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CR 2022/28

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2022

Public sitting

held on Friday 9 December 2022, at 10 a.m., at the Peace Palace,

President Donoghue, presiding,

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

VERBATIM RECORD

ANNÉE 2022

Audience publique

tenue le vendredi 9 décembre 2022, à 10 heures, au Palais de la Paix,

sous la présidence de Mme Donoghue, présidente,

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

COMPTE RENDU

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

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

M. Gautier, greffier

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M. Thomas Frogh, cartographe, International Mapping,

comme conseillers techniques.

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

For reasons duly made known to me, Judge Salam is unable to join us for today's sitting.

The Court meets this morning to hear the second round of oral argument ***of*** the Republic of Colombia. I shall now give the floor to Sir Michael Wood. You have the floor, Sir.

Sir Michael WOOD:

THE DETERMINATION OF CUSTOMARY INTERNATIONAL LAW

I. Introduction

1. Madam President, Members of the Court, I shall open Colombia's second round by responding to what our friends opposite ~~***here***~~ have said about the determination of customary international law, particularly in relation to the Court's first question.

2. We shall of course seek to abide by Article 60 of the Rules of Court and Practice Direction VI. In particular, we shall avoid repeating statements we have previously made. We stand by what we said in the first round; nothing we heard earlier this week causes us to depart from that.

II. The questions posed by the Court concern the extent of the continental shelf, not delimitation

3. Madam President, it was remarkable how, on Wednesday, the Agent and counsel for Nicaragua largely ignored — yet again — the Court's questions about the customary status of Article 76. Instead, one after another, culminating in Professor Pellet, they constantly returned to Article 83 and delimitation, avoiding the Court's questions about Article 76. It was as though they considered your questions irrelevant.

4. On Wednesday, counsel for Nicaragua, as well as the Agent, spent much of their time presenting to the Court their views on the delimitation line that, in their eyes, would achieve an "equitable solution" in this case. They spoke of relevant coasts[1], and the application of the Court's three-step equidistance/relevant circumstances/non-disproportionality methodology[2]. Nicaragua showed the Court where, in its view — which, of course, Colombia rejects as factually mistaken and

[1] CR 2022/27, pp. 29-30 (Pellet).

[2] E.g. CR 2022/27, p. 13 (Lowe).

flawed — the areas of overlapping entitlements were. It also went so far as to calculate disproportionality for its invented overlapping claims[3].

5. Madam President, Nicaragua's assertions have nothing to do with the two questions that the Parties were to address "exclusively", as stated in the Order of 4 October. Nicaragua, throughout this week, has proceeded to address the issue of delimitation, ignoring the Order of the Court and the purpose of these proceedings as specified by the Court. Its arguments, therefore, are not only wrong; they have no place in the current proceedings.

6. Professor Pellet himself acknowledged that facts relating to the actual delimitation go beyond the questions of the Court[4], and admitted that he was contradicting himself by entering into the merits of Nicaragua's claim[5]. Contradicting himself because, as he correctly observed, in order for the Court to proceed to delimit in this case, it must first determine whether it *can* delimit[6]. There cannot be a delimitation where there are no competing entitlements. In other words, for there to be a delimitation, the Court would first have to answer its first question, and answer it in the affirmative, so as to find that Nicaragua's extended continental shelf may extend within the 200-nautical-mile zones of Colombia under customary international law. But as Colombia has demonstrated, that cannot happen. This is the complete answer to Professor Lowe's extraordinary suggestion that the existence of a 200-nautical-mile EEZ is merely a circumstance to be taken into account for the purposes of delimitation[7].

7. Professor Pellet observed emphatically that the current case concerns delimitation and not delineation[8]. Yet the Court has determined that the questions in the Order of 4 October must first be answered before delimitation is deemed relevant or possible. And it is obvious that Nicaragua's delimitation request would require the Court first to delineate the outer edge of the margin. As we explained in our written pleadings, all of the case law concerns States with *competing extended continental shelf claims* and delimitation was possible because these States were adjacent, not

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[3] E.g CR 2022/27, pp. 29-31 (Pellet).

[4] CR 2022/27, p. 29 (Pellet).

[5] *Ibid*.

[6] *Ibid.*

[7] CR 2022/27, pp. 13-14 (Lowe).

[8] CR 2022/27, pp. 22-23 (Pellet).

opposite[9]. Even if the Court were to decide that Nicaragua's extended shelf may overlap with Colombia's 200-nautical-mile entitlements, and that a delimitation was possible, *quod non*, the Court would first need to determine the extent of Nicaragua's purported entitlement. That would require the delineation of the outer limit of the continental margin. As I explained on Tuesday[10], a party to UNCLOS does not have the authority to establish as final and binding the outer limit of its continental shelf beyond 200 nautical miles by itself. It may only do so based on recommendations of the CLCS. The Court was clear in *Somalia* v. *Kenya*: "It is only after such recommendations are made that Somalia and Kenya can establish final and binding outer limits of their continental shelves, in accordance with Article 76, paragraph 8, of UNCLOS."[11]

8. In addition, on Wednesday, Professor Lowe conceded that, in *Libya/Malta*, the Court found that natural prolongation is "immaterial" or "does not matter" anymore within 200 nautical miles of all States. Despite this acknowledgment, he claimed that it was a "fallacy" to conclude that natural prolongation was not a basis for title within 200 nautical miles[12]. Yet according to the dictionaries, "immaterial" means "of no substantial consequence", "unimportant"[13], "not important", "not relating to the subject"[14], "irrelevant"[15]. Madam President, semantics aside, the Court's jurisprudence is clear: within 200 nautical miles of any State, natural prolongation "belongs to the past" and plays no role[16].

9. The Agent for Nicaragua tried to distinguish *Libya/Malta* on the ground that those States "were less than 400 nautical miles apart and that there was no question of a delimitation between an extended continental shelf and an EEZ"[17]. But ***as*** we explained in our written pleadings[18] and on Tuesday[19], even where the coasts are less than 400 nautical miles apart, if natural prolongation were a source of title, that would allow a State to claim more than 200 nautical miles of entitlements. The

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

[10] CR 2022/26, pp. 28-29 (Wood).

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

[12] CR 2022/27, p. 12, para. 10 (Lowe).

[13] Https://www.merriam-webster.com/dictionary/immaterial.

[14] Https://dictionary.cambridge.org/us/dictionary/english/immaterial.

[15] Https://www.oed.com/view/Entry/91815?redirectedFrom=immaterial#eid.

[16] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 36, para. 40.

[17] CR 2022/27, p. 37, para. 21 (Argüello Gómez).

[18] CMC, paras. 3.82-3.91; RC, paras. 3.27-3.37.

[19] CR 2022/26, p. 30 (Wood).

Court was no doubt aware of that and so did not see a difference between States that are 401 or 399 nautical miles apart. Nicaragua's contention finds no support in *Libya/Malta*.

III. The determination of customary international law

10. Madam President, I now turn to the methodology for identifying customary international law. The Court's approach to the determination of whether a rule of customary international law exists is clear from your case law and in particular from a trio of leading cases: the 1969 *North Sea* cases, the *Military and Paramilitary Activities* ***case*** from 1986 and the 2012 *Jurisdictional Immunities of the State* case. Our friends opposite adopt an eccentric view of the matter, I shall just make a couple of quick points to respond to what they have said:

— First, the determination or not of a rule of customary international law is not a mechanical exercise. As the ILC put it, "[i]n assessing evidence for the purpose of ascertaining whether there is a general practice and whether that practice is accepted as law . . .**,** regard must be had to the overall context, the nature of the rule, and the particular circumstances in which the evidence is to be found[20]".

— Second, the circumstances under which a rule set forth in a treaty may reflect a rule of customary international law are well understood, at least since your *North Sea* cases[21].

IV. *Opinio juris*: Judge Robinson's question

11. On Wednesday, Judge Robinson put a question to Colombia about acceptance as law *(opinio juris)*. We thank him for that question, which is an important one. It is important because the only argument we heard from counsel for Nicaragua**,** against the overwhelming State practice that we have shown, was a claim that the practice, which they hardly contested, was not accompanied by acceptance as law.

12. Counsel for Colombia will respond this morning to Judge Robinson's question. I shall do so briefly and in general terms, Mr. Bundy will respond by reference to specific items of practice, and Professor Thouvenin will also refer to the matter, *il va dire un petit mot.*

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[20] International Law Commission, "Conclusions on Identification of Customary International Law, with commentaries", *Yearbook of the International Law Commission*, 2018, pp. 119-156, annexed to United Nations General Assembly resolution 73/203 of 20 Dec. 2018 (hereinafter the "ILC 2018 Conclusions"), Conclusion 3.1.

[21] 2018 ILC Conclusions, Conclusion 11.

13. Madam President, in the first round I mentioned briefly the Court's case law which makes it clear, as Professor Pellet acknowledged[22], ~~***the***~~ ***that*** practice itself may sometimes be evidence of acceptance as law *(opinio juris)*[23]. While practice and *opinio juris* are to be separately ascertained[24], that does not mean they are unrelated. Indeed, they "may be intertwined in fact"[25]. That is the case here.

14. In certain circumstances a practice may indicate a conviction as to what the law is, especially when the matter at issue is governed by international law, as is obviously the case with maritime entitlements. It has even been suggested that practice may be the best evidence of acceptance of law unless it can be shown that it has been followed for other reasons. That we find in Oppenheim***[26]***. This point is brought out with particular clarity by Professor Lowe in the section on customary international law of his 2007 book entitled *International Law*. There Professor Lowe explains that when a State abstains from doing something in regard to a matter that is regulated by international law, it is presumed that the State's abstention is motivated by legal obligation and, I quote from Professor Lowe, "*opinio juris* is presumed to exist"[27].

