputed area. The Court is bound to do so whether or not a formal claim has been made in this respect. Thus the claim relating to sovereignty is implicit in and arises directly out of the question which is the subject-matter of Nicaragua's Application, namely the delimitation of the disputed areas of the territorial sea, continental shelf and exclusive economic zone.

The Court thus concludes that the Nicaraguan claim relating to sovereignty over the islands in the maritime area in dispute is admissible as it is inherent in the original claim relating to the maritime delimitation between Nicaragua and Honduras in the Caribbean Sea.

The critical date (paras. 117-131)

The Court recalls that, in the context of a maritime delimitation dispute or of a dispute related to sovereignty over land, the significance of a critical date lies in distinguishing between those acts performed à titre de souverain which are in principle relevant for the purpose of assessing and validating effectivités, and those acts occurring after such critical date, which are in general meaningless for that purpose, having been carried out by a State which, already having claims to assert in a legal dispute, could have taken those actions strictly with the aim of buttressing those claims. Thus a critical date will be the dividing line after which the Parties' acts become irrelevant for the purposes of assessing the value of effectivités.

Honduras contends that there are two disputes, albeit related: one as to whether Nicaragua or Honduras has title to the disputed islands; and the other as to whether the 15th parallel represents the current maritime frontier between the Parties. Nicaragua perceives it as a single dispute.

Honduras observes that in respect of the dispute concerning sovereignty over the maritime features in the disputed area there "may be more than one critical date". Thus, "[t]o the extent that the issue of title turns on the application of uti possidetis", the critical date would be 1821 — the date of independence of Honduras and Nicaragua from Spain. For the purposes of post-colonial effectivités, Honduras argues that the critical date cannot be "earlier than the date of the filing of the Memorial — 21 March 2001 — since this was the first time that Nicaragua asserted that it had title to the islands". With regard to the dispute over the maritime boundary, Honduras maintains that 1979, when the Sandinista Government came to power, constitutes the critical date, as up to that date "Nicaragua never showed the slightest interest in the cays and islands north of the 15th parallel".

For Nicaragua, the critical date is 1977, when the Parties initiated negotiations on maritime delimitation, following an exchange of letters by the two Governments. Nicaragua asserts that the dispute over the maritime boundary, by implication, encompasses the dispute over the islands within the relevant area and therefore the critical date for both disputes coincides.

Having examined the arguments of the Parties, the Court considers that in cases where there exist two interrelated disputes, as in the present case, there is not necessarily a single critical date and that date may be different in the two disputes. For these reasons, the Court finds it necessary to distinguish two different critical dates which are to be applied to two different circumstances. One critical date concerns the attribution of sovereignty over the islands to one of the two contending States. The other critical date is related to the issue of delimitation of the disputed maritime area.

With regard to the dispute over the islands, the Court considers 2001 as the critical date, since it was only in its Memorial filed in 2001 that Nicaragua expressly reserved "the sovereign rights appurtenant to all the islets and rocks claimed by Nicaragua in the disputed area".

With regard to the dispute over the delimitation line, the Court finds that it is from the time of two incidents involving the capture of fishing vessels in March 1982 and eliciting a diplomatic exchange between the Parties that a dispute as to the maritime delimitation could be said to exist.

Sovereignty over the islands (paras. 132-227)

— The maritime features in the area in dispute

In assessing the legal nature of the land features in the disputed area the Court notes that the Parties do not dispute the fact that Bobel Cay, Savanna Cay, Port Royal Cay and South Cay remain above water at high tide. They thus fall within the definition and régime of islands under Article 121 of UNCLOS (to which Nicaragua and Honduras are both parties).

With the exception of these four islands, the Court states that there seems to be an insufficiency in the information it would require in order to identify a number of the other maritime features in the disputed area. In this regard little assistance was provided in the written and oral procedures to define with the necessary precision the other "features" in respect of which the Parties asked the Court to decide the question of territorial sovereignty.

The Court notes that during the proceedings, two other cays were mentioned: Logwood Cay (also called Palo de Campeche) and Media Luna Cay. In response to a question put by a judge ad hoc, the Parties have stated that Media Luna Cay is now submerged and thus that it is no longer an island. Uncertainty prevails in the case of Logwood Cay's current condition: according to Honduras it remains above water (though only slightly) at high tide; according to Nicaragua, it is completely submerged at high tide.

Given all these circumstances, the Court regards it as appropriate to pronounce only upon the question of sovereignty over Bobel Cay, Savanna Cay, Port Royal Cay and South Cay.

A claim was also made during the oral proceedings by each Party to an island in an entirely different location, namely, the island in the mouth of the River Coco. For the last century the unstable nature of the river mouth has meant that larger islands are liable to join their nearer bank and the future of smaller islands is uncertain. Because of the changing conditions of the area, the Court makes no finding as to sovereign title over islands in the mouth of the River Coco.

— The uti possidetis juris principle and sovereignty over the islands in dispute

The Court observes that the principle of uti possidetis juris has been relied on by Honduras as the basis of sovereignty over the islands in dispute. This is contested by Nicaragua which asserts

that sovereignty over the islands cannot be attributed to one or the other Party on the basis of this principle.

The Court notes that it has recognized that "the principle of uti possidetis has kept its place among the most important legal principles" regarding territorial title and boundary delimitation at the moment of decolonization (Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986, p. 567, para. 26). It states that it is beyond doubt that the principle is applicable to the question of territorial delimitation between Nicaragua and Honduras, both former Spanish colonial provinces. During the nineteenth century, negotiations aimed at determining the territorial boundary between Nicaragua and Honduras culminated in the conclusion of the Gámez-Bonilla Treaty of 7 October 1894, in which both States agreed in Article II, paragraph 3, that "each Republic [was] owner of the territory which at the date of independence constituted, respectively, the provinces of Honduras and Nicaragua". The terms of the Award of the King of Spain of 1906, based specifically on the principle of uti possidetis juris as established in Article II, paragraph 3, of the Gámez-Bonilla Treaty, defined the territorial boundary between the two countries with regard to the disputed portions of land, i.e. from Portillo de Teotecacinte to the Atlantic Coast. The validity and binding force of the 1906 Award have been confirmed by the International Court of Justice in its 1960 Judgment and both Parties to the dispute accept the Award as legally binding.

Turning to the question of sovereignty over the islands, the Court begins by observing that uti possidetis juris may, in principle, apply to offshore possessions and maritime spaces. It observes that the mere invocation of the principle does not of itself provide a clear answer as to sovereignty over the disputed islands. If the islands are not terra nullius, as both Parties acknowledge and as is generally recognized, it must be assumed that they had been under the rule of the Spanish Crown. However, it does not necessarily follow that the successor to the disputed islands could only be Honduras, being the only State formally to have claimed such status. The Court recalls that uti possidetis juris presupposes the existence of a delimitation of territory between the colonial provinces concerned having been effected by the central colonial authorities. Thus in order to apply the principle of uti possidetis juris to the islands in dispute it must be shown that the Spanish Crown had allocated them to one or the other of its colonial provinces.

The Court looks for convincing evidence which would allow it to determine whether and to which of the colonial provinces of the former Spanish America the islands had been attributed.

It states that the Parties have not produced documentary or other evidence from the pre-independence era which explicitly refers to the islands. The Court also observes that proximity as such is not necessarily determinative of legal title. The information provided by the Parties on the colonial administration of Central America by Spain does not allow for certainty as to whether one entity (the Captaincy-General of Guatemala), or two subordinate entities (the Government of Honduras and the General Command of Nicaragua), exercised administration over the insular territories of Honduras and Nicaragua at that time. Unlike the land territory where the administrative boundary between different provinces was more or less clearly demarcated, it is apparent that there was no clear-cut demarcation with regard to islands in general. This seems all the more so with regard to the islands in question, since they must have been scarcely inhabited, if at all, and possessed no natural resources to speak of for exploitation, except for fishing in the surrounding maritime area. The Court also observes that the Captaincy-General of Guatemala may well have had control over land and insular territories adjacent to coasts in order to provide security, prevent smuggling and undertake other measures to ensure the protection of the interests of the Spanish Crown. However there is no evidence to suggest that the islands in question played any role in the fulfilment of any of these strategic aims.

Notwithstanding the historical and continuing importance of the uti possidetis juris principle, so closely associated with Latin American decolonization, it cannot in this case be said that the application of this principle to these small islands, located considerably offshore and not obviously adjacent to the mainland coast of Nicaragua or Honduras, would settle the issue of sovereignty over them.

With regard to the adjacency argument put forward by Nicaragua, the Court notes that the independence treaties concluded by Nicaragua and Honduras with Spain in 1850 and 1866 respectively refer to adjacency with respect to mainland coasts rather than to offshore islands. Nicaragua's argument that the islands in dispute are closer to Edinburgh Cay, which belongs to Nicaragua, cannot therefore be accepted. While the Court does not rely on adjacency in reaching its findings, it observes that, in any event, the islands in dispute appear to be in fact closer to the coast of Honduras than to the coast of Nicaragua.

Having concluded that the question of sovereignty over the islands in dispute cannot be resolved on the above basis, the Court then ascertains whether there were relevant effectivités during the colonial period. This test of "colonial effectivités" has been defined as "the conduct of the administrative authorities as proof of the effective exercise of territorial jurisdiction in the region during the colonial period" (Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986, p. 586, para. 63; Frontier Dispute (Benin/Niger), Judgment, I.C.J. Reports 2005, p. 120, para. 47).

The Court notes that information about such conduct by the colonial administrative authorities is lacking in the case. It considers that, given the location of the disputed islands and the lack of any particular economic or strategic significance of these islands at the time, there were no colonial effectivités in relation to them. Thus the Court can neither found nor confirm on this basis a title to territory over the islands in question.

In light of the above considerations the Court concludes that the principle of uti possidetis affords inadequate assistance in determining sovereignty over the islands because nothing clearly indicates whether they were attributed to the colonial provinces of Nicaragua or of Honduras prior to or upon independence. Neither can such attribution be discerned in the King of Spain's Arbitral Award of 1906. Equally, the Court has been presented with no evidence as to colonial effectivités in respect of these islands. Thus it has not been established that either Honduras or Nicaragua had title to these islands by virtue of uti possidetis.

— Post colonial effectivités and sovereignty over the disputed islands

The Court first notes that according to its jurisprudence (in particular the Indonesia/Malaysia case) and that of the Permanent Court of International Justice, sovereignty over minor maritime features, such as the islands in dispute between Honduras and Nicaragua, may be established on the basis of a relatively modest display of State powers in terms of quality and quantity.

It then examines the different categories of effectivités presented by the Parties.

Concerning the category of legislative and administrative control, the Court, noting that there is no reference to the four islands in dispute in the various Honduran Constitutions and in the Agrarian Law, further notes that there is no evidence that Honduras applied these legal instruments to the islands in any specific manner. The Court therefore finds that the Honduran claim that it had legislative and administrative control over the islands is not convincing.

Concerning the application and enforcement of criminal and civil law, the Court is of the opinion that the evidence provided by Honduras does have legal significance. The fact that a number of the acts mentioned (inter alia criminal complaints of theft and physical assault on Savanna and Bobel Cays, as well as a 1993 drug enforcement operation in the area by Honduras authorities and the United States Drug Enforcement Administration (DEA)) occurred in the 1990s is no obstacle to their relevance as the Court has found the critical date in relation to the islands to be 2001. The criminal complaints have relevance because the criminal acts occurred on the islands in dispute. The 1993 drug enforcement operation, while not necessarily an example of the application and enforcement of Honduran criminal law, can well be considered as an authorization by Honduras to the United States DEA granting it the right to fly over the islands mentioned in the

document, which are within the disputed area. The permit extended by Honduras to the DEA to overfly the "national air space", together with the specific mention of the four islands and cays, may be understood as a sovereign act by a State, amounting to a relevant effectivité in the area.

Concerning the regulation of immigration, the Court notes that there appears to have been substantial activity with regard to immigration and work-permit related regulation by Honduras of persons on the islands in 1999 and 2000. In 1999 Honduran authorities visited the four islands and recorded the details of the foreigners living in South Cay, Port Royal Cay and Savanna Cay (Bobel Cay was uninhabited at the time, though it had previously been inhabited). Honduras provides a statement by a Honduran immigration officer who visited the islands three or four times from 1997 to 1999. The Court finds that legal significance is to be attached to the evidence provided by Honduras on the regulation of immigration as proof of effectivités, notwithstanding that it began only in the late 1990s. The issuance of work permits and visas to Jamaican and Nicaraguan nationals exhibit a regulatory power on the part of Honduras. The visits to the islands by a Honduran immigration officer entails the exercise of jurisdictional authority, even if its purpose was to monitor rather than to regulate immigration on the islands. The time span for these acts of sovereignty is rather short, but then it is only Honduras which has undertaken measures in the area that can be regarded as acts performed à titre de souverain. There is no contention by Nicaragua of regulation by itself of immigration on the islands either before or after the 1990s.

