

## DISSENTING OPINION OF JUDGE CHARLESWORTH

*Explanation of the negative vote — Distinction between maritime entitlements and maritime delimitation — Factors pertinent for the determination of maritime entitlements — The first question as a question of maritime entitlement.*

*Interpretation of customary international law — Methodological approach. Extended continental shelf — Interpretation of UNCLOS.*

*Relationship between exclusive economic zone and continental shelf — The Court's Judgment in Continental Shelf (Libyan Arab Jamahiriya/Malta) — Bay of Bengal cases.*

*Relevance of the practice of States — Executive summaries of submissions to the Commission on the Limits of the Continental Shelf — Generality of practice — Opinio juris — Evaluation of the practice — Legal conviction as to an equitable delimitation.*

## I. INTRODUCTION

1. This opinion explains why I have voted against all subparagraphs of the operative clause of today's Judgment. The questions that the Court had set out to address in the present phase of the proceedings were cast in abstract terms, detached from the specific facts of the case before the Court (see paragraph 14 of the Judgment). This was the reason I supported the Order of 4 October 2022. In my view, however, the Court's reasoning allows considerations specific to this case to colour its discussion of abstract principles.

## II. THE FIRST QUESTION

2. The first question was worded as follows:

“Under customary international law, may 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 extend within 200 nautical miles from the baselines of another State?” (*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, *I.C.J. Reports 2022 (II)*, p. 565.)

*A. Maritime Entitlements and Maritime Delimitation*

3. The first question concerns the determination of a maritime entitlement — specifically, a coastal State’s maritime entitlement to a continental shelf beyond 200 nautical miles from its baselines (“extended continental shelf”)<sup>1</sup>. This question is distinct from, albeit complementary to, the question of maritime delimitation<sup>2</sup>. The two questions are governed by different legal rules, and they can give rise to separate disputes<sup>3</sup>.

4. As the Judgment affirms (Judgment, para. 42), the determination of maritime entitlements is the first step in any maritime delimitation. In that step, the question is whether, under international law, a coastal State may claim to exercise jurisdiction over a maritime area. Where, however, multiple coastal States may lay claim to exercise jurisdiction over the same maritime area, this jurisdiction may not be exercised concurrently by all coastal States, at least not without their consent. It is in such circumstances that maritime delimitation is employed to resolve situations of multiple entitlements over the same maritime area. The process of maritime delimitation determines the spatial ambit of each coastal State’s jurisdiction over part of that common maritime area<sup>4</sup>, and thereby sanctions the exercise of coastal State jurisdiction as recognized by international law.

5. The object of any maritime delimitation is to achieve an equitable solution<sup>5</sup>. In a situation in which multiple coastal States have entitlements over the same area, therefore, the delimitation process will almost inevitably result in each coastal State sacrificing part of its maritime entitlement and exercising jurisdiction over a maritime area that is less than its full

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<sup>1</sup> I use the term “baselines” as a shorthand for “baselines from which the breadth of the territorial sea is measured”, and I treat it as synonymous to “coast”. I use the term “extended continental shelf” to denote the continental shelf extending to the outer edge of the continental margin, where that edge extends beyond 200 nautical miles from the coastal State’s baselines.

<sup>2</sup> *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 30, para. 27.

<sup>3</sup> *South China Sea Arbitration between the Republic of the Philippines and the People’s Republic of China, Award on Jurisdiction and Admissibility of 29 October 2015*, United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. XXXIII, p. 65, para. 156.

<sup>4</sup> Yoshifumi Tanaka, *Predictability and Flexibility in the Law of Maritime Delimitation* (2nd ed., Oxford: Hart 2019), p. 6; see also Prosper Weil, *The Law of Maritime Delimitation — Reflections* (transl. Maureen MacGlashan, Cambridge: Grotius Publications 1989), p. 3.

<sup>5</sup> *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway), Judgment, I.C.J. Reports 1993*, p. 59, para. 48; see also *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 59, para. 70; *Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 67, para. 235.

entitlement<sup>6</sup>. For example, where the coasts of two States are 100 nautical miles apart, either State is in theory entitled to a continental shelf that reaches the other State's shores. However, this does not mean that either State may exercise continental shelf jurisdiction on the basis of this entitlement to its full extent. It is left to the process of maritime delimitation to determine the areas over which each coastal State may exercise the jurisdiction to which it is entitled under international law.

6. Whether a coastal State is entitled under international law to exercise sovereign rights for the exploration and exploitation of the continental shelf's natural resources is a question of maritime entitlement. What parts of the continental shelf should be found to appertain to this coastal State where another coastal State is also entitled to sovereign rights over the same continental shelf is a question of maritime delimitation and its effects.

### *B. The Determination of Maritime Entitlements in the Court's Jurisprudence*

7. The Court has a considerable jurisprudence on maritime entitlements. In *Anglo-Norwegian Fisheries*, the Court explained that “[i]t is the land which confers upon the coastal State a right to the waters off its coasts”<sup>7</sup>. This point was affirmed with respect to a State's entitlement to a continental shelf in *Black Sea*<sup>8</sup>. The International Tribunal for the Law of the Sea concurs, having held that “[a] coastal State's entitlement to the continental shelf exists by the sole fact that the basis of entitlement, namely, sovereignty over the land territory, is present”<sup>9</sup>. This is not necessarily to say that maritime entitlements are contingent on the presence or on the integrity of the land territory in perpetuity. The legal conception of maritime entitlements

<sup>6</sup> *Delimitation of Maritime Areas between Canada and France, Decision of 10 June 1992*, RIAA, Vol. XXI, p. 289, para. 67; *ibid.*, dissenting opinion of Prosper Weil, p. 307, para. 17.

<sup>7</sup> *Fisheries (United Kingdom v. Norway), Judgment, I.C.J. Reports 1951*, p. 133.

