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International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2017

Public sitting

held on Monday 3 July 2017, at 10 a.m., at the Peace Palace,

President Abraham presiding,

***in the cases concerning* 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)**

VERBATIM RECORD

ANNÉE 2017

Audience publique

tenue le lundi 3 juillet 2017, à 10 heures, au Palais de la Paix,

sous la présidence de M. Abraham, président,

***dans les affaires relatives à la* Délimitation maritime dans la mer des Caraïbes et l'océan Pacifique (Costa Rica c. Nicaragua) *et à la* Frontière terrestre dans la partie septentrionale d'Isla Portillos (Costa Rica c. Nicaragua)**

COMPTE RENDU

Present:	President	Abraham
	Vice-President	Yusuf
	Judges	Owada
		Tomka
		Bennouna
		Cançado Trindade
		Greenwood
		Xue
		Donoghue
		Gaja
		Sebutinde
		Bhandari
		Robinson
		Gevorgian
	Judges *ad hoc*	Simma
		Al-Khasawneh
	Registrar	Couvreur

Présents : M. Abraham, président
M. Yusuf, vice-président
MM. Owada
Tomka
Bennouna
Cançado Trindade
Greenwood
Mmes Xue
Donoghue
M. Gaja
Mme Sebutinde
MM. Bhandari
Robinson
Gevorgian, juges
MM. Simma
Al-Khasawneh, juges *ad hoc*

M. Couvreur, greffier

The Government of Costa Rica is represented by:

H.E. Mr. Manuel A. González Sanz, Minister for Foreign Affairs and Worship;

H.E. Mr. Edgar Ugalde Alvarez, Ambassador on Special Mission,

as Agent;

H.E. Mr. Sergio Ugalde, Ambassador of Costa Rica to the Kingdom of the Netherlands, Member of the Permanent Court of Arbitration,

as Co-Agent, Counsel and Advocate;

Mr. Marcelo Kohen, Professor of International Law at the Graduate Institute of International and Development Studies, Geneva, member and Secretary-General of the Institut de droit international,

Mr. Samuel Wordsworth, Q.C., member of the English Bar, member of the Paris Bar, Essex Court Chambers,

Mr. Coalter G. Lathrop, member of the North Carolina ***Bar***, Sovereign Geographic,

Mr. Arnoldo Brenes, member of the Costa Rican Bar, Senior Adviser to the Ministry of Foreign Affairs and Worship,

Ms Kate Parlett, member of the English Bar, 20 Essex Street Chambers,

Ms Katherine Del Mar, member of the English Bar, 4 New Square, Lincoln's Inn,

as Counsel and Advocates;

Mr. Simon Olleson, member of the English Bar, Three Stone,

as Counsel;

Mr. Ricardo Otarola, Adviser to the Ministry of Foreign Affairs and Worship,

Ms Ana Patricia Villalobos, chargé d'affaires, Embassy of Costa Rica to Venezuela,

Ms Alejandra González, Minister Counsellor and Consul General of Costa Rica to the Kingdom of the Netherlands,

Mr. Christian Kandler, Minister Counsellor at the Costa Rican Embassy in the Kingdom of the Netherlands,

Mr. Najib Messihi, Ph.D. candidate, Graduate Institute of International and Development Studies, Geneva,

as Assistant Counsel;

Ms Ericka Araya, administrative assistant at the Embassy of Costa Rica in the Kingdom of the Netherlands,

as Assistant.

Le Gouvernement du Costa Rica est représenté par :

S. Exc. M. Manuel A. González Sanz, ministre des affaires étrangères et des cultes ;

S. Exc. M. Edgar Ugalde Alvarez, ambassadeur en mission spéciale,

comme agent ;

S. Exc. M. Sergio Ugalde, ambassadeur du Costa Rica auprès du Royaume des Pays-Bas, membre de la Cour permanente d'arbitrage,

comme coagent, conseil et avocat ;

M. Marcelo Kohen, professeur de droit international à l'Institut de hautes études internationales et du développement de Genève, membre et secrétaire général de l'Institut de droit international,

M. Samuel Wordsworth, Q.C., membre des barreaux d'Angleterre et de Paris, Essex Court Chambers,

M. Coalter G. Lathrop, membre du barreau de Caroline du Nord, Sovereign Geographic,

M. Arnoldo Brenes, membre du barreau du Costa Rica, conseiller principal auprès du ministère des affaires étrangères et des cultes,

Mme Kate Parlett, membre du barreau d'Angleterre, 20 Essex Street Chambers,

Mme Katherine Del Mar, membre du barreau d'Angleterre, 4 New Square, Lincoln's Inn,

comme conseils et avocats ;

M. Simon Olleson, membre du barreau d'Angleterre, Three Stone,

comme conseil ;

M. Ricardo Otarola, conseiller auprès du ministère des affaires étrangères et des cultes,

Mme Ana Patricia Villalobos, chargé d'affaires à l'ambassade du Costa Rica au Venezuela,

Mme Alejandra González, ministre-conseiller et consul général du Costa Rica auprès du Royaume des Pays-Bas,

M. Christian Kandler, ministre-conseiller à l'ambassade du Costa Rica au Royaume des Pays-Bas,

M. Najib Messihi, doctorant à l'Institut de hautes études internationales et du développement de Genève,

comme conseils adjoints ;

Mme Ericka Araya, assistante administrative à l'ambassade du Costa Rica au Royaume des Pays-Bas,

comme assistante.

The Government of the Republic of Nicaragua is represented by:

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as Agent and Counsel;

Mr. Vaughan Lowe, Q.C., member of the English Bar, Emeritus Professor of International Law, Oxford University, member of the Institut de droit international,

Mr. Lawrence H. Martin, Attorney at Law, Foley Hoag LLP, member of the Bars of the United States Supreme Court, the District of Columbia and the Commonwealth of Massachusetts,

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

Mr. Paul Reichler, Attorney at Law, Foley Hoag LLP, Washington D.C., member of the Bars of the United States Supreme Court and the District of Columbia,

Mr. Antonio Remiro Brotóns, Professor of International Law, Universidad Autónoma de Madrid, member of the Institut de droit international,

Mr. Benjamin Samson, Ph.D. candidate, Centre de droit international de Nanterre (CEDIN), University Paris Nanterre, Visiting Scholar, George Washington University Law School,

as Counsel and Advocates;

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

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

Mr. Julio César Saborio, Juridical Adviser, Ministry of Foreign Affairs,

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

Mr. Edgardo Sobenes Obregon, Counsellor, Embassy of Nicaragua in the Kingdom of the Netherlands,

Ms Claudia Loza Obregon, Legal Adviser, Ministry of Foreign Affairs,

Mr. Yuri Parkhomenko, Attorney at Law, Foley Hoag LLP (United States of America),

as Counsel;

Ms Gimena González, Researcher in public international law,

Ms Ilona Tan, Legal Intern, Foley Hoag LLP,

as Legal Assistants;

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

Le Gouvernement du Nicaragua est représenté par :

S. Exc. M. Carlos José Argüello Gómez, ambassadeur du Nicaragua auprès du Royaume des Pays-Bas, membre de la Commission du droit international,

comme agent et conseil ;

M. Vaughan Lowe, Q.C., membre du barreau d'Angleterre, professeur émérite de droit international à l'Université d'Oxford, membre de l'Institut de droit international,

M. Lawrence H. Martin, avocat au cabinet Foley Hoag LLP, membre des barreaux de la Cour suprême des Etats-Unis d'Amérique, du district de Columbia et du Commonwealth du Massachusetts,

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

M. Paul Reichler, avocat au cabinet Foley Hoag LLP, Washington D.C., membre des barreaux de la Cour suprême des Etats-Unis d'Amérique et du district de Columbia,

M. Antonio Remiro Brotóns, professeur de droit international à l'Universidad Autónoma de Madrid, membre de l'Institut de droit international,

M. Benjamin Samson, doctorant au Centre de droit international de Nanterre (CEDIN), Université Paris Nanterre, professeur invité, faculté de droit de l'Université George Washington,

comme conseils et avocats ;

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

M. Walner Molina Pérez, conseiller juridique au ministère des affaires étrangères,

M. Julio César Saborio, conseiller juridique au ministère des affaires étrangères,

Mme Tania Elena Pacheco Blandino, conseillère juridique au ministère des affaires étrangères,

M. Edgardo Sobenes Obregon, conseiller à l'ambassade du Nicaragua au Royaume des Pays-Bas,

Mme Claudia Loza Obregon, conseillère juridique au ministère des affaires étrangères,

M. Yuri Parkhomenko, avocat au cabinet Foley Hoag LLP (Etats-Unis d'Amérique),

comme conseils ;

Mme Gimena González, chercheuse en droit international public,

Mme Ilona Tan, stagiaire en droit au cabinet Foley Hoag LLP,

comme assistants juridiques ;

M. Robin Cleverly, M.A., D.Phil, C.Geol, FGS, consultant en droit de la mer, Marbdy Consulting Ltd,

Ms Victoria Leader, Geographical and Technical Consultant,

as Scientific and Technical Advisers;

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

as Administrator.

Mme Victoria Leader, consultante dans les domaines géographique et technique,

comme conseillers scientifiques et techniques ;

Mme Sherly Noguera de Argüello, consul général et ministre-conseiller de la République du Nicaragua,

comme administrateur.

The PRESIDENT: Veuillez vous asseoir. The sitting is open.

The Court meets today to hear the Parties' oral arguments in the joined cases concerning *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica* v. *Nicaragua)* and the *Land Boundary in the Northern Part of Isla Portillos (Costa Rica* v. *Nicaragua)*.

Judge Crawford has withdrawn from the cases, in accordance with Article 17, paragraph 2, of the Statute of the Court.

Since the Court does not include upon the Bench a judge of the nationality of either of the Parties, both Parties have availed themselves of the right, under Article 31, paragraph 3, of the Statute, to choose a judge *ad hoc*. Costa Rica chose Mr. Bruno Simma and Nicaragua chose Mr. Awn Al-Khasawneh to sit in both cases.

Article 20 of the Statute provides that "[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously". Pursuant to Article 31, paragraph 6, of the Statute, the same provision applies to judges *ad hoc*, who have to make a new solemn declaration in each case in which they participate, as stated in Article 8, paragraph 3, of the Rules of Court.

In accordance with custom, I shall first say a few words about the career and qualifications of each judge *ad hoc* before inviting him to make his solemn declaration.

Mr. Bruno Simma, of German nationality, is well-known to the Court, since he served as a Judge from 2003 to 2012, and has been chosen as judge *ad hoc* in the case concerning *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica)* and the case concerning *Dispute over the Status and Use of the Waters of the Silala (Chile* v. *Bolivia)*. Mr. Simma studied law at the University of Innsbruck, where he obtained a doctorate degree in 1966. In 1973, he became Professor of International Law and European Community Law at the University of Munich, where he went on to serve as Dean of the Faculty of Law between 1995 and 1997. Mr. Simma also has a longstanding academic career at the University of Michigan Law School, where he began teaching in 1986, was appointed Professor of Law in 1987 and where a Chair was created in his name in 2009. He has twice been the Director of Studies of The Hague Academy of International Law, and in 2009 he delivered its prestigious general course in public

international law. His publications in international law are numerous and well-known. Mr. Simma was a member of the United Nations International Law Commission from 1996 to 2003. He has appeared as advocate in various cases before the Court and has sat as arbitrator in numerous important arbitration cases. Since 1 December 2012, he has been an Arbitrator at the Iran-United States Claims Tribunal. Mr. Simma is the recipient of numerous awards, including honorary doctorate degrees.

Mr. Awn Al-Khasawneh, of Jordanian nationality, is also well-known to the Court, having served as a Judge from 2000 to 2011 and as Vice-President from 2006 to 2009. Mr. Al-Khasawneh read history and law at Cambridge University and completed post-graduate studies in international law at the same university. He then pursued a distinguished career in the diplomatic service of his country, including serving as the Head of the Legal Department at the Ministry of Foreign Affairs; as Ambassador; as Adviser to the King and Adviser of the State on international law with the rank of Cabinet Minister; and as Chief of the Royal Court. He is well acquainted with the United Nations, having served as representative of Jordan in the Sixth Committee of the General Assembly for two decades and as Jordan's alternate representative on the Security Council (from 1981 to 1982). He was a member of the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities, from 1984 to 1993. He was also a member of the International Law Commission from 1986 to 1999. He has been chosen as arbitrator in several arbitration cases. He also represented his country at numerous conferences and committees in the field of the progressive development of international law. After his departure from the Court in 2011, Mr. Al-Khasawneh became Prime Minister of his country, a position he occupied until April 2012. He is an Honorary Fellow of Queens' College, Cambridge, and he has lectured at prestigious universities around the world. He has received various Jordanian distinctions and, in 1997, he was decorated by the French Government as a *Grand Officier de la Légion d'Honneur.*

In accordance with the order of precedence fixed by Article 7, paragraph 3, of the Rules of Court, I shall first invite Mr. Simma to make the solemn declaration prescribed by the Statute, and I would request all those present to rise.

Mr. SIMMA:

"I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously."

The PRESIDENT: Thank you. I shall now invite Mr. Al-Khasawneh to make the solemn declaration prescribed by the Statute.

Mr. AL-KHASAWNEH:

"I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously."

The PRESIDENT: Thank you. Please be seated. I take note of the solemn declarations made by Mr. Simma and Mr. Al-Khasawneh and declare them duly installed as judges *ad hoc* in the cases concerning *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)*.

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Je vais maintenant rappeler les principales étapes de la procédure dans les deux affaires.

Par une requête déposée au Greffe de la Cour le 25 février 2014, la République du Costa Rica a introduit une instance contre la République du Nicaragua au sujet d'un différend relatif «à l'établissement, entre les deux Etats, dans la mer des Caraïbes et l'océan Pacifique, de frontières maritimes uniques délimitant l'ensemble de leurs espaces maritimes respectifs, sur la base des règles et principes applicables du droit international» — il s'agit de l'affaire relative à la *Délimitation maritime dans la mer des Caraïbes et l'océan Pacifique (Costa Rica c. Nicaragua)* à laquelle je me référerai comme étant l'«affaire relative à la *Délimitation maritime*».

Par ordonnance en date du 1er avril 2014, la Cour a fixé au 3 février 2015 et au 8 décembre 2015, respectivement, les dates d'expiration des délais pour le dépôt d'un mémoire par le Costa Rica et d'un contre-mémoire par le Nicaragua. Le mémoire et le contre-mémoire ont été déposés dans les délais ainsi fixés.

Lors d'une réunion que j'ai tenue avec les représentants des Parties le 28 janvier 2016, celles-ci se sont accordées pour considérer que le dépôt d'une réplique et d'une duplique en l'espèce n'était pas nécessaire.

En application du paragraphe 1 de l'article 67 du Règlement de la Cour, le greffier a, par des lettres en date du 13 avril 2016, informé les Parties que la Cour envisageait de faire procéder à une expertise dans le cadre de laquelle un ou plusieurs experts seraient chargés de rassembler, en se rendant sur place, l'ensemble des éléments factuels relatifs à l'état de la côte entre le point situé sur la rive droite du fleuve San Juan à son embouchure et le point de la côte le plus proche de Punta de Castilla, tels que ces deux points pouvaient être identifiés à ce moment.

Après avoir pris connaissance des vues des Parties, la Cour a, par une ordonnance en date du 31 mai 2016, décidé qu'il serait procédé à une expertise, conformément aux articles 48 et 50 de son Statut. Elle a indiqué que cette expertise serait confiée à deux experts indépendants, qui seraient désignés par ordonnance du président de la Cour et devraient se rendre sur place afin de donner leur avis à la Cour en ce qui concerne l'état de la côte entre les points invoqués respectivement par le Costa Rica et le Nicaragua, dans leurs écritures, comme étant le point de départ de la frontière maritime dans la mer des Caraïbes.

Après avoir consulté les Parties, j'ai, par une ordonnance du 16 juin 2016, désigné les deux experts, à savoir : M. Eric Fouache, de nationalité française, professeur de géographie, président de l'association internationale des géomorphologues ; et M. Francisco Gutiérrez, de nationalité espagnole, professeur de géologie et de géomorphologie, ancien membre du comité exécutif de l'association internationale des géomorphologues. Ceux-ci ont ensuite fait une déclaration solennelle, par laquelle ils se sont engagés à s'acquitter de leurs fonctions en tout honneur, impartialité et discrétion.

Les experts ont indiqué à la Cour qu'il était à leur sens nécessaire de procéder à deux visites sur les lieux, l'une vers le début du mois de décembre (qui correspond à une période pluvieuse et de débit élevé du fleuve San Juan) et l'autre en mars ou au début du mois d'avril (période moins pluvieuse et de faible débit du San Juan).

Une première visite sur les lieux s'est déroulée du 4 au 9 décembre 2016.