15. The undeniable general practice of States to restrict their maritime claims and not to extend them within 200 nautical miles of another State, thus relinquishing any more expansive claims they might purport to have, and so against their direct interest, may be presumed to be based on legal conviction. Nicaragua has questioned the proof of *opinio juris* to accompany the overwhelming practice, but it has not seriously attempted to demonstrate any evidence to rebut the presumption put forward in Professor Lowe's book.

16. Of course, the ascertainment of *opinio juris* is often no easy task. States are rarely explicit about their motives, especially when it comes to explaining their actions in terms of legal obligation. There may be many reasons underlying State conduct, including compliance with the law. Motives may be mixed and hard to disentangle. That is where your case law — to which I referred on Tuesday

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[22] CR 2022/27, pp. 26-27 (Pellet).

[23] CR 2022/26, p. 29 (Wood).

[24] 2018 ILC Conclusions, Conclusion 3.2.

[25] *Ibid.*, Commentaries on Conclusion 3, para. 6.

[26] L. Oppenheim, *International Law: A Treatise* (1912), Vol. I: Peace, 2nd ed., London, Longmans, Green and Co., p. 22.

[27] V. Lowe, *International Law* (2007), Oxford, Oxford University Press, p. 51.

and again today — comes to the rescue. The case of submissions to the CLCS is a classic example, where compliance with the law is the obvious but not always explicit motive for action or inaction. As we have shown, States have been more or less explicit about their legal motivations in their CLCS submissions, but in all the circumstances the fact that that they are based on a sense of legal obligation is beyond question. That obvious motivation has certainly not been shown to be absent by any of Nicaragua's wild speculations. The existence of *opinio juris* has not been put in doubt by references, drawn out of thin air, to tidiness, equity and so on.

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

17. Madam President, I now return to the EEZ and continental shelf régimes, mainly to note that the points we made on Tuesday have remained unchallenged by Nicaragua.

18. Nicaragua continues to say virtually nothing about the EEZ and likewise continues to ignore the developments in the international law of the sea over recent decades. They did not seriously respond to what we said about the nature of the EEZ and the continental shelf, and the relationship between the two. All they did was play down your case law, notably *Libya/Malta*. Nicaragua also said nothing about the overwhelming practice of States in maritime delimitation agreements.

19. Nicaragua has likewise virtually nothing to say about the negotiations at the Third Law of the Sea Conference. Yet these lie at the heart of the questions that the Court has put to the Parties. For example, Nicaragua said not one word about the Lamont Map with its accompanying document which, as you recall, was circulated at the Conference in order to illustrate the effects of the formulae then under consideration. Nicaragua said not one word about the importance for States, particularly developing States, of the comprehensive and exclusive nature of their *exclusive* economic zone resource rights.

20. On Wednesday, counsel for Nicaragua repeated the curious non sequitur that the compromise reached at the Conference over the extended continental shelf was not a "package deal" because the Convention as a whole was a package deal[28]. Yet, as any student of the Conference

[28] CR 2022/27, p. 26 (Pellet).

knows full well, there were many hard-fought deals on many different aspects of the law of the sea, negotiated in separate negotiating groups of various degrees of formality. That is all very well described in the detailed summary of the negotiating process by Koh and Jayakumar in the first volume of the Virginia Commentary[29].

21. Madam President, before concluding, I should say a word about one matter to which Nicaragua did refer. The Agent of Nicaragua said that in this year's *Alleged Violations* Judgment, "the Court decided that the jurisdiction in a contiguous zone could coincide with the jurisdiction in an EEZ[30]". But, if anything, that example undermines Nicaragua's position in the present case. In the *Alleged Violations* case, the Court concluded that one State's contiguous zone can overlap with another State's EEZ because, "[t]he two zones may overlap, but the powers that may be exercised therein . . . are not the same"[31]. The Court explained that, while the contiguous zone is established for purposes of prevention and punishment of certain conduct that is illegal under national laws, "the exclusive economic zone, on the other hand, is established to safeguard the coastal State's sovereign rights over natural resources[32]" — "to safeguard the coastal State's sovereign rights over natural resources". When, on the other hand, as in our case, we are dealing with EEZ and continental shelf rights, there is no question but that these rights both concern the same thing, "sovereign rights over natural resources" in the sea-bed and subsoil. The situation is thus completely different from that addressed in *Alleged Violations*, and the reasoning in that case supports Colombia's position, not that of Nicaragua.

22. Madam President, Members of the Court, I thank you for your attention. I request that you invite Mr. Bundy to the podium.

The PRESIDENT: I thank Sir Michael. I now invite the next speaker, Mr. Rodman Bundy, to take the floor. You have the floor, Sir.

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[29] Center for the Oceans Law and Policy, University of Virginia, *United Nations Convention on the Law of the Sea 1982: A Commentary* (1985), Martinus Nijhoff, pp. 29-134.

[30] CR 2022/27, p. 38, para. 22 (Argüello Gómez).

[31] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Judgment of 21 April 2022*, para. 161.

[32] *Ibid.*

Mr. BUNDY: Thank you.

STATE PRACTICE AS EVIDENCE OF CUSTOMARY INTERNATIONAL LAW

1. Madam President, distinguished judges, my presentation this morning will be directed at responding to contentions that Dr. Oude Elferink raised on Wednesday relating to the relevance and content of the extensive State practice which demonstrates that States, as a rule, do not claim extended continental shelf entitlements in areas that are situated within 200 nautical miles of another State's baselines.

2. *First*, I will address my counterpart's suggestion that my presentation of this practice was "futile" because I failed to take account of Article 76, paragraph 10, of UNCLOS[33]. I will show that that argument is wholly misguided.

3. *Second*, I will demonstrate how counsel for Nicaragua has misrepresented the six examples of State practice he chose to discuss in arguing that States claim extended continental shelves that encroach on the exclusive economic zones of neighbouring States. Contrary to counsel's assertions, those examples actually fully support the points I made on Tuesday, and I will show how.

4. *Third*, as a complement to what Sir Michael has already said in answer to Judge Robinson's question, I will show that the State practice to which I have referred represents *opinio juris*.

5. With that, let me turn directly to Dr. Oude Elferink's opening salvo: that was that paragraph 10 of Article 76 renders the ample amount of State practice I laid before the Court irrelevant[34].

I. Delimitation of a maritime boundary depends on there being valid legal entitlements that overlap

6. All States that lodge extended continental shelf submissions before the CLCS recognize that the delineation of their outer limits based on the recommendations of the Commission are without prejudice to the question of delimitation. That is a wholly uncontroversial point.

7. But what counsel does — indeed, what Nicaragua spent most of Wednesday doing in stressing the need for an "equitable delimitation" — is to put the cart before the horse. A question of

[33] CR 2022/27, p. 15, para. 2 (Oude Elferink).

[34] CR 2022/27, p. 15, paras. 2 and 4 (Oude Elferink).

delimitation does not arise unless the parties have legal entitlements that overlap. In other words, a State must *first* establish that it has a legal title to certain maritime areas that overlap with the legal title of another State *before* the principles and rules of maritime delimitation come into play. It is not delimitation that generates a legal title, but rather a legal title that gives rise to the need for delimitation. As the Court stated in the *Tunisia/Libya* case in its Judgment:

> "The need for delimitation of areas of continental shelf between the Parties can only arise within the submarine region in which claims by them to the exercise of sovereign rights are legally possible according to international law."[35]

8. That is precisely the issue raised by the Court's first question. Can a State have a legal title to a continental shelf situated more than 200 nautical miles from its baselines that extends within 200 nautical miles of another State's baselines? State practice, together with the negotiating history of UNCLOS and the *opinio juris*, demonstrates that the answer is "no". None of this has anything to do with delimitation: paragraph 10 of Article 76 is simply irrelevant to the question.

II. Nicaragua's examples of State practice are unavailing and actually prove the opposite of what Nicaragua contends

9. I now turn to the examples of State practice that Dr. Oude Elferink discussed on Wednesday. Regrettably, as I shall show, my learned colleague was rather economical with the facts.

Submission of the Russian Federation

10. Counsel first referred to a submission that the Russian Federation made to the CLCS in 2001. He displayed a figure on the screen which appeared to show an area in the Barents Sea which he claimed extended to within 200 nautical miles of Norway's baselines[36].

11. However, what counsel failed to disclose to the Court is that the Russian Federation revised its submission in 2015. The revised submission did *not* include the area that counsel focused on that allegedly lay less than 200 nautical miles from Norway. Rather, in the meantime, the Russian Federation and Norway had concluded an agreement delimiting their maritime spaces which came into force on 7 July 2011. As you see from the map on the screen taken from the *revised* submission — it is also under tab 3 — the Russian Federation's revised submission does not extend

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[35] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 42, para. 34.

[36] CR 2022/27, p. 16, para. 7 (Oude Elferink).

within the 200-nautical-mile entitlements of Norway, just as Norway's submission in the same area did not encroach on the Russian Federation's 200-nautical-mile zone, as I explained on Tuesday[37].

