

Corrigé  
Corrected

CR 2017/14

International Court  
of Justice

THE HAGUE

Cour internationale  
de Justice

LA HAYE

YEAR 2017

*Public sitting*

*held on Monday 10 July 2017, at 3 p.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)*

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VERBATIM RECORD

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ANNÉE 2017

*Audience publique*

*tenue le lundi 10 juillet 2017, à 15 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)*

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COMPTE RENDU

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

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

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*as Agent;*

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

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

*comme administrateur.*

Le PRESIDENT: Veuillez vous asseoir. The sitting is now open. The Court meets this afternoon to hear the conclusion of Cost Rica's second round of oral argument. I shall now give the floor to Mr. Coalter Lathrop.

Mr. LATHROP:

## DELIMITATION IN THE CARIBBEAN SEA

### A. Introduction

1. Thank you, Mr. President. Mr. President, as in the first round, I will address the delimitation in the Caribbean Sea, from the starting-point on the right bank of the San Juan River at its mouth, through the territorial sea, exclusive economic zone and continental shelf to an endpoint on the 200-nautical-mile limit of Costa Rica. And I will move from landward to seaward as I address these matters.

2. First, some points of agreement between the Parties:

- (a) They agree that the construction of a provisional equidistance line is not only feasible, but possible, and we heard an extended explanation last week of how Nicaragua constructed its provisional line<sup>1</sup>.
- (b) The Parties agree that "some cut-off is inevitable in a delimitation between two adjacent States"<sup>2</sup>.
- (c) They agree that concavity-induced cut-off can be a relevant circumstance requiring adjustment of the provisional equidistance line<sup>3</sup>.
- (d) And the Parties agree that they do not rely on disproportionality as an argument<sup>4</sup>.

3. After I touch on three preliminary points, I will take you to the issues on which the Parties do not yet agree.

- (a) My first preliminary point. Nicaragua continues to confuse areas within and beyond the territorial sea. [Start tab 216] Here is the map Professor Lowe had on the screen while telling

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<sup>1</sup>CR 2017/11, pp. 29-30, paras. 30-31 (Reichler).

<sup>2</sup>*Ibid.*, p. 39, para. 61 (Reichler).

<sup>3</sup>*Ibid.*, p. 39, para. 60 (Reichler).

<sup>4</sup>*Ibid.*, p. 12, para. 13 (Lowe).

you about the delimitation of the territorial sea and why you should adjust the provisional line in that narrow zone, which appears on the very far left of this map<sup>5</sup>. You will have noticed several examples of this during Nicaragua's first round, and no doubt you will see it again in their second round. [End tab 216]

(b) My second preliminary point. [Start tab 217] The map on the screen was used by Costa Rica during its first round of oral argument in the hearing on Costa Rica's application to intervene in *Nicaragua v. Colombia*. For the purpose of that intervention, Costa Rica defined its interest of a legal nature, in geographic terms, as a minimum area of interest bounded on the north by a mainland-only equidistance line with Nicaragua, on the east by Costa Rica's 200-mile limit, and on the south by Costa Rica's agreed boundary with Panama. Now, the line that extends east from the end of the Costa Rica-Panama boundary is formed by the southern limit of Nicaragua's expansive delimitation area in that case. Costa Rica's area, identified for the narrow purpose of the intervention, was without prejudice to third States<sup>6</sup>, and it certainly did not represent Costa Rica's delimitation position against Panama as Mr. Reichler implied on Friday<sup>7</sup>. [End tab 217]

(c) My third and final preliminary point. Nicaragua has twice raised the issue of continental shelf beyond 200 nautical miles<sup>8</sup>. Costa Rica does not request a delimitation of this zone because all of the areas of continental shelf in the Caribbean Sea lie within 200 nautical miles of the coast of one or more Caribbean State. Therefore Costa Rica finds it inappropriate to make such a claim in the confined geography of the region.

## **B. Delimitation of the Territorial Sea in the Caribbean**

4. Mr. President, I move to the territorial sea delimitation, beginning with the starting-point in the Caribbean.

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<sup>5</sup>CR 2017/11 p. 17, para. 43 (Lowe).

<sup>6</sup>*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Application by Costa Rica for permission to intervene, para. 14.

<sup>7</sup>CR 2017/11, pp. 25-26, para. 17 (Reichler).

<sup>8</sup>CR 2017/10, p. 25, para. 19 (Oude Elferink). See also *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica v. Nicaragua)*, CMN, para. 3.70.

**(1) The starting-point of the maritime delimitation**

5. As Mr. Brenes noted, Costa Rica’s position is that it is appropriate and feasible to start the maritime delimitation at the stable point nearest the right bank of the San Juan River at its mouth. Costa Rica has identified that point, and it remains Costa Rica’s primary position that the maritime boundary should start at that first fixed point on land. [Start tab 218] In answer to the Court’s question, Costa Rica has noted the possibility of a first fixed point at sea connected to the mouth of the river with a mobile line segment. If the need were established, this would address the Court’s concern regarding coastal instability at the mouth of the San Juan River. And Nicaragua agrees that such a mobile line segment is “practicable”<sup>9</sup>.