Le 16 janvier 2017, le Costa Rica a introduit une instance contre le Nicaragua au sujet d'un différend concernant «l'emplacement précis de la frontière terrestre séparant Isla Portillos du banc de sable de la lagune de Los Portillos/Harbor Head», ainsi que «l'établissement …, par le Nicaragua, d'un campement militaire sur la plage d'Isla Portillos» — il s'agit de l'affaire relative à la *Frontière terrestre dans la partie septentrionale d'Isla Portillos (Costa Rica c. Nicaragua)*, à laquelle je me référerai comme étant «l'affaire relative à *Isla Portillos*». Dans sa requête, le Costa Rica a prié la Cour de joindre, en application de l'article 47 de son Règlement, la nouvelle instance à celle relative à la *Délimitation maritime*.

Par une ordonnance du 2 février 2017, la Cour a fixé au 2 mars 2017 et au 18 avril 2017, respectivement, les dates d'expiration des délais pour le dépôt d'un mémoire du Costa Rica et d'un contre-mémoire du Nicaragua dans l'affaire relative à *Isla Portillos*. Le mémoire et le contre-mémoire ont été déposés dans les délais ainsi fixés.

Par son ordonnance du 2 février 2017, la Cour a également décidé de joindre les instances relatives à la *Délimitation maritime* et à *Isla Portillos*.

Par une lettre du 3 février 2017, le greffier a informé les Parties que la Cour avait décidé que les audiences dans les affaires jointes s'ouvriraient le 3 juillet 2017.

La seconde visite sur les lieux par les experts désignés en l'affaire relative à la *Délimitation maritime* s'est déroulée du 12 au 17 mars 2017.

Par une lettre du 1er mai 2017, le greffier a fait tenir aux Parties copie du rapport déposé par les experts. Chacune d'entre elles s'est vu octroyer jusqu'au 1er juin 2017 pour présenter toutes observations écrites qu'elle souhaiterait faire sur ledit rapport.

Le 16 mai 2017, j'ai rencontré les représentants des Parties pour discuter de l'organisation de la procédure orale dans les affaires jointes ; les Parties se sont alors accordées pour considérer qu'elles n'estimaient pas nécessaire de poser des questions aux experts désignés par la Cour à l'audience. Par lettres en date du 29 mai 2017, le greffier a informé les Parties du calendrier de la procédure orale adopté par la Cour.

Sous le couvert d'une lettre en date du 1er juin 2017, le Costa Rica a communiqué à la Cour les observations écrites de son gouvernement sur le rapport des experts. Par une lettre de la même date, le Nicaragua a indiqué ne pas avoir, à ce stade, d'observations écrites à formuler. Les

observations du Costa Rica ont été communiquées aux experts. Les commentaires de ces derniers sur lesdites observations ont été communiqués aux Parties par une lettre du 8 juin 2017.

Par une lettre en date du 12 juin 2017, le greffier a transmis aux experts la question d'un membre de la Cour, à laquelle ils ont répondu le 15 juin 2017. Leur réponse a été immédiatement communiquée aux Parties.

Par lettre du 28 juin 2017, le greffier a transmis aux Parties une question de la Cour, les invitant à y répondre au cours de leur premier tour de plaidoiries.

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Conformément au paragraphe 2 de l'article 53 de son Règlement, la Cour, après avoir consulté les Parties, a décidé de rendre accessibles au public, à l'ouverture de la procédure orale, des exemplaires des pièces de procédure et des documents annexés. Elle a également décidé que le rapport des experts et certains éléments connexes seraient aussi rendus publics. En outre, l'ensemble de ces documents seront placés dès aujourd'hui sur le site Internet de la Cour.

Je note la présence devant la Cour des agents, conseils et avocats des deux Parties. Conformément aux dispositions relatives à l'organisation de la procédure arrêtées par la Cour, les audiences comprendront un premier et un second tour de plaidoiries. Chaque Partie disposera de trois séances de trois heures pour le premier tour, puis d'une séance de trois heures et d'une séance d'une heure et demie pour le second. Il s'agit bien évidemment d'un temps de parole maximal, que les Parties ne devront utiliser qu'en tant que de besoin. Le premier tour débute aujourd'hui et se terminera le vendredi 7 juillet. Le second tour des plaidoiries débutera lundi prochain, le lundi 10 juillet, et s'achèvera le jeudi 13 juillet.

Le Costa Rica, qui est l'Etat demandeur dans les deux affaires, sera entendu le premier. Compte tenu du temps qu'a pris l'ouverture de ces audiences, la délégation du Costa Rica pourra, si nécessaire, dépasser 13 heures d'une quinzaine de minutes.

Je donne à présent la parole à S. Exc. M. l'ambassadeur Ugalde Álvarez, agent du Costa Rica. Excellence, vous avez la parole.

M. UGALDE ÁLVAREZ :

1. Monsieur le président, Mesdames et Messieurs de la Cour, c'est un privilège de comparaître une nouvelle fois devant vous au nom du Costa Rica. Je le fais en présence du ministre des affaires étrangères de mon pays, M. Manuel González Sanz. Sa présence témoigne de l'importance que mon gouvernement attache aux présentes audiences.

2. Monsieur le président, dans la présente instance, le Costa Rica comme requérant demande à ce que la Cour détermine, dans son intégralité, le tracé des frontières maritimes uniques délimitant l'ensemble des espaces maritimes relevant respectivement du Costa Rica et du Nicaragua dans la mer des Caraïbes et l'océan Pacifique. Dans une requête plus récente, mon pays a également demandé à la Cour de trancher deux questions supplémentaires concernant la frontière terrestre dans la région d'Isla Portillos, adjacente à la mer des Caraïbes.

3. Il n'aura pas échappé aux membres de la Cour que le Costa Rica et le Nicaragua étaient très récemment devant la Cour pour lui demander de régler des différends relatifs à certaines activités nicaraguayennes dans la zone frontalière ainsi que d'autres questions portant sur la zone attenante à la frontière terrestre. En décembre 2015, la Cour a rendu son arrêt au fond dans les affaires : *Certaines activités* et *Construction d'une route*[1]. A cet égard, le Costa Rica souhaitera exprimer à la Cour toute sa gratitude pour le rôle significatif qu'elle a joué dans le règlement pacifique de ces différends. C'est donc avec une confiance renouvelée que le Costa Rica demande à la Cour de trancher les présents différends, qui seront, du moins comme mon pays l'espère, les derniers entre ces deux Etats à être portés devant vous.

4. Le Costa Rica a introduit la présente instance du fait de son attachement au respect du droit international et de sa confiance dans le règlement pacifique des différends. Il initia l'affaire relative à la délimitation maritime parce que les deux Etats n'avaient pas été en mesure d'aboutir à un accord sur la délimitation de leurs frontières maritimes. Concernant la frontière terrestre dans la région d'Isla Portillos, le Costa Rica fut contraint de déposer une seconde requête à cause de la regrettable méconnaissance, par le Nicaragua, de votre arrêt du 16 décembre 2015. Mon pays espère et croit fortement que le règlement pacifique de ces différends, conformément au droit

[1] *Certaines activités menées par le Nicaragua dans la région frontalière (Costa Rica c. Nicaragua)* et *Construction d'une route au Costa Rica le long du fleuve San Juan (Nicaragua c. Costa Rica), arrêt, C.I.J. Recueil 2015 (II)*, p. 665.

international, apportera la sécurité juridique et contribuera au développement pacifique des relations bilatérales entre nos deux Etats.

5. Monsieur le président, Mesdames et Messieurs de la Cour, la première affaire implique la mise en œuvre des principes bien établis en matière de délimitation maritime, principalement développés par la jurisprudence de votre Cour, tandis que pour la seconde, il s'agit d'appliquer votre arrêt du 16 décembre 2015.

6. Concernant la délimitation maritime, le Costa Rica revendique des frontières maritimes fondées sur l'équidistance aussi bien dans l'océan Pacifique que dans la mer des Caraïbes, et ce, pour ce qui est de la mer territoriale d'une part, et de de la zone économique exclusive et du plateau continental d'autre part. Le Costa Rica est fermement d'avis que, dans le Pacifique, compte tenu de la géographie côtière et de toutes les circonstances pertinentes alléguées, une ligne d'équidistance non ajustée assure une répartition juste et équitable des espaces maritimes, alors que, dans la mer des Caraïbes, un ajustement de la ligne d'équidistance au niveau de la zone économique exclusive et du plateau continental est nécessaire pour tenir compte de la concavité des côtes des trois Etats qui bordent la partie sud-ouest de la mer en question.

7. En réponse au Costa Rica, le Nicaragua avance des revendications qui impliquent un refaçonnement plutôt drastique de la géographie costa-ricienne, dans le but d'obtenir des espaces maritimes qui reviendraient, sans cela, au Costa Rica. La position du Nicaragua n'est pas conforme au droit international applicable et à la jurisprudence. Pire encore, elle révèle une incohérence inhérente dans l'appréhension des deux zones maritimes en jeu, à savoir le Pacifique et les Caraïbes, comme il le sera démontré au cours des audiences à venir.

8. Du côté des Caraïbes, j'aimerais souligner l'existence de deux questions secondaires qui opposent les Parties.

9. La première a trait au point de départ de la délimitation maritime qui devra, comme l'expliquera le Costa Rica, être défini sur la base de la situation géographique actuelle. De plus, concernant la frontière terrestre dans la partie septentrionale d'Isla Portillos, la stratégie du Nicaragua semble se focaliser sur la réouverture d'une question que vous aviez déjà tranchée dans votre arrêt relatif à l'affaire *Certaines activités*. Le Nicaragua persiste dans sa revendication d'un

territoire costa-ricien[2], et ce malgré la clarté de votre arrêt de décembre 2015. Cela est en totale contradiction avec les principes de droit international applicables, notamment celui de l'autorité de la chose jugée, comme le démontrera le Costa Rica au cours des deux prochains jours d'audiences.

10. La deuxième question concerne la tentative par le Nicaragua, sans fondement aucun, de tirer profit d'un accord de délimitation non ratifié entre le Costa Rica et la Colombie[3]. Un accord qui n'est jamais entré en vigueur et dont le Nicaragua n'a jamais été partie. La position du Nicaragua à cet égard est intenable.

11. Concernant les questions à trancher dans l'affaire de la *Frontière terrestre*, le Costa Rica prie la Cour de déterminer l'emplacement précis de la frontière terrestre dans la partie septentrionale d'Isla Portillos. Il demande également à ce que la Cour déclare que l'installation, par le Nicaragua, d'un camp militaire sur la plage de Los Portillos qui appartient au Costa Rica, est illégale. La ligne de conduite nicaraguayenne qui consiste à occuper un territoire costa-ricien pour le revendiquer par la suite est désormais familière à la Cour et ne saurait être tolérée.

12. Compte tenu du lien étroit qui unit les deux affaires, le Costa Rica présentera ses arguments oraux relatifs à la délimitation dans la mer des Caraïbes et à la question de la frontière terrestre, de manière conjointe.

13. Monsieur le président, Mesdames et Messieurs de la Cour, le Costa Rica est convaincu que ses revendications en matière de délimitation maritime des deux côtés de l'isthme conduisent à une répartition équitable des espaces maritimes et sont en totale conformité avec les exigences du droit international. Mon pays est également confiant que la frontière terrestre sera définie, dans son intégralité, selon la revendication costa-ricienne. Nous espérons que ces différends avec notre voisin seront réglés une bonne fois pour toutes, grâce à l'assistance indispensable de la Cour, ce qui ouvrira la voie à un avenir positif, marqué par des relations bilatérales allant de l'avant.

14. Monsieur le président, je vous prie de bien vouloir prendre note de l'ordre de passage suivant :

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[2] *Frontière terrestre*, mémoire du Costa Rica (MCR), p. 53, par. 3.6. Voir également la lettre MRE/DMC/250/11/16 en date du 17 novembre 2016 adressée au Costa Rica par le Nicaragua, MCR, p. 167 (annexe 57).

[3] *Délimitation maritime*, contre-mémoire du Nicaragua (CMN), p. 71, par. 3.29.

a) Je serai suivi à la barre ce matin par l'ambassadeur Sergio Ugalde, qui vous livrera un aperçu général des deux affaires et de leurs principaux aspects.

b) Ensuite, M. Parlett nous entretiendra des aspects pertinents du droit applicable à la délimitation maritime.

c) M[e] Wordsworth abordera par la suite la délimitation dans l'océan Pacifique.

d) Plus tard dans la journée, le Costa Rica présentera ses arguments relatifs à la délimitation de la frontière terrestre dans la partie septentrionale d'Isla Portillos.

i) Le professeur Kohen abordera le caractère d'autorité de chose jugée revêtu par la souveraineté costa-ricienne sur la plage d'Isla Portillos ; et

ii) M[e] Wordsworth exposera la position du Costa Rica concernant les points terminaux de la frontière terrestre, en se référant à la situation géographique actuelle et aux documents juridiques et d'expertise pertinents.

e) Il sera suivi par M. Del Mar qui s'intéressera à l'installation illicite du camp militaire sur la plage d'Isla Portillos.

f) Passant alors à la délimitation de la frontière maritime dans la mer des Caraïbes, M. Arnoldo Brenes abordera devant vous la question du point de départ.

g) Demain matin, poursuivant l'examen de la délimitation en mer des Caraïbes, le professeur Kohen discutera de la non-pertinence du traité de délimitation non ratifié entre le Costa Rica et la Colombie et des circonstances pertinentes dans les Caraïbes.

h) Ensuite, M. Lathrop conclura le premier tour de plaidoiries du Costa Rica en abordant la délimitation des espaces maritimes dans la mer des Caraïbes.

15. Monsieur le président, Mesdames et Messieurs de la Cour, je vous remercie de l'attention que vous avez aimablement accordée à ces remarques préliminaires et vous prie de bien vouloir appeler à la barre l'ambassadeur Ugalde qui poursuivra l'exposé des arguments du Costa Rica en la présente instance.

Le PRESIDENT : Je vous remercie. Je donne maintenant la parole à l'ambassadeur Sergio Ugalde.

Mr. UGALDE:

GENERAL OVERVIEW OF THE DISPUTES

A. Introduction

1. Mr. President, distinguished Members of the Court, I am privileged to appear once again before this honourable Court on behalf of Costa Rica.

2. Mr. President, Costa Rica and Nicaragua first met in 1976 with the intention to carry out negotiations to agree the delimitation of their respective maritime boundaries[4]. Forty years on, Costa Rica has managed to negotiate maritime boundaries with all its neighbours, with the exception of Nicaragua. Having been unable to delimit its maritime boundaries with Nicaragua by agreement, Costa Rica has submitted the present case before this Court, so that those boundaries may be delimited in accordance with international law.

3. At the outset, let me state that Costa Rica is of the view that the two joined cases currently before you are relatively straightforward.

B. The Maritime Delimitations

4. Mr. President, let me turn first to the maritime delimitation in the Caribbean Sea and the Pacific Ocean. In both delimitations, Costa Rica asks you to delimit the maritime boundary, separating the respective territorial seas, exclusive economic zones and continental shelf of the Parties out to 200 nautical miles[5].

(1) Background to the dispute

5. As for the background of the dispute, there is no need to go over the history of the negotiations between the Parties in any great detail. In short, Costa Rica tried to reach a way forward and negotiate a maritime delimitation with Nicaragua, both in the Pacific Ocean and the Caribbean Sea. Discussions were held for this purpose initially in the 1970s, and were then revived

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[4]See *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica* v. *Nicaragua)*, Memorial of Costa Rica (MCR), para. 2.19. See also *ibid.*, Ann. 27: Press Release of 26 October 1976 and Minute of Liberia meeting of 25 January 1977.

[5]MCR, p. 85 (submissions).

between 2002 and 2005. No agreement was reached. As regards the abandonment of negotiations in 2005, it may be recalled that Nicaragua unilaterally suspended those negotiations in October 2005, as a result of Costa Rica submitting the *Dispute regarding Navigational and Related Rights* to this Court. Ambassador Argüello explained that — and I quote — "After Costa Rica filed an Application against Nicaragua before this Court on 29 September 2005 there was very little incentive to continue with these obviously futile meetings"[6]. After Nicaragua's unilateral suspension of discussions, no further negotiations took place.

6. Thereafter, on 25 February 2010, in accordance with Article 62 of the Court's Statute, Costa Rica submitted an Application for Permission to Intervene in the case concerning the *Territorial and Maritime Dispute* between Nicaragua and Colombia. Costa Rica felt compelled to seek permission to intervene as a result of certain statements made by the parties in that case, and certain materials submitted in support, which Costa Rica considered might affect its rights and legal interests in the Caribbean Sea. I note that, in rejecting Costa Rica's request to intervene, the Court highlighted that: "a third State's interest will, as a matter of principle, be protected by the Court, without it defining with specificity the geographical limits of an area where that interest may come into play . . ."[7]. You further emphasized that "this protection is to be accorded to any third State, whether intervening or not"[8].