France: Saint-Pierre and Miquelon

12. Counsel next took aim at France's submission with respect to its claimed extended continental shelf off the islands of Saint-Pierre and Miquelon. The outer limit of that submission is depicted, as you can see from the map on the screen, by the broken green line. However, counsel then went on to assert that: "In other words, France does not consider that its continental shelf has to stop at the point it enters the Canadian exclusive economic zone."[38]

13. But this is precisely what France did, as can be seen on the map. The broken green line stops at the 200-nautical-mile limits of Canada on the west where the arrow is pointing. Moreover, the executive summary of the submission states with respect to a possible agreement with Canada on this issue: "Pending the emergence of such an agreement between the parties, France confirms that there is a maritime dispute, resulting from *an overlap of extended continental shelf between Canada and France*."[39]

14. The reference to "an overlap of extended continental shelf" shows that any areas of overlap concern the two States' extended continental shelves, not an overlap with Canada's exclusive economic zone.

15. Moreover, counsel also asserted that this example "implies that other submissions of France that do stop at the 200-nautical-mile limit do not do so because France considers that there is a legal obligation to do so"[40]. To support this contention, counsel referred to France's submission relating to the extended continental shelf off of New Caledonia. I will come back to the new Caledonia example in a few minutes, in order to show that France *did recognize* a legal obligation; it said that it was stopping its submission off New Caledonia at the 200-nautical-mile limits of Australia because that area was within Australia's EEZ and jurisdiction.

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[37] CR 2022/26, p. 39, para. 33 (Bundy).

[38] CR 2022/27, p. 16, para. 8 (Oude Elferink).

[39] Executive summary, Sec. 5; emphasis added.

[40] CR 2022/27, pp. 16-17, para. 8 (Oude Elferink).

Australia: Timor Sea

16. My opponent then chastised me for not discussing the situation in the Timor Sea with respect to Australia[41]. I have to say I thought this was a rather bizarre accusation. Dr. Oude Elferink himself acknowledged that the whole of the Timor Sea is within 200 nautical miles of either Australia or Timor-Leste, and that Australia had made *no submission* for an extended shelf in the Timor Sea[42]. Nevertheless, counsel seemed to find it relevant that Australia had claimed a boundary up to the Timor Trough, which is within 200 nautical miles of Timor-Leste. However, that claim dated back to the early 1970s, when the notion of an exclusive economic zone did not even exist and Timor-Leste was not an independent country. The situation afterwards was complicated and included a series of agreements between Australia and Indonesia, including an agreement on a joint development zone in the Timor Sea where Indonesia actually had no sovereign rights.

17. After its independence, and in response to Australia's 2004 submission to the CLCS, Timor-Leste published a position paper that was attached to a Note dated 11 February 2005 to the Secretary-General of the United Nations[43], this was in Nicaragua's folder on Wednesday. That Note stated that it was Timor-Leste's view "that the CLCS should make clear in its recommendations that there is no question of endorsement of the Australian continental shelf entitlement beyond 200 nautical miles in the Timor Sea region". Fortunately, the Timor Sea issue has been largely resolved as a result of both Timor-Leste's independence and the Article 298 conciliation process between Timor-Leste and Australia. But it has nothing to do with the first question posed by the Court. The important point is that Australia never lodged an extended continental shelf submission with respect to the Timor Sea.

Australia-Indonesia

18. I now turn to counsel's arguments with respect to Australia's submission regarding the Argo region between Australia and Indonesia. I discussed this example on Tuesday where I showed that — just as it had done in the east in its submission around Norfolk Island with respect to the

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[41] CR 2022/27, p. 17, para. 9 (Oude Elferink).

[42] *Ibid.*

[43] Nicaragua's judges' folders, 7 Dec. 2022, tab AOE 2-7.

200-nautical-mile zone of New Caledonia — so also did Australia stop its submission in the west so as not to encroach on the 200-nautical-mile limit of Indonesia.

19. Dr. Oude Elferink conceded that Australia made no submission to the CLCS that extended within 200 nautical miles of Indonesia's baselines[44]. However, he argued that the red box highlighted on his map, which is on the screen and you can also find it in tab 5, is an area of Australian outer continental shelf that lies within 200 nautical miles of Indonesia pursuant to a 1997 treaty between Australia and Indonesia[45]. What counsel neglected to tell the Court is that this treaty *never entered into force*, despite being signed over 25 years ago and has been put into question as a result and following Timor-Leste's independence.

Mozambique's submission

20. Next, counsel took you to Mozambique's submission to the CLCS displaying the map that now appears on the screen and in tab 6. My colleague acknowledged that Mozambique did not extend its continental shelf claim within 200 nautical miles of Europa Island. But he argued that Mozambique's submission is without prejudice to the delimitation of its continental shelf boundary with Europa[46].

21. Once again, counsel gets things backwards. It is clear that Mozambique has not claimed a continental shelf within 200 nautical miles of Europa. Accordingly, Mozambique has no putative title in this 200-nautical-mile zone. If there is no basis of title, there is nothing to delimit.

22. That did not prevent counsel from pointing out that Mozambique's coastline is 60 times longer than the coastline of Europa. "Disproportionality writ large", were my opponent's words[47]. But disproportionality is a factor that may be taken into account when there is a maritime area that falls to be delimited. Here, as I have said, there is nothing to delimit because there is no Mozambique-claim***ed*** title within 200 nautical miles of Europa. Moreover, counsel's focus on the respective coastal lengths of Mozambique and Europa, the 60 to 1 proportion, simply reinforces the point I made on Tuesday that States respect the 200-nautical-mile limits generated by the coasts of a neighbouring

[44] CR 2022/27, p. 18, para. 10 (Oude Elferink).

[45] *Ibid.*

[46] CR 2022/27, p. 19, para. 11 (Oude Elferink).

[47] *Ibid.*

State, whether those 200-nautical-mile limits are generated by mainland coasts or by islands, including small islands.

Ecuador

23. The last example my opponent discussed was Ecuador's submission this year. His contention was that I neglected to mention that Ecuador and Peru had delimited their 200-nautical-mile zones in the area along the parallel that is highlighted on the map[48].

24. Dr. Oude Elferink agrees that "[t]he submission of Ecuador reflects Ecuador's *opinio juris*". But his contention is that "Ecuador's practice reflects the belief that *pacta sunt servanda*"[49]. With respect, that argument is misguided. The reason Ecuador stopped its submission short of Peru's 200-nautical-mile EEZ was explicitly explained in the executive summary of Ecuador: it was "in order to avoid any potential prejudice to the determination of any maritime spaces under the national jurisdiction of Peru at a distance of 200 nautical miles"[50]. That is a clear expression of *opinio juris*: extended continental shelves should not intrude into another State's EEZ where that State has jurisdiction.

Joint submission of Costa Rica and Ecuador

25. I should also mention the joint submission filed by Costa Rica and Ecuador in 2020 in the same region. The map on the screen, which is also at tab 8, shows the relevant area, including the 200-nautical-mile limits from Malpelo Island in the north-east, which is an island that belongs to Colombia.

26. If we now look at the outer limits — which we will also blow up because they are hard to see on the screen — if we look at the outer limits defined in the joint submission, it can be seen that they stop at the 200-nautical-mile limits of Malpelo. Why did Costa Rica and Ecuador do this? For the exact same reason as stated in Ecuador's separate submission I discussed a minute ago. First, the

[48] CR 2022/27, p. 20, para. 12 (Oude Elferink).

[49] *Ibid.*

[50] Executive summary, Sec. 6, p. 16.

joint submission's executive summary states that the submission concerns an area located 200 nautical miles from the baselines as measured by *all* States[51]. It then goes on to say:

> "This action was taken with great caution in order to avoid any potential prejudice to the determination of the outer limits of any maritime spaces under the national jurisdiction of Colombia."[52]

27. Once again, and this is relevant to Judge Robinson's question, it clearly reflected the *opinio juris* of the neighbouring States: do not encroach on another State's 200-nautical-mile zone. It had nothing to do with *pacta sunt servanda*.

III. State practice as reflecting customary international law

28. Madam President, I now turn to the final part of my presentation in which, in response to Judge Robinson's question, and to supplement what Sir Michael has said, I will show that State practice reflects customary international law.

29. The Court will recall that there are 51 submissions to the CLCS which stopped at the 200-nautical-mile zones of other States when, on technical grounds, they could have gone further. Contrary to Nicaragua's contention, none of the executive summaries say that the submitting State stopped at the 200-nautical-mile limits of other States because it was "equitable" to do so, or that it was in application of Article 83 of the Convention. These submissions must be viewed against the background of the negotiations at the Third Conference on the extended continental shelf that Sir Michael has reviewed.

30. To recapitulate, during those negotiations, no State, including a number of States that participated in the negotiations but that are not parties to UNCLOS, no State suggested that extended continental shelf claims could encroach on another State's 200-nautical-mile exclusive economic zone. The main concern was to set limits for the extension of the continental shelf into the international sea-bed area. Moreover, no State took issue with Pakistan's statement of principle that extended continental shelf claims should not prejudice the exclusive economic zones of other States. State practice reflects these principles.

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[51] Executive summary, p. 10.

[52] Executive summary, p. 18, Sec. 6.

31. I have already explained how Costa Rica and Ecuador expressly stated that their submissions stopped at the 200-nautical-mile limits of Peru and Colombia so as to avoid prejudicing the exclusive economic zones of neighbouring States. That was an expression of *opinio juris*.