6. Nicaragua does not agree, however, that such an offshore fixed point is compatible with an equidistance delimitation<sup>10</sup>; but, in fact, this presents no problem at all, especially if the fixed point offshore is itself an equidistance point. Costa Rica’s proposed fixed point at sea, labelled FP1, is on the equidistance line, and there is no difficulty continuing along the equidistance line seaward from that point. [End tab 218] [Start tab 219] But even if the fixed offshore point is not an equidistant point — and there is no reason here that it should not be — the Court and international tribunals have found solutions for getting back to the equidistance line from a non-equidistant point. Examples are the connector lines in *Cameroon v. Nigeria* — which is on the left of your screen — between Points G and X<sup>11</sup>, and in *Guyana v. Suriname* between Points 2 and 3 both of which are highlighted in blue on the map<sup>12</sup>. [End tab 219]

7. So there is nothing inherently wrong with providing for a first fixed point at sea, as long as it does not leave a gap in the delimitation and the boundary respects the fundamental principle that the land dominates the sea, so that the sea lying off a State’s territory should ~~pertain and~~ appertain to that State. This is best achieved by placing the fixed point on the equidistance line drawn between the actual coasts of the Parties. [Start tab 220] Nicaragua’s proposed fixed point offshore violates this principle and, if connected to the land boundary terminus at the right bank of the

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<sup>9</sup>CR 2017/11, p. 19, para. 54 (Lowe).

<sup>10</sup>*Ibid.*, p. 19, para. 56 (Lowe).

<sup>11</sup>*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, sketch-map No. 12, p. 449.

<sup>12</sup>*Award in the Arbitration regarding the Delimitation of the Maritime Boundary between Guyana and Suriname*, 17 Sep. 2007, United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. XXX, Part 1, Map No. 2, p. 105.

San Juan River at its mouth, it would deprive as much as 5 km of Costa Rican coast of nearly all maritime area lying seaward of that coast. This is not logical or equitable. And, moreover, it does not look “right”<sup>13</sup>. To the contrary, the line looks completely wrong, and it looks that way because it is unrelated to the coastal territory of the Parties, the very source of the title the Parties enjoy over areas of ocean to seaward. [End tab 220]

**(2) There are no special circumstances in the Territorial Sea**

8. Mr. President, there are no special circumstances in the territorial sea in this case. Nicaragua’s argument for special circumstances in the territorial sea suffers, not only from the question of whether their special circumstance is special enough, but also whether it is pertinent to the territorial sea at all. And Costa Rica says it is not.

9. [Start tab 221] Professor Lowe told you about the base points and coast relevant to the territorial sea delimitation, and here is his map. He said “in the Caribbean, for the first 12 nautical miles from the coast, the base points are all on the mainland coast within 8 miles or so of the starting-point”<sup>14</sup>. The red rectangle covers the section of sea and coast he referred to and that are relevant to the delimitation within the territorial sea. [End tab 221] [Start tab 222] And here is that same area and coast on a map that provides a more appropriate perspective on the territorial sea delimitation because it only covers the areas of sea and coast that are relevant to the delimitation of the territorial sea. Coasts beyond this limited area, including 75 per cent of Nicaragua’s concavity, do not impact the territorial sea and cannot be circumstances, special or otherwise, to be considered in its delimitation.

10. Professor Lowe asks whether, and I am quoting him, “it would make any difference if the equidistance/special circumstances approach were applied first to the territorial sea, excluding any consideration of what goes on beyond the 12-nautical-mile limit, and then to the EEZ, excluding any consideration of what goes on within the 12-nautical-mile limit”<sup>15</sup>. To answer the question would it make any difference, consider the differences between an equidistance line drawn, in the absence of special circumstances, from the nearest points on the coasts of the Parties — and that is

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<sup>13</sup>CR 2017/11, p. 20, para. 59 (Lowe).

<sup>14</sup>*Ibid.*, p. 14, para. 27 (Lowe).

<sup>15</sup>*Ibid.*, p. 13, para. 19 (Lowe).

Costa Rica's line in black — compared to an angle bisector constructed from a general direction line drawn across Nicaragua's concavity, over 75 per cent of which is relevant only to areas *beyond* the territorial sea — and that is Nicaragua's claim line in dashed red. So in answer to Professor Lowe's question, yes, it would make a difference. [End tab 222]

11. The concavity that Nicaragua invokes is not a special circumstance in the territorial sea delimitation. Coastal instability and geomorphological factors, which were special circumstances in *Nicaragua v. Honduras*, also are not special circumstances here. The construction of an equidistance line is eminently feasible in this case, and, of course, both Parties have proceeded on this basis in the territorial sea and beyond. The two provisional equidistance lines are not the same in the territorial sea, but this difference results from a disagreement about the location of the starting-point, a disagreement that the Court will no doubt resolve in its judgment. The mouth of the San Juan River is not the mouth of the Rio Coco, and the circumstances at the mouth of the San Juan River do not require the use of "alternative methods" to delimit the territorial sea<sup>16</sup>. Under these circumstances an equidistance line is the correct delimitation in the territorial sea, and it does not require adjustment.