Concerning the regulation of fisheries activities, the Court is of the view that the Honduran authorities issued fishing permits with the belief that they had a legal entitlement to the maritime areas around the islands, derived from Honduran title over those islands. The evidence of Honduran-regulated fishing boats and construction on the islands is also legally relevant for the Court under the category of administrative and legislative control. The Court considers that the permits issued by the Honduran Government allowing the construction of houses in Savanna Cay and the permit for the storage of fishing equipment in the same cay provided by the municipality of Puerto Lempira may also be regarded as a display, albeit modest, of the exercise of authority, and as evidence of effectivités with respect to the disputed islands. The Court does not find persuasive Nicaragua's argument that the negotiations between Nicaragua and the United Kingdom in the 1950s over renewed turtle fishing rights off the Nicaraguan coast attests to Nicaraguan sovereignty over the islands in dispute.

Concerning naval patrols, the Court recalls that it has already indicated that the critical date for the purposes of the issue of title to the islands is not 1977 but 2001. The evidence put forward by both Parties on naval patrolling is sparse and does not clearly entail a direct relationship between either Nicaragua or Honduras and the islands in dispute. Thus the Court does not find the evidence provided by either Party on naval patrols persuasive as to the existence of effectivités with respect to the islands.

Concerning oil concessions, the Court finds that the evidence relating to the offshore oil exploration activities of the Parties has no bearing on the islands in dispute. It will therefore concentrate on the oil concession related acts on the islands under the category of public works.

Concerning public works, the Court observes that the placing on Bobel Cay in 1975 of a 10 m long antenna by Geophysical Services Inc. for the Union Oil Company was part of a local geodetic network to assist in drilling activities in the context of oil concessions granted. Honduras claims that the construction of the antenna was an integral part of the "oil exploration activity authorized by Honduras". Reports on these activities were periodically submitted by the oil company to the Honduran authorities, in which the amount of the corresponding taxes paid was also indicated. Nicaragua claims that the placement of the antenna on Bobel Cay was a private act for which no specific governmental authorization was granted. The Court is of the view that the antenna was erected in the context of authorized oil exploration activities. Furthermore the payment of taxes in respect of such activities in general can be considered additional evidence that

the placement of the antenna was done with governmental authorization. The Court thus considers that the public works referred to by Honduras constitute effectivités which support Honduran sovereignty over the islands in dispute.

Having considered the arguments and evidence put forward by the Parties, the Court finds that the effectivités invoked by Honduras evidenced an "intention and will to act as sovereign" and constitute a modest but real display of authority over the four islands. Although it has not been established that the four islands are of economic or strategic importance and in spite of the scarcity of acts of State authority, Honduras has shown a sufficient overall pattern of conduct to demonstrate its intention to act as sovereign in respect of Bobel Cay, Savanna Cay, Port Royal Cay and South Cay. The Court further notes that those Honduran activities qualifying as effectivités which can be assumed to have come to the knowledge of Nicaragua did not elicit any protest on the part of the latter. With regard to Nicaragua, the Court has found no proof of intention or will to act as sovereign, and no proof of any actual exercise or display of authority over the islands.

— Evidentiary value of maps in confirming sovereignty over the disputed islands

The Court notes that a large number of maps was presented by the Parties to illustrate their respective arguments, but that none of the maps which include some of the islands in dispute clearly specify which State is the one exercising sovereignty over those islands. Furthermore none of the maps being part of a legal instrument in force nor more specifically part of a boundary treaty concluded between Nicaragua and Honduras, the Court concludes that the cartographic material presented by the Parties cannot of itself support their respective claims to sovereignty over islands to the north of the 15th parallel.

— Recognition by third States and bilateral treaties; the 1998 Free Trade Agreement

In the Court's view there is no evidence to support any of the contentions made by the Parties with respect to recognition by third States that sovereignty over the disputed islands is vested in Honduras or in Nicaragua. Some of the evidence offered by the Parties shows episodic incidents that are neither consistent nor consecutive. It is obvious that they do not signify an explicit acknowledgment of sovereignty, nor were they meant to imply any such acknowledgment.

The Court observes that bilateral treaties of Colombia, one with Honduras and one with Jamaica, have been invoked by Honduras as proof of recognition of sovereignty over the disputed islands. The Court notes that in relation to these treaties Nicaragua never acquiesced in any understanding that Honduras had sovereignty over the disputed islands. The Court does not find these bilateral treaties relevant as regards recognition by a third party of title over the disputed islands.

The Court recalls that during the oral proceedings it was apprised of the negotiating history of a Free Trade Agreement Central America-Dominican Republic which was signed on 16 April 1998 in Santo Domingo by Nicaragua, Honduras, Costa Rica, Guatemala, El Salvador and the Dominican Republic. According to Honduras the original text of the Agreement included an Annex to Article 2.01 giving a definition of the territory of Honduras, which referred inter alia to Palo de Campeche and Media Luna cays. Honduras claims that the term "Media Luna" was "frequently used to refer to the entire group of islands and cays" in the area in dispute. Nicaragua points out that during the ratification process, its National Assembly approved a revised text of the Free Trade Agreement which did not contain the Annex to Article 2.01. Having examined said Annex, the Court observes that the four islands in dispute are not mentioned by name in it. Moreover, the Court notes that it has not been presented with any convincing evidence that the term "Media Luna" has the meaning advanced by Honduras. In these circumstances the Court finds that it need not further examine arguments relating to this Treaty nor its status for the purposes of these proceedings.

— Decision as to sovereignty over the islands

The Court, having examined all of the evidence related to the claims of the Parties as to sovereignty over the islands of Bobel Cay, Savanna Cay, Port Royal Cay and South Cay, including the issue of the evidentiary value of maps and the question of recognition by third States, concludes that Honduras has sovereignty over these islands on the basis of post-colonial effectivités.

Delimitation of maritime areas (paras. 228-320)

— Traditional maritime boundary line claimed by Honduras

The principle of uti possidetis juris

The Court observes that the uti possidetis juris principle might in certain circumstances, such as in connection with historic bays and territorial seas, play a role in a maritime delimitation. However, in the present case, were the Court to accept Honduras's claim that Cape Gracias a Dios marked the separation of the respective maritime jurisdiction of the colonial provinces of Honduras and Nicaragua, no persuasive case has been made by Honduras as to why the maritime boundary should then extend from the Cape along the 15th parallel. It merely asserts that the Spanish Crown tended to use parallels and meridians to draw jurisdictional divisions, without presenting any evidence that the colonial Power did so in this particular case.

The Court thus cannot uphold Honduras's assertion that the uti possidetis juris principle provided for a maritime division along the 15th parallel "to at least 6 nautical miles from Cape Gracias a Dios" nor that the territorial sovereignty over the islands to the north of the 15th parallel on the basis of the uti possidetis juris principle "provides the traditional line which separates these Honduran islands from the Nicaraguan islands to the south" with "a rich historical basis that contributes to its legal foundation".

The Court further observes that Nicaragua and Honduras as new independent States were entitled by virtue of the uti possidetis juris principle to such mainland and insular territories and territorial seas which constituted their provinces at independence. The Court, however, has already found that it is not possible to determine sovereignty over the islands in question on the basis of the uti possidetis juris principle. Nor has it been shown that the Spanish Crown divided its maritime jurisdiction between the colonial provinces of Nicaragua and Honduras even within the limits of the territorial sea. Although it may be accepted that all States gained their independence with an entitlement to a territorial sea, that legal fact does not determine where the maritime boundary between adjacent seas of neighbouring States will run. In the circumstances of the present case, the uti possidetis juris principle cannot be said to have provided a basis for a maritime division along the 15th parallel.

The Court also notes that the 1906 Arbitral Award, which indeed was based on the uti possidetis juris principle, did not deal with the maritime delimitation between Nicaragua and Honduras and that it does not confirm a maritime boundary between them along the 15th parallel.

The Court thus finds that the contention of Honduras that the uti possidetis juris principle provides a basis for an alleged "traditional" maritime boundary along the 15th parallel cannot be sustained.

Tacit agreement

Having already indicated that there was no boundary established by reference to uti possidetis juris, the Court must determine whether, as claimed by Honduras, there was a tacit agreement sufficient to establish a boundary. Evidence of a tacit legal agreement must be compelling. The establishment of a permanent maritime boundary is a matter of grave importance and agreement is not easily to be presumed. A de facto line might in certain circumstances correspond to the existence of an agreed legal boundary or might be more in the nature of a

provisional line or of a line for a specific, limited purpose, such as sharing a scarce resource. Even if there had been a provisional line found convenient for a period of time, this is to be distinguished from an international boundary.

As regards the evidence of oil concessions proffered by Honduras in support of its contention, the Court considers that Nicaragua, by leaving open the northern limit to its concessions or by abstaining from mentioning the boundary with Honduras in that connection, reserved its position concerning its maritime boundary with Honduras. Moreover, the Court observes that the Nicaraguan concessions provisionally extending up to the 15th parallel were all given after Honduras had granted its concessions extending southwards to the 15th parallel.

With regard to the 1986 Treaty between Colombia and Honduras and the 1993 Treaty between Colombia and Jamaica invoked by Honduras, the Court recalls that Nicaragua has maintained its persistent objections to these treaties. In the 1986 Treaty the parallel 14° 59' 08" to the east of the 82nd meridian serves as the boundary line between Honduras and Colombia. As already mentioned, according to Honduras the 1993 Treaty proceeds from a recognition of the validity of the 1986 Treaty between Colombia and Honduras, thereby recognizing Honduran jurisdiction over the waters and islands to the north of the 15th parallel.

The Court has noted that at periods in time, as the evidence shows, the 15th parallel appears to have had some relevance in the conduct of the Parties. This evidence relates to the period after 1961 when Nicaragua left areas to the north of Cape Gracias a Dios following the rendering of the Court's Judgment on the validity of the 1906 Arbitral Award and until 1977 when Nicaragua proposed negotiations with Honduras with the purpose of delimiting maritime areas in the Caribbean Sea. The Court observes that during this period several oil concessions were granted by the Parties which indicated that their northern and southern limits lay respectively at 14° 59.8'. Furthermore, regulation of fishing in the area at times seemed to suggest an understanding that the 15th parallel divided the respective fishing areas of the two States; and in addition the 15th parallel was also perceived by some fishermen as a line dividing maritime areas under the jurisdiction of Nicaragua and Honduras. However, these events, spanning a short period of time, are not sufficient for the Court to conclude that there was a legally established international maritime boundary between the two States.

The Court observes that the Note of the Honduran Minister for Foreign Affairs dated 3 May 1982 cited by the Parties (in which he concurred with the Nicaraguan Foreign Ministry that "the maritime border between Honduras and Nicaragua has not been legally delimited" and proposed that the Parties at least come to a "temporary" arrangement about the boundary so as to avoid further boundary incidents) is somewhat uncertain regarding the existence of an acknowledged boundary along the 15th parallel. The acknowledgment that there was then no legal delimitation "was not a proposal or a concession made during negotiations, but a statement of facts transmitted to the Foreign [Ministry, which] did not express any reservation in respect thereof" and should thus be taken "as evidence of the [Honduran] official view at that time".

Having reviewed all of this practice including diplomatic exchanges, the Court concludes that there was no tacit agreement in effect between the Parties in 1982 — nor a fortiori at any subsequent date — of a nature to establish a legally binding maritime boundary.

— Determination of the maritime boundary

The Court, having found that there is no traditional boundary line along the 15th parallel, proceeds to the maritime delimitation between Nicaragua and Honduras.

Applicable law

Both Parties in their final submissions asked the Court to draw a "single maritime boundary" delimiting their respective territorial seas, exclusive economic zones, and continental shelves in the

disputed area. Although Nicaragua was not party to UNCLOS at the time it filed the Application in this case, the Parties are in agreement that UNCLOS is now in force between them and that its relevant articles are applicable between them in this dispute.

Areas to be delimited and methodology

The "single maritime boundary" in the present case will be the result of the delimitation of the various areas of jurisdiction spanning the maritime zone from the Nicaragua-Honduras mainland out to at least the 82nd meridian, where third-State interests may become relevant. In the western reaches of the area to be delimited the Parties' mainland coasts are adjacent; thus, for some distance the boundary will delimit exclusively their territorial seas (UNCLOS, Art. 2, para. 1). Both Parties also accept that the four islands in dispute north of the 15th parallel (Bobel Cay, Savanna Cay, Port Royal Cay and South Cay), which have been attributed to Honduras, as well as Nicaragua's Edinburgh Cay south of the 15th parallel, are entitled to generate their own territorial seas for the coastal State. The Court recalls that as regards the islands in dispute no claim has been made by either Party for maritime areas other than the territorial sea.

The Court notes that, while the Parties disagree as to the appropriate breadth of these islands' territorial seas, according to Article 3 of UNCLOS, a State's territorial sea cannot extend beyond 12 nautical miles. These islands are all indisputably located within 24 miles of each other but more than 24 miles from the mainland that lies to the west. Thus the single maritime boundary might also include segments delimiting overlapping areas of the islands' opposite-facing territorial seas as well as segments delimiting the continental shelf and exclusive economic zones around them.

For the delimitation of the territorial seas, Article 15 of UNCLOS, which is binding as a treaty between the Parties, provides:

> "Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest point on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith."