32. Now, let me show you how France characterized its own 2007 extended continental shelf submission generated by New Caledonia vis-à-vis Australia. The Court will see from the map on the screen, where the arrow is pointing, that France limited its submission in the south-east area to the 200-nautical-mile limit of Norfolk Island. The point I wish to emphasize is how France described the extension of its submission in this area. On this, the executive summary states: "The extension is limited to the west by the area under Australian jurisdiction (EEZ)"[53]. That is an expression of *opinio juris* not to intrude on the EEZ of another State. It is a recognition that, legally, such jurisdiction should not be prejudiced by extended continental shelf submissions.

33. As for Japan, it stopped its submission at the 200-nautical-mile limits of Palau and the Federated States of Micronesia, as Japan states in its executive summary, in application of Article 76, paragraph 1, of UNCLOS. That reflected a legal interpretation of Article 76 (1) and its constraints.

34. There are numerous other submissions which show that the submitting States consider the 200-nautical-mile entitlements of other States as similar to the legal constraints found in Article 76. We have put a number of extracts, at tab 12 of your folders, from the executive summaries.

35. In these extracts, the submitting States explain how the outer limits of their submissions were constructed. In doing so, they refer to constraints imposed by Article 76, such as the 350-nautical-mile limit from the territorial sea baselines, or the 60-nautical-mile distance between fixed points, or the application generally of Article 76. Critically, the 200-nautical-mile entitlements of other States are placed on the same list as those constraints imposed by Article 76. In other words, the submitting States considered the 200-nautical-mile entitlements of other States as a legal constraint, similar to the other constraints set out in Article 76. You may recall on Tuesday I pointed out that Indonesia's submission to the CLCS, which respected the 200 nautical miles of Christmas Island, specifically listed that as a constraint.

[53] Executive summary of France with respect to the areas of French Guiana and New Caledonia (2007), Sec. 2.2.1.

36. In the case of the submissions of the Maldives and the Federated States of Micronesia, for example, these concern the Eauripik Rise and an area north of Yap, the 200-nautical-mile entitlements of other States were expressly listed as the result of "[a]pplying the relevant provisions of Article 76". Moreover, if one looks at the list of co-ordinates defining the outer limits contained in the executive summaries, it will be seen that the submitting States identify the legal basis and constraints underlying those co-ordinates. These include constraints such as: 60 nautical miles from the foot of the slope, the Hedberg formula; the sediment thickness, the Gardiner formula; the 350-nautical-mile constraint; the 100 nautical miles from the 2,500-metre isobath constraint; and — in the list of co-ordinates — the 200-nautical-mile limits of other States. In other words, States considered the 200-nautical-mile entitlements of other States as a legal constraint in their submissions, just as the other constraints they list when explaining their co-ordinates.

37. These submissions, when reviewed in the light of the background to the Convention's provisions on the extended continental shelf, confirm that States stopped at the 200-nautical-mile limits of other States out of a sense of legal obligation: do not encroach on another State's EEZ. In other words, the practice of stopping at the 200-nautical-mile limits — and it is an overwhelming practice — is supported by *opinio juris*.

38. Madam President, that concludes my presentation. I thank the Court for its attention and I would be grateful if the floor could now be given to Professor Thouvenin. Thank you.

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

M. THOUVENIN : Merci beaucoup, Madame la présidente.

RÉPONSES DE LA COLOMBIE À LA DEUXIÈME QUESTION/SECOND TOUR

1. Madame la présidente, Mesdames et Messieurs de la Cour, il m'échet de revenir sur la seconde question posée par la Cour, à laquelle mon collègue et ami le professeur Pellet a dédié quelques pensées.

2. Assez peu, d'ailleurs.

3. Comme l'indiquera dans quelques minutes l'agent de la Colombie, une longue série desdites pensées semble en effet refléter les sérieux doutes du Nicaragua sur la pertinence même des présentes audiences consacrées à — et je cite l'ordonnance de la Cour du 4 octobre 2022 : «certaines questions de droit».

4. Madame la présidente, il ne me revient pas, naturellement, de résoudre cette mauvaise querelle que le Nicaragua fait à la Cour. L'ordonnance du 4 octobre 2022 fait droit, et puisque, dans cette ordonnance, la Cour *«[d]écide»* que les Parties devront «circonscrire leurs plaidoiries» à traiter les deux questions posées par la Cour — «exclusively», dit le texte anglais —, je m'abstiendrai de répliquer à ce qui ne correspond pas du tout à cette claire injonction.

5. Sur ces bases, les trois points de la plaidoirie du professeur Pellet qui donnent prise à une réplique concernent :

— le rôle de la doctrine, massive, que j'ai citée[54], et dont le professeur Pellet fait fort peu de cas[55] ;

— les termes «Aux fins de la [présente] Convention», qui introduisent les formules de l'article 76, paragraphe 4, lettre *a)*[56], mais qui, selon le professeur Pellet, ne veulent rien dire[57] ;

— et la pratique dont, contrairement à ce qu'en dit le professeur Pellet, son collègue Oude Elferink n'a rien dit de substantiel[58].

6. Mais avant de m'y consacrer, Madame la présidente, permettez-moi une remarque d'ordre général.

7. C'est que, de ce côté-ci de la barre, nous sommes tombés des nues en entendant les professeurs Lowe et Oude Elferink exposer, en s'appuyant sur l'article 76, paragraphe 10, que si, devant la Commission des limites, les dizaines d'Etats mentionnés mardi par M. Bundy limitent leurs prétentions à des zones qui n'empiètent pas sur les 200 milles marins d'autres Etats, c'est uniquement parce que la Commission des limites n'est pas compétente pour délimiter les chevauchements de revendications[59].

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[54] CR 2022/26, p. 51, par. 9-12 et p. 55-56, par. 25-33 (Thouvenin).

[55] CR 2022/27, p. 23, par. 4, p. 24-25, par. 8 et 10-11 (Pellet).

[56] CR 2022/26, p. 58, par. 41 (Thouvenin).

[57] CR 2022/27, p. 25, par. 11 (Pellet).

[58] CR 2022/25, p. 45, par. 7, p. 48, par. 15, p. 49, par. 17, p. 52-54, par. 29-34, p. 57, par. 44 (Oude Elferink).

[59] CR 2022/27, p. 11, par. 6 (Lowe), p. 15, par. 4 (Oude Elferink).

8. La Cour notera sans doute avec beaucoup d'intérêt que cette nouvelle thèse est totalement incompatible avec la «thèse nicaraguayenne de l'équitable» relevée par ***Son Excellence*** le juge Robinson[60]. Selon la nouvelle approche nicaraguayenne, ce n'est pas du tout par souci de ce qui est «équitable» que les Etats ne réclament rien qui se situe dans les 200 milles marins de leurs pairs lorsqu'ils saisissent la Commission des limites. Pour le Nicaragua, point d'arrière-fond d'équité puisque, est-il suggéré, les Etats ont respecté les 200 milles marins de leurs pairs parce que «it is not any business of the CLCS» de délimiter leurs prétentions à l'intérieur de ces zones[61]. Mais ils peuvent tout à fait faire valoir ces prétentions par ailleurs, à raison de l'article 76, paragraphe 10[62]. Autrement dit, les Etats bénéficiant d'une extension géomorphologique au-delà des 200 milles marins pénétrant dans les 200 milles des autres peuvent, indépendamment de ce qu'ils font ou ont fait valoir devant la CLCS, se lancer à la conquête de ce qu'ils pensaient jusque-là appartenir à leurs voisins[63]. La professeure Boisson de Chazournes a évoqué l'exemple du Portugal vis-à-vis du Maroc et de l'Espagne mardi[64]. Il y en a des dizaines d'autres. Et, à en croire nos collègues, ils pourraient tous, après s'en être abstenus, revendiquer un plateau continental étendu dans les espaces maritimes en deçà de 200 milles marins de leurs voisins. Grâce à l'article 76, paragraphe 10, aucun chaos n'en résulterait car, vous dit le professeur Lowe, vous, Cour, mettrez fin à ce chaos en délimitant de manière équitable tous ces prétendus chevauchements[65].

9. Cette thèse, inventée ou non au milieu d'une nuit sans sommeil[66], est intenable, et j'ose espérer que vous la rejetterez sévèrement.

10. La Cour notera toutefois au passage que les deux Parties s'accordent sur le fait que l'article 76, paragraphes 2 et suivants, n'opère pas dans la zone des 200 milles d'un autre Etat[67]. Le Nicaragua en profite d'ailleurs pour contredire sans états d'âme ses écritures, qui s'appuient pour

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[60] CR 2022/27, p. 40, question du juge Robinson.

[61] CR 2022/27, p. 11, par. 6 (Lowe).

[62] CR 2022/27, p. 15, par. 4 (Oude Elferink).

[63] *Ibid.*

[64] CR 2022/26, p. 64, par. 14 (Boisson de Chazournes) et dossier des juges du premier tour de la Colombie, onglet n° 45.

[65] CR 2022/27, p. 14, par. 21 (Lowe).

[66] CR 2022/27, p. 31, par. 29 (Pellet).

[67] CR 2022/27, p. 28, par. 16 (Pellet).

leur part abondamment sur l'article 76, paragraphe 4, pour justifier d'un plateau continental étendu au beau milieu de la ZEE de la Colombie. Je note que le Nicaragua s'est plaint à trois reprises d'imaginaires valses hésitations de la Colombie à propos du droit coutumier[68], tout en se satisfaisant lui-même de criantes contradictions. Quoi qu'il en soit, nous sommes d'accord, disais-je, sur la portée de l'article 76, à la différence notable que, selon la Colombie, et selon à vrai dire tout le monde, il en découle qu'un plateau continental étendu d'un Etat ne peut pas s'étendre dans la zone des 200 milles d'un autre[69], tandis que le Nicaragua en tire, seul, la conclusion inverse. La Cour saura trancher les mérites respectifs des thèses en présence.