### **C. Delimitation of the exclusive economic zone and continental shelf in the Caribbean**

12. There are no special circumstances in the territorial sea in this case, but there is a relevant circumstance requiring an adjustment of the equidistance line in the EEZ and continental shelf. Before I turn to that relevant circumstance, I will address the question of islands.

#### **(1) Islands**

13. Nicaragua criticized Costa Rica for ignoring the Corn Islands in the construction of Costa Rica's provisional equidistance line and said that Costa Rica provided no justification for doing so<sup>17</sup>. In fact, in the Memorial, Costa Rica pointed to *Black Sea* as one of the cases that guided its approach<sup>18</sup>, and on Tuesday last week I provided a list of cases in which islands were not included

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<sup>16</sup>*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. 283.

<sup>17</sup>CR 2017/11, p. 34, para. 46 (Reichler).

<sup>18</sup>*Maritime Delimitation*; MCR, paras. 4.23-4.24.

in the construction of the first stage provisional equidistance line<sup>19</sup>. Costa Rica followed this Court's jurisprudence when it determined that the Corn Islands were similar to Serpents' Island, especially in terms of the location of the Corn Islands relative to the mainland coasts of Costa Rica and Nicaragua. Costa Rica determined that, to paraphrase the Court, "to count the [Corn Islands] as a relevant part of the coast would amount to grafting an extraneous element onto Nicaragua's coastline; the consequence would be a . . . refashioning of the geography"<sup>20</sup>.

14. In *Black Sea*, when the Court decided to disregard Serpents' Island, it was concerned with identifying base point features that would "reflect[] the general direction of the coastlines"<sup>21</sup>. The Court noted that Serpents' Island lies "alone and some 20 nautical miles away from the mainland"<sup>22</sup>, and it would, therefore, be "inappropriate to select any base points on Serpents' Island for the construction of a provisional equidistance line"<sup>23</sup>. The Court assessed the location of Serpents' Island relative to the mainland coast of Ukraine, and the adjacent mainland coast of Romania, and, having done that, determined that the island should not be given effect. Costa Rica made the same determination with respect to the Corn Islands and for the same reasons.

15. Nicaragua is correct that "location is critical" in the assessment of the effect of islands<sup>24</sup>, but it is not absolute location of the islands that matters. Instead what matters is the location of the island relative to its own mainland coast and to the features and coasts of the other party. And that is why the undisputed fact that Corn Islands, and I am quoting Nicaragua, "have not moved since the Judgment in *Nicaragua v. Colombia*" does not lead to the conclusion that, "they are entitled to similar treatment in this case as was given them in *Nicaragua v. Colombia*"<sup>25</sup>.

16. In a detailed footnote in the Memorial, Costa Rica explained why this is so<sup>26</sup>. While the Corn Islands have not moved since *Nicaragua v. Colombia*, the area to be delimited has, and with

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<sup>19</sup>CR 2017/9, p. 45, para. 34 (Lathrop).

<sup>20</sup>Cf. *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, pp. 109-110, para. 149.

<sup>21</sup>*Ibid.*, p. 105, para. 127.

<sup>22</sup>*Ibid.*, pp. 109-10, para. 149.

<sup>23</sup>*Ibid.*, p. 110, para. 149.

<sup>24</sup>CR 2017/11, p. 37, para. 55 (Reichler).

<sup>25</sup>*Ibid.*, p. 32, para. 39 (Reichler).

<sup>26</sup>*Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)*; CRM, para. 4.24, fn 141.

it the relative location of the Corn Islands to that area. With this shift, the islands' location relative to the mainland coast of Nicaragua has also changed. In the opposite delimitation with Colombia, the Corn Islands were one of a series of like features fringing Nicaragua's mainland coast. In the adjacent delimitation with Costa Rica, they sit alone offshore. The islands' location relative to the other Party's coast has also changed from one of oppositeness to one of adjacency. And, finally, the character of the features against which the Corn Islands would have an effect has changed from an archipelago of scattered insular features to the entire mainland coast of Costa Rica.

17. The Court is familiar with the different impacts of small offshore features in relative locations of adjacency and oppositeness. In opposite situations, and I quote from *Libya/Malta*, "the influence of one feature is normally quickly succeeded and corrected by the influence of another", while in adjacent situations "any distorting effect of a salient feature might well extend and increase through the entire course of the boundary"<sup>27</sup>. Costa Rica and Nicaragua are in an adjacent relationship in this delimitation, and the Corn Islands, if given any effect, would push the equidistance line even further south across Costa Rica's coast, and exacerbate the concavity-induced cut-off. And that distorting effect would persist from Nicaragua's Point B to the seaward end of the boundary.