7. Following your Judgment of 19 November 2012 in the case between Nicaragua and Colombia[9], on 5 March 2013 Costa Rica proposed to Nicaragua that they should recommence the negotiations relating to maritime delimitation. Costa Rica also suggested that, consistently with Articles 15, 74 and 83 of UNCLOS, the two States should adopt the equidistance line as a provisional arrangement of a practical nature, pending agreement on the final delimitation[10]. Nicaragua, however, declined to agree to any such provisional arrangement[11].

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[6] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Application by Costa Rica for Permission to Intervene*, CR 2010/13, p. 17, para. 26 (Argüello).

[7] *Ibid., Judgment, I.C.J. Reports 2011 (II)*, p. 372, para. 86.

[8] *Ibid.*

[9] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012*, pp. 624-771.

[10] MCR, Ann. 19: Note from the Minister for Foreign Affairs and Worship of Costa Rica to the Minister for Foreign Affairs for Nicaragua, Ref. DM-AM-113-13, 5 Mar. 2013.

[11] *Ibid.*, Ann. 20: Note from the Minister for Foreign Affairs of Nicaragua to the Minister for Foreign Affairs and Worship of Costa Rica, Ref. MRE-DM-205-4-13, 8 Apr. 2013.

8. Only a few months later, in July 2013, Costa Rica became aware of new promotional material for hydrocarbon exploration and exploitation produced by Nicaragua, in both the Pacific and the Caribbean. Those Nicaraguan materials depicted certain blocks in maritime spaces appertaining to and claimed by Costa Rica[12]. Costa Rica protested against this documentation and invited Nicaragua to recommence the negotiations[13]. However, Nicaragua did not respond.

9. Having exhausted all diplomatic options, Costa Rica filed its Application in the case concerning *Maritime Delimitation* on 25 February 2014[14].

(2) Geography

10. Mr. President, as to the geography which is relevant for the delimitation, Costa Rica and Nicaragua share a land boundary that runs from the Caribbean Sea to the Pacific Ocean. Both countries have coastal territories in the Pacific and in the Caribbean; the maritime entitlements generated by those coastal territories overlap, thus requiring delimitation.

11. In the Pacific, Costa Rica's coast is marked by sinuosities and deep indentations and has an approximate length of 1,200 km[15]. Nicaragua's coast is relatively straight with a length of some 345 km[16]. The length of the coasts shown here is not that of the relevant coast for the purposes of delimitation. Nevertheless, Costa Rica's overall coast is some 3.5 times longer than the coast of Nicaragua.

12. In the Caribbean, Costa Rica's entire coast sits at the centre of a three-State concavity in the Central American coast, such that, if delimitation were based on unadjusted equidistance, the maritime zones Costa Rica generates seawards out to 200 nautical miles would be encroached upon by the projection of the neighbouring coasts of Nicaragua and Panama. The total length of Nicaragua's coast in the Caribbean is some 535 km[17], while that of Costa Rica measures some

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[12]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, MCR, Ann. 41: Nicaragua, Ministry of Energy and Mines, Petroleum Promotional Folder, 2012.

[13]*Ibid.*, Ann. 23: Note from the Minister for Foreign Affairs and Worship of Costa Rica to the Minister for Foreign Affairs of Nicaragua, Ref. DM-AM-393-13, 19 July 2013.

[14]*Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica* v. *Nicaragua)*, Application instituting proceedings, 25 Feb. 2014.

[15]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, MCR, para. 2.2.

[16]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, Counter-Memorial of Nicaragua (CMN), para. 2.2.

[17]*Ibid.*, para. 3.5.

225 km[18]. It should be noted that a good part of Nicaragua's coast faces territory appertaining to Colombia in this area.

(3) Nicaragua's approach to the delimitations

13. Mr. President, distinguished Members of the Court, it appears that there is agreement between the Parties that the task before you consists of the determination of a single maritime boundary between all areas appertaining to Costa Rica and Nicaragua, respectively, in both the Caribbean Sea and the Pacific Ocean[19]. There are, however, several specific points of disagreement which will be highlighted in our presentations over the next two days.

14. I wish, however, to emphasize a more general difference separating the Parties. As you will already have appreciated, there is an obvious contrast between the Parties' approach to the delimitations. On the one hand, there is Costa Rica's position, which is straightforward and consists of an application of the actual geographical situation, as it stands today, of the relevant law, as that law has been consistently developed and applied by this Court. On the other hand, we have Nicaragua's position, which relies heavily on unrealistic and exaggerated claims, based on distortion of the relevant legal principles, apparently in the hope that exaggerated and extreme claims may lead to a better result for Nicaragua in these proceedings.

15. While the detail of these contrasting positions will be dealt with as Costa Rica makes its case, let me give you an example.

16. As concerns the delimitation of the territorial sea in the Pacific Ocean, Nicaragua submits that the delimitation of the territorial sea pursuant to Article 15 of UNCLOS must be undertaken in such a manner as not to prevent or undermine the achievement of an equitable solution to the delimitation of the EEZ and continental shelf under Articles 74 and 83 of UNCLOS[20]. In other words, what Nicaragua invites the Court to do is to deviate from the clear and ordinary meaning of Article 15.

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[18] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, MCR, para. 2.10.

[19] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 1.5.

[20] *Ibid.*, para. 2.44.

17. This invitation to the Court to depart from the well-known and consistently applied principles governing delimitation of the territorial sea is then followed by the mutilation of Costa Rica's territory, particularly in the Pacific. Nicaragua thus not only misapplies the law, it also seeks to wholly redraw the relevant geography.

18. While Mr. Wordsworth will deal more fully with Nicaragua's flawed argument based on the supposed existence of "special circumstances"[21], let me draw your attention to Nicaragua's plea based on extremes. Nicaragua seeks to characterize the Santa Elena Peninsula — and here I would emphasize the word "Peninsula" — as a "remote projection . . . [of] the coastline"[22]. This is so even though it also described that same peninsula, elsewhere in its Counter-Memorial, as one of the "major geographical features" on the Pacific coast[23]. On the screens, you can appreciate more fully the size of the territory of the Santa Elena Peninsula that Nicaragua invites you to disregard entirely.

19. Nicaragua's position on Costa Rica's Santa Elena Peninsula on the Pacific side is, however, wholly inconsistent with the approach it takes on the Caribbean side. There, Nicaragua claims a so-called "adjusted equidistance" line, for the purposes of which Nicaragua seeks to place base points on Big Corn Island[24]. On the screens now, you can see Big Corn Island at exactly the same scale as the Santa Elena Peninsula. Big Corn Island measures approximately 9.6 sq km[25], while the Santa Elena Peninsula measures approximately 286 sq km. That is, Santa Elena Peninsula is some 30 times larger than Big Corn Island. The disparity of treatment between a small Nicaraguan island, distant from the mainland coast, and Costa Rica's very substantial Santa Elena Peninsula, which constitutes an integral part of Costa Rica's mainland territory, is evident. This obvious disparity concerns not only their size, but also their role more generally in the construction of the delimitation line between the Pacific and the Caribbean, as will be examined by Mr. Wordsworth and Mr. Lathrop.

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[21] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 2.46.

[22] *Ibid*., para. 2.48.

[23] *Ibid*., para. 2.1.

[24] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 3.92. See also at p. 116 (Fig. IId-6).

[25] *Ibid*., para. 3.7.

20. To further emphasize Nicaragua's inconsistent approach concerning the treatment of the Santa Elena Peninsula vis-à-vis some of Nicaragua's truly minor features, Nicaragua has even complained that in constructing the provisional equidistance line in the Caribbean, Costa Rica ignored "several small insular features"[26], such as Paxaro Bovo, a rock that lies about three nautical miles from the Nicaraguan coast. To give you an idea of the difference between Costa Rica's Santa Elena Peninsula — which Nicaragua argues should be given no effect — and Nicaragua's Paxaro Bovo — which Nicaragua argues should be given full effect — on the screens now, we attempt to show the scale of Paxaro Bovo vis-à-vis the Santa Elena Peninsula, and also in relation to Big Corn Island. I can tell you that it is not invisible! I can assure you that it is there, even if one struggles to see it.

21. But to complete the picture, it should be noted that Nicaragua's claimed line in the Pacific cuts off Costa Rica's sovereign territorial sea less than five nautical miles from the coast of Santa Elena Peninsula.

22. In an attempt to justify this mutilation of Costa Rica's territory, Nicaragua relies on what it characterizes as the "broader macro-geographic circumstances"[27]. According to Nicaragua, to justify what it calls the "General Direction of the Parties' Coasts"[28] — which incidentally, only follows the direction of the shorter Nicaraguan coast — not only the Santa Elena Peninsula, but also large swathes of Costa Rican territory, including the entire Nicoya peninsula and other territory that include a number of important Costa Rican towns, should be deleted with the stroke of a pen. Not happy with this, it also appears to do away with the Osa Peninsula[29], which is home to 4 per cent of the world's biodiversity. According to Nicaragua, the territory it proposes to omit would constitute a "conspicuous protrusion"[30]. I invite you to look at your screens, where this extreme refashioning of the actual geography can be observed.

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[26] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 3.84.

[27] *Ibid*., para. 2.60.

[28] *Ibid*., p. 45 (Fig. Id-2).

[29] *Ibid.*

[30] *Ibid*., para. 2.61.

23. In truth, the so-called "broader macro-geographic circumstances" relied upon by Nicaragua are just a poor justification for the excision of relevant elements that constitute a part of the geographical reality in the Pacific. Incidentally, it is of course no coincidence that these "broader macro-geographic circumstances" affect only Costa Rican territory, and have no impact on Nicaragua. And yet, while Nicaragua takes a "macro" perspective in the Pacific, it wishes to focus very much on the "micro" geography in the Caribbean. Its position concerning Paxaro Bovo and the Corn Islands underscores not only its inconsistency in this regard, but the artificiality of Nicaragua's entire position.

24. Of course, Nicaragua's attempt to redraw Costa Rica's coast is baseless. This is exactly what I mean by the difference between a case based on law and geographic facts and one based on inconsistencies and exaggeration. Nicaragua's ostensible strategy is to alter the geography of Costa Rica so radically that any adjustment on the basis of its manipulated representation of that geography, no matter how small, would become a net gain to it. Nicaragua undoubtedly knows well that the refashioning of the Costa Rican coast as a whole will get it nowhere, but it has apparently put forward this position in the hope that you might at least be convinced to take out the scalpel and apply it to the Costa Rica Santa Elena Peninsula.

25. Costa Rica is of course aware of Nicaragua's tendency in previous disputes to adopt extreme and far-fetched positions. Costa Rica has very deliberately chosen not to follow suit. We reject the logic that appears implicitly to underlie Nicaragua's position: that a State that presents a sensible case is to be penalized for doing so.

(4) The 1977 Costa Rica-Colombia Treaty

26. Mr. President, Members of the Court, I should also address another piece of fancy today: Nicaragua's reliance on the unratified 1977 Costa Rica-Colombia Treaty for Maritime Delimitation in the Caribbean Sea. Professor Kohen will address this matter more fully tomorrow, but in opening I will make some specific observations.

27. In 1977 Costa Rica and Colombia set out to delimit their maritime entitlements in the Caribbean Sea. Incidentally, Nicaragua and Colombia did the same, a series of events documented

by Nicaragua in the proceedings against Colombia[31]. The negotiations between Costa Rica and Colombia resulted in the signing of the Facio-Fernandez Treaty[32]. The treaty was never ratified by Costa Rica, and on 27 February 2013 Costa Rica informed Colombia that the un-ratified treaty was impractical and ineffective[33]. It follows that Costa Rica has not and will not ratify that treaty.

28. On a number of occasions, Nicaragua sought to secure Costa Rica's agreement not to take any step towards ratification of the treaty. In December 1995, Nicaragua protested against statements made by a Costa Rican official to a press outlet regarding the need to take action on the treaties concluded by Costa Rica with Colombia and Ecuador. Costa Rica's acting Foreign Minister responded to Nicaragua's protest on 1 March 1996[34]. In that response, there are two points of note: first, Costa Rica reminded Nicaragua that the 1977 agreement with Colombia was signed well before Nicaragua first disputed Colombia's sovereignty over the San Andres Archipelago. Second, Costa Rica emphasized to Nicaragua that the Treaty between Costa Rica and Colombia constituted *res inter alios acta* as regards Nicaragua[35]. It should be noted that Nicaragua never responded to that note, and thus never claimed that, either, it considered that it might have any claims deriving from this treaty, or, that it challenged the generally applicable rules of international law regarding the effects of treaties for third parties.

29. Subsequently, in May 1997, on the occasion of a bilateral meeting between the two countries, Nicaragua pushed for, and secured from Costa Rica, a statement about this treaty. The statement, recorded in the minutes of the meeting, under the heading "Maritime Delimitation" reads:

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[31]See *Territorial and Maritime Dispute (Nicaragua* v. *Colombia*), *Preliminary Objections,* Written Statement of Nicaragua of 26 January 2004, paras. 1.67-1.69.

[32]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, Ann. 3: Treaty on the Delimitation of Marine and Submarine Areas and Maritime Co-operation between the Republic of Colombia and the Republic of Costa Rica, San José, 17 March 1977.

[33]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, MCR Ann. 18: Note from the Ambassador of Costa Rica in Colombia to the Co-ordinator of ICJ issues of the Ministry of Foreign Affairs of Colombia, Ref. ECRICOL-13-097, 27 February 2013.

[34]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN Ann. 21: Diplomatic Note from the acting Minister for Foreign Affairs and Worship of Costa Rica to the Minister for Foreign Affairs of Nicaragua, Ref. Nº 071-96-DVM, 1 March 1996.

[35]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, MCR Ann. 21: Diplomatic Note No. 071-96-DVM from the Costa Rican Minister for Foreign Affairs to the Nicaraguan Minister for Foreign Affairs, 1 March 1996.

> "Foreign Affairs Minister Naranjo, reiterated the firm commitment of his Government not to take action regarding its position on the limits on the Northern Caribbean, until the Governments of Nicaragua and Colombia reach an agreement that allows them to resolve the dispute that has arisen between the two friendly nations."[36]

30. Thereafter, during the negotiations on maritime delimitation between 2002 and 2005, the matter of possible ratification of the 1977 treaty was discussed again. Costa Rica once more agreed not to take any decision on the treaty until this Court had given judgment in the maritime dispute between Nicaragua and Colombia. Nicaragua accepted before this Court that this was the case: in its written observations upon Costa Rica's request for permission to intervene Nicaragua said that it did not recall, and I quote

> "any negotiations on maritime delimitation with Costa Rica in the Caribbean that involved specific claims to maritime areas or even methods of delimitation. On the contrary, it was understood that negotiations in the Caribbean would await solution to the dispute between Nicaragua and Colombia"[37].

31. In its Judgment on Costa Rica's request to intervene, the Court took note of Nicaragua´s position regarding Costa Rica's intervention request. It observed, and I cite:

> "Nicaragua, for its part, notes that since the Parties do not seek delimitation in Costa Rica's area of interest, 'Costa Rica's interests will not — cannot — be affected by the decision in this case'"[38].

You further noted Nicaragua's position that, and I quote again:

> "Costa Rica is protected by Article 59 of the Statute and the practice of the Court in maritime delimitation cases in that third States' interests are left unaffected. Nicaragua has argued that Costa Rica's intervention should be disallowed because the interest of a legal nature it claims to have would not be affected by the decision of the Court"[39].

32. Seemingly, early on Nicaragua believed that it did not have any rights to maritime areas flowing from the 1977 Treaty, as it was actually asking Costa Rica not to take action on that treaty. When dealing with Costa Rica's request for permission to intervene, Nicaragua appeared to have changed its mind, but made the unambiguous point that the Judgment in the case against Colombia

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[36] *Ibid.*, Ann. 28: Final Minutes of the IV Binational Nicaragua-Costa Rica Meeting, Granada, Nicaragua, 12-13 May 1997.

[37] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, Written Observations of the Republic of Nicaragua on the Application for Permission to Intervene filed by the Republic of Costa Rica, 26 May 2010, para. 19.

[38] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Application by Costa Rica for Permission to Intervene, Judgment, I.C.J. Reports 2011(II)*, p. 369, para. 74.

[39] *Ibid.*, p. 370, para. 78.

would not have any effect on Costa Rica's legal interests[40]. But today, Nicaragua's narrative has shifted fundamentally.

33. In the present proceedings, Nicaragua seeks to challenge the Court's reasoning in both the Judgment on Costa Rica's intervention request of February 2010, and in the Judgment on the merits in *Nicaragua* v. *Colombia* case, rendered on 19 November 2012.

34. Nicaragua now argues that, magically, it is heir to the maritime spaces north and east of the boundary line depicted in the 1977 treaty[41]. In an attempt to give this claim some traction, it has come up with its own interpretation of *dicta* in certain judgments[42], concerning the binding effects of the Court's decisions under international law.

35. Nicaragua appears to suggest — wrongly — that there is some relevance of the Court's Judgment of 19 November 2012 in the present proceedings, even though it had previously recognized that — and I quote again — "Costa Rica's interests will not — cannot — be affected by the decision in this case"[43].