A. Le rôle de la doctrine

11. J'en viens, Madame la présidente, aux trois points que je souhaite extraire de la plaidoirie de mon contradicteur. Et le premier concerne la doctrine. Le professeur Pellet semble considérer qu'elle ne saurait avoir droit de cité lorsque l'on s'interroge sur l'état de l'*opinio juris*[70]. Mais n'est-ce pas l'article 38, paragraphe 1, alinéa *d)*, du Statut de votre Cour lui-même qui dit qu'il est pertinent de se référer à : «la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit» ?

12. Le conseil du Nicaragua s'est demandé «ce que le rapporteur spécial de la CDI sur «[l]'identification du droit … coutumier» pense [à ce] sujet»[71]. C'est simple. La Conclusion 14 des Projets de conclusion de la CDI sur la détermination du droit international coutumier indique que «[l]a doctrine des publicistes les plus qualifiés des différentes nations peut servir de moyen auxiliaire de détermination des règles de droit international coutumier»[72].

13. En second lieu, mon éminent contradicteur a fait valoir que la doctrine que j'ai évoquée, est «souvent ancienne»[73]. En vérité, les écrits que j'ai cités s'étendent de 1989 à 2017, et montrent, je crois de manière très convaincante, qu'aucun des observateurs les plus attentifs de la pratique en

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[68] CR 2022/25, p. 18-19, par. 12-16 (Argüello Gómez) et p. 44-45, par. 6-7 (Oude Elferink) ; CR 2022/27, p. 21-22, par. 1-2 (Pellet).

[69] CR 2022/26, p. 61, par. 5 (Boisson de Chazournes).

[70] CR 2022/27, p. 24-26, par. 8-11 (Pellet).

[71] CR 2022/27, p. 24, par. 8 (Pellet).

[72] CDI, Projets de conclusion sur la détermination du droit international coutumier et commentaires y relatifs, p 160.

[73] CR 2022/27, p. 24, par. 10 (Pellet).

matière de droit de la mer n'a vu poindre un processus coutumier s'agissant des paragraphes 2 à 6 de l'article 76, que tous voyaient d'ailleurs comme totalement improbable. Et s'il faut absolument citer la doctrine la plus récente, qu'à cela ne tienne ! A peine sorti des presses, un ouvrage de référence en droit international que je n'ai pas besoin de citer — mais il est en français, en est à sa 9e édition… —, indique, à l'égard des règles de l'article 76 que «[t]rop détaillées et précises, ces règles se prêtent mal à une consécration coutumière»[74].

14. Le fait est que la doctrine est massivement convaincue que les paragraphes 2 à 6 n'ont rien de coutumier, doctrine représentant indubitablement les publicistes les plus qualifiés, y compris des juges et président du Tribunal international du droit de la mer, et également ce que j'appellerais la «doctrine praticienne», c'est-à-dire celle qui non seulement publie, y compris tout récemment, mais aussi conseille les Etats sur ce que dit et sur ce que ne dit pas le droit international général. Face à cela, comment peut-on imaginer que, contrairement à tout ce que leurs départements juridiques, qui naturellement s'abreuvent de cette doctrine, qui, c'est bien normal, lisent et entendent les conseils et experts les plus avisés affirmant que les paragraphes 2 à 6 de l'article 76 ne peuvent refléter le droit coutumier — comment peut-on imaginer, disais-je qu'en dépit de tous ces indicateurs, tous allant dans le même sens, les Etats aient acquis la conviction que les paragraphes 2 à 6 reflètent le droit coutumier ?

15. Il est possible, bien sûr, qu'un Etat non partie à la convention trouve intérêt à s'appuyer sur les paragraphes 2 à 6 de l'article 76 et fasse valoir des prétentions sur cette base. Ce pourrait être le cas, par exemple, d'un Etat souhaitant disposer d'un plateau continental étendu tel que défini par l'article 76, mais souhaitant également, entre autres, ne pas verser les droits liés à l'exploitation des fonds marins. Bref, comme dirait le professeur Pellet, un Etat qui souhaiterait avoir «le beurre et l'argent du beurre»[75]. Dans un tel cas, il n'y aurait rien de comparable à une «*opinio juris*», c'est-à-dire à une conviction de se conformer au droit. Comme l'indique la CDI dans son projet de

[74] M. Forteau, A. Miron et A. Pellet, *Droit international public*, 9e édition (LGDJ, Paris, 2022), p. 1620. Voir aussi R. Churchill, V. Lowe et A. Sander, *The Law of the Sea*, 4e édition (Manchester University Press, Manchester, 2022), p. 237.

[75] CR 2022/27, p. 27, par. 15 (Pellet).

conclusion cité plus tôt, lorsque la pratique répond à des considérations d'opportunité politique, il n'y a pas d'*opinio juris*[76].

B. «Aux fins de la Convention»

16. Madame la présidente, le deuxième point qu'il est loisible d'aborder concerne la formule «Aux fins de la [présente] Convention», qui alerte explicitement sur le statut purement conventionnel de l'article 76, paragraphe 4, de la convention. Selon le Nicaragua, ces termes pourtant explicites n'empêchent pas ce paragraphe de se muer par la suite en norme coutumière. Et mon contradicteur de prendre l'exemple de l'article 10 de la convention qui évoque le régime des baies[77].

17. Si l'on met de côté l'article 76, paragraphe 4, la formule «Aux fins de la Convention» se trouve huit fois dans la convention. Dans tous ces autres cas, elle annonce la définition d'un ou de plusieurs termes employés. Elle est invariablement «Aux fins de la Convention, on entend par», suivie du ou des termes, entre guillemets, que la convention entend définir.

18. Bien sûr, une définition établie aux fins d'une convention peut entretenir un lien avec le droit coutumier. Mais la définition elle-même ne peut tout simplement pas devenir coutumière pour la raison évidente qu'une définition n'est pas «fondamentalement normative». En soi, une définition ne crée ni droit, ni obligation. Son lien avec la règle coutumière ne peut être qu'indirect, lorsqu'elle définit un objet auquel une règle coutumière s'applique. C'est d'ailleurs exactement ce que la Cour a dit dans la seule affaire à laquelle mon contradicteur a habilement tenté, mais en vain, d'arrimer sa démonstration[78]. Dans l'affaire du *Différend frontalier, terrestre, insulaire et maritime*, lorsque la Cour a évoqué l'article 10 de la convention, alors non entrée en vigueur, elle a estimé que les «dispositions relatives aux baies pourraient être considérées comme exprimant le droit coutumier général»[79].

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[76] CDI, Projets de conclusion sur la détermination du droit international coutumier et commentaires y relatifs, p. 147, par. 3.

[77] CR 2022/27, p. 25, par. 11 (Pellet).

[78] *Ibid.*

[79] *Différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras ; Nicaragua (intervenant)), arrêt, C.I.J. Recueil 1992*, p. 588, par. 383, cité par M. Pellet, *op. cit*.

19. La Cour faisait indubitablement ici référence à la règle autorisant à considérer les eaux de certaines baies comme intérieures, et pas à une règle, évidemment inexistante, qui poserait comme obligatoire de définir une baie de la manière dont la convention la définit.

C. La pratique

20. Le troisième point qui appelle une réplique concerne la pratique, dont mon contradicteur fait grand cas[80].

21. L'exposé de la prétendue pratique pertinente est issu d'un article d'un conseiller juridique au département d'Etat américain, spécifiquement en charge du «Extended Continental Shelf Project» depuis 2004, M. Kevin Baumert[81]. Il est, à notre connaissance, le seul à suggérer avoir compris, rétrospectivement, qu'un processus coutumier larvé, en fait totalement invisible de la communauté internationale, aurait pris corps dans les années 1980, par le fait essentiellement de traités et de lois conclus ou adoptés par une poignée d'Etats avant l'entrée en vigueur de la convention.

22. J'ai compté, dans son recensement, 10 lois[82], adoptées avant l'entrée en vigueur de la convention, concernant 9 Etats[83], tous parties ou devenus parties à la convention par la suite. La thèse de M. Baumert est donc que 10 lois de 9 Etats formuleraient le droit international général opposable à tous dans une communauté de 193 Etats Membres des Nations Unies, dont 168 Etats parties à la convention. C'est d'autant plus improbable qu'aucune des lois en cause ne fait référence au droit coutumier, sauf celles du Costa Rica et de l'Islande, de manière d'ailleurs très floue.

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[80] CR 2022/27, p. 24-26, par. 9-11 (Pellet).

[81] CR 2022/25, p. 54, par. 33 (Oude Elferink).

[82] K.A. Baumert, «The Outer Limits of the Continental Shelf under Customary International Law», *Am. J. Int'l L.*, n° 111, 2017, p. 850-851. (1) Brésil, loi du 4 janvier 1993 (https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/BRA_1993_8617.pdf) ; (2) Costa Rica, loi du 14 octobre 1988 (https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CRI_1988_Decree18581.pdf) ; (3) Namibie, loi du 30 juin 1990 (https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/NAM_1990_Act.pdf) et amendement de 1991 (https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/NAM_1991_Act.pdf) ; (4) Afrique du Sud, loi de 1994 (https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/ZAF_1994_Act.pdf) ; (5) Chili, loi du 14 septembre 1985 (https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHL_1985_Declaration.pdf) ; (6) Equateur, loi du 19 septembre 1985 (https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/ECU_1985_Declaration.pdf) ; (7) Islande, loi du 9 mai 1985 (https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/ISL_1985_Regulation.pdf) ; (8 et 9) Madagascar, loi du 11 décembre 1985 (https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/MDG_1985_Ordinance.pdf) et amendement au code maritime du 7 décembre 1999 (https://www.un.org/Depts/los/doalos_publications/LOSBulletins/bulletinpdf/bulletin56e.pdf) ; (10) Trinité-et-Tobago, loi du 22 décembre 1969, amendée le 28 octobre 1986 (https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TTO_1986_CSAct.pdf).