<sup>8</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, p. 89, para. 77: “The title of a State to the continental shelf and to the exclusive economic zone is based on the principle that the land dominates the sea through the projection of the coasts or the coastal fronts.” That Judgment also cites from *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*: “the land is the legal source of the power which a State may exercise over territorial extensions to seaward” (*Judgment, I.C.J. Reports 1969*, p. 51, para. 96). See also *Aegean Sea Continental Shelf (Greece v. Turkey), Judgment, I.C.J. Reports 1978*, p. 36, para. 86: “continental shelf rights are legally both an emanation from and an automatic adjunct of the territorial sovereignty of the coastal State”.

<sup>9</sup> *Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 107, para. 409.

may well need to adapt to modern challenges<sup>10</sup>. It simply means that, under customary international law, entitlements at sea are derivative of the title to land.

8. As a result, when determining a coastal State's entitlement to maritime areas, the Court refers only to the question of whether the State has sovereignty over the relevant land territory, as well as to the characteristics of that land territory (because, for example, not all maritime features generate an entitlement to a continental shelf)<sup>11</sup>. No other factors have been found to inform the question of a coastal State's entitlement to a maritime area — certainly not factors pertaining to other coastal States' maritime entitlements in the vicinity. The logic of determining each State's maritime entitlements in isolation can also be seen in the constraints applicable to the establishment of the outer edge of the continental margin under Article 76 of the United Nations Convention on the Law of the Sea (hereinafter “UNCLOS” or the “Convention”), leaving aside the question of whether these constraints form part of customary international law. None of these constraints contemplates the presence of other States.

9. The maritime entitlements of other States will of course inform the question of delimitation. This point is illustrated in the Court's Judgment in *Territorial and Maritime Dispute* with respect to the relationship between a State's entitlement to a territorial sea and another State's entitlement to a continental shelf<sup>12</sup>. In that Judgment, the Court discussed “the *overlap* . . . between the territorial sea *entitlement* of Colombia derived from each island and the *entitlement* of Nicaragua to a continental shelf and exclusive economic zone”<sup>13</sup>. The Court's point of departure was that a State's entitlement to a continental shelf (in that case, Nicaragua's) may well extend into — and thus overlap with — another State's entitlement to a territorial sea (in that case, Colombia's). However, the Court clarified that, in such a situation, the former State's entitlement would not be given *effect*, namely, that the former State be allowed to exercise jurisdiction over a continental shelf that extends within the latter State's territorial sea<sup>14</sup>.

<sup>10</sup> See, for example, “Sea-level rise in relation to international law: Additional paper to the first issues paper (2020), by Bogdan Aurescu and Nilüfer Oral, Co-Chairs of the Study Group on sea-level rise in relation to international law”, UN doc. A/CN.4/761, 13 February 2023, para. 155; see also “Resolution 5/2018: Committee on International law and sea level rise”, *International Law Association Reports of Conferences*, Vol. 78 (2018), p. 29.

<sup>11</sup> Article 121, paragraph 3, of UNCLOS, which forms part of customary international law: *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012 (II), p. 674, para. 139.

<sup>12</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012 (II), p. 690, paras. 177-178.

<sup>13</sup> *Ibid.*, p. 690, para. 177 (emphasis added).

<sup>14</sup> *Ibid.*, pp. 690-691, paras. 178-180; see also *Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, ITLOS Reports 2012, p. 51, para. 169,

10. By contrast, today's Judgment holds that, in a specific maritime area (the area within 200 nautical miles from a coastal State's baselines), a specific type of competing maritime entitlement (the entitlement to an extended continental shelf) is precluded (Judgment, para. 79). Other maritime entitlements in the same area — for example, a third State's maritime entitlement to an exclusive economic zone, or a fourth State's entitlement to a territorial sea — are legally valid, and the ensuing overlap is to be resolved through maritime delimitation. The entitlement to an extended continental shelf, however, is not. On that basis, the Court does not proceed to maritime delimitation (*ibid.*, paras. 86 and 91).

### C. Methodological Approach

11. The Court's task in this case is essentially an interpretative one: it consists in identifying the contours of the entitlement to an extended continental shelf under customary international law. There is no doubt that UNCLOS reflects many aspects of the customary international law of the sea: some of its provisions codify pre-existing rules of customary international law, others crystallize then-emerging rules, and yet others have since given rise to a general practice accepted as law, generating new customary rules<sup>15</sup>. For that reason, I share the Court's view that recourse to the Convention can assist in the interpretation of the rules of customary international law that are reflected in it. At the same time, the methods of treaty interpretation are not fully transposable to the context of the interpretation of customary international law, and not all interpretative methods apply with equal force in the two processes<sup>16</sup>. The interpreter must keep in mind that custom is neither generated, nor modified, nor extinguished in the same manner as a treaty.

12. The majority bases its conclusion on two sets of considerations: first, considerations pertaining to the relationship between the régime of the exclusive economic zone and that of the continental shelf and, second, considerations pertaining to the régime of the extended continental shelf (Judgment, paras. 68 and 74; see also *ibid.*, para. 78). In the following

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which refers to a process of "giving more weight" to one coastal State's entitlement than the other's.

<sup>15</sup> See, with respect to the Convention on the Continental Shelf, *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment*, *I.C.J. Reports 1969*, p. 37, para. 60; see also "Conclusions on identification of customary international law, with commentaries", *Yearbook of the International Law Commission (YILC)*, 2018, Vol. II, Part Two, p. 91 (Conclusion 11, para. 1).

<sup>16</sup> See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment*, *I.C.J. Reports 1986*, p. 95, para. 178.

sections, I will explain why, in my view, these factors do not support the Court's reasoning. I will start with the concept of the extended continental shelf (Section D), before turning to its relationship with the exclusive economic zone (Section E). I will then set out my misgivings about the Court's discussion of the practice of States (Section F).