36. Not only did the Court in its 2012 Judgment not make any "findings" which come even remotely close to constituting a "precedent" applicable to this case, but it even declined to consider issues concerning the relationship between Costa Rica and Nicaragua, and certainly said nothing as to the scope or effects of the 1977 Costa Rica/Colombia agreement. The only thing that the Court did do was to state, in terms, that that agreement constituted *res inter alios acta* for Nicaragua[44].

37. Therefore, it is difficult to perceive what "precedent" or "finding" Nicaragua is seeking to invoke. By contrast, we would agree that there is no compelling basis for the Court to depart from the "finding" which *was* clearly made in its 2012 Judgment: that treaties between Colombia and neighbouring countries, such as the one with Costa Rica, constitutes *res inter alios acta* for Nicaragua[45].

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[40]*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Application by Costa Rica for Permission to Intervene, Judgment, I.C.J. Reports 2011(II)*, p. 369, para. 75.

[41]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 3.29; see also para. 3.32.

[42]*Ibid.*, para. 3.12.

[43]*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2011 (II)*, p. 369, para. 74.

[44]*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 660, para. 95.

[45]*Ibid.*

38. Mr. President, Members of the Court, it is quite obvious that in the Caribbean Sea delimitation, Nicaragua has bet most of its chips on the fairy tale of the 1977 Costa Rica/Colombia agreement, which, as the Court is aware, was not only not ratified by Costa Rica, but which now Costa Rica has made clear it will never ratify[46]. Thus, this treaty does not provide any legal basis for Nicaragua to claim maritime spaces north and east of the line depicted in said treaty. Delimitation here must be carried out in accordance to the applicable general international law, as Dr. Parlett, Professor Kohen and Mr. Lathrop will explain more fully.

(5) The starting point of the delimitation in the Caribbean Sea

39. Mr. President, I shall briefly refer to the question of the starting-point of the delimitation in the Caribbean Sea.

40. When Costa Rica and Nicaragua set out to attempt to negotiate the maritime boundary in the Caribbean, they charged a Sub-Commission on Limits and Cartography to start that work. The Sub-Commission agreed to collect cartographical data and to obtain newly satellite material in order to determine the state of the coasts. The technical teams concurred — albeit always subject to the decision of the Vice-Ministers of Foreign Affairs[47] — that an agreement was needed first concerning the land boundary *terminus*. As is familiar to you, the demarcation work presided over by General Alexander established only Marker I and Marker II in the area in which the boundary followed a water body, i.e., the San Juan river; with Marker I (the Initial Marker) being located at what was the mouth of the river at that time.

41. Naturally, the Sub-Commission had to determine the contemporary location of Marker I. But to be clear, the Parties never agreed upon the position of Marker I. Nicaragua accepts that this was the case; it stated in its Counter-Memorial that, and I quote: "the delegations had not completely agreed on the location of Marker no. 1"[48].

42. As a result, the starting-point of the delimitation in the Caribbean that you are being asked to decide must be determined on the basis of the current geography and of the applicable law,

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[46]See *supra*, para. 28.

[47]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, MCR, Vol. II, Ann. 29.

[48]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, Vol. 1, p. 86, para. 3.51.

a matter that Mr. Brenes will address in more detail this afternoon. I should say that Costa Rica will also respond to the question posed by the Court concerning the option of starting the maritime boundary from a fixed point on the Caribbean Sea some distance from the coast.

43. Mr. President, by way of conclusion of this general overview of the maritime delimitation case, the delimitation that the Court is asked to effect in the Caribbean Sea is the drawing of a single maritime boundary out to 200 nautical miles. Costa Rica has explained the relevant circumstances, consisting of the three-State concavity in the Central American coast and the resulting cut off to Costa Rica's maritime entitlements, which require a correction to the equidistance line in order for an equitable result to be achieved. Professor Kohen and Mr. Lathrop will deal with this aspect of the case in more detail tomorrow.

44. Costa Rica is also asking the Court to draw a single maritime boundary in the Pacific Ocean, where there exist no relevant circumstances. Mr. Wordsworth will address Costa Rica's case in that regard in more detail later today.

C. The land boundary on Isla Portillos

45. Mr. President, distinguished Members of the Court, let me now refer to the case concerning the *Land Boundary in the Northern Part of Isla Portillos*. It is rather a simple case, although by simple, I do not mean inconsequential. Nicaragua, by locating a military camp on the beach of Isla Portillos in 2016, and by later advancing its challenge concerning the material effects of your Judgment of 16 December 2015 in *Certain Activities*, seeks to relitigate a matter that has been already decided with the force of *res judicata*. As will be explained by Professor Kohen, all the relevant questions regarding the beach, what constitutes the beach, and the extent of what was then termed the "disputed territory", which was ultimately determined by the Court to be sovereign Costa Rican territory, were decided by the Court in the *Certain Activities* case[49].

46. Costa Rica wishes to emphasize that Nicaragua's decision to install the military camp where it placed it in 2016 is far from being purely coincidental. Costa Rica has constantly had to confront Nicaragua's routine disregard for the letter of the treaty régime governing the border, and

[49] *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015 (II)*, pp. 696-697, para. 69.

even its disregard of determinations made by this Court. On this occasion, it is obvious that the placement of a military camp on the beach of Isla Portillos had the intended aim of, first, laying claim, yet again, to that beach, for the purposes of which they needed to show some form of action on the ground; and second, to attempt to portray some conduct in the form of *effectivité*, which Nicaragua now claims has been acquiesced in by Costa Rica[50]. The letter dated 17 November 2016[51] by General Denis Moncada, then acting as Minister Advisor to the President of Nicaragua, Commander Ortega, in response to Costa Rica's protest note of 14 November 2016[52], underscores this fact.

47. Mr. President, Members of the Court, we regret that Nicaragua has time and again raised these challenges to your judgments. We sincerely hope that after the judgment of this Court in these cases, there will be an opportunity for the rebuilding of confidence and goodwill necessary for a cordial relationship between both countries. However, that can only be achieved if the law and the judgments of this Court are fully respected.

48. Concerning the dispute, Nicaragua has sought to exploit a statement made by the Court in its 2015 Judgment concerning the Caribbean coast[53]. It is apparent to Costa Rica that what the Court referred to as the "stretch of coast abutting the Caribbean Sea"[54], which Nicaragua now seems to interpret as referring to the beach of Isla Portillos, is an area located in the sea, well seaward of the low-water mark on the beach of Isla Portillos. On your screens, you can see the area that concerned the Court. However, there remains no "territory" capable of appropriation to the north of the northern shore of Costa Rica's Isla Portillos. The report prepared by the Court-appointed experts confirms this to be the case. Asked by the Court about this very point, the experts responded, and I quote:

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[50] *Land Boundary in the Northern Part of Isla Portillos (Costa Rica* v. *Nicaragua)*, Counter-Memorial of Nicaragua (CMN), para. 4.35.

[51] *Land Boundary in the Northern Part of Isla Portillos (Costa Rica* v. *Nicaragua)*, Memorial of Costa Rica (MCR), Ann. 57, letter from Nicaragua to Costa Rica, Ref.: MRE/DMC/250/11/16, 17 November 2016.

[52] *Ibid.*, Ann. 56, letter from Costa Rica to Nicaragua, ref.: DM-AM-584-16, 14 November 2016.

[53] *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015 (II)*, p. 697, para. 70.

[54] *Ibid*.

> "Off the coastline, there are no features above water even at low tide, as it was observed during the two site visits. Some satellite images reveal the presence of coast-parallel shoals. These are the typical submerged sand bars that develop in the nearshore zone of sandy beaches by wave action."[55]

If the Court intended to exclude the beach of Isla Portillos in its 2015 Judgment, as Nicaragua seems to contend[56], it would have stated so in terms. It did not. What Nicaragua in effect seeks to call into question, although it dedicated little or nothing of relevance to this particular issue in its Counter-Memorial, is that the Court found in 2015 that the disputed territory of Isla Portillos included the beach[57]. Nicaragua claims that the identification by the Court of the "disputed territory" was merely ancillary to Costa Rica's claim of responsibility in the *Certain Activities* case[58]. However, that is quite incorrect. The finding on responsibility was necessarily contingent on the determination of sovereignty over the disputed territory, and the question of sovereignty was fully in issue. To confirm that this was the case, one need only look at Nicaragua's submissions, in which it requested the Court in fact to adjudge the disputed territory as falling under Nicaragua's sovereignty[59]. This is further accentuated by the *dispositif* in the Judgment itself, which found that Costa Rica had sovereignty over the "disputed territory"[60].

49. Despite the Court's robust 2015 Judgment, now, to buttress its position, Nicaragua has come up, yet again, with a further freshly concocted "new caño" story. Let me pause here to make an observation. The Court will recall that, for over five years, Nicaragua fought tooth and nail over what was to be understood as being General Alexander's famous "first channel met"; it even requested that you appoint a team of experts to go to Isla Portillos to locate it for them[61]. Nicaragua never contended for a "caño" being in the location it now claims. Similarly, none of Nicaragua's experts in the *Certain Activities* case ever saw or identified a "caño" in the position that Nicaragua

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[55] *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica* v. *Nicaragua)*, Expert Opinion, 30 April 2017, para. 190.

[56] *Land Boundary in the Northern Part of Isla Portillos (Costa Rica* v. *Nicaragua)*, CMN, para. 2.11.

[57] *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015 (II)*, p. 697, para. 69.

[58] *Land Boundary in the Northern Part of Isla Portillos (Costa Rica* v. *Nicaragua)*, CMN, para. 2.19.

[59] See, e.g., CR 2015/15, p. 63, para. 1 (Argüello).

[60] *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015 (II)*, p. 740, para. 229 (1).

[61] *Ibid.*, p. 701, paras. 80 and 81; see also, e.g., CR 2015/5, p. 34, para. 24 (Pellet); CR 2015/7, p. 11, para. 4 (Loewenstein); and CR 2015/15, p. 20, para. 49 (Argüello).

now argues for, that is, parallel to the beach of Isla Portillos, which is now shown on your screens. In sum, Nicaragua never ever said a word about *this* caño, and the undeniable fact is that this new caño does not exist either.

50. Mr. President, distinguished Members of the Court, the only conclusion that can be reached, in light of the evidence, is that Alexander's "first channel met" no longer exists; this was clearly stated by the Court-appointed experts[62], a matter that will be further addressed by Mr. Wordsworth later today. The land which once formed the left bank of that channel has been eroded away by the constant action of the Caribbean Sea. The beach is one and only one, and, as per your 2015 Judgment in the *Certain Activities* case, it is Costa Rican. The Nicaraguan camp is located on that beach, and as such, it was placed and maintained there by Nicaragua in violation, yet again, of Costa Rica's sovereignty, as Dr. Del Mar will show this afternoon.

51. Mr. President, Members of the Court, this concludes my presentation this morning, and I thank you for your kind attention.

52. Mr. President, I would be grateful if you could give the floor to Dr. Parlett in order to address relevant aspects of the law applicable to the delimitation in both the Atlantic and the Pacific.

Le PRESIDENT : Merci. Je donne maintenant la parole à Mme Kate Parlett. Madame, vous avez la parole.

Ms PARLETT:

RELEVANT ASPECTS OF THE APPLICABLE LAW

A. Introduction

1. Mr. President, Members of the Court, it is an honour to appear before you once again on behalf of Costa Rica. My remarks to you today are focused on the relevant aspects of the applicable law to the delimitation of the maritime boundaries in this case.

2. I have three preliminary points by way of introduction:

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[62] *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica* v. *Nicaragua)*, Answer of the Court-Appointed Experts in response to the question of Judge Tomka, transmitted by the letter from the Registrar dated 15 June 2017 (Ref.: 148822).

(a) The first is that, as Ambassador Ugalde has explained, Costa Rica has requested the Court to determine the complete course of the maritime boundaries between the two States in the Caribbean Sea and in the Pacific Ocean, on the basis of international law[63].

(b) The second is that both Costa Rica and Nicaragua are party to and have ratified the United Nations Convention on the Law of the Sea (UNCLOS)[64]. It follows that the principles of maritime delimitation to be applied to this dispute are those set out in Article 15 of the Convention, so far as concerns the territorial sea, and paragraph 1 of Articles 74 and 83 of the Convention, so far as the exclusive economic zone and continental shelf are concerned.

(c) The third point is that none of the relevant boundaries have been agreed between the Parties, so the request is to delimit the boundaries between the territorial sea, exclusive economic zone and continental shelf out to 200 nautical miles, both in the Pacific and the Caribbean.

B. Delimitation methodology

3. Let me now move to the delimitation methodology to be applied by the Court. I can be brief as the Court is very familiar with the relevant methodologies, these having been principally developed in its case law.

(1) Territorial sea

4. Concerning delimitation of the territorial sea, Article 15 of UNCLOS[65]:

(a) "places primacy on the [equidistance] line as the delimitation line between the territorial seas of opposite or adjacent States"[66];

(b) it mandates departure from a strict equidistance line only where it is "necessary by reasons of historic title or other special circumstances"[67];

(c) which special circumstances are to be assessed "on a case by case basis"[68].

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[63] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, Costa Rica's Application instituting proceedings, 25 February 2014, para. 15. See also *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, Memorial of Costa Rica (MCR), Submissions, p. 85.

[64] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, MCR, para. 1.7.

[65] United Nations Convention on the Law of the Sea (UNCLOS) 10 Dec.1982 (entry into force 16 November 1994), United Nations, *Treaty Series (UNTS)*, Vol. 1833,p. 3, Art. 15.

[66] *Award in the Arbitration regarding the Delimitation of the Maritime Boundary between Guyana and Suriname*, *Award*, 17 Sep. 2007, United Nations, *Reports of International Arbitral Awards (RIAA)* 1, Vol. XXX, para. 296.

[67] UNCLOS, Art. 15.

5. In its practice, where it has found it necessary to depart from an equidistance line on account of special circumstances, the Court has either used another method of delimitation or it has adjusted the equidistance line[69]; but the Court has consistently differentiated between delimitation of the territorial sea under Article 15 on the one hand, and delimitation of the EEZ and continental shelf under Articles 74 and 83, on the other.

(2) Exclusive economic zone and continental shelf

6. When it comes to the EEZ and continental shelf, UNCLOS does not prescribe or give primacy to any particular method of delimitation[70], but merely indicates that a delimitation should "achieve an equitable result"[71]. The Court has consistently applied a standard method to delimit the EEZ and continental shelf, and its case law makes clear that it will proceed in three stages[72]:

(a) First: "the Court establishes a provisional delimitation line . . . us[ing] methods that are geometrically objective and appropriate for the geography of the area."[73]

(i) "This task will consist of the construction of an equidistance line, where the relevant coasts are adjacent . . . unless . . . there are compelling reasons as a result of which the establishment of such a line is not feasible"[74].

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[68]*Award in the Arbitration regarding the Delimitation of the Maritime Boundary between Guyana and Suriname, Award*, 17 September 2007, *RIAA* 1, Vol. XXX, para. 303.

[69]See, e.g., *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 58, para. 176; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 441, para. 288.

[70]See UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India), Award*, 7 July 2014, para. 338.

[71]UNCLOS, Articles 74 (1) and 83(1). See also UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India), Award*, 7 July 2014, para. 339.

[72]*Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012 (II),* p. 695, para. 190. See also *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 46, para. 60; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 101, paras. 115-122; and *Maritime Dispute (Peru* v. *Chile), Judgment, I.C.J. Reports 2014*, p. 66, para. 190.

[73]*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II),* p. 695, para. 191. See also *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 101, para. 116; ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, para. 233; UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India), Award*, 7 July 2014, para. 341.

[74]*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II),* p. 695, para. 191; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 745, para. 281. See also *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 101, para. 116; *Maritime Dispute (Peru v. Chile), Judgment, I.C.J. Reports 2014*, p. 66, para. 190; ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, para. 233; UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India), Award*, 7 July 2014, paras. 341 and 345.

(ii) It is also necessary to identify the "relevant area" and the "relevant coasts". In the *Black Sea* case, the Court noted that "the coast, in order to be considered as relevant for the purpose of the delimitation, must generate projections which overlap with projections from the coast of the other Party."[75] The identification of the relevant area, and relevant coasts, are matters to which I will return in due course.

(iii) Next, one identifies appropriate base points on the parties' relevant coasts[76], and from those base points the provisional equidistance line is constructed.

(b) Having constructed a provisional equidistance line, the second step in the Court's standard methodology is the assessment of relevant circumstances that may necessitate an adjustment of that line in order "to achieve an equitable result"[77]. As I will develop, those qualifying relevant circumstances are fairly limited in practice.

(c) Third and finally: "the Court conducts a disproportionality test in which it assesses whether the effect of the line, as adjusted or shifted, is that the Parties' respective shares of the relevant area are markedly disproportionate to their respective relevant coasts"[78]. But importantly, the Court clarified in *Nicaragua* v. *Colombia*, this third state adjustment of the delimitation line will only be carried out "to ensure there is not a disproportion so gross as to 'taint' the result and render it inequitable"[79].