[83] Brésil, Costa Rica, Namibie, Afrique du Sud, Chili, Equateur, Islande, Madagascar et Trinité-et-Tobago.

23. Par exemple, la loi du Brésil adoptée en 1993, donc avant l'entrée en vigueur de la convention en 1994, indique que «[t]he outer limits of the continental shelf will be established in accordance with article 76 of the United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982»[84].

24. Outre que, à l'instar de toutes les autres, la loi brésilienne ne vise pas explicitement les paragraphes 2 et suivants de l'article 76, cette loi, comme toutes les autres, anticipait clairement l'entrée en vigueur de la convention : «the continental shelf will be established in accordance with Article 76 of the United Nations Convention». En l'occurrence, le Brésil a ratifié la convention en 1988, puis adopté sa loi en 1993, juste avant l'entrée en vigueur de la convention, ***entrée en vigueur*** conditionnée, comme on le sait, par la ratification ou l'adhésion par 60 Etats. Le professeur Oude Elferink m'accusera évidemment de me livrer à de la «reverse engineering»[85]. On regarde rétrospectivement les choses et on les interprète d'une manière erronée. Mais voici, à l'image, un graphique montrant la dynamique des ratifications et adhésions à la convention entre 1982, date de signature, et 1994, date d'entrée en vigueur. J'indique que ce graphique est fait à partir de données publiques qui sont disponibles sur tous les bons sites Internet évoquant le droit de la mer. Ce graphique, cette image démontre que l'entrée en vigueur ne pouvait faire aucun doute pour les Etats signataires, naturellement attentifs à la dynamique des ratifications. Il est bien évident que les Etats ont anticipé l'entrée en vigueur de la convention.

25. En tout état de cause, le fait est qu'aucun des 9 Etats qui ont adopté des lois n'a mis en pratique l'article 76, paragraphes 2 et suivants, avant l'entrée en vigueur de la convention. Dès lors, même à supposer qu'il y ait eu *opinio juris* avant l'entrée en vigueur de la convention — *quod non* —, la pratique relative aux paragraphes 2 et suivants de l'article 76 n'est intervenue qu'après l'entrée en vigueur de la convention, et a correspondu à la mise en œuvre de cette dernière, et non à la cristallisation d'un droit coutumier. Dans toutes les soumissions à la Commission des limites, les Etats concernés disent appliquer la convention, aucun ne dit appliquer le droit coutumier. La prétendue *opinio juris*, à supposer — mais ce n'est pas établi, je vais y revenir — qu'elle concerne

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[84] Https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/BRA_1993_8617.pdf.

[85] CR 2022/25, p. 53, par. 32 (Oude Elferink).

les paragraphes 2 et suivants de l'article 76, est restée, si j'ose dire, platonique. La rencontre entre l'*opinio juris* et la pratique ne s'est pas produite.

26. Trois dernières remarques, Madame la présidente, dans le temps qu'il me reste, si vous le voulez bien.

27. En premier lieu, aucune de ces lois ne mentionne l'article 76, paragraphe 4, de la convention, ou son contenu.

28. En deuxième lieu, aucune de ces lois ne prétend que l'Etat qui s'en est doté dispose d'un titre à revendiquer un plateau continental étendu au beau milieu de la zone des 200 milles marins d'un autre Etat. Aucune.

29. En dernier lieu, et pour être complet, la Cour relèvera qu'il existe, selon M. Baumert, deux traités adoptés et entrés en vigueur avant l'entrée en vigueur de la convention, qui se réfèrent à l'article 76, paragraphe 4.

30. Il s'agit d'abord du traité entre l'Irlande et le Royaume-Uni du 7 novembre 1988, entré en vigueur le 11 janvier 1990. Il se réfère à l'article 76 pour l'établissement de deux points qui marquent l'extrémité des frontières vers le large : le point 94 et le point 132, que l'on voit mis en lumière par des flèches jaunes sur vos écrans.

31. Je rappelle que l'Irlande et le Royaume-Uni étaient de fervents soutiens des formules de l'article 76 durant les négociations de la troisième conférence, puisqu'ils bénéficient d'une extension considérable de leur plateau continental vers le large. Il n'est donc pas surprenant qu'ils aient très tôt anticipé l'entrée en vigueur de la convention. Quoi qu'il en soit, à supposer que ce traité reflète la croyance des deux Etats quant au caractère de droit coutumier de l'article 76, paragraphe 4, ce qui frappe, et qui probablement frappera la Cour, est évidemment que les points établis en référence à ces formules ne sont pas posés à l'intérieur de la ZEE d'un Etat tiers.

32. Il en va exactement de même du traité conclu entre Trinité-et-Tobago et le Venezuela le 18 avril 1990, entré en vigueur 23 juillet 1991. Ce traité pose un point terminal de la frontière maritime explicitement situé à la limite de ce qui relève de la Zone. L'article 2 du traité le situe en effet à la limite de l'«International Seabed Area which is the common heritage of mankind»[86]. Là

[86] Https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/TTO-VEN1990SA.PDF.

encore, il n'est pas question d'une extension susceptible de pénétrer dans les 200 milles marins d'un autre Etat.

33. L'étude de M. Baumert mentionne deux autres accords qui ne sont jamais entrés en vigueur, qui sont donc sans pertinence[87]. De là, la question est de savoir si deux traités, par hypothèse *res inter alios acta*, peuvent générer une règle de droit international général. Il est permis d'en douter. Mais si c'est le cas, il suffit d'en prendre connaissance pour voir que cette prétendue règle confirme en tous points la position colombienne que j'ai exposée mardi.

34. Madame la présidente, Mesdames et Messieurs les juges, ceci conclut ma présentation de ce jour. En vous remerciant de votre attention, je vous prie maintenant d'appeler à la barre Monsieur l'agent de la Colombie.

The PRESIDENT: I thank Professor Thouvenin. I shall now give the floor to the Agent of Colombia, H.E. Mr. Eduardo Valencia-Ospina. You have the floor, Your Excellency.

Mr. VALENCIA-OSPINA:

AGENT'S CLOSING SPEECH

1. Madam President, Members of the Court, we have reached the end of the oral proceedings decided by the Court in its Order of 4 October 2022 and, thus, the completion of the Republic of Colombia's oral arguments on the legal questions posed to the Parties. Before reading Colombia's final submissions, I have concluding remarks on the first and second questions. I also have some brief observations on matters that Nicaragua brought up, which concern the entitlements of San Andrés, Providencia and Santa Catalina, as well as the legal interests of the neighbouring third States.

Nicaragua's digressions

2. However, before I go any further, I must emphatically protest the conduct of Nicaragua in the present proceedings. The Order of 4 October was clear. The Parties were to "present their

[87] K.A. Baumert, «The Outer Limits of the Continental Shelf under Customary International Law», *Am. J. Int'l L.*, n° 111, 2017, p. 852-853.

arguments exclusively with regard to . . . two questions"[88]. Colombia had alerted the Court to the fact that Nicaragua's first round had touched on matters unrelated to the questions posed to the Parties[89]. Remarkably, Nicaragua, in its second round, went even further in discussing delimitation[90]. Nicaragua had even the insolence of alerting the Court to its intention of overstepping the confines[91].

3. The first question was not a delimitation question; it was a question whether, under customary international law, a State's entitlement to a continental shelf beyond 200 nautical miles may extend within the 200-nautical-mile entitlements of another State; if it cannot, as Colombia demonstrated, there can be no question of delimitation. The important point — which I had mentioned, and which Nicaragua deliberately disregarded — is that regardless of whether one agrees with the Colombian position, one thing is certain: Nicaragua should not have discussed maritime delimitation methodology and supposedly equitable or inequitable solutions at this stage[92].

4. Likewise, the second question posed by the Court was not a delimitation question; it was a question about the criteria under customary international law for determining the limit of the continental shelf beyond 200 nautical miles and whether paragraphs 2 to 6 of Article 76 of UNCLOS reflect custom. Nicaragua declared that delineation is irrelevant, because it asserts, without demonstration, that this is a delimitation case. Implicitly, Nicaragua also asserts that this alleged delimitation can occur without prior delineation — another controversial contention that was not relevant to this oral hearing. The Court had asked a precise question and Nicaragua should have limited itself to answering it. Instead, Nicaragua found it sufficient to declare that what matters is that the name of the case refers to delimitation[93]. Nicaragua likewise dismissed doctrinal writings on delineation as irrelevant[94]. Nicaragua has implied that the Court's second question is irrelevant.

5. Madam President, Members of the Court, during hearings, States often avoid difficult questions and concentrate on claims and arguments that, in their eyes, are supposedly more

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[88] *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Order of 4 October 2022*, p. 2.

[89] CR 2022/26, p. 11, para. 6 (Valencia-Ospina).