18. The Court will find the Corn Islands in the same relative location as it found Serpents' Island: alone, offshore, in an adjacent delimitation against a neighbouring mainland coast, not reflecting the general direction of those coastlines, and with the potential, if used, to distort the provisional equidistance line. Costa Rica considers that the Corn Islands should not be included in the construction of the provisional line, and if they were included, they should be discounted as a relevant circumstance and, ultimately, given no effect in the delimitation between Costa Rica and Nicaragua.

**(2) Three-State concavities create inequitable cut-off requiring adjustment to the equidistance line**

19. I move from islands to concavities and the cut-off they can create. Both Parties invoke concavity-induced cut-off, and it deserves another look.

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<sup>27</sup>*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 51, para. 70.



20. With respect to concavity, Dr. Parlett took us back to maritime delimitation bedrock in the *North Sea* cases. As she emphasized, in a three-State coastal concavity, two equidistance lines give rise to a single situation, and can create a cut-off effect severe enough to necessitate adjustment of the provisional equidistance line in favour of the middle State.

21. So what about Nicaragua's concavity that Professor Lowe and Mr. Reichler both told us creates "significant cut-off"?<sup>28</sup>

22. [Start tab 223] Here is one of the figures Dr. Parlett showed you earlier today. It represents a two-State concavity in which State B does not suffer inequitable cut-off because there is no third State or second boundary to create that cut-off. The coasts of State B project out of the concavity, as do the coasts of State C. [End tab 223] [Start tab 221] And here is Nicaragua's concavity. Like the concavity in the diagram, Nicaragua's is a one-State, or at best a two-State concavity. As a result it is missing an indispensable element: a third State with which there would be a second delimitation to create that cut-off triangle. Here we have only two States. As between those two States, the equidistance line creates *inevitable* cut-off for both States for the first 20 nautical miles or so. But at Point 13 or Point A - here that is labelled 14 by the way, and I apologise, this is Nicaragua's map - but *at* Point 13 or at Point A on the red line, the major inflection point, that is where the inevitable and balanced cut-off nearshore transitions to *inequitable* cut-off. That is the actual cut-off that is in need of mitigation<sup>29</sup>.

23. One more thing before I leave this slide. Nicaragua's argument goes beyond the so-called "markedly concave coast" of Nicaragua to include the "markedly convex coast" on Costa Rica's side of the land boundary<sup>30</sup>. Whether or not there is anything markedly convex here - and it must be markedly convex in order to meet the test cited by Mr. Reichler<sup>31</sup> - the convex part of the coastline forms part of the concavity, and it has already been taken into account in the consideration of that concavity and its effect on the line. The alleged convexity does not add to

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<sup>28</sup>CR 2017/11, p. 14, para. 28 (Lowe); and CR 2017/11, p. 39, para. 59 (Reichler).

<sup>29</sup>CR 2017/9, p. 52, para. 49 (Lathrop).

<sup>30</sup>CR 2017/11, p. 39, para. 59 (Reichler).

<sup>31</sup>*Ibid.*, p. 39, para. 59 (Reichler) (citing *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 44, para. 56).

Nicaragua's purported cut-off. Nicaragua's problem here is not convexity, but the lack of a third State and the inequitable cut-off a second equidistance line might produce.

24. Nicaragua's cut-off is inevitable, but it is not inequitable. [End tab 221]

25. Mr. President, Costa Rica compares itself to Germany in the back of the North Sea, so before we go to the three-State concavity that creates inequitable cut-off in this case, I will take you to the concavity that created inequitable cut-off in the *North Sea* case.

26. [Start tab 224] Here is the general configuration of the relevant part of the North Sea to which we have added the two lateral equidistance lines extending from the coasts of the Parties, in dashed red, and the median line agreed in 1966 between Denmark and the Netherlands, in solid red. We have also added Point T which is the location where equidistance lines among these three neighbours converge.

27. This was the delimitation scenario the Court described in its Judgment. You can see on the map the two equidistance lines "meet[ing] at a relatively short distance from the coast" so that the "area they enclose, . . . take[s] the form approximately of a triangle" thus "'cutting off" the coastal State from further areas of the continental shelf outside of and beyond this triangle"<sup>32</sup>. This is the geography the Court considered "shows how inequitable would be the apparent simplification brought about by a delimitation which, ignoring such geographical circumstances, was based solely on the equidistance method"<sup>33</sup>. Finally, it was in this geography that the Court considered that "[t]he fact that the question of either of these delimitations might have arisen and called for settlement separately in point of time, does not alter the character of the problem with which the Court is actually faced"<sup>34</sup>.