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[75] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, pp. 96-97, para. 99.

[76] *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 695, para. 191; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 101, paras. 116-117.

[77] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, para. 192. See also *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 101, para. 120 and p. 112, para. 155; *Maritime Dispute (Peru* v. *Chile), Judgment, I.C.J. Reports 2014*, p. 66, para. 190; and ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 233 and 275.

[78] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 696, para. 193. See also *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 103, para. 122 and p. 119, para. 210; *Maritime Dispute (Peru* v. *Chile), Judgment, I.C.J. Reports 2014*, p. 66, para. 190; ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 233 and 497; UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India), Award*, 7 July 2014, para. 341.

[79] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 716, para. 242. See also *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 99, para. 110; and *Maritime Dispute (Peru* v. *Chile), I.C.J. Reports 2014*, p. 69-70, paras. 193-194.

C. Three issues in dispute

7. As to the application of these methodologies to the present case, there is broad agreement between the Parties as to:

(a) the use of an equidistance line to delimit the territorial sea[80]; and

(b) the three-stage "standard method" to delimit the EEZ and continental shelf[81].

8. But there are three issues that divide the Parties, and in my remaining time I will focus on these points of difference. They are:

(a) first, the primacy of equidistance to delimit the territorial sea;

(b) second, the identification of relevant coasts and relevant area, which are taken into account for the purposes of the third stage "gross disproportionality" test; and

(c) third, relevant circumstances justifying adjustment of the equidistance line delimiting the EEZ and continental shelf.

These are of course differences that feature frequently in the arguments of States contesting a maritime delimitation and will also be familiar to the Court.

(1) Equidistance to delimit the territorial sea

9. [Start slide 1] Turning then to the first point of difference: it concerns the primacy of the equidistance line in the territorial sea. I have already mentioned that Article 15 of UNCLOS identifies equidistance as the method for delimitation of the territorial sea[82].

10. Both Costa Rica and Nicaragua rely on Article 15 as the applicable law between the Parties and in this case[83], but Nicaragua seeks to bring in Articles 74 and 83 and argues that these are also relevant to the delimitation of the territorial sea[84]. Nicaragua then seeks an adjustment to the equidistance line in the territorial sea, both in the Pacific and in the Caribbean[85]. It does so on the basis of geographic features it considers to have a disproportionate impact on the equidistance

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[80] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, MCR, paras. 3.14 and 4.16; and Counter-Memorial of Nicaragua (CMN), paras. 2.42 and 3.81.

[81] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, MCR, paras. 2.44-2.46; and CMN, para. 2.43.

[82] See J. Crawford, *Brownlie's Principles of Public International Law* (8th edition, 2012), p. 283.

[83] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 2.42; MCR, para. 2.43.

[84] *Ibid.*, paras. 2.42-2.46.

[85] *Ibid.*, paras. 2.47-2.52 and 3.88-3.90.

line in the territorial sea[86]. But it goes further, and pleads for an adjustment to the territorial sea equidistance line because it considers the endpoint of that line to be an unsatisfactory point to start the EEZ/continental shelf delimitation[87]. It argues that you should take into account the anticipated course of a provisional equidistance line *beyond* the territorial sea in delimiting within the territorial sea.

11. Nicaragua cites no authority for its novel approach. There is no authority. Where one State would like an equidistance line for the EEZ/continental shelf delimitation to start is obviously not a "special circumstance" requiring adjustment of an equidistance line delimiting the territorial sea. [End slide 1]

12. On the primacy of the equidistance line in a territorial sea delimitation, I have six points.

13. First, Nicaragua relies on Article 31 (1) of the Vienna Convention on the Law of Treaties in arguing that Articles 15, 74 and 83 all "need to be taken into account, and read together in their context within UNCLOS and in light of the object and purpose of UNCLOS"[88], in delimiting the territorial sea.

14. While the applicable rules of treaty interpretation require that one does not take the terms of particular articles of UNCLOS in isolation or out of context, Nicaragua's argument here seems to be that despite the different terms used in Article 15, compared with Articles 74 and 83, one must read those provisions as though they are the same. Again, there is no authority cited. Article 15 uses different terms to Articles 74 and 83 and it has a different subject matter. The three Articles appear in different parts of the Convention. True, all three Articles address delimitation of maritime spaces, but Article 15 does not refer to or incorporate Articles 74 and 83, and vice versa. Article 15 is autonomous and separate from Articles 74 and 83[89].

15. Indeed this was a deliberate choice of the drafters of UNCLOS. During the Third Conference on the Law of the Sea, one delegation took the same position Nicaragua now takes — it

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[86]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 2.48.

[87]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, paras. 2.44, and 2.49-2.50.

[88]*Ibid.*, para. 2.44.

[89]See, e.g, *Border and Transborder Armed Actions (Nicaragua* v. *Honduras), Jurisdiction and Admissibility, I.C.J. Reports 1988*, p. 88-89, paras. 42-45; *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France), Judgment, I.C.J. Reports 2008*, p. 232-233, paras. 154-156.

proposed that the distinction be abandoned on the basis that delimitation of all maritime spaces "should be based on the concept of equity"[90]. That proposal was rejected and the distinction was retained in the final text[91]. The Court has confirmed that there is a distinction between delimitation of the territorial sea under Article 15 and delimitation of the EEZ and continental shelf under Articles 74 and 83: for example, in *Nicaragua* v. *Honduras* it noted that "[t]he methods governing territorial sea delimitation have needed to be, and are, more clearly articulated in international law than those used for the other, more functional maritime areas"[92].

16. Nicaragua also makes reference to the "object and purpose of UNCLOS"[93], but has not developed the point, and it has not explained why its very particular take on the object and purpose of the Convention should override the ordinary meaning of the terms of Article 15.

17. Second point. Nicaragua relies on the ILC's commentary to an early draft of Article 12 of the 1958 Territorial Sea Convention, to the effect that the equidistance/special circumstances rule should be "flexibly applied"[94]. There is of course an element of flexibility built into the equidistance/special circumstances rule and that is reflected in the text of Article 15. But any "flexibility" in its application cannot override the plain text. It cannot override the deliberate choice made by the drafters of UNCLOS, to which I have already referred, to distinguish between territorial sea delimitations on the one hand, and EEZ/continental shelf delimitations on the other. And how any "flexible application" gets one to the result that Nicaragua argues for — that one should adjust a territorial sea equidistance line to take into account "the direction of equidistance lines drawn on more extensive maps"[95] further out to sea — is not explained by Nicaragua.

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[90] *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XII (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Ninth Session)*, A/CONF.62/SR.126, 126th Plenary Meeting (1980), statements by Venezuela, para. 137; see also statements by Argentina, *ibid.*, para. 88.

[91] See S.N. Nandan and S. Rosenne, *United Nations Convention on the Law of the Sea 1982: A Commentary, Volume II* (1985), p. 141, para. 15.10.

[92] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 740, para. 269; see also p. 740, paras. 267-289.

[93] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 2.44.

[94] *Yearbook of the International Law Commission (YILC)*, 1956, Vol. II, p. 272, Commentary to draft Article 14, para. 7, cited in *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 2.45.

[95] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 2.45.

18. Third point. Referring to a 2005 study on maritime boundaries concluded by agreement, Nicaragua suggests that there is convergence in methods used to delimit the territorial sea and the EEZ/continental shelf[96]. The same study was cited by the Tribunal in the recent award in the dispute between Croatia and Slovenia[97]. The authors of that study examined the practice of States in "concluding agreements concerning delimitation"[98]. Such agreements may or may not follow the delimitation methods prescribed by UNCLOS. As such, it is not clear how the study is of assistance in applying Article 15 of UNCLOS to this particular dispute. The distinction between State practice and delimitation under Article 15 was not explained by Nicaragua and neither was it addressed in the *Croatia/Slovenia* award. States are of course free to conclude maritime boundary agreements that are consistent, or not, with the delimitation approaches set forth in UNCLOS. That freedom is explicitly preserved in Article 15, which provides for equidistance absent "agreement . . . to the contrary"[99]. But here the applicable international law to the delimitation of the territorial sea is found in Article 15 of UNCLOS.

19. Fourth point. Nicaragua mentions in passing an assimilation of "special circumstances" and "relevant circumstances"[100]. Again, quite how this helps Nicaragua is not developed, and perhaps we will hear more about this from across the Bar table later this week, but what the decided cases show, and as the Court expressly noted in the *North Sea Continental Shelf* cases, any "distorting effects" of an equidistance line are "comparatively small within the limits of territorial waters"[101]. It follows that a circumstance which may justify adjustment of the equidistance line for an EEZ/continental shelf delimitation does not necessarily justify adjustment of an equidistance line in the territorial sea.

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[96] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 2.43, referring to C. Yacouba and D. McRae, "The Legal Regime of Maritime Boundary Agreements", in D. A. Colson and R. W. Smith (eds.), *International Maritime Boundaries*, *Vol. V* (2003), p. 3920.

[97] *The Republic of Croatia* v. *The Republic of Slovenia*, PCA Case No. 2012-04, Final Award, 29 June 2017, para. 1000.

[98] C. Yacouba and D. McRae, "The Legal Regime of Maritime Boundary Agreements", in D. A. Colson and R.W. Smith (eds.), *International Maritime Boundaries*, *Volume V* (2003), p. 3920.

[99] UNCLOS, Art. 15.

[100] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 2.46, footnote 66.

[101] *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 37, para. 59. See also *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 318.

20. [Start slide 2] This can be seen from the treatment of the Bangladeshi St. Martin's Island in the *Bangladesh/Myanmar* case, indicated in the Tribunal's sketch-map now on your screens. Myanmar argued that the Island was a "special circumstance" in the context of the territorial sea delimitation and should be given less than full effect[102]. Myanmar's claimed adjusted equidistance line is shown in red. The Island, an area of some 8 sq km, did have an impact on the equidistance line which is shown in green: from the point marked C it had the effect of pushing the equidistance line in a general southerly direction and closer to Myanmar's coast. The Tribunal rejected Myanmar's submission, finding that there were no compelling reasons to justify treating St. Martin's Island as a special circumstance for the purposes of Article 15 of the Convention. The Tribunal delimited the territorial sea with an unadjusted, strict equidistance line[103]. When it came to delimitation of the EEZ and continental shelf, however, the Tribunal gave St. Martin's Island zero effect[104]. This differentiated treatment followed from the different approaches to delimitation of the territorial sea and the EEZ/continental shelf, as mandated by UNCLOS. The Tribunal expressly noted that "the effect to be given to islands in delimitation may differ, depending on whether the delimitation concerns the territorial sea or other maritime areas beyond it"[105].

21. [Start slide 3] Similarly, in *Bangladesh* v. *India*, Bangladesh sought an adjustment of the equidistance line in the territorial sea on the basis of concavity of the coastline of the Bay of Bengal. While the Annex VII Tribunal considered that concavity *did not* warrant adjustment of an equidistance line in the territorial sea[106], it found that concavity *did* warrant adjustment for the EEZ/continental shelf[107]. You see on your screens the final delimitation line for both the territorial sea and beyond, but the territorial sea delimitation followed a strict equidistance line. This differentiated approach follows from the primacy given to equidistance in the territorial sea and from the fact that concavity did not have any significant effect in the territorial sea. [End slide 3.]

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[102]ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 131-137.

[103]*Ibid*., para. 152.

[104]*Ibid.*, paras. 318-319.

[105]*Ibid.*, para. 148.

[106]UNCLOS, Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, *Award*, 7 July 2014, para. 272.

[107]*Ibid.*, paras. 406-421.

22. Fifth point. In the territorial sea, absent special circumstances, an equidistance line will be an equitable solution to the delimitation, enabling both States to enjoy their full sovereignty over the territorial sea on equal terms. A coastal State's sovereignty over the territorial sea is to be contrasted with its functional rights and jurisdiction over the EEZ and continental shelf. If an equidistance line is adjusted, one State's territorial sea is effectively cut off in favour of the other's EEZ. As the ITLOS observed in *Bangladesh/Myanmar*, this would give "more weight to the sovereign rights and jurisdiction of [one State] in its exclusive economic zone and continental shelf than to the sovereignty of [another State] over its territorial sea"[108]. Mr. Wordsworth and Mr. Lathrop will return to this point in discussing the territorial sea delimitations sought by Nicaragua in this case.

23. Sixth and final point: I mentioned at the outset that where the Court has found it necessary to depart from an equidistance line on account of special circumstances, it has either used another method of delimitation or it has adjusted the equidistance line[109]. Nicaragua emphasizes this in a footnote to its Counter-Memorial, when it argues for a convergence in the delimitation of maritime zones[110]. The point is undeveloped though in Nicaragua's written pleadings and perhaps we will hear more about it later this week. Quite how this assists Nicaragua in its plea for you to take into account the anticipated course of a provisional equidistance line *beyond* the territorial sea, in delimiting within the territorial sea, is entirely unclear.

Le PRESIDENT : Mme Parlett, je suis désolé de vous interrompre. Je crois que le moment est venu de faire une pause de quinze minutes comme il est d'usage. Vous pourrez reprendre votre plaidoirie après la pause. L'audience est suspendue.

L'audience est suspendue de 11 h 30 à 11 h 50.

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[108]ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 169.

[109]See, e.g., *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 94, para. 176.

[110]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, p. 29, fn 59.

Le PRESIDENT : Veuillez vous asseoir. Madame Parlett, je vous donne la parole pour la poursuite de votre plaidoirie.

Ms PARLETT: Thank you Mr. President.

(2) Identification of relevant area and relevant coast

24. Having addressed you on the first point of difference between the Parities, that is the primacy of the equidistance line in the territorial sea, I turn now to the second contested issue of principle, and that concerns the identification of relevant coasts and relevant area. The ratios of the two States' relevant coasts and areas are used in the third stage of the standard methodology, in order to avoid gross disproportion in the final delimitation line.

25. The Parties agree that the relevant coast is that which generates overlapping projections, and that those overlapping projections are used to define the relevant area[111]. This was clearly stated by the Court in the *Black Sea* case[112].

26. The Parties disagree on identification of relevant area and relevant coasts in two respects, and I will address each of them in turn.

(a) First, as to the relevant area, the Parties differ as to the way overlapping projections should be identified, and more precisely, whether they include only frontal as opposed to radial projections. While Costa Rica contends that radial projections are appropriate, Nicaragua argues that only unidirectional "frontal" projections should be used[113].

(b) Second, as to relevant coast, the Parties differ in respect of when parts of a State's coast are to be excluded, as irrelevant.

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[111] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, MCR, para. 3.3; CMN, para. 2.15.

[112] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, pp. 96-97, para. 99; see also p. 89, para. 77; and *Continental Shelf (Tunisia/Libya Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 75.

[113] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 2.17.

27. At the outset I would emphasize that the "vagaries" associated with the assessment of relevant areas and relevant coasts have been remarked upon[114], and these assessments may involve a "margin of appreciation"[115]. This is hardly surprising, given that the ratios of relevant area and relevant coast are factors to be taken into account in the third stage gross disproportionality test, and it is notable that neither the Court nor any international tribunal has so far been persuaded to adjust a delimitation line on the basis of perceived disproportionality at the third stage. In this case, neither Party argues for an adjustment on the basis of disproportion in the allocation of relevant areas or the ratio of relevant coasts. Nevertheless, this forms an established part of the exercise required to delimit an EEZ/continental shelf, and it is for that reason that I will explain why Costa Rica's approach to relevant coasts and relevant area is to be preferred over Nicaragua's approach.

(i) Radial projection to identify the relevant area

28. Costa Rica uses a radial projection to identify the relevant area of overlapping entitlements. Apart from the fact that this is consistent with the applicable case law and practice, there are two very practical considerations which suggest that a radial projection is the appropriate method of measuring the relevant area.

29. First, what is being identified is the area of overlapping "entitlements" of the two States. Crucial to that measurement is the identification of the outer limits of those "entitlements". The outer limits of distance-based, law-of-the-sea zones are all measured using the arcs of circles or "envelope of arcs" method because those zones project radially from coastal territory: this approach was embodied in Article 6 of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone[116]; it now finds expression in Article 4 of UNCLOS[117]. [Start slide 4] The outer

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[114]*Arbitration between Newfoundland and Labrador and Nova Scotia concerning Portions of the Limits of their Offshore Areas as defined in the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act and the Canada-Newfoundland Atlantic Accord Implementation Act, Award, Second Phase*, 26 Mar. 2002, (2002) 128 *ILR* 435, p. 576, para. 5.19.

[115]UNCLOS, Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, *Award*, 7 July 2014, para. 302.

[116]Convention on the Territorial Sea and the Continuous Zone, signed at Geneva on 29 April 1958 (entered into force 10 September 1964), *UNTS*, vol. 516, Art. 6, p. 205.

[117]UNCLOS, Art. 4.

limits of the maritime zones of Peru and Chile were shown on the sketch-map appended to the Court's Judgment as measured using an envelope of arcs[118].