*D. The Concept of the Extended Continental Shelf  
under Customary International Law*

13. In my view, the conclusion of the Judgment is not supported by the terms of the definition of the continental shelf under customary international law, as reflected in Article 76, paragraph 1, of UNCLOS<sup>17</sup>. This provision establishes two methods to determine the limit of the entitlement to a continental shelf: the outer edge of the continental margin, or the distance of 200 nautical miles where that outer edge lies within that distance. The provision does not compel any coastal State to use one method over the other when determining the outer limits of its continental shelf. Customary international law stipulates that a coastal State's minimum entitlement to a continental shelf extends up to 200 nautical miles from its baselines<sup>18</sup>, and it recognizes a broader continental shelf where the outer edge of the continental margin extends beyond that distance<sup>19</sup>.

14. The rule reflected in Article 76, paragraph 1, of the Convention, being a rule of maritime entitlement, is not concerned with the maritime entitlements of other coastal States or with the method through which the outer limits of those entitlements are themselves determined. Therefore, this rule allows an overlap in the same maritime area when two coastal States have used different methods to determine the limits of their maritime entitlements. This is not undermined by the fact that only one of the two methods requires the application of "scientific and technical criteria" (Judgment, para. 75). These criteria are in practice, if not in theory, more difficult to apply than the criterion of distance. It does not follow, however, that the burden of meeting the scientific and technical criteria somehow tarnishes the maritime entitlement thus determined, compared to a maritime entitlement determined with reference to distance.

15. May treaty provisions that have not themselves been affirmed as reflecting custom serve as context for the interpretation of provisions that do reflect custom? The Judgment invokes Article 82, paragraph 1, of UNCLOS — a provision with a doubtful status under customary inter-

<sup>17</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, *I.C.J. Reports 2012 (II)*, p. 666, para. 118.

<sup>18</sup> See *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, *I.C.J. Reports 1985*, p. 33, para. 34: "natural prolongation . . . is in part defined by distance from the shore".

<sup>19</sup> Furthermore, at least under UNCLOS, a maximal limit is established in relation to the outer edge of the continental margin; see Article 76, paragraphs 5 and 6, of UNCLOS.

national law. In essence, the Court relies on the broad text of that provision, which does not indicate any exceptions or qualifications, to offer an interpretation that prevents its application in situations in which a coastal State encroaches upon the 200-nautical-mile zone of another State. This, in turn, is used as context to interpret the definition of the continental shelf under Article 76, paragraph 1, of the Convention. I have some doubts about the Court's interpretation of Article 82. Whether the purpose of this provision can be served in the situation envisaged by the Court depends, in part, on the interpretation of the "equitable sharing criteria" that will guide the distribution of payments in such a situation, pursuant to Article 82, paragraph 4, of the Convention.

16. Moreover, I am reluctant to attach significance to the fact that the substantive and procedural conditions for determining the outer limits of the extended continental shelf — namely, those enshrined in Article 76, paragraphs 4 to 9 — were the result of a compromise (Judgment, para. 76). Leaving the definition of the continental shelf to one side, the Court has refrained from pronouncing on the status under customary international law of Article 76 of UNCLOS (see *ibid.*, para. 82)<sup>20</sup>. If the criteria for determining the outer limits of the extended continental shelf are reflective of custom, then the fact that they emerged out of a compromise seems inconsequential. If they are not reflective of custom, then the pertinence of the compromise seems even more limited.

17. The preparatory work of UNCLOS assumes importance in today's Judgment. As the Judgment acknowledges, however, the question now before the Court was not debated during the Third United Nations Conference on the Law of the Sea (Judgment, para. 76). On other occasions, in situations where the preparatory work evidences little or no discussion of a topic, the Court avoided drawing any inferences for the purposes of treaty interpretation<sup>21</sup>. In my view, the Court should proceed with even greater caution where customary international law is in question.

#### *E. The Significance of the Exclusive Economic Zone*

18. The Judgment places weight on the fact that the institutions of the exclusive economic zone and the continental shelf are integrated (Judgment, para. 49) and that their legal régimes are interrelated (*ibid.*, para. 70). In this regard, two points are worth making.

<sup>20</sup> See also *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, *I.C.J. Reports 2012 (II)*, p. 666, para. 118.

<sup>21</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, *I.C.J. Reports 2011 (I)*, pp. 129-130, para. 147; *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Judgment, *I.C.J. Reports 2020*, p. 323, para. 70; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Jurisdiction and Admissibility, Judgment, *I.C.J. Reports 1995*, p. 22, para. 41.

19. First, while linked, the institutions of the exclusive economic zone and of the continental shelf remain legally distinct, and the continental shelf up to 200 nautical miles has not been absorbed by the exclusive economic zone<sup>22</sup>. The separate character of the two institutions is illustrated by the fact that, in the context of maritime delimitation, the Court maintains the distinction between the delimitation of the exclusive economic zone and the delimitation of the continental shelf even where it draws a single maritime boundary, despite the fact that the rights accruing in the continental shelf are, in the main, included among the exclusive economic zone rights<sup>23</sup>. A coastal State's entitlement to an exclusive economic zone is distinct from its entitlement to a continental shelf (even if the latter only extends up to 200 nautical miles), and indeed a State may enjoy sovereign rights over a continental shelf up to 200 nautical miles even where it has not proclaimed an exclusive economic zone, or where its exclusive economic zone is narrower than 200 nautical miles<sup>24</sup>.