28. As we know, the Court found that the equidistance method was not mandatory between the Parties, and sent them away to delimit their boundaries "by agreement in accordance with equitable principles, and taking account of all the relevant circumstances"<sup>35</sup>. [End tab 224] [Start tab 225] The Parties did so, and by early 1971 had concluded their boundaries by agreement,

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<sup>32</sup>*North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 17, para. 8.

<sup>33</sup>*Ibid.*, p. 49, para. 89 (b).

<sup>34</sup>*Ibid.*, p. 19, para. 11.

<sup>35</sup>*Ibid.*, p. 53, para. 101.

which are now on the screen in solid black. Those treaties entered into force in late 1972 at which time the Netherlands and Denmark terminated their 1966 agreement<sup>36</sup>, which, in any event, Germany had regarded as *res inter alios acta* from the beginning<sup>37</sup>.

29. Several observations may be made about the delimitation results in the North Sea. First, the negotiated agreements did not follow equidistance, but were adjusted in Germany's favour. Notably the adjustment on the Danish side started at the major inflection point on the Germany-Denmark equidistance line. Second, both adjacent neighbours bore the burden of relieving Germany's cut-off, but not equally. Denmark gave up 30 per cent more space than the Netherlands as compared to their median line<sup>38</sup>. And, third, and this is important when trying to do a direct comparison of the North Sea and the Caribbean, Germany reached its outer limit at the centre of the North Sea and the median line with the United Kingdom at only 175 nautical miles from its coast. Reaching the centre of the North Sea alleviated the cut-off which would have been complete for Germany at Point T, approximately 100 nautical miles from its coast under an equidistance scenario. Germany now shares a 10-nautical-mile-long opposite boundary with the United Kingdom. [End tab 225]

**(3) The concavity in the south-western Caribbean is a three-State concavity that creates inequitable cut-off and requires an adjustment in favour of Costa Rica**

30. [Start tab 226] I now return to the south-western Caribbean and the concavity Costa Rica invokes in this case. Nicaragua does not dispute that three-State coastal concavities can create inequitable cut-off requiring an adjustment to the benefit of the State in the back of the concavity<sup>39</sup>, and it does not dispute that there are three States in this geography<sup>40</sup>. The dispute is whether Costa Rica would be cut off in this three-State concavity without an adjustment to the provisional line with Nicaragua. For Nicaragua, that comes down to Panama and the impact of Panama's maritime entitlements on Costa Rica's cut-off.

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<sup>36</sup>"Denmark-Netherlands", Report Number 9-18, in Charney and Alexander (eds), *International Maritime Boundaries*, Vol. III (1998), p. 2497.

<sup>37</sup>*North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 18, para. 9.

<sup>38</sup>*Maritime Delimitation*; MCR, sketch-map 4.11 p. 74.

<sup>39</sup>See CR 2017/11, p. 21, paras. 21-24 (Reichler).

<sup>40</sup>CR 2017/10, p. 22, para. 9 (Oude Elferink).

31. Costa Rica contends that under a scenario in which the boundaries among Costa Rica, Nicaragua and Panama would be constructed on the basis of equidistance measured from the mainland coasts, Costa Rica would be cut off completely from the extension of its 200-nautical-mile zone at less than 150 nautical miles from the coast. Beyond that point, the mainland only equidistant boundary between Nicaragua and Panama would extend until those States had to address the interests of a third State, here, obviously, Colombia. That scenario is shown on the screen. Mr. Reichler found this picture “a compelling one” that “certainly makes Costa Rica appear to be cut off”<sup>41</sup>. To be fair, Mr. Reichler then called this scenario “a ruse, an artifice, a complete fake”<sup>42</sup>.

32. So we should take a close look at the argument advanced to support Nicaragua’s strong words. It is, in essence, this:

- (a) first, Panama has no maritime entitlement north and west of the boundary agreed between Panama and Colombia — that is shown as the dashed grey line coming off the end of the Panama-Costa Rica black line;
- (b) second, that means that Costa Rica would get the area that “Panama has renounced”<sup>43</sup>, and,
- (c) third, therefore Costa Rica is not cut off from reaching 200 nautical miles even if the boundary between Costa Rica and Nicaragua were delimited on the basis of an equidistance line giving full effect to Corn Islands.

33. But there is a fundamental problem with this, and Professor Kohen has brought it to your attention. In short, it is that the boundary agreement between Colombia and Panama is *res inter alios acta* for the Parties to this case. And of course it cannot be taken for granted that Panama has renounced the maritime areas north and west of the boundary it agreed with Colombia, as Nicaragua contends<sup>44</sup>. Panama is also not “precluded from claiming”<sup>45</sup> an equidistant maritime boundary (or any other boundary) in this area *against Costa Rica*. And, Nicaragua may be disappointed to hear this, but Panama cannot be considered in this case as being “precluded from

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<sup>41</sup>CR 2017/11, p. 23, para. 10 (Reichler).