30. You now see on your screens a simplified coastline of a fictitious State. The limits of its 200 nautical mile EEZ/continental shelf, measured using an envelope of arcs, are now shown. The area highlighted represents its maritime entitlements. If one were to use a frontal projection, rather than a radial projection, the projected area would not cover the entirety of its entitlements. Given that the Court is concerned to identify the area of overlapping entitlements, it follows that the relevant area should be defined using the same method as is used to define the outer limits of those entitlements. That requires a radial projection. If outer limits were measured using a unidirectional frontal projection, which they are not but which Nicaragua's approach in this case would suggest, those outer limits would follow a *tracé parallèle* of the coast. This method, once favoured but now outmoded, leads to different outer limits than those which follow from the use of an envelope of arcs. In order to identify the correct area of overlapping entitlements it is necessary to use the same method as is used to measure the outer limits: and that requires using radial projections.

31. A second practical consideration suggests that radial projections should be preferred.

(a) [Start slide 5] You see now on your screens the coasts of two hypothetical, adjacent States, which are aligned along a straight line. Using a radial projection for each, one can identify the relevant area of overlapping entitlements. In contrast, using only a frontal projection for each, there is no area of overlapping entitlements, and no relevant area. This cannot be right — it would mean that States in this configuration would never have any maritime areas to be delimited. It is illogical. Radial projection is required to identify any relevant area.

(b) [Start slide 6] You see now two adjacent States' coasts that are slightly convex. Again, using a radial projection, it is possible to identify each State's entitlement, and the area of overlapping entitlements: the relevant area. If one were to use only a frontal projection, there is no area of overlapping entitlements, and no relevant area. This cannot be right.

(c) [Start slide 7] A third configuration of adjacent States now appears on your screens — ones whose coasts are slightly concave. Here using a radial projection, one can identify the relevant

[118] *Maritime Dispute (Peru* v. *Chile), Judgment, I.C.J. Reports 2014*, p. 70, Sketch-map No. 4.

area, the area of overlapping entitlements. Using a frontal projection, here there is some area of overlapping entitlements, although as you see it is much smaller, and it does not extend to the outer limit of the two States' entitlements.

32. The point to be taken from this is that a frontal projection approach means that only where adjacent States have some kind of coastal concavity will there be any relevant area. That is what follows from Nicaragua's approach to relevant area. It makes no sense. The relevant area must be measured using a radial projection; otherwise there would often be no relevant area at all.

33. Using a radial projection to define the relevant area is also consistent with the weight of authority. Some 25 years ago, before the three-stage methodology for delimiting maritime boundaries had been fully developed, a majority of the arbitral tribunal in the *Saint Pierre et Miquelon* case, accepted that coasts project frontally. That approach resulted in a projection of a corridor for Saint Pierre and Miquelon which had the same breadth as the coastal opening of those two islands[119]. By reference to the Court's jurisprudence, Professor Prosper Weil dissented, noting that "[a] maritime projection defined by a certain distance from the coast is not effected only in a direction perpendicular to the general direction of the coastline" but "[i]t radiates in all directions, creating an envelope of ocean around the coastal front. In a word, it is radial"[120]. He noted further that "[t]he frontal projection theory has been rejected by the practice of States both for the determination of outer limits and for delimitation between States", noting that those are determined using the technique of "envelope of arcs", a technique based on radial projection, and not using the outmoded technique of *tracé parallèle*[121].

34. In more recent cases, radial projection has been explicitly endorsed as the appropriate method to define the relevant area. [Start slide 8] The Annex VII Tribunal in *Bangladesh* v. *India* endorsed the use of radial projection in the determination of relevant coasts and relevant area. Referring to the earlier decision of the distinguished Tribunal in the arbitration between Trinidad

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[119]Court of Arbitration for the Delimitation of Maritime Areas between Canada and France: *Decision in Case Concerning Delimitation of Maritime Areas (St. Pierre and Miquelon)*, 10 June 1992, 31 *ILM* 1145 (1992), p. 1170, para. 71.

[120]Court of Arbitration for the Delimitation of Maritime Areas between Canada and France: *Decision in Case Concerning Delimitation of Maritime Areas (St. Pierre and Miquelon)*, 10 June 1992, 31 *ILM* 1145 (1992), Dissenting Opinion of Prosper Weil, p. 1200, para. 11.

[121]*Ibid.*, p. 1201, para. 12. See also P. Weil, *The Law of Maritime Delimitation — Reflections* (1989), p. 69.

and Tobago and Barbados[122], the Tribunal in *Bangladesh* v. *India* noted that "[t]o establish the projection generated by the coast of a State, the Tribunal considers that 'what matters is whether [the coastal frontages] abut as a whole upon the disputed area by a radial or directional presence relevant to the delimitation'"[123]. The relevant area was there defined by a radial projection, which you see highlighted in red on Map 4 from the Tribunal's Award.

35. As Nicaragua notes[124], the Tribunal took into account a portion of the northern coast of India's Andaman Islands — it is marked in orange in that sketch-map — but it did not take into account the southern part of those islands[125]. The Tribunal's reason was clearly stated: the excluded coasts "lie too far south to be fairly considered to generate projections that overlap with those of the coast of Bangladesh"[126]. Indeed, they are well over 400 nautical miles from the nearest point on the Bangladeshi coast. Nicaragua does not accept this reason and suggests that the coasts were actually excluded because the Tribunal adopted a frontal projection approach[127]. There is no support for this in the Award. Instead, the Tribunal explicitly adopted a radial projection, while noting that it retained a "margin of appreciation in determining the projections generated by a segment of coastline"[128]. Nicaragua attempts to rewrite the Tribunal's reasoning by pointing to this map of total relevant area as supporting its claim that the Tribunal applied the theory of frontal projection. But the map does not support Nicaragua; it makes plain, as is apparent from the Award itself, that the Tribunal used a radial projection to identify the relevant area projecting from the mainland coasts. [End slide 8]

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[122]*Arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the exclusive economic zone and the continental shelf between them*, Decision, 11 April 2006, *RIAA, vol.* XXVII, p. 235, paras. 329 and 331; see also p. 233, para. 321.

[123]UNCLOS, Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, *Award*, 7 July 2014, para. 300 (references omitted).

[124]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 2.34.

[125]UNCLOS, Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, *Award*, 7 July 2014, para. 302 and p. 89, Map 4.

[126]*Ibid*., para. 304.

[127]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 2.34.

[128]UNCLOS, Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, *Award*, 7 July 2014, para. 302. See also *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 747, para. 289.

36. So far as islands are concerned, I would note that the correct approach is that shown by the Court in *Nicaragua* v. *Colombia*: there it included in the relevant area a radial projection from the coasts of the islands of San Andres and Providencia[129].

37. While I am addressing Nicaragua's case on frontal projection, I note that it argues that the use of perpendicular lines as lateral limits to the relevant area confirms that frontal rather than radial projection is appropriate[130]. Costa Rica agrees that these lines are commonly used; indeed, it has proposed a perpendicular to the closing line on the Gulf of Fonseca to limit Nicaragua's relevant area in the Pacific[131]. [Start slide 9] This is a practical approach taken to exclude areas in which third States have interests or "potential entitlements"[132]. In this case, the application of a perpendicular as a northern limit to Nicaragua's relevant area actually benefits Nicaragua in the gross disproportionality test; in its absence, Nicaragua's relevant area would radially project north of the perpendicular and this would therefore result in a higher proportion of the area of overlapping entitlements being allocated to Nicaragua. But the use of perpendiculars as reasonable limits to the relevant area has no bearing on the appropriate method of measuring coastal projection. For the reasons I have explained, the weight of authority indicates that a radial projection should be used to measure the relevant area, and that is consistent with the way States measure the outer limits of their maritime zones: using an envelope of arcs. [End slide 9]

38. Finally, once the relevant area is identified using radial projections, it is necessary to exclude areas in which a party has no entitlement "whether because of an agreement it has concluded with a third State or because that area lies beyond a judicially determined boundary between that Party and a third State"[133]. [Start slide 10] This was recently done by the Court in *Nicaragua* v. *Colombia*. It resulted in the exclusion of areas north of the Nicaraguan boundary with Honduras, and the Panamanian side of the boundary with Colombia, for example. In this case, it

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[129] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, pp. 679-680, para. 151.

[130] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, paras. 2.31-2.32.

[131] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, MCR, para. 3.12.

[132] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, pp. 685-686, para. 163.

[133] *Ibid.*.

results in the exclusion of areas on the Colombian side of the boundary delimited by the Court in 2012, as Mr. Lathrop will explain tomorrow. [End slide 10]

(ii) Identifying the relevant coast

39. This brings me to the question of relevant coast. In principle any coast of a party which generates overlapping entitlements — using a radial projection — should be counted as part of the relevant coast. Like relevant area, the ratio of relevant coastal length is used for the purposes of assessing gross disproportionality in the final stage of the delimitation of the EEZ and continental shelf.

40. There are three reasons to exclude coasts from a party's relevant coasts and all have application in this case.

41. The first is that the coast of one State faces onto itself. [Start slide 11] An example is the Court's exclusion, in the *Black Sea* case, of the coasts of the Karkinits'ka Gulf, excluded because those "face each other and their submarine extension cannot overlap with the extensions of Romania's coast"[134]. They are to be contrasted with less pronounced coastal indentations, such as Ukraine's Gulf of Kalamits'ka[135], which was included in the relevant coast for the purpose of the delimitation with Romania, and Bangladesh's Meghna River Estuary[136] [Start slide 12], which was included in the relevant coasts both for the delimitation with Myanmar [Start 13] and the delimitation with India.[137]

42. The second reason to exclude coast as irrelevant is that it faces onto a third State. This follows from the decision of the Court in *Cameroon* v. *Nigeria*. [Start slide 13] There Cameroon argued that its entire coastline should be considered relevant to the delimitation with Nigeria, but the Court found that the part of the Cameroonian coast that faced Bioko — an island belonging to a third State, Equatorial Guinea — was not relevant to the delimitation between Cameroon and

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[134]*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 97, para. 100.

[135]*Ibid.*, pp. 95-96, para. 94 and Sketch Map No. 4.

[136]ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 200.

[137]UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India), Award*, 7 July 2014, Map 4, p. 89.

Nigeria[138]. It followed that nearly three quarters of Cameroon's coast was excluded from the coast relevant to the delimitation with Nigeria.

43. The third and final reason to exclude coast as irrelevant is that it faces entirely away from the area of overlapping potential entitlements. [Start slide 14] An example of this was the Court's exclusion, in *Nicaragua* v. *Colombia*, of "the short stretch of coast near Punta de Perlas, which faces due south, and thus [did] not project into the area of overlapping potential entitlements"[139]. As is apparent from the sketch-map appended to the Court's Judgment now on your screens, this small section of coast faces entirely away from the area to be delimited, and does not merely face slightly away from that area. Other areas of Nicaragua's coast which faced slightly away from the delimitation area were not excluded, notably part of its mainland coast north of Miskitos Cays, and part of its south-facing mainland coast below Punta del Mono.

44. [Start slide 15] A final point to note about the exclusion of relevant coast is this: even if parts of a State's coast are disregarded as irrelevant, the waters in front of that coast might still be counted as relevant area, because they fall within the radial projection of other parts of coast that are relevant. The exclusion of the south-facing stretch of coast near Punta de Perlas in *Nicaragua* v. *Colombia* did not result in the exclusion of the waters in front of that coast from the relevant area. This is entirely consistent with Costa Rica's approach to the measurement of the relevant area in this case. [End slide 15]

(3) Relevant circumstances

45. I turn now to the final point of applicable law that divides the Parties, and it concerns the scope of "relevant circumstances". These might necessitate an adjustment to a provisional equidistance line in the delimitation of the EEZ and continental shelf, in the second stage of the

[138] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, pp. 442-443, para. 291.

[139] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 678, para. 145.

Court's standard methodology[140]. The cases show that such circumstances are the exception rather than the rule.

46. Reflecting that approach, Costa Rica has proposed an adjustment to the equidistance line in the Caribbean Sea, in order to avoid the inequitable result created from the cut-off resulting from the three-State coastal concavity of the south-west Caribbean, taken together with the notional delimitation with a third State: Panama. In contrast, Nicaragua has sought to rely upon a variety of factors it says constitute "relevant circumstances" on both the Pacific and the Caribbean. These will be addressed by Mr. Wordsworth and by Professor Kohen in turn, but in advance of their remarks I will just make a few general points.

47. First, "relevant circumstances" in the context of EEZ/continental shelf delimitations are almost always circumstances which arise from the geography[141].

48. Second: incidental features, such as minor offshore islands, may have a disproportionate or distorting effect on the delimitation. There are two ways of addressing this. First, the feature can be ignored in the construction of the provisional equidistance line at the first stage of the standard method (as Costa Rica has done in this case for the delimitation of the EEZ and continental shelf in the Caribbean Sea). Alternatively, they can be used in the construction of the provisional equidistance line, and then discounted at the second stage, as relevant circumstances justifying an adjustment of the provisional equidistance line. I mentioned earlier St. Martin's Island, which was disregarded by ITLOS for the purposes of the delimitation in the EEZ and continental shelf, on the basis that because of its location, giving it full effect "would result in a line blocking the seaward projection from Myanmar's coast in a manner that would cause an unwarranted distortion of the delimitation line"[142]. In *Qatar* **v.** *Bahrain* the Court disregarded a small feature to the north of Bahrain, the Fasht al Jarim, noting that it was "a remote projection of Bahrain's coastline" which, if

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[140]*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II),* p. 696, para. 192. See also *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 101, para. 120 and p. 112, para. 155; and ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, paras. 233 and 275.

[141]S. Fietta and R. Cleverly, *A Practitioner's Guide to Maritime Boundary Delimitation* (2016), p. 67; Y. Tanaka, "Article 74" in Proelss, *UNCLOS, 1st edition* (2017), pp. 575-576, para. 24; M.D. Evans, *Relevant Circumstances and Maritime Delimitation* (1989), pp. 119-121.

[142]ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, para. 318.

given full effect "would 'distort the boundary and have disproportionate effects'"[143]. Similarly, in *Black Sea*, the Court disregarded Serpent's Island, for the purposes of the delimitation beyond the territorial sea because to count it "as a relevant part of the coast would amount to grafting an extraneous element onto Ukraine's coastline; the consequence would be a judicial refashioning of geography, which neither the law nor practice of maritime delimitation authorizes"[144].

49. While there are several examples of islands being given less than full effect, there are no examples of peninsulas being given less than full effect. Indeed, one cannot simply ignore features which form part of the coast or refashion the existing coastal geography — consistent with the Court's statement in *North Sea* that "[t]here can never be any question of completely refashioning nature"[145]. In *Gulf of Maine*, Canada sought to argue that the peninsula of Cape Cod should be ignored in the delimitation "because it forms a salient on the Massachusetts coast"[146]. The Chamber rejected this argument, finding that a peninsula "so substantial" could not simply be ignored. It noted that "the facts of geography are not the product of human action amenable to positive or negative judgment, but the result of natural phenomena, so that they can only be taken as they are"[147].

50. Third: and this is a further point on which both Parties agree: cut-off caused by coastal concavity may be a relevant circumstance requiring adjustment to the equidistance line to achieve an equitable result.

51. [Start slide 16.] The concept of cut-off resulting from coastal concavity was first enunciated in the *North Sea Continental Shelf* cases, in which Germany found itself at the back of a coastal concavity caught between the adjacent States of Denmark to the north (State A) and the

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[143] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Merits, Judgment, I.C.J. Reports 2001*, pp. 114-115, para. 247; citing *Continental Shelf* Case *(France/United Kingdom)*, *RIAA*, vol. XVIII., p. 114, para. 244.

[144] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 110, para. 149. See also p. 123, para. 188.

[145] *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 49, para. 91.

[146] *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 271, para. 37.

[147] *Ibid.*

Netherlands to the west (State C)[148]. On the sketch reproduced in the Court's Judgment and now shown on your screens, it is most similar to State ***B*** on sketch-map 1, at the top left. The Court emphasized that "in the case of a concave or recessing coast" — such as that of Germany in the North Sea — "the effect of the use of the equidistance method is to pull the line of the boundary inwards, in the direction of the concavity"[149]. The Court noted that where the concavity is pronounced, and "two such lines are drawn at different points on a concave coast, they will . . . inevitably meet at a relatively short distance from the coast", effectively "'cutting off' the coastal State from the further areas of the continental shelf outside of and beyond this triangle"[150]. The Court noted that it takes three States and two maritime boundaries to create this situation. Considering the two individual boundaries separately, the Court observed "that neither of the lines in question, taken by itself, would produce this effect, but only both of them together"[151]. It continued: "although two separate delimitations are in question, they involve — indeed actually give rise to — a single situation"[152]. The Court also emphasized that in this situation — that is, where there is a three-State coastal concavity:

> "the use of the equidistance method would frequently cause areas which are the natural prolongation or extension of the territory of one State to be attributed to [the other], when the configuration of the latter's coast makes the equidistance line swing out laterally across the former's coastal front, cutting it off from areas situated directly before that front"[153].