[90] See in particular: CR 2022/27, p. 13, paras. 16-17 (Lowe); pp. 29-31, paras. 19-25 (Pellet); pp. 36-38, paras. 18-22 (Arguëllo Gómez); Nicaragua, judges' folder, 7 Dec. 2022, tabs AP2-2, AP2-3, AP2-4 and AP2-5.

[91] CR 2022/27, p. 29, para. 19 (Pellet).

[92] CR 2022/26, p. 11, para. 6 (Valencia-Ospina).

[93] CR 2022/26, p. 22, para. 3 (Pellet).

[94] CR 2022/26, p. 23, para. 4 (Pellet).

compelling. Because of the Order of 4 October, Nicaragua was not in a position to do so in the present case. In any event, Nicaragua's strategy betrays the fact that its case is one based only on impressions. Nicaragua has not engaged in the legal debate. Instead, it has hidden behind the suggestion that the answer to your first question is one that could be taken on a "case-by-case basis", depending on "relevant circumstances", with a view to achieving an "equitable solution" or "equitable result", in conformity with "Article 83" of UNCLOS[95].

6. Nicaragua has conflated a general question that concerns the ranking of entitlements with a separate question that concerns delimitation. This is not surprising considering what Nicaragua had said in the first round. At that time, Nicaragua made the general unsupported contention according to which where there is overlap of entitlements, there must always be delimitation[96]. Interestingly, during one of its digressions, Nicaragua picked a poor example that disproves its proposition. Nicaragua relied on Quitasueño to make a case, again, based on impressions. Their Agent complained about the fact that a feature, the size of ***a this*** lectern, could generate 3,000 sq km of territorial sea[97]. The problem is that equity, case-by-case assessments and relevant circumstances had nothing to do with that finding. When a feature is above water at high tide, and that feature is located farther than 24 nautical miles from the land territory of another State, that feature's entitlement to a territorial sea will be given full effect up to its 12-nautical-mile limit[98]. This is because, according to the consistent jurisprudence, territorial sea entitlements prevail over 200-nautical-mile entitlements[99], just as the latter prevail over natural prolongation-based continental shelves. When an entitlement prevails over another kind of entitlement, the boundary must follow the outer limit of the prevailing one. Context and equity have no relevance whatsoever.

7. I turn to my concluding remarks on the questions posed by the Court.

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[95] CR 2022/25, p. 18, para. 9, p. 24, para. 36, p. 25, para. 38 and p. 26, paras. 43-44 (Arguëllo Gómez); p. 29, paras. 11-12 (Lowe); CR 2022/27, p. 13, para. 19, p. 14, paras. 21-22 (Lowe); pp. 36-37, paras. 18-21 (Arguëllo Gómez); p. 19, para. 18, p. 28, paras. 16-17 and pp. 29-31, paras. 20-25 (Pellet).

[96] CR 2022/25, p. 25, para. 38 (Arguëllo Gómez); p. 29, para. 1 (Lowe).

[97] CR 2022/25, p. 25, para. 39 (Arguëllo Gómez).

[98] 2012 Judgment, pp. 643-645, paras. 34-38 and pp. 692-693, paras. 181-183.

[99] See, for example: 2012 Judgment, pp. 690-692, paras. 177-180; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, pp. 130-133, paras. 218-219; *Award of the Arbitral Tribunal in the Second Stage of the Proceedings between Eritrea and Yemen (Maritime Delimitation), Decision of 17 December 1999, RIAA*, Vol. XXII, p. 371, para. 160.

First question

8. The first question of whether, under customary international law, extended continental shelf entitlements can encroach upon 200-nautical-mile entitlements, must be addressed on the basis of three fundamental relationships: (i) the one between the exclusive economic zone and the continental shelf; (ii) the one between the extended continental shelf and the international sea-bed area; and, lastly, (iii) the one between continental shelves up to 200 nautical miles and continental shelves beyond that distance. I will keep these three relationships in mind while discussing seven of the many flaws in Nicaragua's argumentation.

9. The first flaw is that the argumentation essentially rests on only one of these relationships, the one between the two continental shelf entitlements referred to in Article 76 (1) of UNCLOS[100]. In fact, the arguments of Nicaragua are based almost solely on this one paragraph of this one provision[101]. Nicaragua has read that paragraph in isolation from the text of UNCLOS; in isolation from the discussions held during the Third United Nations Conference on the Law of the Sea; in isolation from the relevant jurisprudence; and, of course, in complete isolation from State practice. There can be no discussion of the first question posed by the Court without considering the exclusive economic zone and the relationship between the extended continental shelf and the international sea-bed area.

10. The second flaw is that, to the extent that it deals with one of these relationships, it does so in theory, without considering the practice[102]. Nicaragua has not shown that its claim is supported by practice. Nicaragua has not rebutted the general practice put forth by Colombia. Simply put, Nicaragua abandoned the case, because it has not established — let alone argued — that the two constituent elements of customary international law favour its position.

11. The third flaw is that Nicaragua essentially relies on a legal régime of title that, with regard to maritime areas situated within 200 nautical miles of at least one State, belongs to the past, not to the law applicable today[103]. To rely to such an extent, as Nicaragua did, on the Truman Proclamation,

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[100] CR 2022/25, pp. 27-43 (Lowe); CR 2022/27, pp. 10-14 (Lowe).

[101] See in particular: CR 2022/25, p. 28, para. 6 (Lowe).

[102] See in particular: CR 2022/25, p. 27, para. 4 (Lowe).

[103] See in particular: CR 2022/25, pp. 30-34, paras. 21-37 (Lowe); *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 36, para 40.

the 1958 Geneva Convention on the Continental Shelf and the *North Sea Continental Shelf* cases is to forget the emergence of the exclusive economic zone and the international sea-bed area. These maritime areas drastically affected the relationship between distance-based and natural prolongation-based continental shelves. The Court said so in its 1985 Judgment in *Libya/Malta*, a decision that causes great discomfort to Nicaragua.

12. The fourth flaw is indeed Nicaragua's disregard of the *Libya/Malta* case. That case is relevant for the following main reasons: first, it is based on the modern law of the sea; second, the law applicable to that case was customary international law; third, this case made fundamental pronouncements on the exclusive economic zone, its influence on the continental shelf, but also its impact on the relationship between the two continental shelf entitlements.

13. As explained in the 1985 Judgment, there can be a continental shelf without an exclusive economic zone[104]. Natural prolongation is still a source of title in maritime areas situated beyond 200 nautical miles of all States. However, as also stated in that Judgment, the converse is not true. There cannot be an exclusive economic zone without a corresponding continental shelf[105]. What if a State did not proclaim and exclusive economic zone? Can an extended continental shelf encroach upon its distance-based continental shelf? *Libya/Malta* addressed this point and rejected Nicaragua's case, based on the relationship between distinct entitlements to the continental shelf[106]. Because Libya and Malta could have proclaimed exclusive economic zones at any time following the Judgment, the Court concluded that, in a situation in which delimitation involves continental shelves that are within 200 nautical miles of at least one State, natural prolongation has no value; it has no value for establishing entitlements and no value for identifying equitable boundaries[107].

14. The fifth flaw relates to Nicaragua's attempt to draw a distinction between States that are less than 400 nautical miles apart and States that are farther than 400 nautical miles apart. The distinction makes no sense. Assuming natural prolongation is a source of title within 200 nautical miles of another State, why should a continental shelf that extends up to 300 nautical miles be

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

[105] *Ibid.*

[106] *Ibid.*, p. 22, para. 17 and p. 33, para. 34.

[107] *Ibid.*, p. 35, para. 39.

relevant when two coastlines are 450 nautical miles apart, but not when two coastlines are 350 nautical miles apart? Caught on the horns of a dilemma, Nicaragua has hesitated between two positions, both of which are fatal to its case.

15. The first position entails advancing a reading of the *Libya/Malta* case according to which the Court itself drew this distinction. Seemingly, this allows Nicaragua to avoid a confrontation with the 1985 Judgment. The disadvantage is that by stating that practice between States that are less than 400 nautical miles apart is irrelevant, Nicaragua admits that natural prolongation can never be a source of title in that geographic situation. Nicaragua thus allows the couple of exceptional CLCS submissions that could have supported its claim to slip through its fingers. Yet, the Court's reference to 400 nautical miles can easily be explained. The Court did not mean to say that natural prolongation would be resurrected within 200 nautical miles of coastlines when the distance between two States is greater than 400 nautical miles. The Court simply meant to stress that — if the distance is greater than 400 nautical miles — natural prolongation may become a source of title within the sea-bed situated between two 200-nautical-mile limits.

16. The second Nicaraguan position is to distort the 1985 Judgment. Nicaragua thus abandons the distinction between situations in which the coastlines are situated less than 400 nautical miles or farther than 400 nautical miles apart. Nicaragua seeks to reconcile its position with that of a couple of outliers, but at what cost? Nicaragua inevitably acknowledges that all CLCS submissions in which States did not encroach upon 200-nautical-mile zones are detrimental to its case, regardless of the distances involved. All delimitation agreements, regardless of whether they involve States situated more than 400 nautical miles apart, or less than 400 nautical miles apart, are detrimental to its case when they disregard geological and geomorphological features within 200 nautical miles of coastlines.

17. The sixth flaw is Nicaragua's reliance on what is obviously an exception — grey areas — to set forth a general rule according to which natural prolongation can encroach upon 200-nautical-mile entitlements. By placing the focus on grey areas, Nicaragua has drawn attention to the fact that the *Bay of Bengal* and *Indian Ocean* cases do not support its claim. Ironically, Nicaragua did not

rebut Colombia's first-round presentation on this matter since it considered that this is a delimitation question that should not be discussed[108].