<sup>42</sup>*Ibid.*, para. 11 (Reichler).

<sup>43</sup>*Ibid.*, p. 26, para. 18 (Reichler).

<sup>44</sup>*Ibid.*

<sup>45</sup>*Ibid.*, p. 26, para. 19 (Reichler).

claiming” an equidistant maritime boundary (or any other boundary) in this area *against Nicaragua*.

34. Costa Rica has presented to the Court a scenario under which it would be cut off by the converging mainland-to-mainland equidistance lines delimited with its neighbours. The boundary with Nicaragua is yet to be delimited, but part of the boundary with Panama has been delimited. So let me turn to that line for a moment. As I said, it is the black line originating at the land boundary terminus in the mouth of the boundary river between Costa Rica and Panama. Although, as Professor Oude Elferink noted<sup>46</sup>, the boundary treaty creating this line calls for a “median line every point of which is equidistant from the nearest points on the baselines”<sup>47</sup>, in fact the treaty establishes a single segment boundary between two specified points, at the land boundary terminus and at a point 100 nautical miles offshore<sup>48</sup>. This is in fact a simplified equidistance line that discounts some features, including Panama’s Isla Colon, which would have pushed the boundary further west toward Costa Rica. As can be seen on the map, the agreed boundary, in black, is more favourable to Costa Rica than a mainland only equidistance line would be. That is the line in dashed red.

35. The real question that Mr. Reichler’s intervention raises is what will the Costa Rica-Panama boundary look like beyond the seaward point of the existing agreement? He tells the Court it will follow the boundary between Panama and Colombia, as if Costa Rica somehow automatically would receive the benefit of an agreement to which it is not a party. But this is Nicaragua’s approach to the law of treaties, not Costa Rica’s. The correct answer is that we do not know, because it has not yet been delimited. In fact, negotiations have not yet even begun between Costa Rica and Panama, and Panama is not here before the Court to present its position. We do not know what Panama’s claim is in this area, and we do not know what the resulting line between Costa Rica and Panama will look like. But we do know that Panama is the coastal State nearest this area and that it is not precluded from claiming area north and west of its line with

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<sup>46</sup>CR 2017/10, p. 22, para. 5 (Oude Elferink).

<sup>47</sup>“Costa Rica-Panama”, Report Number 2-6, in Charney and Alexander (eds), *International Maritime Boundaries*, Vol. I (2002), p. 537.

<sup>48</sup>*Ibid.*

Colombia. One can perhaps assume that States maximize when they can, and that Panama will do so here. [End tab 226]

36. [Start tab 227] In the intervention, Costa Rica posited an extension of the Costa Rica-Panama boundary as a possible outcome in that case. As Costa Rica explained in its Memorial and in these hearings, we have used this notional extension of the agreed line to limit the relevant area in the current case<sup>49</sup>. [End tab 227]

37. [Start tab 228] And we have now added that “notional extension” of the Costa Rica-Panama boundary to the map as the dashed black line. As the Court can see, Costa Rica used a different line to indicate the area of interest of Panama in this case. And that is the dashed red median line between the opposite mainland coasts of Nicaragua and Panama. Under a delimitation scenario in which Panama accepted the “notional extension” of the Costa Rica-Panama boundary, Panama, too, would provide relief for Costa Rica’s cut-off. This would address Nicaragua’s concern that it would be “made to bear the [entire] burden of compensating” Costa Rica for its cut-off<sup>50</sup>.

38. In Costa Rica’s view, the mainland median line between Nicaragua and Panama represents a reasonable boundary relationship between those two States in this geographic situation. But it is a mainland median line, and it does not give effect to Nicaragua’s islands, and it can be seen as the most that Panama might expect to achieve in an opposite delimitation with Nicaragua. It is included on the map to indicate to the Court where it may draw its line between Costa Rica and Nicaragua without affecting the interests of third States. It should be noted that all of the areas to the south-east of that line are closer to Panama’s mainland coast than to Nicaragua’s, and all areas to the north-west of that line are closer to Nicaragua’s mainland coast than to Panama’s. Of course, we have not heard from Panama, and so it is left for the Court to decide how to protect Panama’s interests while carrying out the complete delimitation requested of it.

39. Mr. President, Costa Rica would, in fact, be cut off at less than 100 nautical miles from its coasts under a mainland-only equidistance delimitation scenario in the south-west Caribbean. The provisional equidistance line with Nicaragua must be adjusted in Costa Rica’s favour to

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<sup>49</sup>*Maritime Delimitation*; MCR, para. 4.12.

<sup>50</sup>CR 2017/11, p. 27, para. 23 (Reichler).

account for the relevant circumstance of that cut-off. Costa Rica has offered a proposed delimitation that would create an equitable solution by connecting the major inflection point in the provisional line with Point 14. And that line is on the screen. A boundary ending at Point 14 would achieve two objectives: it would allow Costa Rica to reach its 200-nautical-mile limit and it would protect the interests of Panama. In Costa Rica's view, no other endpoint would achieve both of these objectives.