As already indicated, the Court has determined that there is no existing "historic" or traditional line along the 15th parallel.

As the Court has observed with respect to implementing the provisions of Article 15 of UNCLOS: "The most logical and widely practised approach is first to draw provisionally an equidistance line and then to consider whether that line must be adjusted in the light of the existence of special circumstances." (Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Merits, Judgment, I.C.J. Reports 2001, p. 94, para. 176.)

The jurisprudence of the Court sets out the reasons why the equidistance method is widely used in the practice of maritime delimitation: it has a certain intrinsic value because of its scientific character and the relative ease with which it can be applied. However, the equidistance method does not automatically have priority over other methods of delimitation and, in particular circumstances, there may be factors which make the application of the equidistance method inappropriate.

The Court notes that neither Party has as its main argument a call for a provisional equidistance line as the most suitable method of delimitation.

It observes at the outset that both Parties have raised a number of geographical and legal considerations with regard to the method to be followed by the Court for the maritime delimitation.

Cape Gracias a Dios, where the Nicaragua-Honduras land boundary ends, is a sharply convex territorial projection abutting a concave coastline on either side to the north and south-west. Taking into account Article 15 of UNCLOS and given the geographical configuration described above, the pair of base points to be identified on either bank of the River Coco at the tip of the Cape would assume a considerable dominance in constructing an equidistance line, especially as it travels out from the coast. Given the close proximity of these base points to each other, any variation or error in situating them would become disproportionately magnified in the resulting equidistance line. The Parties agree, moreover, that the sediment carried to and deposited at sea by the River Coco have caused its delta, as well as the coastline to the north and south of the Cape, to exhibit a very active morpho-dynamism. Thus continued accretion at the Cape might render any equidistance line so constructed today arbitrary and unreasonable in the near future. These geographical and geological difficulties are further exacerbated by the absence of viable base points claimed or accepted by the Parties themselves at Cape Gracias a Dios.

This difficulty in identifying reliable base points is compounded by the differences, addressed more fully, infra, that apparently still remain between the Parties as to the interpretation and application of the King of Spain's 1906 Arbitral Award in respect of sovereignty over the islets formed near the mouth of the River Coco and the establishment of "[t]he extreme common boundary point on the coast of the Atlantic" (Arbitral Award Made by the King of Spain on 23 December 1906, Judgment, I.C.J. Reports 1960, p. 202).

Given the set of circumstances in the case it is impossible for the Court to identify base points and construct a provisional equidistance line for the single maritime boundary delimiting maritime areas off the Parties' mainland coasts. Even if the particular features already indicated make it impossible to draw an equidistance line as the single maritime frontier, the Court must nonetheless see if it would be possible to start the frontier line across the territorial seas as an equidistance line, as envisaged in Article 15 of UNCLOS. It may be argued that the problems associated with distortion, if the protrusions either side of Cape Gracias a Dios were used as base points, are less severe close to the coast. However, the Court notes first that the Parties are in disagreement as to title over the unstable islands having formed in the mouth of the River Coco, islands which the Parties suggested during the oral proceedings could be used as base points. It is recalled that because of the changing conditions of the area the Court has made no finding as to sovereignty over these islands. Moreover, whatever base points would be used for the drawing of an equidistance line, the configuration and unstable nature of the relevant coasts, including the disputed islands formed in the mouth of the River Coco, would make these base points (whether at Cape Gracias a Dios or elsewhere) uncertain within a short period of time.

Article 15 of UNCLOS itself envisages an exception to the drawing of a median line, namely "where it is necessary by reason of historic title or special circumstances . . .". Nothing in the wording of Article 15 suggests that geomorphological problems are per se precluded from being "special circumstances" within the meaning of the exception, nor that such "special circumstances" may only be used as a corrective element to a line already drawn. Indeed, the latter suggestion is plainly inconsistent with the wording of the exception described in Article 15. It is recalled that Article 15 of UNCLOS, which was adopted without any discussion as to the method of delimitation of the territorial sea, is virtually identical (save for minor editorial changes) to the text of Article 12, paragraph 1, of the 1958 Convention on the Territorial Sea and the Contiguous Zone.

The genesis of the text of Article 12 of the 1958 Convention on the Territorial Sea and the Contiguous Zone shows that it was indeed envisaged that a special configuration of the coast might require a different method of delimitation (see Yearbook of the International Law Commission (YILC), 1952, Vol. II, p. 38, commentary, para. 4). Furthermore, the consideration of this matter in 1956 does not indicate otherwise. The terms of the exception to the general rule remained the same (YILC, 1956, Vol. I, p. 284; Vol. II, pp. 271, 272, and p. 300 where the Commentary to the Draft Convention on the Continental Shelf noted that "as in the case of the boundaries of the territorial sea, provision must be made for departures necessitated by any

exceptional configuration of the coast . . .”). Additionally, the jurisprudence of the Court does not reveal an interpretation that is at variance with the ordinary meaning of the terms of Article 15 of UNCLOS.

For all of the above reasons, the Court finds itself within the exception provided for in Article 15 of UNCLOS, namely facing special circumstances in which it cannot apply the equidistance principle. At the same time equidistance remains the general rule.

Construction of a bisector line

Having reached the conclusion that the construction of an equidistance line from the mainland is not feasible, the Court must consider the applicability of the alternative methods put forward by the Parties.

Nicaragua’s primary argument is that a “bisector of two lines representing the entire coastal front of both States” should be used to effect the delimitation from the mainland, while sovereignty over the maritime features in the area in dispute “could be attributed to either Party depending on the position of the feature involved with respect to the bisector line”.

Honduras “does not deny that geometrical methods of delimitation, such as perpendiculars and bisectors, are methods that may produce equitable delimitations in some circumstances”, but it disagrees with Nicaragua’s construction of the angle to be bisected. Honduras, as already explained, advocates a line along the 15th parallel, no adjustment of which would be necessary in relation to the islands. The Court notes that in Honduras’s final submissions it requested the Court to declare that the single maritime boundary between Honduras and Nicaragua “follows 14° 59.8' N latitude, as the existing maritime boundary, or an adjusted equidistance line, until the jurisdiction of a third State is reached”.

The Court recalls that both of Honduras’s proposals (the main one based on tacit agreement as to the 15th parallel representing the maritime frontier and the other on the use of an adjusted equidistance line) have not been accepted by the Court.

It states that the use of a bisector — the line formed by bisecting the angle created by the linear approximations of coastlines — has proved to be a viable substitute method in certain circumstances where equidistance is not possible or appropriate. The justification for the application of the bisector method in maritime delimitation lies in the configuration of and relationship between the relevant coastal fronts and the maritime areas to be delimited. In instances where, as in the present case, any base points that could be determined by the Court are inherently unstable, the bisector method may be seen as an approximation of the equidistance method. Like equidistance, the bisector method is a geometrical approach that can be used to give legal effect to the

> “criterion long held to be as equitable as it is simple, namely that in principle, while having regard to the special circumstances of the case, one should aim at an equal division of areas where the maritime projections of the coasts of the States . . . converge and overlap” (Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984, p. 327, para. 195).

If it is to “be faithful to the actual geographical situation” (Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985, p. 45, para. 57), the method of delimitation should seek a solution by reference first to the States’ “relevant coasts” (see Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Judgment, I.C.J. Reports 2001, p. 94 para. 178; see also the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), I.C.J. Reports 2002, p. 442, para. 90)). Identifying the relevant coastal geography calls for the exercise of judgment in assessing the actual coastal geography. The equidistance method approximates the relationship between two parties’

relevant coasts by taking account of the relationships between designated pairs of base points. The bisector method comparably seeks to approximate the relevant coastal relationships, but does so on the basis of the macro-geography of a coastline as represented by a line drawn between two points on the coast. Thus, where the bisector method is to be applied, care must be taken to avoid "completely refashioning nature" (North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p. 49, para. 91).

The Court notes that, in the present case, the application of the bisector method is justified by the geographical configuration of the coast, and the geomorphological features of the area where the endpoint of the land boundary is located.

The Court considers for present purposes that it will be most convenient to use the point fixed in 1962 by the Mixed Commission at Cape Gracias a Dios as the point where the Parties' coastal fronts meet. The Court adds that the co-ordinates of the endpoints of the chosen coastal fronts need not at this juncture be specified with exactitude for present purposes; one of the practical advantages of the bisector method is that a minor deviation in the exact position of endpoints, which are at a reasonable distance from the shared point, will have only a relatively minor influence on the course of the entire coastal front line. If necessary in the circumstances, the Court could adjust the line so as to achieve an equitable result (see UNCLOS, Arts. 74, para. 1, and 83, para. 1).

The Court then considers the various possibilities for the coastal fronts that could be used to define these linear approximations of the relevant geography. Nicaragua's primary proposal for the coastal fronts, as running from Cape Gracias a Dios to the Guatemalan border for Honduras and to the Costa Rican border for Nicaragua, would cut off a significant portion of Honduran territory falling north of this line and thus would give significant weight to Honduran territory that is far removed from the area to be delimited. This would seem to present an exaggeratedly acute angle to bisect.

In selecting the relevant coastal fronts, the Court has considered the Cape Falso-Punta Gorda coast (generating a bisector with an azimuth of 70° 54'), which certainly faces the disputed area, but it is quite a short façade (some 100 km) from which to reflect a coastal front more than 100 nautical miles out to sea, especially taking into account how quickly to the north-west the Honduran coast turns away from the area to be delimited after Cape Falso, as it continues past Punta Patuca and up to Cape Camerón. Indeed, Cape Falso is identified by Honduras as the most relevant "turn" in the mainland coastline.

A coastal front extending from Cape Camerón to Rio Grande (generating a bisector with an azimuth of 64° 02') would, like the original Nicaraguan proposal, also overcompensate in this regard since the line would run entirely over the Honduran mainland and thus would deprive the significant Honduran land mass lying between the sea and the line of any effect on the delimitation.

The front that extends from Punta Patuca to Wouhnta, would avoid the problem of cutting off Honduran territory and at the same time provides a coastal façade of sufficient length to account properly for the coastal configuration in the disputed area. Thus, a Honduran coastal front running to Punta Patuca and a Nicaraguan coastal front running to Wouhnta are in the Court's view the relevant coasts for purposes of drawing the bisector. This resulting bisector line has an azimuth of 70° 14' 41.25".

Delimitation around the islands

The Court notes that by virtue of Article 3 of UNCLOS Honduras has the right to establish the breadth of its territorial sea up to a limit of 12 nautical miles be that for its mainland or for islands under its sovereignty. In the current proceedings Honduras claims for the four islands in question a territorial sea of 12 nautical miles. The Court thus finds that, subject to any overlap

between the territorial sea around Honduran islands and the territorial sea around Nicaraguan islands in the vicinity, Bobel Cay, Savanna Cay, Port Royal Cay and South Cay shall be accorded a territorial sea of 12 nautical miles.

As a 12-mile breadth of territorial sea has been accorded to these islands, it becomes apparent that the territorial seas attributed to the islands of Bobel Cay, Savanna Cay, Port Royal Cay and South Cay (Honduras) and Edinburgh Cay (Nicaragua) would lead to an overlap in the territorial sea of Nicaragua and Honduras in this area, both to the south and to the north of the 15th parallel.

Drawing a provisional equidistance line for this territorial sea delimitation between the opposite-facing islands does not present the problems that would an equidistance line from the mainland. The Parties have provided the Court with co-ordinates for the four islands in dispute north of the 15th parallel and for Edinburgh Cay to the south. Delimitation of this relatively small area can be satisfactorily accomplished by drawing a provisional equidistance line, using co-ordinates for the above islands as the base points for their territorial seas, in the overlapping areas between the territorial seas of Bobel Cay, Port Royal Cay and South Cay (Honduras), and the territorial sea of Edinburgh Cay (Nicaragua), respectively. The territorial sea of Savanna Cay (Honduras) does not overlap with the territorial sea of Edinburgh Cay. The Court does not consider there to be any legally relevant "special circumstances" in this area that would warrant adjusting this provisional line.

The maritime boundary between Nicaragua and Honduras in the vicinity of Bobel Cay, Savanna Cay, Port Royal Cay and South Cay (Honduras) and Edinburgh Cay (Nicaragua) will thus follow the line as described below.

From the intersection of the bisector line with the 12-mile arc of the territorial sea of Bobel Cay at point A (with co-ordinates 15° 05' 25" N and 82° 52' 54" W) the boundary line follows the 12-mile arc of the territorial sea of Bobel Cay in a southerly direction until its intersection with the 12-mile arc of the territorial sea of Edinburgh Cay at point B (with co-ordinates 14° 57' 13" N and 82° 50' 03" W). From point B the boundary line continues along the median line, which is formed by the points of equidistance between Bobel Cay, Port Royal Cay and South Cay (Honduras) and Edinburgh Cay (Nicaragua), through points C (with co-ordinates 14° 56' 45" N and 82° 33' 56" W) and D (with co-ordinates 14° 56' 35" N and 82° 33' 20" W), until it meets the point of intersection of the 12-mile arcs of the territorial seas of South Cay (Honduras) and Edinburgh Cay (Nicaragua) at point E (with co-ordinates 14° 53' 15" N and 82° 29' 24" W). From point E the boundary line follows the 12-mile arc of the territorial sea of South Cay in a northerly direction until it intersects the bisector line at point F (with co-ordinates 15° 16' 08" N and 82° 21' 56" W).