52. [Start slide 17.] Following the Court's Judgment, by agreement, the three States negotiated adjusted equidistance lines to achieve an equitable solution to Germany's cut-off resulting from concavity. On the sketch-map now on your screens you can see the inequitable unadjusted equidistance line in red, and the equitable adjusted equidistance boundaries negotiated by the parties in black[154].

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[148]*North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 17, para. 8, and fig. produced on p. 16 of the Judgment.

[149]*Ibid.*, p. 17, para. 8.

[150]*Ibid.*.

[151]*North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 17, para. 7.

[152]*Ibid.*, p. 19, para. 11.

[153]*Ibid.*, pp. 32-33, para. 44.

[154]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, MCR, sketch-map 4.11.

53. Cut-off as enunciated in *North Sea* has continued to guide the decisions of this Court and international tribunals in maritime delimitation cases. I will mention just two recent decisions, both of which involved a State at the middle of a three-State coastal concavity, and where adjustment was required in order to avoid inequitable cut-off for the middle State.

(a) [Start slide 18.] The first is the decision of ITLOS in *Bangladesh*/*Myanmar*, where the Tribunal adjusted the provisional equidistance line delimiting the EEZ and continental shelf to account for the concavity of the coast of Bangladesh caught between Myanmar and India[155]. To the right of the sketch on your screen you can see the unadjusted equidistance line in red for the EEZ/continental shelf between Bangladesh and Myanmar, and the adjusted equitable equidistance line delimited by the Tribunal in black[156].

(b) The second is the decision of the UNCLOS Annex VII Tribunal in *Bangladesh* v. *India*, where the Tribunal considered:

> "that a cut-off produced by a provisional equidistance line must meet two criteria to warrant adjustment . . . First, the line must prevent a coastal State from extending its maritime boundary as far seaward as international law permits. Second, the line must be such that — if not adjusted — it would fail to achieve the equitable solution required by articles 74 and 83 of the Convention."[157]

The Tribunal proceeded to adjust the provisional equidistance line in Bangladesh's favour, in order to avoid the inequitable consequences of that line in the context of Bangladesh's situation of coastal concavity. To the left of the sketch on your screen you see in red the unadjusted equidistance line between Bangladesh and India, and the adjusted equitable boundary marked in black. [End slide 18.]

54. In these cases, the application of equidistance in the context of a three-State coastal concavity produced a line that was found to be inequitable. The inequitable cut-off effect was produced when concavity and equidistance were combined with a third ingredient: the presence of a third State. All three ingredients were present in *North Sea*, *Bangladesh/Myanmar* and *Bangladesh* v. *India*, and, together, they created a cut-off effect severe enough to be considered a

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[155]ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 292 and 297.

[156]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, MCR, sketch-map 4.12.

[157]UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, *Award*, 7 July 2014, para. 417.

relevant circumstance impacting the State at the back of the concavity and necessitating adjustment of the provisional equidistance line in favour of the middle State. As my colleagues will explain, this is the situation in which Costa Rica finds itself in the south-western Caribbean Sea, but it is not the situation in which Nicaragua finds itself either in the Caribbean or in the Pacific.

55. Mr. President, Members of the Court, that brings my remarks on the relevant applicable law to a close. I thank you very much for your kind attention, and I ask that you give the floor to Mr. Wordsworth to address you on the delimitation of the maritime boundary in the Pacific Ocean.

Le PRESIDENT : Merci Madame. Je donne maintenant la parole à M. Wordsworth.

Mr. WORDSWORTH:

THE DELIMITATION IN THE PACIFIC

A. Introduction

1. Mr. President, Members of the Court, it is a privilege to appear before you, and to have been asked by Costa Rica to set out its position on delimitation of the maritime boundary in the Pacific Ocean.

2. As you have already heard from Ambassador Ugalde, Costa Rica seeks delimitation along the equidistance line in the maritime zones of the Pacific Ocean that are now before the Court. This is the delimitation that follows — and follows very obviously, we would say — from application of the well-known principles that Dr. Parlett has just outlined.

3. Without further ado, I turn then to the details, dealing first with the relevant coasts and the relevant areas.

B. Costa Rica's proposed delimitation

(1) Relevant coasts and relevant area

4. And the first task for the Court is to identify the coasts of Costa Rica that "generate projections which overlap with projections from the coast of the other Party"[158] — that is, of course, Nicaragua.

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[158] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, pp. 96-97, para. 99; see also p. 89, para. 77.

5. These coasts are depicted on the screen, showing the natural configuration. The relevant coast of Costa Rica extends from the centre point on the closing line of the Salinas Bay down to Punta Salsipuedes, measuring some 670 km when all the natural sinuosities are taken into account. On the same basis, the relevant coast of Nicaragua is 345 km long, giving a coastal length ratio of 1.9 to 1.

6. As can be seen on the screen, that coastal length ratio comes down to 1.4 to 1 when straight line approximations are used, consistent with the preferred approach of the Court and other international tribunals[159]; and it is by reference to this sketch-map that I wish to develop Costa Rica's submissions on the relevant coasts, and indeed the relevant areas. And there are three short points that I wish to make:

(a) First, it is the Costa Rican coast down to Punta Salsipuedes on the Osa Peninsula that generates projections which overlap with projections from the Nicaraguan Pacific coast, as you can now see on the screen showing the radial projections.

(b) Secondly, consistent with the *Black Sea* case, *Bangladesh/Myanmar*, and *Nicaragua* v. *Colombia*[160], sections of coast of one State that either face each other or face entirely away from the delimitation are to be disregarded. In this case, it follows that the Nicoya Gulf is to be disregarded, along with the south eastern coast of the Nicoya peninsula. These are the equivalents of the Karkinits'ka Gulf in the *Black Sea* case and the Punta de Perlas in *Nicaragua* v. *Colombia*, that you have just seen up on the screens from Dr. Parlett.

(c) Thirdly, when it comes to the relevant coast of Nicaragua, there is no basis for any such exclusions. The only issue concerns the exclusion of maritime areas in which third States have

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[159]See, e.g., *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, *Judgment*, *I.C.J. Reports 1969*, p. 52, para. 98; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, *Judgment, I.C.J. Reports 1982*, p. 91, para. 131; *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, *Judgment, I.C.J. Reports 1984*, pp. 335-336, para. 221; *Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau, Award*, 14 February 1985, *RIAA, vol.* XIX ,p. 149, para. 97; *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, *Judgment, I.C.J. Reports 1985*, p. 50, *para.* 68; *Delimitation of Maritime Areas between Canada and France (St. Pierre and Miquelon)*, Award (1992) 31 *ILM* 1145, para. 33; *Maritime Delimitation in the Area between Greenland and Jan Mayen*, *Judgment, I.C.J. Reports 1993*, p. 65, para. 61 and Sketch Map 2; ITLOS, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, paras. 201, 204 and Sketch Map 3; and UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, *Award*, 7 July 2014, para. 281.

[160]See *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 97, para. 100; ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, para. 200; and *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 678, para. 145.

an interest, consistent with the Court's decision in the *Nicaragua* v. *Colombia* case[161]. To take into account the interests of Honduras and El Salvador, Costa Rica has used a perpendicular to the closing line of the Gulf of Fonseca[162]. You see it now at the north-west corner of this sketch-map.

7. As can be seen on the screen, using straight line approximations, the length of the relevant coastline of Costa Rica is 415 km and that of Nicaragua is 300 km, giving the ratio of 1.4 to 1 that I have just mentioned. [On screen.] The relevant area generated by these coastlines is 202,800 sq km. Thus, one sees depicted the maritime space in which the potential entitlements of Costa Rica and Nicaragua overlap, as is consistent with the Court's decision in *Nicaragua* v. *Colombia*[163].

8. So far, so straightforward, one might think.

9. I turn, however, to Nicaragua's position on the relevant coasts, as depicted in its Figure 1b-1 [on screen]. As is manifest from this sketch-map, Nicaragua seeks dramatically to reduce Costa Rica's relevant coast by reference to a supposed principle that coasts generate a frontal projection only[164].

10. Three points on this.

11. First, it is radial projection that allows for the determination of the relevant coasts and the relevant area. The points have already been made by Dr. Parlett, but I just want to identify the coast that Nicaragua seeks to leave out of contention, and highlight by means of a simple sketch-map why this makes no sense at all. On Nicaragua's Figure 1b-1, we have added in a green line the Costa Rican coast that generates projections — radial projections — that overlap with projections from Nicaragua's coast. Nicaragua's position that these can be left out of consideration is depicted on its Figure 1b-3, which makes plain that its position is that frontal projections only are relevant, although Nicaragua can point to no compelling authority to support that position.

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[161] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, pp. 685-686, para. 163.

[162] *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992*, pp. 616-617, para. 432.

[163] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 683, para. 159.

[164] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, Counter-Memorial of Nicaragua (CMN), paras. 2.29-2.35.

12. Secondly, it will not have been lost on the Court that there is a marked inconsistency when it comes to Nicaragua's position on treatment of the Nicoya Peninsula — a geographical feature that, according to Nicaragua, can be emphasized or ignored to the extent that it fits with a maximum apportionment of maritime zones to Nicaragua. When it comes to identifying the relevant coasts and the relevant area, Nicaragua gives effect *only* to points on the Nicoya Peninsula and takes no account of 200 plus km of Costa Rican coastline to the south [Figure 1b-1 on screen].

(a) Compare, then, Nicaragua's position on the equitable result, where the base points on the Nicoya Peninsula disappear, alongside the Peninsula itself, as you can see from Nicaragua's Figure 1d-5 — now on the screen. There you see the so-called "effective baseline without Nicoya". Suddenly the one-time relevant coast is reduced to a mere shadow line.

(b) The absence of principle is then made all the more plain when one looks at Nicaragua's Figure Id-2 on the "general direction of the Parties' coasts" [on screen], which is the basis for Nicaragua's argument that the equidistance line is inconsistent with what it calls the "dominant geographic reality"[165]. It is not just that the Nicoya Peninsula is being excised once again, along with other parts of the Costa Rican coast. Also, as one notes, the Costa Rican coast to the south-east of Nicoya, said by Nicaragua to be irrelevant coast, is somehow being brought back into the equation to support a thesis on "general direction". And whilst this is on the screen, it is worth noting that what Nicaragua is really doing is taking the general direction of *its* coast, and then continuing that line south-east regardless of the inconveniently different geography of Costa Rica's coastline.

13. Finally, as to defining the relevant area by reference to a perpendicular to the closing line of the Gulf of Fonseca [on screen], Nicaragua has said in its Counter-Memorial that the Judgment of the Chamber in the *El Salvador* v. *Honduras* case is not *res judicata* for it, and observes that the lateral boundary of its maritime zones seaward of the Gulf of Fonseca remains to be determined[166]. It observes, quite correctly, that the determination of that boundary is not a matter for the present proceedings, of course. Costa Rica has not suggested the contrary, and is simply looking to take

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[165] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, paras. 2.56-2.61.

[166] *Ibid.*, paras. 2.36-2.37

into account the interests of third States as is mandated by the Court's methodology so far as concerns the relevant area. As the Court has made plain, a degree of approximation is quite acceptable so far as concerns identifying the relevant area, and Nicaragua has notably not put forward any different line, but has rather confined itself to maintaining — incorrectly, we would say — that its relevant coast and relevant area do not extend so far north.

(2) Starting point

14. Against that backdrop, I move briefly to the starting-point for the delimitation, which is the midpoint of the closing line of the Bay of Salinas. The Parties' respective depictions of that point are now on your screens. The Parties are agreed on the location of this point, and the only difference is one of rounding up[167], as to which Costa Rica takes no issue.

(3) Territorial sea delimitation

15. I turn then to delimitation of the territorial sea in accordance with Article 15 of UNCLOS. The equidistance line is depicted at sketch-map 3.6 of Costa Rica's Memorial [on screen] and, as follows from the absence of any historic title or special circumstance, this is the line that Costa Rica claims. This follows from a straightforward application of Article 15.

16. Nicaragua challenges this line, not on the basis of any historic title, but on the basis that the local geography — in the form of the Santa Elena Peninsula — constitutes a special circumstance. Nicaragua's position, as depicted on its Figure 1c-2, is that the equidistance line should be deflected very significantly southwards due to what it terms the "distorting effect" of the Santa Elena Peninsula[168]. In other words, the Santa Elena Peninsula is to be erased from the map, and the delimitation on the Costa Rican side is to be effected solely by reference to a base point on a tiny rock off the tip of Punta Descartes on the much smaller peninsula that forms the southern side of the Bay of Salinas.

17. There is nothing in Article 15 of UNCLOS or the law on maritime delimitation that supports this approach. Costa Rica's makes four points.

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[167] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, Memorial of Costa Rica (MCR), para. 3.13; CMN, para. 2.10.

[168] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, paras. 2.48-2.49.

18. First, and most obviously, the Santa Elena Peninsula does not somehow qualify as a "special circumstance" within Article 15 UNCLOS that could then displace the general rule on application of equidistance within the territorial sea. This is an area of the mainland of some 286 sq km, with a permanent population in excess of 2,400 people, many of whom moreover depend on the sea for their living — through tourism or fishing. The Peninsula is also the location of the Santa Rosa National Park, visited by tens of thousands of people every year[169].

19. And yet Nicaragua seeks to treat the Peninsula as if it were a small offshore feature or island. Nicaragua borrows the wording from the *Qatar* v. *Bahrain* case to contend that the Santa Elena Peninsula is "a remote projection of the coastline which, if given full effect, would distort the boundary and have disproportionate effects"[170]. Yet, the Court was then looking at the potential impact on the delimitation of a small feature to the north of Bahrain, the Fasht al Jarim, and it is worth putting up on the screen the Court's reasoning so you can focus on the very real geographical differences:

> "247. The Court further recalls that in the northern sector the coasts of the Parties are comparable to adjacent coasts [so that is the same basic situation as we have here] abutting on the same maritime areas extending seawards into the Gulf. . . . The only noticeable element is Fasht al Jarim as a remote projection of Bahrain's coastline in the Gulf area, which, if given full effect, would 'distort the boundary and have disproportionate effects'. [that is the wording that Nicaragua seeks to adopt] *(Continental Shelf* case *(France/United Kingdom),* United Nations, *Reports of International Arbitral Awards***,** Vol. XVIII, p. 114, para. 244).
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> 248. In the view of the Court, such a distortion, due to a maritime feature located well out to sea and of which at most a minute part is above water at high tide, would not lead to an equitable solution which would be in accord with all other relevant factors referred to above. In the circumstances of the case considerations of equity require that Fasht al Jarim should have no effect in determining the boundary line in the northern sector."[171]

20. So, it is self-evident that the two situations are not even remotely comparable, and this is all the more so given that, in *Qatar* v. *Bahrain*, the Court was looking at the impact of Fasht al Jarim on delimitation of the EEZ and the continental shelf. Similarly, in the *Continental*

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[169] See 2016 figures (45,589), "Informe Anual Estadísticas SEMEC 2016: SINAC en Números", Comp. B. Pavlotzky, San José, Costa Rica; available online at: http://www.sinac.go.cr/ES/docu/Transparencia/Estad%C3%ADsticas%20de%20Gesti%C3%B3n/Informe%20SEMEC/Informe%20SEMEC%202016.pdf.

[170] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, paras. 2.48-2.49.

[171] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Merits, Judgment, I.C.J. Reports 2001*, pp. 114-115, paras. 247-248.

Shelf case *(France/United Kingdom)*[172], which the Court was referring to in *Qatar* v. *Bahrain*, the tribunal was concerned with the impact of the Scilly Isles on delimitation of the continental shelf, not the territorial sea. And the simple point is that Nicaragua is unable to point to any case where this Court or any other international tribunal has adjusted a territorial sea equidistance line on the basis of any remotely equivalent configuration of a mainland coast.

21. Indeed, even with respect to islands, the argument now run by Nicaragua does not have the strength that it would wish for. In the *Bangladesh/Myanmar* case, Myanmar argued that granting St. Martin's Island full effect throughout the territorial sea delimitation would lead to a considerable distortion with respect to the general configuration of the coastline[173]. Dr. Parlett has already shown you the relevant sketch-map. You will recall that the ITLOS rejected this argument, and again it is worth looking briefly at the passage of the Tribunal's reasoning:

> "151. While it is not unprecedented in case law for islands to be given less than full effect in the delimitation of the territorial sea, the islands subject to such treatment are usually 'insignificant maritime features', such as the island of Qit'at Jaradah, a very small island, uninhabited and without any vegetation, in the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (*Merits, Judgment, I.C.J. Reports 2001*, p. 40, at p. 104, para. 219). In the view of the Tribunal, St. Martin's Island is a significant maritime feature by virtue of its size and population and the extent of economic and other activities."[174]

22. As you can see, the Tribunal then concluded that there were no compelling reasons that justif***ied*** treating St. Martin's Island as a special circumstance for the purposes of Article 15. And that conclusion is entirely consistent with the approach of the Court. As Dr. Parlett has just mentioned, in the *North Sea Continental Shelf* cases, the Court noted that any "distorting effects" of an equidistance line are "comparatively small within the limits of territorial waters"[175]. It follows that the threshold to establish that an equidistance line in the territorial sea requires adjustment is a high one, and in practice the Court and international tribunals have been slow to carry out any such

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[172] *Continental Shelf* case *(France/United Kingdom), RIAA*, vol. XVIII, p. 114, para. 244.