40. Costa Rica's line would create an equitable solution for the delimitation between Costa Rica and Nicaragua in the Caribbean Sea. [End tab 228] And Costa Rica requests the Court to adopt Costa Rica's line as *the* equitable solution in this case.

41. Mr. President, that brings to a close my remarks on the delimitation in the Caribbean Sea. I thank you once again for your kind attention, and I ask that you call Ambassador Ugalde to the podium for Costa Rica's closing remarks and submissions.

The PRESIDENT: Thank you. I give the floor to Ambassador Ugalde, Agent of Costa Rica.

Mr. UGALDE ÁLVAREZ:

1. Mr. President, Members of the Court, my country comes to the conclusion of the second round of oral hearings, and therefore to the conclusion of our oral submissions on the two joined cases brought by Costa Rica before you.

2. I would like to reiterate my country's confidence in the decisions of this Court. We trust, indeed, that you will be able to discern the importance my country places on the delimitation of the maritime boundaries taking into account the true geographical circumstances appertaining to both the Pacific Ocean and the Caribbean Sea, and in accordance with international law.

3. Mr. President, also in closing, I must address an issue of principle. On Friday, counsel for Nicaragua dedicated quite a bit of time dealing with Costa Rica's case based on concavity in the Caribbean. Counsel accused Costa Rica of a litany of wrongdoings<sup>51</sup>. It is unnecessary for me to quote him, but the general point the gentleman appeared to have been making was that, in relation

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<sup>51</sup>CR 2017/11, p. 23, para. 11 (Reichler).

to our neighbours, Costa Rica has sought to slip behind Panama's back and lay claim to maritime areas that under international law may still be Panama's to claim vis-à-vis Costa Rica.

4. Costa Rica observes that whatever the situation between Panama and Colombia at present, it is a matter that concerns those two countries alone. But the fact that Costa Rica respects Panama's potential entitlements in these proceedings appears to have caused grave distress to Nicaragua. When Costa Rica makes a case concerning its interests, it does so directly, face to face, and not by way of concealment, as Nicaragua suggests. Furthermore, whatever the legal consequences of your judgments concerning third parties, those are matters that should be viewed and discussed directly by the interested parties; they are not matters to be advocated in full in the absence of those third parties in proceedings to which they are not party<sup>52</sup>. At the end of the day, that is precisely the situation Article 59 of your Statute is designed to address.

5. Consequently, Nicaragua's proposition<sup>53</sup>, whereby any agreements concluded with Colombia in the Caribbean Sea by third countries would see those countries deprived of those maritime areas vis-à-vis Nicaragua, on the dubious proposition that you gave those spaces to Nicaragua in full in the 2012 Judgment, is untenable.

6. It also follows that, whatever effects that Judgment may have between Nicaragua and Colombia, it is only between those two countries, and it leaves intact Costa Rica's rights in relation to Nicaragua.

7. Concerning the term "complete fake"<sup>54</sup>, used by Nicaragua's counsel to qualify Costa Rica's case on concavity, I need only say that the Court is more than capable to identify one when it sees one.

8. I would also like to state that my country laments Nicaragua's position that, in approaching the various disputes currently before you, it refers to the existence of new ones which are not the object of these proceedings. I am compelled, in this closing, to reject two of those contentions. The first is Nicaragua's regrettable and unfounded claim that it holds a sovereign

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<sup>52</sup>CR 2017/11, p. 26, para. 20 (Reichler).

<sup>53</sup>See CMN, p. 73, para. 3.32: "Once the maritime delimitation between Nicaragua and Colombia excluded Colombian jurisdiction from areas North and East of the 1977 Treaty line, those areas necessarily fell within the scope of what has now been determined by the Court to be Nicaraguan sovereign rights."

<sup>54</sup>CR 2017/11, p. 23, para. 11 (Reichler).



interest in the Costa Rican Isla Bolaños<sup>55</sup>. Costa Rica fully rejects that claim, as it has already communicated to Nicaragua by diplomatic means.

9. The second is Nicaragua's repetition of its assertion that Costa Rica does not have co-ownership over the Bay of San Juan del Norte<sup>56</sup>, contrary to the black letter of Article IV of the 1858 Treaty of Limits. This claim is entirely unfounded, and it is frustrating that Nicaragua continues to advance it. Costa Rica reserves its rights in this respect, and notes, again, Nicaragua's rejection of the agreed border régime, which is binding under international law.

10. Mr. President, Members of the Court, Costa Rica is confident that your judgment will decide all of the questions before it in full, in accordance with international law, and on behalf of my Government, I can convey Costa Rica's pledge to fully respect the decision. We hope that Nicaragua will do the same.

Mr. President, Members of the Court, I will now proceed to read Costa Rica's submissions in the present cases.