18. The seventh flaw is that Nicaragua ignores the obvious connection between the extended continental shelf and the international sea-bed area. If Nicaragua's claim were to be entertained, the CLCS would no longer be the watchdog of the international community and the protector of the common heritage of mankind. The CLCS would become the protector of individual interests of coastal States that are confronted by natural prolongation-based claims within their 200-nautical-mile zones. The International Seabed Authority, for some obscure reasons, would distribute the benefits made in what would otherwise have been the exclusive economic zone of a coastal State, to all the State parties to UNCLOS.

Second question

19. I turn to the second question on which I will be brief since — as suggested by the sequence in which the two questions were posed to the Parties — an answer to the second question is only required provided that an extended continental shelf can encroach upon 200-nautical-mile entitlements, a contention that Colombia considers totally unfounded.

20. On this point, Colombia, like Nicaragua, believes that the question arises in the framework of a specific case, the one being heard at present. For this reason, the question, in the context of this case, is: what are the criteria, under customary international law, for determining the limit of an extended continental shelf within the 200-nautical-mile zones of another State? The answer to this question is that there are no such criteria.

Observations on the entitlements of San Andrés, Providencia and Santa Catalina

21. I turn now briefly to the question of the entitlements of San Andrés, Providencia and Santa Catalina, since these matters were raised only by Nicaragua, not by your Order.

22. I must do so because Nicaragua displayed a misleading figure on Monday. Figure VL 1-12 suggests that the entitlements of these features — which the Court recognized are full-fledged islands generating 200-nautical-mile entitlements — do not project radially beyond 200 nautical miles from

[108] CR 2022/27, p. 29, para. 18 (Pellet).

Nicaragua[109]. Nicaragua conveniently suggests that, beyond that distance, the 2012 parallels of latitude continue to limit the entitlements of these islands to a red corridor running due east. Clearly, Nicaragua tries to keep some room for delimitation in the likely event that the Court finds that natural prolongation-based entitlements cannot encroach upon distance-based entitlements. Nicaragua's contention fails for the following reasons:

— First, because Nicaragua's claim would entail that the Court already prejudged the alleged delimitation that the Applicant would have you establish beyond 200 nautical miles;

— Second, because the 2012 Judgment expressly reserved the entitlements of San Andrés, Providencia and Santa Catalina, which extend in "each direction", beyond 200 nautical miles of Nicaragua;[110]

— Third, because, after having described the course of the 2012 boundary, the Court specifically stressed that

> "San Andrés, Providencia and Santa Catalina should not be cut off from their entitlement to an exclusive economic zone and continental shelf to their east, including in that area which is within 200 nautical miles of their coasts but beyond 200 nautical miles from the Nicaraguan baselines"[111];

— the maritime areas located north and south of the red corridor are clearly located within 200 nautical miles of San Andrés, Providencia and Santa Catalina;

— Fourth, because Nicaragua contradicted itself both orally and in the documents included in its judges' folders[112].

23. I will not address the entitlements of other Colombian features on which the Court has not ruled upon. I will simply stress that, at the 200-nautical-mile limit of Nicaragua, the 200-nautical-mile entitlements of San Andrés, Providencia and Santa Catalina leave no room for Nicaragua's alleged natural prolongation. I must stress, moreover, that in the second round of written pleadings, the Parties have agreed that entitlements cannot leapfrog over, nor tunnel under, established boundaries or entitlements of higher rank[113]. In other words, the alleged natural

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[109] Nicaragua, judges' folder, 5 Dec. 2022, tab VL1-12.

[110] 2012 Judgment, pp. 686-688, para. 168.

[111] *Ibid.*, pp. 716-717, para. 244.

[112] CR 2022/25, p. 38, para. 54, (Lowe); Nicaragua, judges' folder, 7 Dec. 2022, tabs CAG2-2 and CAG2-4.

[113] RC, paras. 4.6 and 5.36; RN, para. 4.108.

prolongation-based entitlement of Nicaragua cannot leapfrog over the 200-nautical-mile entitlements of San Andrés, Providencia and Santa Catalina. In any event, there is no international sea-bed area within the Caribbean Sea.

Observations on the legal interests of third States

24. The question of the legal interests of third States is addressed in detail in Chapter 5 of Colombia's Rejoinder[114]. I will then just summarize the key arguments that demonstrate that, beyond 200 nautical miles of Nicaragua, any delimitation between Nicaragua and Colombia would inevitably encroach upon legal interests that neighbouring third States possess vis-à-vis Nicaragua.

25. I should begin by stressing that Nicaragua has grudgingly renounced its subrogation theory[115], already rejected by the Court in the *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica* v. *Nicaragua)*[116]. It follows that Nicaragua accepts that it cannot rely on the agreements concluded by Colombia to block the coastal projections of the neighbouring States.

26. This means that, vis-à-vis Nicaragua, the entitlements of third States project unhindered within maritime areas located beyond 200 nautical miles, as well as within 200 nautical miles of Nicaragua. Beyond 200 nautical miles of Nicaragua, the distance-based entitlements of third States prevail over the alleged natural prolongation-based entitlement of Nicaragua. Even if some were to disagree, these entitlements would still constitute plausible legal interests that would prevent the Court from proceeding to a delimitation between Colombia and Nicaragua. The presence of the legal interests of third States distinguishes the present case from the few other instances in which States have encroached upon 200-nautical-mile entitlements of other States. I take the opportunity to recall that one of the judges who appended an opinion to the 2012 Judgment rightly emphasized that, due to the presence of overlapping entitlements of other States, that maritime delimitation should have stopped well before the 200-nautical-mile limit of Nicaragua[117].

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[114] RC, Chap. 5, pp. 147-185, paras. 5.1-5.63. See also CMC, Chap. 6, pp. 307-323, paras. 6.1-6.24.

[115] CR 2022/27, pp. 34-35, paras. 10 and 12 (Arguëllo Gómez).

[116] *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica* v. *Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2018 (I),* p. 189, para. 134.

[117] 2012 Judgment, declaration of Judge Xue, pp. 749-750, paras. 11-15.

27. Within 200 nautical miles of its coastlines, Nicaragua must still draw two maritime delimitations with, respectively, Jamaica and Panama. Those maritime delimitations involve two sets of 200-nautical-mile entitlements which, by definition, would give no weight whatsoever to geological and geomorphological features. If equidistance lines were to be drawn between Nicaragua and, respectively, Jamaica and Panama, Nicaragua would not reach its 200-nautical-mile limit, let alone its alleged extended continental shelf. It is worth pointing out that Nicaragua has argued, in its dispute with Costa Rica, that States do not have a right to reach the outer limit of their 200-nautical-mile entitlements[118].

28. Lastly, Madam President, Nicaragua has encouraged you to dismantle the sea-bed portion of the delimitation agreements concluded between Colombia and, respectively, Jamaica and Panama[119]. The agreements signed with, respectively, Honduras and Costa Rica concerned areas located significantly closer to the coastlines of Nicaragua. Judicially determined boundaries may serve an important role when they question controversial boundary relations in which two States, acting in concert, sought to exclude a legally interested third State from a given maritime area. One has to be careful, however, because judicially determined boundaries, which do not take account of the legal interests of third States, may well become the controversial boundary relations that would later be put into question.

29. Madam President, allow me to thank Judge Robinson for his question. Considering that Nicaragua has been given a third opportunity to discuss this matter, Colombia understands that the Court will also grant it the opportunity to comment upon Nicaragua's written response, if any.

30. I now proceed to read the final submissions of Colombia.

Final submissions

"With respect to the *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia),* having regard to the Order dated 4 October 2022 and the questions of law contained therein, Colombia respectfully requests the Court to adjudge and declare that:

1. In relation to the first question:

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[118] *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica* v. *Nicaragua),* Counter-Memorial of Nicaragua, para. 3.131.

[119] CR 2022/27, pp. 34-35, paras. 11-12 (Arguëllo Gómez).

(i) Under customary international law, a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured cannot extend within 200 nautical miles from the baselines of another State.

2. In relation to the second question:

(i) Under customary international law, there are no criteria for the determination of the limit of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured whenever the outer limit of said continental shelf is located within the 200-nautical-mile zone of another State.

(ii) Paragraphs 2 to 6 of Article 76 of the United Nations Convention on the Law of the Sea do not reflect customary international law.

Furthermore, considering that the answers to these two questions govern all of Nicaragua's submissions as set out during the course of the proceedings, Colombia further requests the Court to adjudge and declare that:

3. Nicaragua's request for a delimitation of the continental shelf beyond 200 nautical miles from its coast is rejected with prejudice.

4. Consequently, Nicaragua's request for the fixing of a timetable to hear and decide upon all the outstanding requests in Nicaragua's pleadings is rejected."

31. Madam President, Members of the Court, on behalf of Colombia, may I express thanks to you, the Registrar and his staff.

The PRESIDENT: I thank the Agent of Colombia. The Court takes note of the final submissions that you have just read on behalf of the Republic of Colombia.

This brings the present series of sittings to an end. I would like to thank the Agents, counsel and advocates of the two Parties for their statements. In accordance with the usual practice, I shall request both Agents to remain at the Court's disposal to provide any additional information the Court may require.

The Court will now retire for deliberation. The Agents of the Parties will be advised in due course as to the date on which the Court will deliver its Judgment.

Since the Court has no other business before it today, the sitting is declared closed.

The Court rose at 11.35 p.m.

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