[173] ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 132.

[174] *Ibid*., paras. 152-153.

[175] *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 37, para. 59. See also ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 318.

adjustment, given, of course, the primacy accorded to equidistance lines to delimit the territorial sea, in accordance with Article 15 of UNCLOS.

23. Secondly, and related to its first line of argument, Nicaragua contends that a simplified equidistance line should be drawn on the basis of "the general direction of the coast", and it is said that the Court has followed this approach in several cases. But, again, the cases that Nicaragua refers to — *Tunisia/Libya*, *Gulf of Maine*, and *Nicaragua* **v.** *Honduras* — are not remotely comparable, and the reality is that Nicaragua is taking these cases out of context to suggest an unprincipled approach to delimitation that comes down to the excision of mainland coastal features considered by Nicaragua to be inconvenient to its case[176].

(a) In *Tunisia/Libya*, the Court was concerned with delimitation of the continental shelf, not the territorial sea, and its focus was on the radical change in the general direction of the Tunisian coastline marked by the Gulf of Gabes, you can see that up on your screen[177].

(b) Again, in *Gulf of Maine*, the Chamber was not concerned with delimitation of the territorial sea, and in any event the "main reason" for rejection of the equidistance line in the first sector of the single maritime boundary was the persistent uncertainty as to sovereignty over Machias Seal Island[178].

(c) As to the third case relied on, *Nicaragua* v. *Honduras*, this at least involved delimitation of the territorial sea, but it is also of no assistance to Nicaragua. Given the very unusual geography, neither party was contending that drawing a provisional equidistance line offered the most suitable method of delimitation[179]. In light of the impossibility of identifying base points on the unstable coastline, the Court decided on use of a bisector line. Of course, again, the situation is not remotely comparable, and it is not open to Nicaragua to dip into the methodology adopted by the Court in a given and quite different case, and then select just one part of the

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[176] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 2.48.

[177] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 90, map No. 3.

[178] See *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, pp. 332-333, paras. 211-212.

[179] See *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, pp. 741-742, paras. 273-275.

methodology of that case, without it in any way being contended that a bisector approach should be followed by you here. [End slide]

24. Thirdly, Nicaragua posits a rule by which Article 15 must be interpreted and applied in such a manner as not to prevent or undermine the achievement of an equitable solution to determination of the EEZ and continental shelf under Articles 74 and 83 of UNCLOS[180]. As Dr. Parlett has just explained, no support is put forward for this proposition, and nor is it explained why it would apply in this case. Indeed, Nicaragua's case on the EEZ and the continental shelf turns on the impact of the Nicoya Peninsula, I will return to that in a moment, not on the starting-point for delimitation beyond 12 nautical miles. So, again, this argument goes nowhere.

25. Finally, Nicaragua seeks to justify departure from equidistance by contending that "a State is entitled to the waters that lie in front of its coasts"[181]. As one can see from Nicaragua's proposed delimitation depicted on a sketch-map [on screen], what it really means is that Nicaragua is entitled to the waters that lie in front of *Nicaragua's* coasts. On Nicaragua's case, no effect is given to the Santa Elena Peninsula with the end result that Costa Rica is not similarly entitled to the waters that lie in front of Costa Rica's coasts. Indeed, on Nicaragua's case, Nicaragua's entitlement with respect to the EEZ and continental shelf prevail over Costa Rica's entitlement to territorial sea — a result that you can now see illustrated on your screen, and that is all the more unprincipled here than it was in *Bangladesh/Myanmar*, where it was rejected by the ITLOS with respect to St Martin's Island[182].

(4) Delimitation of the exclusive economic zone and continental shelf

26. I turn then to Articles 74 and 83 of UNCLOS and to the question of how the Court's three step methodology applies in the current case. [End slide]

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[180] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 2.44.

[181] *Ibid.*, para. 2.51.

[182] ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), Judgment,* 14 March 2012, para. 169.

(i) Provisional equidistance line

27. So far as concerns construction of the provisional equidistance line, there appears to be nothing material between the Parties.

28. Costa Rica's line is at its sketch-map 3.7 on screen.

29. Nicaragua has depicted a provisional equidistance line at its Figure 1d-3 and, when it is superimposed onto Costa Rica's line, it is evident that the two lines are not materially different.

(ii) No relevant circumstances calling for adjustment of provisional line

30. The Parties, of course, do differ markedly when it comes to the second stage of the three-step methodology.

31. Costa Rica can see no relevant circumstances that call for adjustment of the provisional equidistance line. There is no coastal concavity; there are no small offshore features which could have a distorting effect. Although the Costa Rican coastline is significantly longer than Nicaragua's, Costa Rica does not contend that the disparity is sufficiently large to constitute a relevant circumstance[183]. That is conservative, but consciously so, as Costa Rica wishes to make a well-founded, as opposed to a maximalist, claim. It relies on the disparity of coastal lengths in its favour only as a factor that powerfully reinforces the position that there should be no adjustment to the provisional equidistance line adverse to Costa Rica.

32. By contrast, Nicaragua's approach is to adopt a starting position to its argument that is at best misconceived, that is, the construction of a so-called "effective baseline" that erases the Nicoya Peninsula from the map — this is Nicaragua's Figure Id-5 [Id-5 on screen]. Nicaragua then argues that, in light of this "effective baseline", half weight should be accorded to the Nicoya Peninsula — unable to point to any case law in support[184], but presumably in the hope that it then achieves some far more minor adjustment of the provisional equidistance line.

33. The asserted basis for Nicaragua's approach is the contention that "Costa Rica's provisional equidistance line produces a marked and unjustified cut-off . . . that must be remedied

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[183]See, e.g., the cases referred to at *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, pp. 116-117, paras. 163-167.

[184]*Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 2.73.

if a truly equitable solution is to be achieved"[185]. The Nicoya Peninsula is then variously portrayed by Nicaragua as a "remote projection", a "coastal protrusion"[186], a "manifest irregularity"[187], even a "slight irregularity"[188], that means — so Nicaragua says — that equidistance leads to an inequitable result, as for example in *North Sea Continental Shelf*, or *Libya/Malta*[189].

34. Before turning to the flaws in Nicaragua's position, there is a preliminary point that Nicaragua seeks to gloss over.

35. In practical terms, any maritime boundary, however drawn, will cut off some of the projection from a given coast. An equidistance line is a balanced and equitable way of allocating cut-off and sharing areas of overlapping entitlements. Nicaragua's Figure Id-3 purports to demonstrate the cut-off produced by a provisional equidistance line by a series of black arrows drawn from Nicaragua's coast. But if one considers the provisional equidistance line from Costa Rica's perspective, it becomes clear that it also has the effect of cutting off Costa Rica's coastal projections. These are Costa Rica's arrows that we have added to Nicaragua's sketch-map. It is also apparent that it does so in a "reasonably and mutually balanced way"[190], and thus achieves the equitable solution called for by Articles 74 and 83 of UNCLOS.

36. The same applies so far as concerns the delimitation realised by the Court in *Romania* v. *Ukraine* as to which Romania might use a Nicaragua-type set of arrows to show that it was cut off[191]. The same applies to the delimitation along the equidistance line ordered by the Annex VII tribunal in *Guyana/Suriname*, as to which the Nicaraguan arrows would, again, show Suriname

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[185] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN., para. 2.63.

[186] *Ibid.*, para. 2.65.

[187] *Ibid.*, para. 2.70.

[188] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 2.67, referring to *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 49, para. 89.

[189] *Ibid.*, paras. 2.48, and 2.66-2.70.

[190] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, pp. 703-704, para. 215. See also *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 127, para. 201; ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 325.

[191] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 133, sketch-map No. 9.

supposedly cut off. In short, one can have all sorts of fun adding such arrows to equitable delimitations and then alleging cut-off, but the exercise is not of great assistance to the Court[192].

37. I move then to the details of Nicaragua's line of argument on cut-off, and there are three very obvious flaws.

38. First, notwithstanding Nicaragua's attempt to co-opt the wording of *North Sea Continental Shelf*, the Nicoya Peninsula cannot be characterized as a slight irregularity that would inequitably be magnified by the equidistance line as regards the consequences for the delimitation of the EEZ and the continental shelf[193]. The Nicoya Peninsula is an area of some 7,500 sq km. It has some 264,000 inhabitants. It is one of the main productive regions of Costa Rica in terms of agriculture and, moreover, accounts for approximately one-quarter of Costa Rica's important tourist industry. And there is a helpful comparison to be drawn with Cape Cod which, as Dr. Parlett noted earlier, Canada was keen to see ignored in the *Gulf of Maine* case. The Chamber held that it was "not possible to accept Canada's claim that the existence of so substantial a peninsula as Cape Cod may be ignored"[194] and, notably, that was in relation to a peninsula of 880, not 7,500 sq km. A little over a tenth of the size of the Nicoya peninsula.

39. So, the basic point here is that Nicaragua's attempt to rely on cases that concern the potentially inequitable impacts of coastal irregularities is misconceived, and the one case that comes closest to being on point is strongly against Nicaragua.

40. I move to the second flaw in Nicaragua's position. It says there is "a marked and unjustified cut-off . . . that must be remedied"[195], but the cases again that Nicaragua relies on do not concern remotely comparable geography. As can be seen on the screen, a provisional equidistance line in no sense restricts Nicaragua from reaching the 200-mile limit.

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[192] *Award in the arbitration regarding the delimitation of the maritime boundary between Guyana and Suriname*, Award of 17 September 2007, *RIAA*, Vol. XXX, p. 130, Map 3.

[193] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 2.67, referring to *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 49, para. 89 (with respect to the continental shelf).

[194] *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, p. 271, para. 37.

[195] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, para. 2.63.

(a) This can be compared with the well-known geography at issue in *North Sea Continental Shelf*, where cut-off was truly an issue that rendered equidistance inequitable. It was in the context of this — wholly different — geography, with three States and two maritime boundaries, that the Court made the well-known statement on which Nicaragua relies to the effect that use of the equidistance method can in certain circumstances produce results that are unreasonable*;* yes, but not here[196].

(b) Nicaragua also relies on *Libya/Malta*[197], which is not, however, a case concerning an alleged cutting-off. There the Court was focused on the issue of proportionality in light of the very different lengths of the coastlines of the two States then before it. The Judgment's Map No. 3 shows the issue that the Court was faced with — a massive discrepancy in coastal lengths, and one can see how this led to some shift northwards in the median line.

41. So the two cases relied on are not remotely comparable, and it is therefore not understood on what basis Nicaragua can contend in its Counter-Memorial that the "pronounced protrusion of the Nicoya Peninsula is exactly the sort of manifest irregularity that the Court referred to in the decisions just cited", which is a reference back to *North Sea Continental Shelf* and *Libya/Malta*[198]. That is simply not correct.

42. Earlier in its pleadings, in a footnote, Nicaragua also refers to *Romania* v. *Ukraine*, *Nicaragua* v. *Colombia* and *Bangladesh/Myanmar*, but this appears to be merely to support the general proposition that "so far as possible, the line of delimitation should allow the coasts of the parties to produce their effects in terms of maritime entitlements in a reasonable way"[199]. This was indeed emphasized by the Court in *Nicaragua* v. *Colombia*, and it is useful to recall quite what the Court was concerned with there. The Court's sketch-map No. 8 is now on your screens, showing the provisional equidistance line 40 to 50 nautical miles off the Nicaraguan mainland coast. I am

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[196] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica* v. *Nicaragua)*, CMN, paras. 2.67-2.68.

[197] *Ibid.*, para. 2.69, referring to *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1982*, p. 37, para. 56.

[198] *Ibid.*, paras. 2.67-2.70.

[199] *Ibid.*, para. 2.64, fn. 84, referring to *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, pp. 703-704, para. 215; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 127, para. 201; ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 325.

sure the Court is very familiar with this sketch-map. Against this geographical backdrop, it was said:

> "The Court agrees, however, that the achievement of an equitable solution requires that, so far as possible, 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 (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 127, para. 201) [referring there to the *Black Sea* case — and the Court will already have this language firmly in mind]. The effect of the provisional median line is to cut Nicaragua off from some three quarters of the area into which its coast projects. Moreover, that cut-off effect is produced by a few small islands which are many nautical miles apart. The Court considers that those islands should not be treated as though they were a continuous mainland coast stretching for over 100 nautical miles and cutting off Nicaraguan access to the sea and waters to their east. The Court therefore concludes that the cut-off effect is a relevant consideration which requires adjustment or shifting of the provisional median line in order to produce an equitable result."[200]

43. But none of this applies so far as concerns the current case. The alleged cut-off here is not remotely comparable, and the Court is concerned here with giving effect to a large and heavily populated part of Costa Rica's "continuous mainland coast", not "a few small islands which are many nautical miles apart". So, you see that we have precisely the reverse of the comparison that the Court was making in this passage from the *Nicaragua* **v.** *Colombia* case.

44. I move to the third flaw in Nicaragua's approach to the Nicoya Peninsula, which is that it is being hopelessly inconsistent, and Ambassador Ugalde has already touched on this point.

(a) So far as concerns the delimitation in the Pacific, Nicaragua says that the Nicoya Peninsula must only be given half effect.

(b) But when it comes to the Caribbean, various small islands and features — namely Corn Islands, the Paxaro Bovo and the Palmenta Cays — are to be given full effect[201]. The Corn Islands are said by Nicaragua to be "significant insular features, measuring 9.6 sq km and 3 sq km in size", and Nicaragua also emphasizes the population of the Islands, said to be in the region of 6,000-7,000[202]. It has nothing to say on Paxaro Bovo and the Palmenta Cays because there is nothing to say to make these rocks sound significant. And yet, all are to be given full effect,

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[200] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, pp. 703-704, para. 215.

[201] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica v. Nicaragua)*, CMN, paras. 3.65 and 3.101.

[202] *Ibid.*, para. 3.104.

whilst the 7,500 sq km of the Nicoya Peninsula, with its 260,000 plus inhabitants, get half effect and no more.

(c) And the inconsistency that Nicaragua is willing to espouse, as it seeks the optimal result for itself in the Pacific and in the Caribbean, is so obvious as to make one wonder if Nicaragua is not here content to play a rather tired game before the Court: an extreme position here, an extreme position there, but all is worth a go if Nicaragua might for example do a little better on the Caribbean side for seeing an untenable argument rejected so far as concerns the Pacific. The difficulty with that, however, is that an equitable solution is reached through applying principles of law to actual geographical features, not through splitting up contested maritime spaces by reference to the untenable extremities of a party's case.

45. Ultimately, the Nicoya Peninsula is a classic example of a geographical reality that cannot be refashioned through a misplaced reliance on "relevant circumstances". Nicaragua's argument comes down to a contention that the two States have been given "broadly equal treatment" by nature[203], which it purports to reflect in its invocation and depiction of the "general direction of the coastline". That is its figure 1d-4 that you see on your screens. The obvious difficulty is that the next step in this invocation of the "general direction of the coastline" is the excision of mainland features (however large, and whatever their importance or population) that interfere with the alleged "general direction". That is not a step recognized in, or compatible with, the law on maritime delimitation. The correct position is that there are no relevant circumstances calling for adjustment of the provisional equidistance line.

(iii) Disproportionality test

46. This leads to the third step in the usual methodology, and here I can be very brief. It is plain that Costa Rica's provisional equidistance line does not lead to any marked disproportion. The line divides the relevant area 130,700 sq km for Costa Rica to 72,100 sq km for Nicaragua, that is a ratio of 1.8 to 1. As already noted, the relevant coast ratios range from 1.4 to 1 (as straight line approximations) to 1.9 to 1 (following natural configurations). Such ratios demonstrate that

[203] *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica v. Nicaragua)*, CMN, para. 2.66; *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, pp. 49-50, para. 91.

there is no question of any disproportion. Costa Rica accordingly claims that the equidistance line should be followed here as in the territorial sea.

C. Conclusion

47. Mr. President, Members of the Court, that concludes Costa Rica's opening on delimitation in the Pacific. I thank you for your attention, and I ask that you give the floor — after the lunch break — to Professor Kohen to open Costa Rica's case on the Caribbean side by reference to its case on the land boundary.

Le PRESIDENT : Merci. La Cour se réunira de nouveau cet après-midi, de 15 à 18 heures, pour entendre la suite du premier tour de plaidoiries du Costa Rica. L'audience est levée.

L'audience est levée à 13 heures.