20. Second, the interrelated character of the exclusive economic zone and the continental shelf is potentially relevant where the two institutions attach to the same coastal State. This was the situation in *Continental Shelf (Libyan Arab Jamahiriya/Malta)*. In that case, Libya had argued that the discontinuity in Malta's natural prolongation nullified Malta's own entitlement to a continental shelf on the basis of distance<sup>25</sup>. Libya's argument was effectively that Malta was not entitled to a continental shelf of up to 200 nautical miles unless it could prove that this shelf was the natural prolongation of its land territory. In emphasizing the importance of the criterion of distance, the Court rejected Libya's contention that Malta's continental shelf was terminated in the absence of natural prolongation in the geomorphological sense<sup>26</sup>. By contrast, the Court did not address the question of whether

<sup>22</sup> *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 33, paras. 33-34.

<sup>23</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012 (II), p. 719, para. 251, subpara. 4; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I.C.J. Reports 2007 (II), pp. 760-763, para. 321, subparas. 2-3.

<sup>24</sup> *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 33, para. 34.

<sup>25</sup> *Ibid.*, p. 34, para. 36:

"it is Libya's case that the natural prolongation, in the physical sense, of the land territory into and under the sea is still a primary basis of title to continental shelf. For Libya, as a first step each Party has to prove that the physical natural prolongation of its land territory extends into the area in which the delimitation is to be effected; if there exists a fundamental discontinuity between the shelf area adjacent to one Party and the shelf area adjacent to the other, then the boundary, it is contended, should lie along the general line of that fundamental discontinuity."

<sup>26</sup> *Ibid.*, p. 35, para. 39:

"It follows that, since the distance between the coasts of the Parties is less than 400 miles, so that no geophysical feature can lie more than 200 miles from each coast, the



Malta's continental shelf entitlement could somehow counter *Libya's* continental shelf entitlement. That question, as discussed, is a question of delimitation.

21. The fact that a coastal State's entitlement to an exclusive economic zone does not nullify *a priori* another coastal State's entitlement to an extended continental shelf is also reflected in international jurisprudence on maritime delimitation beyond 200 nautical miles. This includes the two *Bay of Bengal* cases<sup>27</sup> and the case of *Maritime Delimitation in the Indian Ocean*<sup>28</sup>. In all three cases, at least one coastal State claimed an entitlement to an extended continental shelf lying within another State's 200-nautical-mile limit. In the cases, three different international courts and tribunals proceeded with the delimitation of the maritime area, and in fact held that the entitlement to an extended continental shelf should be given some effect through the creation of a "grey area"<sup>29</sup>. While the modalities may vary in each grey area, the upshot is that the coastal State entitled to an extended continental shelf and the coastal State with maritime entitlements up to 200 nautical miles both exercise a degree of jurisdiction in the same maritime area. Following the reasoning adopted by the Court in the present case, the coastal State's claim to an extended continental shelf should have been declared inadmissible in so far as it lay within 200 nautical miles from the other State's baselines, and no maritime delimitation would have been possible in that area (see Judgment, paras. 86 and 91). Yet the three courts and tribunals did not declare Bangladesh's or Kenya's claims inadmissible in so far as they lay within 200 nautical miles from Myanmar, India or Somalia. Nor did they readjust the delimitation line beyond 200 nautical miles from Bangladesh or Kenya, so that it respects the 200-nautical-mile limit from Myanmar, India or Somalia.

22. Today's Judgment notes that, in those cases, the grey areas were of limited size and arose as an incidental result, or as a consequence, of mari-

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feature referred to as the 'rift zone' *cannot* constitute a fundamental discontinuity *terminating* the southward extension of the *Maltese* shelf and the northward extension of the *Libyan* as if it were some natural boundary." (Emphasis added.)

<sup>27</sup> *Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 4; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India), Award of 7 July 2014, RIAA*, Vol. XXXII, p. 1.

<sup>28</sup> *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), Judgment, I.C.J. Reports 2021*, p. 206.

<sup>29</sup> *Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 120, para. 471; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India), Award of 7 July 2014, RIAA*, Vol. XXXII, p. 147, para. 498; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), Judgment, I.C.J. Reports 2021*, p. 277, para. 197.

time delimitation (Judgment, paras. 71-72). This observation, however, overlooks the precedential value of the cases in the context of answering the question of determining maritime entitlements. For the purposes of the abstract question now before the Court, what matters is that the presence of grey areas at the conclusion of maritime delimitation presupposes, before that process, the existence of a maritime area where a State's entitlement to an extended continental shelf overlaps with another State's maritime entitlements up to 200 nautical miles from its coasts. If the latter maritime entitlements displaced the former, then maritime delimitation beyond 200 nautical miles in those cases would have been barred altogether, and no grey area would have been possible. The questions of whether grey areas — in the sense of areas of overlapping jurisdiction — should be recognized sparingly, whether they should cover a limited size, or whether they should be avoided altogether, would only come at play at the stage of delimitation.

23. The insistence that the jurisprudence of *Bay of Bengal* should be distinguished from the present case (Judgment, para. 72) illustrates, in my view, the Court's oscillation between abstract questions of law and the circumstances of the present case. The only difference between those cases and the case at hand that might be relevant for answering the abstract question before the Court concerns the coastal configuration of the States involved. As the Judgment notes, the previous cases involved States with adjacent coasts (*ibid.*, paras. 71-72). This, however, does not reduce their relevance to the present case. The distinction between opposite and adjacent coasts<sup>30</sup> is not always clear. Within the same case, the Court commonly finds that the coasts of the litigant parties shift from adjacent to opposite or vice versa<sup>31</sup> regardless of whether the coastal States share a land boundary or not, or that they fit in both categories<sup>32</sup>, or indeed in neither<sup>33</sup>. But even if the criterion of adjacency could be applied in a sufficiently predictable manner, it is not clear how it could inform a coastal State's maritime entitlements, which are identified on the basis of the rule reflected in Article 76, paragraph 1, of UNCLOS.