Starting-point and endpoint of the maritime boundary

Having reviewed the proposals of the Parties, the Court considers it appropriate to set the starting-point 3 miles out to sea (15° 00' 52" N and 83° 05' 58" W) from the point already identified by the Mixed Commission in 1962 along the azimuth of the bisector as described above. The Parties are to agree on a line which links the end of the land boundary as fixed by the 1906 Award and the point of departure of the maritime delimitation in accordance with the present Judgment.

As for the endpoint, neither Nicaragua nor Honduras in each of their submissions specifies a precise seaward end to the boundary between them.

The Court observes that there are three possibilities open to it: it could say nothing about the endpoint of the line, stating only that the line continues until the jurisdiction of a third State is reached; it could decide that the line does not extend beyond the 82nd meridian; or it could

indicate that the alleged third-State rights said to exist east of the 82nd meridian do not lie in the area being delimited and thus present no obstacle to deciding that the line continues beyond that meridian.

The Court considers certain interests of third States which result from some bilateral treaties between countries in the region and which may be of possible relevance to the limits to the maritime boundary drawn between Nicaragua and Honduras. The Court adds that its consideration of these interests is without prejudice to any other legitimate third party interests which may also exist in the area.

The Court may accordingly, without specifying a precise endpoint, delimit the maritime boundary and state that it extends beyond the 82nd meridian without affecting third-State rights. It should also be noted in this regard that in no case may the line be interpreted as extending more than 200 nautical miles from the baselines from which the breadth of the territorial sea is measured; any claim of continental shelf rights beyond 200 miles must be in accordance with Article 76 of UNCLOS and reviewed by the Commission on the Limits of the Continental Shelf established thereunder.

Course of the maritime boundary (sketch-maps Nos. 7 and 8 in the Judgment)

The line of delimitation is to begin at the starting-point 3 nautical miles offshore on the bisector. From there it continues along the bisector until it reaches the outer limit of the 12-nautical-mile territorial sea of Bobel Cay. It then traces this territorial sea round to the south until it reaches the median line in the overlapping territorial seas of Bobel Cay, Port Royal Cay and South Cay (Honduras) and Edinburgh Cay (Nicaragua). The delimitation line continues along this median line until it reaches the territorial sea of South Cay, which for the most part does not overlap with the territorial sea of Edinburgh Cay. The line then traces the arc of the outer limit of the 12-nautical-mile territorial sea of South Cay round to the north until it again connects with the bisector, whereafter the line continues along that azimuth until it reaches the area where the rights of certain third States may be affected.

Sketch-map No. 7 in the Judgment

Sketch-map No. 8 in the Judgment

Operative clause (para. 321)

"For these reasons,

THE COURT,

(1) Unanimously,

Finds that the Republic of Honduras has sovereignty over Bobel Cay, Savanna Cay, Port Royal Cay and South Cay;

(2) By fifteen votes to two,

Decides that the starting-point of the single maritime boundary that divides the territorial sea, continental shelf and exclusive economic zones of the Republic of Nicaragua and the Republic of Honduras shall be located at a point with the co-ordinates 15° 00' 52" N and 83° 05' 58" W;

IN FAVOUR: President Higgins; Vice-President Al-Khasawneh; Judges Ranjeva, Shi, Koroma, Buergenthal, Owada, Simma, Tomka, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov; Judge ad hoc Gaja;

AGAINST: Judge Parra-Aranguren, Judge ad hoc Torres Bernárdez;

(3) By fourteen votes to three,

Decides that starting from the point with the co-ordinates 15° 00' 52" N and 83° 05' 58" W the line of the single maritime boundary shall follow the azimuth 70° 14' 41.25" until its intersection with the 12-nautical-mile arc of the territorial sea of Bobel Cay at point A (with co-ordinates 15° 05' 25" N and 82° 52' 54" W). From point A the boundary line shall follow the 12-nautical-mile arc of the territorial sea of Bobel Cay in a southerly direction until its intersection with the 12-nautical-mile arc of the territorial sea of Edinburgh Cay at point B (with co-ordinates 14° 57' 13" N and 82° 50' 03" W). From point B the boundary line shall continue along the median line which is formed by the points of equidistance between Bobel Cay, Port Royal Cay and South Cay (Honduras) and Edinburgh Cay (Nicaragua), through point C (with co-ordinates 14° 56' 45" N and 82° 33' 56" W) and D (with co-ordinates 14° 56' 35" N and 82° 33' 20" W), until it meets the point of intersection of the 12-nautical-mile arcs of the territorial seas of South Cay (Honduras) and Edinburgh Cay (Nicaragua) at point E (with co-ordinates 14° 53' 15" N and 82° 29' 24" W). From point E the boundary line shall follow the 12-nautical-mile arc of the territorial sea of South Cay in a northerly direction until it meets the line of the azimuth at point F (with co-ordinates 15° 16' 08" N and 82° 21' 56" W). From point F, it shall continue along the line having the azimuth of 70° 14' 41.25" until it reaches the area where the rights of third States may be affected;

IN FAVOUR: President Higgins; Vice-President Al-Khasawneh; Judges Shi, Koroma, Buergenthal, Owada, Simma, Tomka, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov; Judge ad hoc Gaja;

AGAINST: Judges Ranjeva, Parra-Aranguren, Judge ad hoc Torres Bernárdez;

(4) By sixteen votes to one,

Finds that the Parties must negotiate in good faith with a view to agreeing on the course of the delimitation line of that portion of the territorial sea located between the endpoint of the land boundary as established by the 1906 Arbitral Award and the starting-point of the single maritime boundary determined by the Court to be located at the point with the co-ordinates 15° 00' 52" N and 83° 05' 58" W.

IN FAVOUR: President Higgins; Vice-President Al-Khasawneh; Judges Ranjeva, Shi, Koroma, Buergenthal, Owada, Simma, Tomka, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov; Judges ad hoc Torres Bernárdez, Gaja;

AGAINST: Judge Parra-Aranguren."

*

Judge Ranjeva appends a separate opinion to the Judgment of the Court; Judge Koroma appends a separate opinion to the Judgment of the Court; Judge Parra-Aranguren appends a declaration to the Judgment of the Court; Judge ad hoc Torres Bernárdez appends a dissenting opinion to the Judgment of the Court; Judge ad hoc Gaja appends a declaration to the Judgment of the Court.

Separate opinion of Judge Ranjeva

Judge Ranjeva explains his vote against the third operative paragraph in a separate opinion appended to the Judgment. With respect to the line of the boundary segment beginning at the point with the co-ordinates 15° 00' 52" N and 83° 05' 58" W, which follows the azimuth 70° 14' 25" until its intersection at point A (co-ordinates 15° 05' 25" N and 82° 52' 54" W) with the 12-nautical-mile arc of the territorial sea of Bobel Cay, the Judgment challenges the law and the consistent jurisprudence on the method of delimiting territorial seas. In view of the instability of the coastlines, the Judgment abandons the method of delimitation by stages in order to attribute a directly normative function to the geomorphological circumstances of the coast. Judge Ranjeva cannot accept the approach adopted in the Judgment, in the sense that such circumstances are seen by the law of maritime delimitation as having a corrective function on the rigid effects of applying a provisional equidistance line. In attributing a normative function to these circumstances, the Judgment first creates a new category of circumstances alongside the conventional ones of special and relevant circumstances; it also reopens the now settled debate between the advocates of equidistance and those of equity. Finally, the bisector method makes the object of the judicial decision an exercise in dividing a sector, rather than one of delimitation. As for the question of the impossibility of drawing a provisional equidistance line, the arguments presented appear too subjective, inasmuch as the notion of unstable coastlines was not unknown to the Montego Bay Convention of 1982.

Separate opinion of Judge Koroma

In a separate opinion, Judge Koroma concurred with the Court's conclusion regarding the method of delimitation applied in this case, but considered that certain significant aspects of the Judgment called for emphasis and clarification. He viewed the use of the bisector to effect the delimitation as consistent with and reflective of the jurisprudence on maritime delimitation, rather than as being a departure therefrom. Under this jurisprudence, the delimitation process begins with defining the geographical context of the dispute and then applies the pertinent rules of international law and equitable principles to determine the relevance and weight of the geographical features. The choice of method thus very much depends upon the pertinent circumstances of the area.

It was in the light of the foregoing that the Court considered the bisector as the most appropriate method for the delimitation process in this case. He pointed out that equidistance cannot be applied universally and automatically as a method of delimitation irrespective of the area to be delimited and, in this case, neither Party argued, in the main, that this method should be used for delimiting their respective territorial seas given the unstable coastal geography. Thus, the Court, having carefully examined the Parties' arguments and their well-founded reluctance to embrace equidistance, decided to adopt the bisector method as a suitable delimitation method in this case.

He recalled that the use of a bisector — the line formed by bisecting the angle formed by the two lines approximating the States' coastal fronts — is a geometric method that can be used to give legal effect to the criterion long held to be as equitable as it is simple, namely that, in principle, while having regard to the special circumstances of the case, a delimitation should aim at an equal division of areas where the maritime projections of the coasts of the States converge and overlap; that while the equidistance method approximates the relationship between two parties' relevant coasts by comparing the fine relationships between acceptable pairs of base points, the bisector method likewise seeks to approximate the relevant coastal relationships on the basis of the macro-geography of a coastline. He acknowledged that care must always be taken to avoid

completely refashioning nature. He pointed out that the use of the bisector method has several precedents and, in applying this approach here, the Court, rather than departing from its settled jurisprudence, has reaffirmed, applied and given effect to that jurisprudence.

On the other hand, Judge Koroma had reservations regarding the decision to attribute to Honduras areas of territorial sea lying south of the 14° 59.8' N parallel. Honduras in its submissions stated that its territorial sea would not extend south of the 14° 59.8' N parallel and there was no compelling reason not to uphold this submission when this would have prevented a potential source of future conflict and avoided giving disproportionate effect to the small islands the title to which was in dispute in this case.

Declaration of Judge Parra-Aranguren

Judge Parra-Aranguren recalls the Note of 19 March 1912 sent by the Minister for Foreign Affairs of Nicaragua to the Foreign Minister of Honduras, specifying the disagreement to be decided by the Arbitrator in application of Article III of the 1894 Treaty concluded between their countries, i.e., "from the point on the Cordillera called Teotecacinte to its endpoint on the Atlantic coast and to the boundary in the sea marking the end of the jurisdiction of the two States" (emphasis added), and challenging for the first time the validity and binding nature of the 1906 Arbitral Award. Nicaragua indicated several grounds for the nullity of the decision of the King of Spain, one of them being that "there is an evident inconsistency in this Award when it deals with that section of the frontier line which should separate the jurisdiction of the two countries in the territorial sea" (I.C.J. Pleadings, Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua), Vol. I, p. 294; emphasis added). [Translation by the Registry.]

Paragraph 39 of the Judgment refers to Nicaragua's Note of 19 March 1912. However, the Court only indicates that it "challenged the validity and binding character of the Arbitral Award", not mentioning the statements quoted above, even though they demonstrate Nicaragua's opinion that the 1906 Arbitral Award had established "the frontier line which should separate the jurisdiction of the two countries in the territorial sea".

Judge Parra-Aranguren agrees with Nicaragua's Note of 1912 acknowledging that the 1906 Arbitral Award determined the sovereignty of the disputed mainland and insular territories, as well as the continental and insular territorial waters appertaining to Honduras and Nicaragua. However, he cannot share Nicaragua's allegation that the decision of the King of Spain was null and void because of its "omissions, contradictions and obscurities". Nicaragua presented this contention to the Court, but it was not upheld in its Judgment of 18 November 1960, which is res judicata (Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua), Judgment, I.C.J. Reports 1960, pp. 205-217).

For these reasons, Judge Parra-Aranguren voted in favour of paragraph 321 (1) and against paragraph 321 (2), paragraph 321 (3) and paragraph 321 (4) of the Judgment.

Dissenting opinion of Judge ad hoc Torres Bernárdez

1. As explained in the introduction to the opinion, Judge Torres Bernárdez has voted in favour of the decision in the Judgment to the effect that sovereignty over Bobel Cay, Savanna Cay and Port Royal Cay lies with the Republic of Honduras (subparagraph (1) of the operative clause), as it is his view that these islands, all lying north of the 15th parallel, belong to Honduras for three reasons: (a) Honduras possesses a legal title to the islands pursuant to the uti possidetis juris position in 1821, which applies as between the Parties; (b) the post-colonial effectivités exercised by Honduras à titre de souverain over the islands and in the territorial sea around them and the

absence of effectivités of Nicaragua; and (c) Nicaragua's acquiescence in Honduras's sovereignty over the islands until the belated assertion of a claim in the Memorial filed by the Applicant in the present proceedings on 21 March 2001.