<sup>30</sup> International Hydrographic Organization, "Manual on technical aspects of the United Nations Convention on the Law of the Sea — 1982 (TALOS)" (6th ed., 2020), Appendix 1 (Glossary), para. 1: "Adjacent coasts: The coasts lying either side of a land boundary between two adjoining States". See also *ibid.*, para. 69: "Opposite coasts: The geographical relationship of the coasts of two States facing each other".

<sup>31</sup> *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Merits, Judgment, I.C.J. Reports 2001, p. 91, para. 170.

<sup>32</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 93, para. 88.

<sup>33</sup> *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment, I.C.J. Reports 1969, p. 28, para. 36.

### *F. The Practice of States*

24. The practice of States provides the strongest support for the Court's conclusion (Judgment, para. 77).

#### *1. Identifying practice*

25. There is extensive practice whereby coastal States refrain from claiming that they are entitled to an extended continental shelf that intrudes within 200 nautical miles from another coastal State's baselines<sup>34</sup>. This practice is

<sup>34</sup> For example, France, "Partial Submission to the Commission on the Limits of the Continental Shelf pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea in respect of the areas of French Guiana and New Caledonia: Part 1: Executive Summary" (May 2007), p. 3, [https://www.un.org/depts/los/clcs\\_new/submissions\\_files/fra07/fra\\_executivesummary\\_2007.pdf](https://www.un.org/depts/los/clcs_new/submissions_files/fra07/fra_executivesummary_2007.pdf) (visited 30 June 2023): "The extension is limited to the west by the area under Australian jurisdiction (EEZ)"; Ghana, "Submission for the Establishment of the Outer Limits of the Continental Shelf of Ghana pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea: Executive Summary" (April 2009), p. 5, para. 6.2, [https://www.un.org/depts/los/clcs\\_new/submissions\\_files/gha26\\_09/gha\\_2009execsummary.pdf](https://www.un.org/depts/los/clcs_new/submissions_files/gha26_09/gha_2009execsummary.pdf) (visited 30 June 2023): "1 (Point OL-GHA-5) [marking the outer limit] is a point where the outer limit line joins to the 200 [nautical miles] from Nigeria's territorial sea baseline"; Federated States of Micronesia, Papua New Guinea and the Solomon Islands, "Joint submission to the Commission on the Limits of the Continental Shelf concerning the Ontong Java Plateau: Executive Summary" (May 2009), p. 11, para. 6.5, [https://www.un.org/depts/los/clcs\\_new/submissions\\_files/fmpgsb32\\_09/exsumdocs/fmpgsb2009executivesummary.pdf](https://www.un.org/depts/los/clcs_new/submissions_files/fmpgsb32_09/exsumdocs/fmpgsb2009executivesummary.pdf) (visited 30 June 2023): "1 point (OJP-ECS-004) [marking the outer limit], where the 60 [nautical mile] formula line (Article 76, paragraph 4 (a) (ii) of the Convention) that defines the outer limit of the extended continental shelf intersects the line 200 [nautical miles] from the territorial sea baseline of Nauru"; Mozambique, "Submission to the Commission on the Limits of the Continental Shelf of the Outer Limits of the Extended Continental Shelf of the Republic of Mozambique under the Provisions of Article 76 of the United Nations Convention on the Law of the Sea, 1982: Executive Summary" (June 2010), p. 6, [https://www.un.org/depts/los/clcs\\_new/submissions\\_files/moz52\\_10/moz\\_2010\\_es.pdf](https://www.un.org/depts/los/clcs_new/submissions_files/moz52_10/moz_2010_es.pdf) (visited 30 June 2023): "Point MOZ-OL-92 [marking the outer limit] is located on the 200 [nautical mile] line measured from the territorial sea baseline of South Africa"; Kiribati, "Submission to the Commission on the Limits of the Continental Shelf: Executive Summary" (December 2012), p. 5, para. 6.3, [https://www.un.org/depts/los/clcs\\_new/submissions\\_files/kir64\\_2012/kir\\_es\\_doc.pdf](https://www.un.org/depts/los/clcs_new/submissions_files/kir64_2012/kir_es_doc.pdf) (visited 30 June 2023): "The Western Platform Area (FP\_001 to FP\_081), defined by 78 fixed points on the Hedberg line, one fixed point on the 200 [nautical mile] line measured from the Kiribati Territorial Sea baseline and one fixed point on the 200 [nautical mile] line of another coastal State"; Canada, "Partial submission to the Commission on the Limits of the Continental Shelf regarding its continental shelf in the Atlantic Ocean: Executive Summary" (December 2013), pp. 6-7, [https://www.un.org/depts/los/clcs\\_new/submissions\\_files/can70\\_13/es\\_can\\_en.pdf](https://www.un.org/depts/los/clcs_new/submissions_files/can70_13/es_can_en.pdf) (visited 30 June 2023):

"The outer limits of the continental shelf in the Labrador Sea region are defined by 47 fixed points (LS-ECS-001 through LS-ECS-047). These fixed points are either formula points established in accordance with article 76 (4) (a) (i) or (ii), points on the distance or depth constraint lines established in accordance with article 76 (5), or a point on the intersection of the line delineating the outer edge of the continental margin and the 200 [nautical mile] limit of the Kingdom of Denmark."

drawn primarily from the executive summaries of submissions to the Commission on the Limits of the Continental Shelf (hereinafter “CLCS”) of States party to UNCLOS under Article 76, paragraph 8, of the Convention.

26. This practice appears to be a general one. The generality of the practice is not necessarily to be ascertained with reference to the totality of States, but rather with reference to the States that are concerned with, or in a position to contribute to the formation of, the putative rule<sup>35</sup>. The relevant States in this context are those that, as a matter of geomorphology, are capable of sustaining a claim to an extended continental shelf intruding within 200 nautical miles from another State’s baselines. Within that pool of coastal States, there appears to be a clear trend among States from several regions. In the International Law Commission’s terminology, therefore, the practice is “sufficiently widespread and representative, as well as consistent”<sup>36</sup>.