2. Thus, in Judge Torres Bernárdez's view, the legal basis for Honduras's sovereignty over the islands is threefold, including the post-colonial effectivités. In the reasoning set out in the Judgment, however, Honduran sovereignty over the islands is based solely on the post-colonial effectivités, the evidence being deemed insufficient to allow for ascertaining which of the two Parties inherited the Spanish title to the islands by operation of the principle of uti possidetis juris and there being no proof of any acquiescence by Nicaragua in Honduras's sovereignty over the islands.

3. It follows that the discussion in the opinion concerning the "territorial dispute" is the statement of a separate, rather than dissenting, opinion. The reason why the present opinion is a "dissenting opinion" is to be found in the "maritime delimitation" effected in the Judgment, because on this subject Judge Torres Bernárdez is in utter disagreement, save on one point, with the majority's decisions and supporting reasoning, and this explains his vote against subparagraphs (2) and (3) of the operative clause.

4. The point in question, and Judge Torres Bernárdez acknowledges its importance, concerns the delimitation of the territorial sea surrounding the islands; he believes that this delimitation is in full accord with the 1982 United Nations Convention on the Law of the Sea, in force between the Parties. His vote against subparagraph (3) of the operative clause must be understood as thus qualified, since, had there been a separate vote on the section of the single maritime boundary around the islands, Judge Torres Bernárdez would have voted in favour of it.

I. THE TERRITORIAL DISPUTE

A. The applicable law for determining sovereignty over the disputed islands

5. The section of the opinion concerning the "territorial dispute" begins with a reaffirmation that the applicable law for determining sovereignty over the contested islands is the law governing acquisition of land territory: in the circumstances of the case, specifically the uti possidetis juris position in 1821, the post-colonial effectivités and acquiescence. In oral argument Nicaragua invoked "adjacency" without further qualification, that is to say adjacency standing alone, but, as stated in the opinion, mere geographical adjacency by itself, without operation of the uti possidetis juris principle or another rule of international law incorporating the criterion, does not constitute territorial title under international law (Island of Palmas case).

B. The decision in the Judgment and post-colonial effectivités

6. The decision in the Judgment concerning the Republic of Honduras's sovereignty over the disputed islands based on the post-colonial effectivités relies on generally accepted principles articulated in the Permanent Court's decision in the case concerning Legal Status of Eastern Greenland, and on the present Court's recent jurisprudence on the subject of small islands that are intermittently inhabited, uninhabited or of slight economic importance (Qit'at Jaradah; Pulau Ligitan and Pulau Sipadan).

7. Judge Torres Bernárdez subscribes wholeheartedly to these findings in the Judgment, for the evidence before the Court weighs heavily in favour of Honduras. While the various evidentiary offerings are variable in number and probative value, as a whole they provide ample proof of

Honduras's intent and will to act à titre de souverain and of the effective exercise and manifestation of its authority over the islands and in the adjacent waters. Confronted with the Respondent's post-colonial effectivités, Nicaragua was unable to prove the existence of a single post-colonial effectivité of its own in respect of the contested islands. Further, the fact that Honduras obtained title to the islands by a process of acquisition based on post-colonial effectivités can hardly give rise to any conflict with the holder of a title based on uti possidetis juris, since Nicaragua is just as lacking in post-colonial effectivités in the islands as it is in title by way of uti possidetis juris.

C. Honduras's uti possidetis juris in the disputed islands

8. The opinion next turns to an examination of the applicability of the international law principle of uti possidetis juris to the dispute as to sovereignty over the islands, noting, as observed in the Arbitral Award made on 23 December 1906 by King Alfonso XIII of Spain: "the Spanish provinces of Honduras and Nicaragua were gradually developing by historical evolution in such a manner as to be finally formed into two distinct administrations (intendencias) under the Captaincy-General of Guatemala by virtue of the prescriptions of the Royal Regulations of Provincial Intendants of New Spain of 1786, which were applied to Guatemala and under whose régime they came as administered provinces till their emancipation from Spain in 1821" (United Nations, Reports of International Arbitral Awards (RIAA), Vol. XI, p. 112).

9. In 1821, upon succeeding to independence, the Republic of Honduras and the Republic of Nicaragua freely accepted the uti possidetis juris principle, which had been formulated a few years earlier as an objective criterion to facilitate the peaceful settlement of potential territorial issues for the new Spanish-American Republics. The principle was incorporated into the constitutions of the Republic of Honduras and the Republic of Nicaragua and into their treaties. For example, Article II, paragraph 3, of the Gámez-Bonilla Treaty of 7 October 1894 pithily expresses the very core of the uti possidetis juris principle: "It is to be understood that each Republic is owner of the territory which at the date of independence constituted, respectively, the provinces of Honduras and Nicaragua". This provision served as the basis for the delimitation carried out between 1900 and 1904 by the Mixed Commission formed under the Treaty and for the later delimitation under the 1906 Arbitral Award.

10. The opinion notes the strong opposition historically encountered from European legal scholars to universal application of the uti possidetis juris principle as a positive norm of general international law. However, once the intangibility of boundaries inherited upon decolonization had gained general acceptance among African States, recognition of the principle of uti possidetis juris became so widespread that a Chamber of the International Court of Justice was able to state in 1986: "Uti possidetis juris . . . is therefore a principle of a general kind which is logically connected with this form of decolonization wherever it occurs." (Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986, p. 566, para. 23.) In 1992, another Chamber of the Court was prompted to apply the principle (Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)). More recently, the principle was applied in 2005 by a third Chamber in the case concerning Frontier Dispute (Benin/Niger).

11. The principle has on occasion also been cited in cases coming before the full Court, notably in the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain, but there was no need for the Court to apply it because the case did not involve State succession. This problem did not arise in the present case, concerning as it does a precise instance of decolonization. Thus, the Court has had no difficulty in the present Judgment in affirming the applicability of uti possidetis juris as a principle of general international law to the dispute over the

islands in this case, because the principle covers disputes over delimitation in the strict sense as well as those as to the holder of title to a particular land, island or maritime area (disputes over attribution).

12. On the question of applicability of the principle per se to the contested islands and on the notion of possession as it relates to uti possidetis juris, the majority and Judge Torres Bernárdez are of the same view. Where they part ways is in respect of weighing the evidence, specifically the best method for assessing the evidence in the light of the nature of the Spanish Crown's original title in its former territories in the Americas and of the characteristics and aims of the American legislation. Judge Torres Bernárdez believes that the present Judgment confirms the difficulties still encountered in applying uti possidetis juris to a particular area when the internal law referred to by the Latin genitive juris is an historical jus such as that which the Spanish Crown applied in America over more than three centuries.

13. In the view of the majority, it cannot be said that the application of this principle to Bobel Cay, Savanna Cay, South Cay and Port Royal Cay — islands of very minor importance lying far off the mainland — would settle the issue of sovereignty over them (paragraph 163 of the Judgment). According to the Judgment, there was no clear-cut administrative delimitation between different provinces of the Captaincy-General of Guatemala in respect of the islands; providing security, preventing smuggling and taking other steps necessary to safeguard the Crown's interests in the islands were probably the responsibility of the Captaincy-General itself.

14. Judge Torres Bernárdez does not subscribe to the majority's hypothetical conclusion on this point, as it disregards the fact that any exercise of direct authority by the Captaincy-General of Guatemala over any place or area in a province in no way altered that province's territory (see: Arbitral Award of 1906, RIAA, Vol. XI, p. 113). In his view, where the uti possidetis juris position must be proved retroactively, it is not always possible to obtain legislative or like documents specifying the ownership or extent of the territories in question or showing the exact location of provincial boundaries. It then becomes necessary, in attempting to reconstruct the position, to take into consideration all the evidence and additional information made available through historical and logical interpretation. Further, it must be kept in mind that evidence in respect of the territorial facet of uti possidetis juris is often very useful in clarifying the delimitation aspect and vice versa.

15. Identifying and proving title to the disputed islands pursuant to uti possidetis juris in this case is, in Judge Torres Bernárdez's opinion, greatly facilitated by the fact that the King of Spain defined the territories of the provinces of Nicaragua and Honduras on the eve of independence in the reasoning supporting his 1906 Arbitral Award made on the basis of the principle of uti possidetis juris as set out in the Gámez-Bonilla Treaty of 1894. On this subject the Arbitral Award states, inter alia: (a) that the Commission of investigation had not found that the expanding influence of Nicaragua had extended to the north of Cape Gracias a Dios, and therefore not reached Cape Camarón, there therefore being no reason to select the latter cape as a frontier boundary with Honduras on the Atlantic coast, as Nicaragua had claimed, and (b) that the Commission of investigation had found that the extension of Honduran jurisdiction to the south of Cape Gracias a Dios had never been clearly defined and that in any case it had been ephemeral, whereas Nicaragua's influence had been exercised in a real and permanent manner as far as that cape, it accordingly not being appropriate for the common boundary on the Atlantic coast to be Sandy Bay, as Honduras had claimed.

16. It was on the basis of this assessment of the fully documented uti possidetis juris position in 1821 that the arbitrator in the 1906 Arbitral Award determined the extreme common boundary

point on the coast of the Atlantic between the Republic of Honduras and the Republic of Nicaragua to be the mouth of the River Coco, Segovia or Wanks where it flowed out in the sea, close to Cape Gracias a Dios, taking as the mouth of the river the mouth of its principal arm between Hara and the Island of San Pío where the cape is situated. The Court's Judgment of 18 November 1960 confirms that the arbitrator's decision was based on the principle of uti possidetis juris:

> "Nicaragua contends that the arbitrator fixed what he regarded as a natural boundary line without taking into account the Laws and Royal Warrants of the Spanish State which established the Spanish administrative divisions before the date of Independence. In the judgment of the Court this complaint is without foundation inasmuch as the decision of the arbitrator is based on historical and legal considerations (derecho histórico) in accordance with paragraphs 3 and 4 of Article II [of the Gámez-Bonilla Treaty]." (Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua), Judgment, I.C.J. Reports 1960, p. 215; emphasis added.)

17. In Judge Torres Bernárdez's view, the substance of the evidence and other information supporting the Arbitral Award of 1906 and the Court's 1960 Judgment, that evidence and information being both considerable in quantity and unassailable in quality and authoritativeness, makes it essential for a judicial determination of the uti possidetis juris position in the contested islands. Further, these decisions are binding, for, as pointed out by a Chamber of the Court: "The award's view of the uti possidetis juris position prevails and cannot now be questioned juridically, even if it could be questioned historically." (Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992, p. 401, para. 67.)

18. It is therefore clear to the author of the opinion that the uti possidetis juris position in 1821 saw the coast of Honduras stretching northwards from the extreme common point of the land boundary on the Atlantic coast, situated in the mouth of the principal arm of the River Coco where it flowed out in the sea close to Cape Gracias a Dios, up to the boundary with Guatemala, and the coast of Nicaragua extending to the south of the same extreme common boundary point up to the boundary with Costa Rica. Thus, we know precisely what were the Parties' coastlines in 1821 and, accordingly, we know the reference point allowing for unproblematic application of the notion of "adjacent island" under historical Spanish law as a general criterion for attributing islands to administrative entities; this notion, by the way, is much broader than that of "coastal island" under contemporary international law, because an island defined or treated as an "adjacent island" can lie far from the mainland.

19. For example, islands such as Aves, Clipperton, Swan, San Andrés and others have been considered "adjacent islands" even though situated a considerable distance from the mainland. Thus, the fact that the islands in dispute in the present case lie from 27 to 32 miles from the Honduran coast north of Cape Gracias a Dios does not preclude their characterization as "adjacent islands" of the province of Honduras under historical Spanish law. Further, the notion of "adjacent island" under that law was much more flexible than under contemporary international law. It was in fact merely a residual rule in that it could be set aside at any time by a specific normative provision to the contrary enacted by the King, e.g. the Royal Order of 1786 on the island of Aves or the Royal Warrant of 1803 on the islands of San Andrés.

20. But Nicaragua has offered no evidence of any specific decision by the King in favour of the province of Nicaragua in respect of the islands involved in the present case. Accordingly, in the view of Judge Torres Bernárdez, the delimitation of the land boundary effected by the Arbitral Award of 1906 enables a judicial response under the doctrine of uti possidetis juris to the question

of sovereignty over the islands, because the four cays in question lie north of the 15th parallel, off and in the vicinity of Honduras's mainland coast and nearer to it than to Nicaragua's mainland coast south of that parallel.

21. Under these circumstances, if account is taken of the general criterion of attribution of "adjacent islands" under historical Spanish law, sovereignty over the cays pursuant to the uti possidetis juris principle undoubtedly belongs, in Judge Torres Bernárdez's opinion, to the Republic of Honduras, because, as determined in the Arbitral Award, the authorities in the province of Nicaragua in 1821 neither had nor exercised any jurisdiction in land, island or maritime areas north of Cape Gracias a Dios.

22. Moreover, the Parties' post-1821 conduct confirms this conclusion: for example, the diplomatic Note of 23 November 1844 to Her Britannic Majesty from the Minister representing both Honduras and Nicaragua, which recognizes Nicaragua's sovereign right along the Atlantic coast but only from Cape Gracias a Dios in the north to the boundary line separating Nicaragua and Costa Rica. Further, under treaties entered into in the nineteenth century between Spain and the Republic of Nicaragua (1856) and between Spain and the Republic of Honduras (1860), the predecessor State relinquished its title to the mainland and island territories of the colonial provinces. The Constitutions of the two Republics also include the expression "adjacent islands" in their respective definitions of national territory.

23. It is also pointed out in the opinion that Nicaragua sought in the arbitration proceedings to obtain recognition of a boundary line running along the 85th meridian west, which passes above Cape Camarón, and following that meridian to the sea, leaving Swan Island to Nicaragua. As we have seen, however, the arbitrator did not accept Nicaragua's argument and — pursuant to the principle upholding the uti possidetis juris position of 1821 — fixed the extreme common boundary point of the two Republics in the mouth of the River Coco close to Cape Gracias a Dios, because, as observed in the Arbitral Award of 1906, the "documents" described Cape Gracias a Dios as the boundary point of the "jurisdictions" which the Royal Decrees of 1745 assigned to the Governors of the provinces of Honduras (Juan de Vera) and Nicaragua (Alonso Fernández de Heredia). Let us add that the Royal Warrant of 30 November 1803 concerning the islands of San Andrés and that part of the Mosquito Coast from Cape Gracias a Dios to the Chagres River confirms the role played by that cape as the jurisdictional boundary between the provinces of Honduras and Nicaragua.

D. Acquiescence by Nicaragua

24. If Nicaragua still believed after the Court's 1960 Judgment regarding the Arbitral Award made by the King of Spain that it was entitled to the disputed islands north of the 15th parallel, it should have said so earlier. But Nicaragua failed to make that clear either before or after the maritime delimitation dispute crystallized in 1982. For example, when the President of Nicaragua signed the original text of the 1998 Free Trade Agreement, Nicaragua had not yet expressed any claims to the islands in dispute in the present proceedings (paragraph 226 of the Judgment). It was not until 21 March 2001 that Nicaragua asserted claims to these islands.

25. In remaining silent over the years, Nicaragua engaged in conduct which could have led Honduras to believe that it accepted the uti possidetis juris position vis-à-vis the disputed islands, as that position had, in Judge Torres Bernárdez's opinion, been binding on the Parties ever since the 1906 Arbitral Award fixed the endpoint of the land boundary at the mouth of the River Coco in the sea close to Cape Gracias a Dios. Further, under international law, Nicaragua, to safeguard the rights claimed in the present proceedings, should have exercised greater vigilance and expressed clearer opposition in respect of Honduras's post-colonial effectivités in the islands.

E. Conclusion

26. It is pursuant to the foregoing considerations that Judge Torres Bernárdez is of the opinion that the legal basis for Honduras's sovereignty over Bobel Cay, Savanna Cay, Port Royal Cay and South Cay is threefold, the post-colonial effectivités and Nicaragua's acquiescence reinforcing the legal title to the islands held by the Republic of Honduras since 1821 by virtue of the principle of uti possidetis juris.

II. DELIMITATION OF THE MARITIME AREAS BY A SINGLE MARITIME BOUNDARY

A. The rejection of the "traditional maritime boundary" claimed by Honduras

27. Honduras defended the existence of a so-called "traditional" maritime boundary running along the 15th parallel north, through the territorial sea and beyond, based initially on the principle of uti possidetis juris (for the 6 nautical miles of territorial waters from the colonial period) and, subsequently, on a tacit agreement between the Parties concerning all the areas to be delimited by the Court in the present case. However, the Court, after considering the arguments and numerous evidentiary offerings submitted by Honduras, as well as the arguments and evidence to the contrary from Nicaragua, concludes "that there was no tacit agreement in effect between the Parties in 1982 — nor a fortiori at any subsequent date — of a nature to establish a legally binding maritime boundary" (paragraph 258 of the Judgment).

28. For the majority, the 15th parallel, at certain periods (1961-1977), "appears to have had some relevance in the conduct of the Parties", but the events concerned spanned a short period of time. However, Judge Torres Bernárdez emphasizes in his opinion that the period in question is considerably longer than that in the Gulf of Maine case. In any event, he holds that the evidence submitted by Honduras, notably that concerning the oil and gas concessions and fisheries regulations and related activities, argues decisively in favour of the idea of the existence of a tacit agreement between the Parties on the "traditional" maritime boundary. He therefore does not subscribe to the negative finding of the majority on this question, although he acknowledges that it is a judge's prerogative to weigh and take a position on the evidence presented by the Parties.

29. In this respect, the opinion contains two particular comments. In the first, the judge declares his disagreement with the interpretation made by the Judgment of the Note from the Minister Dr. Paz Barnica of 3 May 1982. The second concerns Nicaragua's reaction to the Honduran Note of 21 September 1979 which stated that the seizure at sea of a Honduran vessel by the Nicaraguan navy on 18 September 1979 took place "eight miles to the north of the fifteenth parallel that serves as the limit between Honduras and Nicaragua (Counter-Memorial of Honduras, p. 48, para. 3.38; emphasis added). The Judgment, however, attributes no legal effect to the fact that, in its reply, Nicaragua neither contested nor qualified Honduras's assertion.

B. Non-application by the Judgment of succession to the territorial waters from the colonial period under uti possidetis juris

30. In both its written pleadings and at the hearings, Honduras also raised the question of the Parties' succession to the maritime areas of the colonial period pursuant to uti possidetis juris. In this respect, the Judgment declares that in certain circumstances, such as those concerning historic bays and territorial seas, the uti possidetis juris principle could play a role in maritime delimitation (paragraph 232), thereby confirming the relevant jurisprudence of the 1992 Judgment in the case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras; Nicaragua intervening). In his opinion, Judge Torres Bernárdez fully endorses this point of law set out in the Judgment. Unfortunately, the majority has not drawn the necessary conclusions from this declaration for the present case.

31. Honduras's position on the question concerned is summarized in the opinion as follows: (1) the principle of uti possidetis juris referred to in the Gámez-Bonilla Treaty, as well as in the 1906 Award of the King of Spain, is applicable to the maritime area off the coasts of Honduras and Nicaragua; (2) the 15th parallel constitutes the line of maritime delimitation resulting from the application of that principle; (3) Honduras and Nicaragua succeeded, in 1821, to a maritime area consisting of a 6-mile territorial sea; and (4) the uti possidetis juris gives rise to a presumption of Honduran title to the continental shelf and exclusive economic zone north of the 15th parallel.

32. The reactions of Judge Torres Bernárdez to each of these elements of the Honduran position are as follows:

Reaction to point (1): No doubt. At present, as a principle of general international law, uti possidetis juris is applicable to both land and maritime delimitations, as is upheld by the Judgment. Moreover, the Gámez-Bonilla Treaty constituted a friendly settlement of "all pending doubts and differences" in order to "demarcate on the spot the dividing line which is to constitute the boundary between the two Republics" (Art. 1 of the Treaty). The word "boundary" is thus not qualified by the adjective "land". The practice of the Parties bears out this interpretation, moreover, as the Minutes II of the Mixed Commission of 12 June 1900 effected a demarcation between the two republics in the part of the Bay or Gulf of Fonseca "contiguous to the coastline of both States without there being a distance of 33 km between their coasts" (I.C.J. Pleadings, Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua), Vol. I, p. 235). See also the Note of 19 March 1912 from the Nicaraguan Minister for Foreign Affairs indicating the reasons relied on by Nicaragua in order to regard the King of Spain's Award as null and void (ibid., pp. 292-293).

Reaction to point (2): Yes, if the statement is understood to apply to the maritime area of the 6-nautical-mile territorial sea from the colonial period; no, however, as far as the whole of the "traditional maritime boundary" is concerned, as Judge Torres Bernárdez agrees with Nicaragua that title to the exclusive economic zone or the continental shelf is an obviously modern legal notion which did not exist in 1821.

Reaction to point (3): No doubt, under the principle of uti possidetis juris.

Reaction to point (4): Judge Torres Bernárdez understands this point as meaning that the uti possidetis juris principle was used to determine the coasts of each Party, which in turn form the basis of the title governing the delimitation between the Parties to the present case of the maritime areas comprising the continental shelf and exclusive economic zones.

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33. It is noted in the opinion that the Judgment of the Court acknowledges — as do both Parties — that the 1906 Arbitral Award fixed the extreme common point of the land boundary which it established on the Atlantic coast. In which case, how can it be said that nothing in the 1906 Arbitral Award indicates that the 15th parallel of latitude north has been regarded as constituting the boundary line? There is at least one point, the extreme common boundary point on the Atlantic coast resulting from the Arbitral Award, which is the "starting uti possidetis juris point" of a line delimiting the territorial seas between the Parties and, in that respect, it can be invoked as evidence of succession to a maritime dividing line along the horizontal line of the 15th parallel north for the 6 nautical miles under consideration here, since historical Spanish law used parallels and meridians to delimit maritime areas.

34. The fact that this point is located in the vicinity of the 15th parallel north close to Cape Gracias a Dios and not, for example, on a parallel or a meridian passing close by Cape Camarón, Punta Patuca, Cape Falso or Sandy Bay is undoubtedly, in Judge Torres Bernárdez's view, a very significant indication or piece of evidence for a judge or arbitrator involved in applying the uti possidetis juris principle. The Chamber formed for the case Land, Island and Maritime Frontier Dispute (El Salvador/Honduras; Nicaragua intervening) understood this point well when it adopted methods of assessing and interpreting the evidence that were in keeping with the essentially historical character of that principle in Latin America.

35. According to the opinion, it is correct to say that the Arbitral Award of 1906 did not carry out any maritime delimitation in the Atlantic, but much less so to state that it "is not applicable" to the present maritime delimitation between the Parties. It is necessary to examine the reasons for the Arbitral Award in order to gain a proper view of the uti possidetis juris position in 1821 along the Parties' coasts and in their respective adjacent maritime areas, because the land dominates the sea. And the land — the coastal fronts of the Parties — was defined by the 1906 Arbitral Award and not by the resources of the exclusive economic zones located out beyond the territorial seas.

36. As to the very different issue of the scope of the res judicata of the 1906 Arbitral Award, what is required, according to Judge Torres Bernárdez, is to apply, where appropriate, the jurisprudence of the Court concerning the relationship between the operative part and the reasoning of a judgment, since res judicata does not apply only to what is materially indicated in the operative part of an award or a judgment (see, for example, the case concerning Application of the Convention for the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, para. 26).

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37. Judge Torres Bernárdez cannot follow the majority when the Judgment practically ignores the historical, geographical and legal facts set out in the reasoning of the 1906 Arbitral Award. He emphasizes the importance of the documentation in that arbitral case for applying the principle of uti possidetis juris to the delimitation of the territorial seas in the present case. In his view, an examination of the reasoning of the Arbitral Award and the documentation in question makes it possible to appreciate the full importance of the historical role of Cape Gracias a Dios as the projection separating the coast of the province of Honduras from that of the province of Nicaragua, and thus to arrive at an image of the area of the 6-mile territorial sea appertaining to one or other of these Spanish colonial provinces prior to 15 September 1821.

38. For him such an image is, moreover, sufficiently precise — for the purpose of applying the principle of the uti possidetis juris of 1821 — to acknowledge and assert that it was indeed at the parallel running through Cape Gracias a Dios (i.e. the 15th parallel north) that, on the day of their independence, the area of the mainland territorial sea of the Republic of Honduras came to an end and the area of the mainland territorial sea of the Republic of Nicaragua began, to the north and south respectively. This is, of course, a "delimitation" from 1821 and not a "demarcation" at sea in 2007. And why? Because, according to the 1906 Arbitral Award based on the historical "documentation" provided by the Parties, it was Cape Gracias a Dios which "fixes what has practically been the limit or expansion or encroachment of Nicaragua towards the north and of Honduras towards the south" (RIAA, Vol. XI, p. 115).

39. Reading the Judgment, Judge Torres Bernárdez sometimes has the impression that the majority demands too much as evidence of the uti possidetis juris of 1821 and as a definition of what constituted, at the beginning of the nineteenth century, a maritime delimitation of the territorial waters between the adjacent coasts of two States. One must ask whether it was customary at the time, even in Europe, to effect collateral delimitation of territorial seas by means of precisely defined lines in treaties concluded in due form. There is some doubt in that respect. Moreover, the evidence, information and geography are particularly clear for uti possidetis juris to be applied to the delimitation of the first 6 miles of territorial sea between the Parties' mainland coasts in question, along the 15th parallel.

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40. The opinion recalls the assertion by Honduras that the 15th parallel is the dividing line between the Parties of the maritime area represented by the 6-mile territorial waters inherited from Spain, on the basis of the 1906 Arbitral Award and the documentation relating to it, as well as other evidence such as the Royal Decree of 30 November 1803 regarding the islands of San Andrés and the Mosquito Coast from Cape Gracias a Dios to the Chagres River, the geographical plan of the Vice-Royalty of Santa Fé de Bogotá, New Kingdom of Granada (1774) (Rejoinder of Honduras, Vol. II, Ann. 232), the diplomatic Note of 23 November 1844 addressed to Her Britannic Majesty by the Minister representing both Honduras and Nicaragua, and two expert opinions on the general jurisdiction over land and sea of the Captaincy-Generals and Governments in historical Spanish overseas law (ibid., Ann. 266) and the issue of Honduran rights to the waters of the Atlantic Ocean (ibid., Ann. 267).