27. I am also prepared to accept that this practice is supported by legal conviction (*opinio juris*). Identifying the subjective element of custom might be arduous when the relevant practice consists of abstentions, as was the case in *Lotus*<sup>37</sup>. By contrast, in this case the Court is presented with an abundance of States expressly limiting their claims at the 200-nautical-mile mark from other States’ baselines. Moreover, the field in question — maritime entitlements — is governed by customary international law, in the sense that customary international law clearly regulates States’ behaviour in the field, even if the precise contours of that regulation may need to be ascertained. In the face of a clearly identifiable pattern of conduct on the part of States, it is reasonable to infer that States conform to a rule of customary international law. The Court in similar situations has accepted that the general practice was accompanied by *opinio juris*<sup>38</sup>.

28. This practice cannot be dismissed simply because it emanates from States party to UNCLOS. It is true that the conduct of States that emerges from the executive summaries of their submissions to the CLCS could be attributed to an intention to comply with conventional obligations, rather

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<sup>35</sup> “Conclusions on identification of customary international law, with commentaries”, *YILC*, 2018, Vol. II, Part Two, pp. 100-101 (Commentary to Conclusion 8, paras. 3-4).

<sup>36</sup> *Ibid.*, p. 91 (Conclusion 8, para. 1).

<sup>37</sup> “*Lotus*”, *Judgment No. 9, 1927, P.C.I.J., Series A, No. 10*, p. 28.

<sup>38</sup> For example, *Right of Passage over Indian Territory (Portugal v. India), Merits, Judgment, I.C.J. Reports 1960*, p. 40.

than with customary law<sup>39</sup>. But there is nothing in these executive summaries nor in the relevant provisions of the Convention that would suggest that this conduct is peculiar to or triggered by the specific terms of those provisions. In fact, some States party to UNCLOS refrain from claiming an entitlement to areas within 200 nautical miles from the baselines of third States, non-parties of the Convention, which could only accrue benefits from customary international law rather than from the Convention<sup>40</sup>.

## 2. *Evaluating practice*

29. More complicated is the determination of the content of the putative rule of customary international law to which the practice conforms. Here, and elsewhere, *opinio juris* manifests itself in a partial way. In the publicly available documents, most States simply place their claimed outer limit of their extended continental shelf at the 200-nautical-mile mark of another State, without revealing the reasons behind their choice<sup>41</sup>. Similarly, there is little information as to the legal grounds put forward by States objecting to

<sup>39</sup> See “Conclusions on identification of customary international law, with commentaries”, *YILC*, 2018, Vol. II, Part Two, p. 102 (Commentary to Conclusion 9, para. 4).

<sup>40</sup> For example, Costa Rica and Ecuador, “A Joint Partial Submission of Data and Information on the Outer Limits of the Continental Shelf in the Panama Basin pursuant to Part VI of and Annex II to the United Nations Convention on the Law of the Sea: Part I: Executive Summary” (December 2020), p. 18, para. 6, [https://www.un.org/depts/los/clcs\\_new/submissions\\_files/criecu\\_86\\_2020/PART-I%20\(secured\).pdf](https://www.un.org/depts/los/clcs_new/submissions_files/criecu_86_2020/PART-I%20(secured).pdf) (visited 30 June 2023), with respect to Colombia; Ecuador, “A Partial Submission of Data and Information on the Outer Limits of the Continental Shelf in the Southern Region of the Carnegie Ridge pursuant to Part VI of and Annex II to the United Nations Convention on the Law of the Sea: Part I: Executive Summary” (March 2022), p. 16, para. 6, [https://www.un.org/depts/los/clcs\\_new/submissions\\_files/ecu90\\_2022/PartI.pdf](https://www.un.org/depts/los/clcs_new/submissions_files/ecu90_2022/PartI.pdf) (visited 30 June 2023), with respect to Peru.

<sup>41</sup> For example, Cook Islands, “Revised Submission to the Commission on the Limits of the Continental Shelf concerning the Manihiki Plateau: Executive Summary” (December 2021), p. 6, para. 21, [https://www.un.org/depts/los/clcs\\_new/submissions\\_files/cok23\\_09/CKI\\_REV\\_ES\\_DOC.pdf](https://www.un.org/depts/los/clcs_new/submissions_files/cok23_09/CKI_REV_ES_DOC.pdf) (visited 30 June 2023): “5 are points [marking the outer limits of the extended continental shelf] located on the 200 [nautical mile] line of an opposite or adjacent coastal State”; Denmark, “Partial Submission to the Commission on the Limits of the Continental Shelf: The Continental Shelf North of the Faroe Islands: Executive Summary” (April 2009), p. 12, [https://www.un.org/depts/los/clcs\\_new/submissions\\_files/dnk28\\_09/dnk2009executivesummary.pdf](https://www.un.org/depts/los/clcs_new/submissions_files/dnk28_09/dnk2009executivesummary.pdf) (visited 30 June 2023): “To the west, north-west, and south-east, the outer limits of the continental shelf are delineated by the 200 nautical mile limits of Iceland, Jan Mayen and the mainland of Norway, respectively”; Sri Lanka, “Submission made in accordance with the Statement of Understanding adopted by the Third United Nations Conference on the Law of the Sea, on 29 August 1980, contained in Annex II to the Final Act of the Conference, and under paragraph 8 of article 76 of the United Nations Convention on the Law of the Sea and article 3 of Annex II of the Convention: Part I: Executive Summary” (May 2009), p. 9, para. 4.1, [https://www.un.org/depts/los/clcs\\_new/submissions\\_files/lka43\\_09/lka2009executivesummary.pdf](https://www.un.org/depts/los/clcs_new/submissions_files/lka43_09/lka2009executivesummary.pdf) (visited 30 June 2023): “Point B . . . [marking the outer limit of the extended continental shelf is] where the outer limits of the extended continental shelf joins the approximate position of another coastal State’s 200 [nautical mile] line”; Bahamas, “Submission to the Com-

claims by another State to an extended continental shelf that intrudes within 200 nautical miles from their baselines<sup>42</sup>. In view of the States' silence, it is the Court's task to articulate the legal rule to which the general practice conforms. Practice will inevitably be susceptible to multiple interpretations; in this case, there are several possible rules that would explain the practice. The Court should then identify a legal rule that accommodates the broadest variety of practice, that conforms to the established principles concerning the relevant legal field (here, maritime entitlements), and that is in harmony with international jurisprudence, including the jurisprudence of this Court.

30. On this analysis, it is difficult to conclude that States, in stopping at the 200-nautical-mile limit in their submissions to the CLCS, consider that their entitlement to an extended continental shelf is somehow limited by a neighbouring State's own maritime entitlement. Such a legal conviction would be in tension with the principles governing the establishment of maritime entitlements, including entitlements to an extended continental shelf, as well as with the international practice of maritime delimitations involving an extended continental shelf on the one hand and, on the other, a 200-nautical-mile maritime zone.

31. The most likely explanation for the abundant State practice is, in my view, a legal conviction that, under the applicable rules on maritime delimitation, an entitlement to an extended continental shelf in principle shall be given no effect in so far as it overlaps with another State's entitlement to a 200-nautical-mile zone. This can be understood as a manifestation of the goal to achieve "an equitable solution", which, as noted, is the paramount consideration in any delimitation exercise<sup>43</sup>. The Court recently affirmed that "the achievement of an equitable solution requires that, so far as possi-

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mission on the Limits of the Continental Shelf: Executive Summary" (February 2014), p. 4, para. 6.3, [https://www.un.org/depts/los/clcs\\_new/submissions\\_files/bhs71\\_14/BHS-ES-DOC.pdf](https://www.un.org/depts/los/clcs_new/submissions_files/bhs71_14/BHS-ES-DOC.pdf) (visited 30 June 2023); "FP 1 [a point marking the outer limit of the extended continental shelf] marks the location of the intersection of the 350 [nautical mile] constraint line with the 200 [nautical mile] line measured from the territorial sea baselines of the United States of America"; Oman, "Submission to the Commission on the Limits of the Continental Shelf pursuant to article 76 (8) of the United Nations Convention on the Law of the Sea: Executive Summary" (October 2017), p. 6, para. 7.0.2, [https://www.un.org/depts/los/clcs\\_new/submissions\\_files/omn78\\_17/omn\\_es.pdf](https://www.un.org/depts/los/clcs_new/submissions_files/omn78_17/omn_es.pdf) (visited 30 June 2023); "1 point [marking the outer limit of the extended continental shelf] on the line 200 nautical miles from the territorial sea baseline of India".

<sup>42</sup> For example, Japan, Letter to the Secretary-General of the United Nations (28 December 2012), [https://www.un.org/depts/los/clcs\\_new/submissions\\_files/chn63\\_12/jpn\\_re\\_chn\\_28\\_12\\_2012.pdf](https://www.un.org/depts/los/clcs_new/submissions_files/chn63_12/jpn_re_chn_28_12_2012.pdf) (visited 30 June 2023); Colombia, Costa Rica and Panama, Letter to the Secretary-General of the United Nations (5 February 2014), [https://www.un.org/depts/los/clcs\\_new/submissions\\_files/nic66\\_13/col\\_cri\\_pan\\_re\\_nic\\_2014\\_02\\_05\\_e.pdf](https://www.un.org/depts/los/clcs_new/submissions_files/nic66_13/col_cri_pan_re_nic_2014_02_05_e.pdf) (visited 30 June 2023).

<sup>43</sup> See paragraph 5 above.

ble, the line of delimitation should allow the coasts of the Parties to produce their effects in terms of maritime entitlements in a reasonable and mutually balanced way”<sup>44</sup>.

32. The goal of ensuring an equitable solution has been translated into what the Court refers to as the “usual” three-stage methodology<sup>45</sup>. While not mandatory, this methodology is based on objective geographical criteria, and it has brought predictability and consistency in maritime delimitation<sup>46</sup>.

33. The first step towards achieving an equitable solution under the three-stage methodology is to draw a provisional equidistance line. It is reported that an overwhelming majority of maritime delimitation agreements involving States with opposite coasts or with coasts of a hybrid character employs an equidistance line<sup>47</sup>. In *Territorial and Maritime Dispute*, the provisional equidistance line was defined as “a line each point on which is an equal distance from the nearest points on the two relevant coasts” of the parties<sup>48</sup>. When applied to States with opposite coasts lying further than 400 nautical miles apart, the provisional equidistance line ensures that each coastal State is granted a continental shelf of at least 200 nautical miles. It is not obvious why the provisional equidistance line should be drawn differently in a situation involving entitlements to an extended continental shelf<sup>49</sup>, including those of States with opposite coasts. Even if the provisional equidistance line is drawn with reference to the outer limits of the coastal States’ respective continental shelf entitlements<sup>50</sup>, the fact that one of them is entitled to a 200-nautical-mile zone in the relevant area under delimitation may constitute a relevant circumstance warranting the adjustment of the provisional

<sup>44</sup> *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, I.C.J. Reports 2021, p. 250, para. 124, citing *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012 (II), p. 703, para. 215; see also *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment, I.C.J. Reports 1969, p. 53, para. 101, subpara. (C) (1), *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 43, para. 37, and *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 127, para. 201.