41. During the oral arguments stage, Nicaragua attacked the first of those expert opinions by invoking in this respect the Royal Order on coastguards (1802), the Instruction for the regulation of coastguard vessels in the Indies (1803), the Ordinance on privateering vessels (1796, amended in 1801) and the Ordinance concerning the régime and military governance of sailors' registration (matrícula de mar, 1802). Judge Torres Bernárdez does not see in what way the texts of these instruments alter the general conclusions resulting from the opinions expressed by the Honduran experts.

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42. However, Nicaragua did not confine itself to discussing items of evidence. It also presented arguments in the form of a proposition entitled "The sea, one area under one jurisdiction in the Spanish monarchy", according to which "the whole sea" formed a single area, over which a special jurisdiction, centralized in Madrid — that of the navy — exclusively applied, and finally asserting that the Spanish Crown's claim to a 6-mile territorial sea "tells [us] nothing with regard to the limit of this territorial sea between the Provinces of Honduras and Nicaragua" (paragraph 231 of the Judgment; emphasis in the original). Consequently, Nicaragua denies to the republics created from the former colonial provinces of Honduras and Nicaragua this 6-mile maritime area as part of their territorial inheritance from Spain, the predecessor State.

43. The opinion takes a stance on this Nicaraguan argument, as Judge Torres Bernárdez does not subscribe to it. In his view, it corresponds to admitting that the republics established on the territory of the former "colonial provinces" in the Americas received no more than "dry coasts" under the uti possidetis juris principle, in the same way, possibly, as the "Vice-Royalties" and "Captaincy-Generals", since the proposition that the sea was a single area administered by a

centralized jurisdiction in Madrid does not lend itself to distinguishing between the "colonial provinces" and the other administrative territorial entities established by the Spanish Crown in the Americas.

44. Judge Torres Bernárdez points out that the Nicaraguan argument is constructed as a syllogism, but the premisses are incorrect. First, it is not correct to claim that the whole sea formed "one area" when historical Spanish law — in any case in the eighteenth century (Royal Decree of 17 December 1760) — distinguished between the waters under Spanish jurisdiction adjacent to the coast (the 6 miles) and the rest of the sea, without prejudice to the existence of historic waters or bays such as those of the Gulf of Fonseca on which Nicaragua has a coast. Further, the Spanish Kings of the age of enlightenment were, as elsewhere in Europe, at the head of an absolute monarchy in which the King's will alone was the beginning, middle and end of all jurisdiction. Thus in all areas, jurisdiction was centralized in the person of the King and exercised by those entitled to hold it, both in Spain and in the Americas, by delegation of the sovereign's power.

45. Within a given area, be it on land or at sea, in the Americas or in Spain, several jurisdictions coexisted, with each such holder exercising the functions or activity that had been entrusted to him by general legislation or the specific instructions of the monarch. The existence of a special jurisdiction of the navy did not in any way prevent the exercising of governmental, military or maritime powers within the 6-mile territorial sea by a Captain-General or a Governor, whose jurisdiction at sea was not curbed by that of the Spanish royal navy.

46. Judge Torres Bernárdez notes in his opinion that, in the last analysis, the argument in question is based on a conceptual confusion between the respective roles of the principle of uti possidetis juris in international law and the historical Spanish law of the Americas. The existence of a 6-mile territorial sea off the coasts of the Spanish Crown's territories in the Americas is a question of historical Spanish law. However, the administration of the sea by the Spanish Crown, centralized or otherwise, is not relevant at all, since the determination of the successor States to the Spanish monarchy, benefiting from the date of their independence from these 6 miles of territorial sea as part of their territorial inheritance from the predecessor State, is a question of international law.

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47. After attempting to sow doubt with the above argument, Nicaragua finally fell back on the non-division of the 6-mile maritime area of the territorial sea from the colonial period. It did so in the following terms: "[t]he only thing that can be said is that, at the date of independence, a joint sovereignty of the riparian republics arose over the waters of the Spanish Crown . . . and persists until such time as the areas corresponding to each of them are delimited" (CR 2007/3, p. 35, para. 82).

48. For Judge Torres Bernárdez, this amounts to acknowledging that the Republic of Nicaragua and the Republic of Honduras did indeed succeed to the 6 miles of territorial waters from the colonial period off Cape Gracias a Dios under the principle of uti possidetis juris. As the two Parties thus agree on the existence of a succession in 1821 to this maritime area, all that remains is to fix the dividing line between their territorial waters. In this respect, the opinion states that "non-division", purely as such, does not mean that we are dealing with a situation of joint sovereignty. For that, the undivided waters would have to be in a situation or state of community, which does not exist in the present case (Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992, p. 599, para. 401).

49. As regards the location and orientation of this dividing line in 1821, Judge Torres Bernárdez considers that, if one examines all the points of law in the case, it stands to reason that under the uti possidetis juris principle of international law, the line of the parallel running through Cape Gracias a Dios, i.e. approximately the 15th parallel, acted as the dividing line between the Parties for the 6-mile area of territorial waters in the Caribbean Sea during the colonial period, since the colonial authorities of the province of Honduras did not exercise any jurisdiction south of that parallel and the colonial authorities of the province of Nicaragua did not exercise any jurisdiction north of it.

50. The Parties knew this from the early days of independence (see, for example, the diplomatic Note of 23 November 1844), and the 1906 Arbitral Award confirmed it by fixing as res judicata the extreme common point of the land boundary as the mouth of the River Coco close to Cape Gracias a Dios. There was thus no reason to look any further, as the conduct of the Parties confirmed by the Arbitral Award from then on constituted the authentic expression of the uti possidetis juris of 1821 (see, for example, Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992, p. 41, para. 67). Moreover, after the Court's 1960 Judgment on the validity and binding nature of the 1906 Arbitral Award, the Parties' conduct was like that following independence, i.e. as if the dividing line was effectively the 15th parallel (conduct giving rise to the "traditional" maritime boundary). In any event, since uti possidetis juris is a principle that automatically applies, the colonial administrative divisions on land or at sea are transformed into international boundaries "by the operation of the law". No additional deliberate act is required (*ibid.*, p. 565, para. 345).

51. Judge Torres Bernárdez is accordingly of the opinion that there are no grounds for the finding in the Judgment that Honduras ought to have shown to a greater degree that the maritime boundary should follow the 15th parallel from Cape Gracias a Dios, and produced evidence that the colonial power had used parallels and meridians in this particular case, which was its general practice at sea.

52. According to Judge Torres Bernárdez, such a standard is too demanding in terms of assessing a uti possidetis juris situation concerning two States which, in 1821, had the same understanding of that principle as regards the maritime area concerned. This bears out his criticism of the Judgment for opting for a rather too mechanical and unhistorical approach in its assessment of the evidence regarding application of the uti possidetis juris principle.

53. Here, this has the unfortunate consequence of depriving Honduras of a "historic title" which could be invoked in the present case in relation to the interpretation and application of Article 15 of the 1982 United Nations Convention on the Law of the Sea. That is the first reason for Judge Torres Bernárdez's vote against subparagraphs (2) and (3) of the operative clause.

C. The ex novo delimitation of maritime areas effected by the Judgment

1. The Parties' claims and the question of defining the "area in dispute"

54. In the present case, the Parties have adopted fundamentally different approaches towards the delimitation of their "single maritime boundary" in the Caribbean Sea. One initial consequence of this divergence is, according to Judge Torres Bernárdez, that the "area in dispute" defined by the Parties' claims does not correspond to the "area" in which the maritime delimitation must be effected, taking account of the geography involved.

55. In the Judge's opinion, the bisector line claimed by Nicaragua on the basis of all the coastal fronts of both Parties, the line of the 15th parallel north claimed by Honduras and, for the purposes of the argument, the 80th meridian west form a triangular "area in dispute" which is an entirely artificial one in the sense that it is divorced from the reality of the geographical, legal and historical circumstances of a case that concerns the delimitation of maritime areas situated north and south of the mouth of the River Coco close to Cape Gracias a Dios.

56. The majority of the Court appears to presuppose, in Judge Torres Bernárdez's view, that an equal or almost equal sharing of the above triangle represents, in the present circumstances, an equitable result. He does not agree, even though the ratio between the areas of the triangle attributed to Nicaragua and those attributed to Honduras is approximately 3:4 (1:1.3) in favour of Honduras (including a significant extension in terms of territorial sea because of the islands). However, it must be taken into account that the bisector claimed by Nicaragua was certainly designed to back up recent political ambitions (1994/1995), but lacked legal credibility, since it was based on all the coastal fronts of both States regardless of their relationship with the area of delimitation and, moreover, those fronts were replaced by straight lines which bore no relation to the physical geography of the coast.

57. In defining the "area in dispute", the bisector line claimed by the Applicant is a device that creates a distortion and an inequitable result in this case. The Judgment does not correct this effect. Nor did the Respondent's main position initially help to restore a more balanced definition of the "area in dispute" as regards its southern limit (Honduras's alternative submission of an adjusted equidistance line was presented at the hearings). Consequently, Judge Torres Bernárdez notes that the area in which the Parties' principal claims overlap is situated north of the 15th parallel, whereas the area of delimitation lies north and south of that parallel.

2. The law applicable to maritime delimitation

58. Honduras and Nicaragua having become parties to the 1982 United Nations Convention on the Law of the Sea, the Convention is now in force between the Parties. The relevant articles of the Convention are therefore applicable as treaty law in the present dispute. Judge Torres Bernárdez approves of the statement to this effect in the Judgment (paragraph 261). However, he points out that, the weight of tradition being what it is, the overall structure of the Judgment is based more on the case law than on the text of the Convention, often to the detriment of the particular nature of delimitation of the territorial sea.

3. Areas to be delimited and the methodology adopted by the Judgment: the abandonment of equidistance and delimitation in stages in favour of the bisector method

59. Judge Torres Bernárdez does not agree with the Judgment as regards the methodology to be used in order to determine the course of the single maritime boundary. His assumption is that the Court must first and foremost apply the rules on delimitation of the territorial sea, without forgetting that the ultimate task is to draw a single maritime boundary between the Parties that will also be valid for other purposes (Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), I.C.J. Reports 2001, p. 93, para. 174). However, the Judgment does not do this.

60. Judge Torres Bernárdez also criticizes the fact that the Judgment rejects out of hand the equidistance method that is specifically and expressly referred to in Article 15 (Delimitation of the territorial sea) of the 1982 Convention on the Law of the Sea, relying in the first place on the existence of "special circumstances" in order to consider the issue thereafter in terms of the

Convention's rules on delimitation of the exclusive economic zone (Art. 74) and the continental shelf (Art. 83), and indeed in terms of the customary rule which it calls the "equitable principles/relevant circumstances method" (paragraph 271 of the Judgment).

61. The efforts of recent years to make judicial decisions in this field more objective by firstly drawing a provisional equidistance line, even if this subsequently has to be adjusted in the light of "special" or "relevant" circumstances, have thus been set aside. This is a relapse into sui generis solutions, i.e. into pragmatism and subjectivity. The least that can be said is that the Judgment does not put the equidistance method at the centre of the approach to be followed, relying to this end on "difficulties" which are said to make it impossible for the Court to identify base points and construct a provisional equidistance line (paragraph 280 of the Judgment).

62. It is true that neither Party has as its main argument a call for a provisional equidistance line as the most suitable method of delimitation. However, this in no way means that the Parties' positions regarding the equidistance method are the same.

63. One of the Parties, Honduras, put forward a provisional equidistance line drawn from two base points, situated on the Parties' mainland coasts respectively north and south of the mouth of the River Coco, and also presented to the Court in its final submissions, as an alternative to the line of the 15th parallel, an adjusted equidistance line (approximately azimuth 78° 48'). On the other hand, Nicaragua maintained throughout the proceedings and in its final submissions that the method of equidistance/special or relevant circumstances is not appropriate for the purposes of delimitation in the present case because of the instability of the mouth of the River Coco. For Nicaragua, the Court was to draw the whole of the single maritime boundary on the basis of the bisector of the angle formed by two straight lines that were deemed to represent the entire coastal front of both Parties (approximately azimuth 52° 45' 21").

64. In order to justify the Court's decision not to use the equidistance method in the present case, even as an initial provisional measure, the Judgment points to the geographical configuration of the coastline either side of Cape Gracias a Dios and to the marked instability of the delta of the River Coco at its mouth. Judge Torres Bernárdez agrees that these are physical circumstances to be taken into account in the delimitation exercise, but in his view, neither of them justifies abandoning the equidistance method in favour of one such as the bisector, which creates far more serious problems of law and equity in this case than equidistance.

65. In this context, Judge Torres Bernárdez points out that where physical circumstances of this type are present, the solution advocated by the 1982 Convention on the Law of the Sea is to use the "straight baselines" method to identify the base points (Arts. 7 and 9 of the Convention), rather than a method such as the bisector, based on macro-geography, which is unable in the present circumstances to safeguard the principle of non-encroachment in the areas situated off the Honduran mainland coastal front.

66. As explained in the opinion, the line of the single maritime boundary in the Judgment, which begins by delimiting only the territorial seas of the two States for a certain distance, passes too close to the mainland coast of Honduras because of the use of the bisector method. For Judge Torres Bernárdez, this line is therefore inequitable, especially in a maritime area in which security and defence interests are bound to prevail over economic considerations. Moreover, Judge Torres Bernárdez is not at all convinced that "the construction of an equidistance line from the mainland is not feasible" (paragraph 283), nor by the argument that the existence of only two

base points is a circumstance that precludes the equidistance method (see Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), I.C.J. Reports 2002, p. 443, para. 292).

4. The bisector in the Judgment and its construction (coastal fronts)

67. The Judgment has not adopted the delimitation lines requested by either of the Parties. With regard to Honduras, it rejects both the line of the 15th parallel and an adjusted equidistance line. But the Judgment also rejects the bisector of azimuth 52° 45' 21" requested by Nicaragua, which was based on lines representing the entire coastal front of both countries, which the Applicant constructed as straight lines through a process of "planing" or "smoothing" the coastal geography of Honduras.

68. However, the Judgment has chosen to use the bisector method to determine the course of the single maritime boundary established by the Court itself, since for the majority, such a method has proved viable in circumstances where equidistance is not possible or appropriate (paragraph 287 of the Judgment). Judge Torres Bernárdez nevertheless notes that the Court's jurisprudence referred to in the Judgment in support of this finding does not concern cases in which delimitation of the territorial sea was at issue.

69. In his opinion, Judge Torres Bernárdez points out that there is a total symmetry in the Judgment between the reasoning which has led the majority to reject the equidistance method and that which has persuaded it to adopt the bisector method. For him, however, there is no cause and effect relationship between these two methods. A bisector is not the only possible means of achieving an equitable solution in this case. In fact it does the opposite, since in terms of maritime areas, the bisector method imposes on one Party alone, Honduras, the burden of a geographical and morphological situation (the coastal configuration; the instability of the mouth of the River Coco) (paragraph 292 of the Judgment) that is shared by both Parties, as it exists along the entire coastline, both north and south of the mouth of the River Coco, as the Judgment itself acknowledges.

70. But the Judgment does not make any equitable adjustment of the bisector line in favour of Honduras, to compensate for this burden which Honduras has to bear alone. The rejection of Nicaragua's straight line from Cape Gracias a Dios to the frontier with Guatemala has nothing to do with equity. All the Judgment has done in this respect is to restore the actual coastal geography of Honduras which had been "planed' in the Applicant's proposal. Furthermore, the choice of the bisector method has had the effect of extending the relevant coasts beyond those directly concerned by the area of delimitation. Hence the coast from Cape Falso to Laguna Wano put forward by Honduras was rejected in favour of longer coastal fronts.

71. In this context, the Judgment rejects a coastal front extending from Cape Camarón to the Río Grande (producing a bisector of azimuth 64° 02'), because the line would run entirely over the Honduran mainland. But the Judgment also rejects the front from Cape Falso to Punta Gorda, on the grounds that its length (some 100 km) is not sufficient to reflect a coastal front more than 100 nautical miles out to sea, although the azimuth of the angle of the bisector is nonetheless 70° 54'. This was not enough for the majority, which finally settled on a Honduran coastal front extending from Cape Gracias a Dios to Punta Patuca (even though the coast between Cape Falso and Punta Patuca does not directly adjoin the area of delimitation) and a Nicaraguan front from Cape Gracias a Dios to Wouhnta, which the Judgment considers to be of sufficient length to

account properly for the coastal configuration in the disputed area. The bisector of the angle formed by these two coastal fronts has an azimuth of 70° 14' 41.25". This is the azimuth of the bisector in the Judgment.

72. Judge Torres Bernárdez compares this azimuth in the Judgment with that of a provisional equidistance line (approximately 78° 48') drawn from base points situated north and south of the mouth of the River Coco, noting that the difference between the two azimuths is more than 8°. For the judge, this is a huge disparity. He cannot accept it as the equitable solution advocated by the 1982 Convention on the Law of the Sea. Choosing a method to overcome the physical problems that are shared by both Parties' coastal fronts cannot justify a delimitation that is inequitable for one of the Parties.

5. Application of equidistance to the delimitation around the islands

73. Having rejected Nicaragua's claim that would enclose the islands attributed to Honduras within a territorial sea of 3 nautical miles, the Court then turns to delimiting the territorial sea around the islands, in accordance with Articles 3, 15 and 21 of the 1982 United Nations Convention on the Law of the Sea, which is the law applicable between the Parties. Judge Torres Bernárdez entirely agrees with the Court's decisions, and therefore with the course of that section of the maritime boundary which effects the delimitation around the islands.

74. Each of the islands concerned — Bobel Cay, Savanna Cay, Port Royal Cay and South Cay for Honduras and Edinburgh Cay for Nicaragua — is accorded a 12-mile territorial sea, and the overlapping areas between these territorial seas of Honduras and Nicaragua, both north and south of the 15th parallel, are delimited by application of the equidistance method. The Court first drew a provisional equidistance line, using the co-ordinates for these islands as the base points for their territorial seas, and then constructed the median line in the overlapping areas. Lastly, having established that there were no special circumstances warranting an adjustment, it adopted this provisional line as the line of delimitation (paragraph 304 of the Judgment).

75. As a result of the application of equidistance, the course of the delimitation line around the islands lies partly south of the 15th parallel. This is not surprising, as the existence of any kind of maritime boundary along that parallel, based on the tacit agreement of the Parties, had already been rejected by the majority of the Court (see above).

6. The demarcation by the Mixed Commission of 1962 and the starting-point of the single maritime boundary

76. The two Parties left the Court the task of establishing the starting-point of the single maritime boundary, and the Judgment sets it 3 miles out to sea from the point identified in the River Coco by the Mixed Commission in 1962, as Honduras wished, but the majority has placed it along the azimuth of the bisector, as proposed by Nicaragua (paragraph 311 of the Judgment). The co-ordinates of the starting-point thus decided by the Court are 15° 00' 52" of latitude north and 83° 05' 58" of longitude west (subparagraph (2) of the operative clause of the Judgment).

77. Judge Torres Bernárdez disagrees with the location of this point as decided by the Judgment because, in his view, it should have been a point equidistant from the base points situated north and south of the mouth of the River Coco. The point chosen by the majority is not a neutral one in relation to the principal claims of the Parties, which is the reason why he has voted against subparagraph (2) of the operative clause of the Judgment.

78. On the other hand, Judge Torres Bernárdez endorses the Court's finding that the Parties must negotiate in good faith with a view to agreeing on the course of the delimitation line in the territorial sea between the endpoint of the land boundary as established by the 1906 Arbitral Award and the starting-point of the maritime delimitation in the present Judgment.

7. The endpoint of the single maritime boundary, bilateral treaties and third States

79. In paragraphs 314 to 319 of the Judgment, the Court considers the various possibilities open to it as regards the question of the endpoint of the line and analyses the potential third-State interests beyond the 82nd meridian, namely those of Colombia and Jamaica. Following this analysis, it arrives at the conclusion that it cannot draw a delimitation line that would intersect with the line established by the 1993 Treaty between Colombia and Jamaica, but that it can state that the maritime delimitation between Honduras and Nicaragua extends beyond the 82nd meridian without prejudicing Colombia's rights under its treaty with Nicaragua of 1928 and with Honduras of 1986.

80. Hence the Judgment states that the Court may, without specifying a precise endpoint, delimit the maritime boundary beyond the 82nd meridian without affecting third-State rights (paragraph 319 of the Judgment and sketch-map No. 7). Unfortunately, Judge Torres Bernárdez does not have the same certainty as the Judgment as regards this finding. It is true that, in its reasoning, the Judgment adds an important detail, namely that "[the Court's] consideration of these interests is without prejudice to any other legitimate third party interests which may also exist in the area" (paragraph 318). The legitimate interests of third States "in the area" delimited by the Judgment would thus seem duly protected. However, there remains the question of the rights and legitimate interests of third States in the maritime areas adjacent to the area that has been delimited.

81. In Judge Torres Bernárdez's view, the presence of Nicaragua north of the 15th parallel and east of the 82nd meridian can only prejudice the rights and interests of Colombia, since the latter is no longer protected by the delimitation line of the 1986 Treaty with Honduras and is therefore exposed to claims from Nicaragua to the south and east of that line. This is the first reason why Judge Torres Bernárdez is opposed to the delimitation east of the 82nd meridian that is contained in the Judgment.

82. There is a second reason, however, since the delimitation effected by the present Judgment takes no account of the maritime delimitation treaty concluded in 1986 between Honduras and Colombia, even though this is a treaty in force between the two States, registered with the Secretariat of the United Nations and invoked by Honduras in the present case. Judge Torres Bernárdez finds this surprising. Why should it be so? Because the dispute that exists regarding this treaty between the Parties to the present case was not included by the Applicant, Nicaragua, within the subject of the dispute as defined in its Application instituting proceedings, and nor did it ask the Court, in its final submissions, to rule on any legal aspect of the dispute between the Parties concerning that treaty. Yet this raises a jurisdictional issue deserving of particular consideration which is absent from the Judgment.

83. In other words, the status of the treaty instrument in question should have been determined beforehand, since a maritime delimitation line cannot settle a dispute concerning the treaty-making power of States and/or the validity of the treaties thus concluded, just as it could not settle in the present case the dispute between the Parties concerning sovereignty over the contested islands. In this respect, Judge Torres Bernárdez recalls that, according to Articles 74 and 83 of the 1982 United Nations Convention on the Law of the Sea, the delimitation of the exclusive economic zone and of the continental shelf must be effected "on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution".

8. Conclusion

84. Judge Torres Bernárdez has voted against subparagraphs (2) and (3) of the Judgment's operative clause because he believes that the line of single maritime delimitation contained in the Judgment does not entirely comply with the relevant requirements of the 1982 United Nations Convention on the Law of the Sea, except as regards the section around the islands (the second section of the line).

85. For the first section, which begins by delimiting for a certain distance the Parties' mainland territorial seas, it is obvious that the general rule of equidistance contained in Article 15 of the 1982 Convention has not been applied. This has been rejected for the first time in the Court's jurisprudence in relation to the territorial sea, and from the start of the delimitation exercise, in favour of a bisector which is unable to secure the principle of non-encroachment with regard to Honduras's mainland coasts. In the Judgment, the bisector method chosen is justified on the grounds that the configuration of the mainland coasts in question and the instability of the mouth of the River Coco are said to constitute "special circumstances" within the meaning of the second sentence of the above-mentioned Article 15. Judge Torres Bernárdez cannot accept this justification, since the remedy for such situations under the 1982 Convention is not the bisector method, but that of straight baselines (Art. 7, para. 2, and Art. 9 of the Convention). That being so, and the Judgment having rejected the historic titles (uti possidetis juris) relied upon by Honduras, Judge Torres Bernárdez does not find it in any way "necessary" to delimit the territorial sea other than by the median line (equidistance method) provided for in Article 15 of the 1982 Convention.

86. As regards the third section, which delimits only the exclusive economic zone and the continental shelf, the bisector in the Judgment is likewise unable, in Judge Torres Bernárdez's view, to achieve an equitable solution. Firstly, the construction of the bisector makes it necessary to bring into play a Honduran coast (from Cape Falso to Punta Patuca) which does not directly adjoin the area of delimitation. Secondly, and above all, the azimuth of the angle of the Judgment's bisector line is not justified by the relationship between the coasts directly involved in the delimitation, nor by the historical circumstances of the dispute. A bisector line where the azimuth of its angle favours one of the Parties by a difference of 8° compared with the azimuth of the angle of the provisional equidistance line drawn from base points situated north and south of the River Coco is not an equitable result, since in the present case, the Judgment invokes no "relevant circumstance" that would warrant adjusting the provisional equidistance line on such a scale. This is particularly true when one bears in mind that the circumstance of the coasts and river mouth referred to above is common to the coastal fronts of both States. Finally, the fact that the line delimiting the third section extends beyond the 82nd meridian raises jurisdictional questions concerning the treaty concluded in 1986 between Honduras and Colombia, and as regards Colombia's rights and legal interests in the maritime areas lying south and east of the delimitation effected by that treaty.

Declaration of Judge ad hoc Gaja

Judge ad hoc Gaja declared that, while he was in agreement with the rest of the operative part of the Judgment and with most of the reasons given, he did not share the view that maritime areas lying south of the 14° 59.8' N parallel should be attributed to Honduras as part of its territorial sea. Under Article 3 of the United Nations Convention on the Law of the Sea, every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles. Honduras constantly considered — also in its final submissions — that the territorial sea pertaining to the cays in the Media Luna group did not extend in a southerly direction beyond the 14° 59.8' N parallel.