<sup>45</sup> *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, I.C.J. Reports 2021, p. 252, para. 131.

<sup>46</sup> *Ibid.*, p. 251, para. 128.

<sup>47</sup> Yoshifumi Tanaka, *Predictability and Flexibility in the Law of Maritime Delimitation* (2nd ed., Oxford: Hart 2019), p. 191, with further references therein.

<sup>48</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012 (II), p. 695, para. 191; see also Article 6, paragraph 1, of the Convention on the Continental Shelf (concluded 29 April 1958; entered into force 10 June 1964), United Nations, *Treaty Series*, Vol. 499, p. 311.

<sup>49</sup> See *Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, ITLOS Reports 2012, p. 117, para. 455; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award of 7 July 2014, RIAA, Vol. XXXII, p. 139, para. 464; *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, Judgment, ITLOS Reports 2017, p. 142, para. 526; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, I.C.J. Reports 2021, pp. 276-277, para. 195.

<sup>50</sup> As argued by Nicaragua: see Judgment, para. 29.

equidistance line at the 200-nautical-mile limit<sup>51</sup>. In either case, at the end of the maritime delimitation process, the area of the continental shelf up to 200 nautical miles of a coastal State will in principle be found to appertain to that coastal State, and not to another State that may be entitled to an extended continental shelf in the same area. While a State's entitlement to an extended continental shelf remains intact in the abstract, in practice it will likely be subordinated to the neighbouring State's entitlement to a 200-nautical-mile zone by virtue of the goal of achieving an equitable solution.

34. The executive summaries of States' submissions to the CLCS should be assessed against this legal background. It then becomes clear that coastal States refrain from claiming an extended continental shelf within 200 nautical miles from their neighbours' coasts because they hold the legal conviction that principles of maritime delimitation would eventually prevent them from exercising the sovereign rights over that maritime area. Of course, a State cannot unilaterally implement any delimitation through its submission to the CLCS<sup>52</sup>, nor does the CLCS have any role in the delimitation process<sup>53</sup>. Nonetheless, a State understandably considers it futile — or indeed inequitable — to claim before the CLCS an area over which, under the governing principles of delimitation that will eventually apply, it will never exercise continental shelf rights. There is little incentive to enter into a costly and lengthy process of establishing one's entitlement in an area over which one is unlikely ever to exercise jurisdiction.

35. Of course, exceptional situations might call for the adoption of a different outcome. The relevant circumstances of a specific case might justify a delimitation line that does not merely reach the 200-nautical-mile limit but exceeds it. One can imagine, for example, a situation where State A has a particularly narrow coastal front but is entitled to an extended continental shelf, whereas State B, lying opposite, has an exceptionally wide coastal front, over which it is entitled to a continental shelf only up to 200 nautical miles. In such a situation, it is conceivable that, in the course of a delimitation, the narrow continental shelf projection of State A's coastal front be allowed to intrude within State B's continental shelf entitlement. Excep-

<sup>51</sup> See *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 33, para. 33: "one of the relevant circumstances to be taken into account for the delimitation of the continental shelf of a State is the legally permissible extent of the exclusive economic zone appertaining to that same State".

<sup>52</sup> See *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984, p. 299, para. 112 (1).

<sup>53</sup> *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), p. 137, para. 112.



tional circumstances might also justify the position taken by the few States the submissions of which to the CLCS stand in contrast with the rest.

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36. In sum, a coastal State's entitlement to an extended continental shelf is not curtailed because of another coastal State's entitlement to 200-nautical-mile zones in the same maritime area. Consequently, any overlap between the two entitlements must be resolved through the process of maritime delimitation. In that context, I am persuaded that a coastal State's entitlement to an extended continental shelf will in principle be sacrificed in order to give effect to another coastal State's entitlement to 200-nautical-mile zones. This rule ought to be applied with regard to the specific facts of each case, including the case before the Court.

### III. CONCLUSION

37. For the reasons set out above, I think that the Court is not in a position today to reject the submissions that Nicaragua made in its written pleadings. In my view, the Court should have responded to both questions formulated in the Order of 4 October 2022, and it should have proceeded to hold oral proceedings to decide the remaining issues dividing the Parties in this case. In voting against the rejection of Nicaragua's proposed delimitation lines, I do not necessarily endorse Nicaragua's position on the question of maritime delimitation. Rather, I express my reservations about the Court's rejection of Nicaragua's position on the question of maritime delimitation without the benefit of oral argument.

38. My reservations remain regardless of the Court's answer to the first question. As the term suggests, and as Article 60, paragraph 2, of the Rules indicates, a party's final submissions are its final word in a case. By contrast, each party is free to amend the submissions it presents in its written pleadings, provided that it remains within the confines of the dispute as presented in the application<sup>54</sup>. At the end of its oral argument in the present phase of the proceedings in this case, Nicaragua formally reserved its right to complete its final submissions<sup>55</sup>.

<sup>54</sup> For that final point, see *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 1992*, p. 267, para. 69, citing *Société Commerciale de Belgique, Judgment, 1939, P.C.I.J., Series A/B, No. 78*, p. 173; see also *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, *Judgment, I.C.J. Reports 2022 (I)*, p. 293, para. 44.

<sup>55</sup> CR 2022/27, p. 39, para. 29 (Argüello Gómez).

39. The Judgment shifts its focus from the final submissions presented by Nicaragua at the oral proceedings to the submissions that it had presented in its written pleadings. Those written submissions were formulated at a time before the Court's decision to direct the Parties to specific questions, and they address issues extending beyond the Court's focus at the current stage of the proceedings. This fact in itself justifies allowing the Parties to revise their positions on these issues in light of today's Judgment.

*(Signed)* Hilary CHARLESWORTH.

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