#### SUBMISSIONS OF THE REPUBLIC OF COSTA RICA

In the case concerning *Maritime Delimitation in the Pacific Ocean and the Caribbean Sea (Costa Rica v. Nicaragua)*, for the reasons set out in the written and oral pleadings, Costa Rica respectfully requests the Court, rejecting all submissions made by Nicaragua:

- (1) To determine, on the basis of international law, the complete course of single maritime boundaries between all the maritime areas appertaining, respectively, to Costa Rica and to Nicaragua in the Pacific Ocean and in the Caribbean Sea.
- (2) To determine the precise geographical co-ordinates of the single maritime boundaries in the Pacific Ocean and in the Caribbean Sea, and in particular:
  - (a) to delimit the maritime areas of Costa Rica and Nicaragua in the Pacific Ocean by a boundary connecting with geodetic lines the points with the following co-ordinates:

<b>Point number</b>	<b>Latitude (DMS) (WGS-84)</b>	<b>Longitude (DMS) (WGS-84)</b>
SP-P (Starting-Point – Pacific)	11° 04' 00.0" N	85° 44' 28.0" W

<sup>55</sup>CR 2017/10, p. 16, para. 22 (Argüello).

<sup>56</sup>CR 2017/10, p. 19, para. 33 (Argüello).

<b>Point number</b>	<b>Latitude (DMS) (WGS-84)</b>	<b>Longitude (DMS) (WGS-84)</b>
1	11° 03' 57.6" N	85° 45' 30.3" W
2	11° 03' 57.7" N	85° 45' 35.9" W
3	11° 03' 47.2" N	85° 46' 31.7" W
4	11° 03' 53.8" N	85° 47' 13.4" W
5	11° 03' 24.2" N	85° 49' 43.5" W
6	11° 03' 17.9" N	85° 50' 05.1" W
7	11° 02' 45.0" N	85° 51' 25.2" W
8	11° 03' 11.6" N	85° 52' 42.8" W
9	11° 04' 26.8" N	85° 55' 28.3" W
10	11° 05' 13.7" N	85° 57' 21.2" W
11	11° 05' 51.6" N	86° 00' 48.1" W
12	11° 05' 54.2" N	86° 04' 31.5" W
13	11° 06' 22.0" N	86° 07' 00.4" W
14	11° 05' 45.4" N	86° 13' 10.2" W
15	11° 05' 43.7" N	86° 13' 28.7" W
16	11° 05' 30.9" N	86° 15' 09.8" W
17	11° 04' 22.2" N	86° 21' 43.8" W
18	11° 03' 32.6" N	86° 25' 21.2" W
19	10° 56' 56.3" N	86° 44' 27.0" W
20	10° 54' 22.7" N	86° 49' 39.5" W
21	10° 36' 50.6" N	87° 22' 47.6" W
22	10° 21' 23.2" N	87° 47' 15.3" W
23 (intersection with 200-M limit)	09° 43' 05.7" N	89° 11' 23.5" W

(b) to delimit the maritime areas of Costa Rica and Nicaragua in the Caribbean Sea by a boundary connecting with geodetic lines the points with the following co-ordinates:

<b>Point number</b>	<b>Latitude (DMS) (WGS-84)</b>	<b>Longitude (DMS) (WGS-84)</b>
SP-C (Starting-Point – Caribbean)	10° 56' 22.1" N	83° 41' 51.4" W
1	10° 56' 54.0" N	83° 42' 03.7" W
2	10° 57' 16.6" N	83° 41' 58.4" W
3	11° 02' 12.6" N	83° 40' 27.1" W
4	11° 02' 54.7" N	83° 40' 01.0" W
5	11° 03' 04.8" N	83° 39' 54.1" W
6	11° 03' 46.1" N	83° 39' 29.6" W
7	11° 03' 47.4" N	83° 39' 28.7" W
8	11° 05' 35.2" N	83° 38' 14.0" W
9	11° 07' 47.2" N	83° 36' 33.2" W
10	11° 10' 16.0" N	83° 34' 13.2" W
11	11° 10' 39.2" N	83° 33' 47.3" W
12	11° 13' 42.6" N	83° 30' 33.9" W
13	11° 15' 02.0" N	83° 28' 53.6" W
14 (intersection with Costa Rica's	12° 19' 15.9" N	80° 33' 59.2" W

<b>Point number</b>	<b>Latitude (DMS) (WGS-84)</b>	<b>Longitude (DMS) (WGS-84)</b>
200-M limit)		

(c) as a subsidiary submission to paragraph (b) above, to delimit the maritime areas of Costa Rica and Nicaragua in the Caribbean Sea by a boundary:

- (i) connecting, using a geodetic line, the point 3 nautical miles from the Parties' respective coasts (Point FP1, having co-ordinates 10° 59' 22.7" N, 83° 41' 19.0" W), with Point 3 in paragraph (b) above;
- (ii) thereafter, connecting, with geodetic lines Points 3 to 14 in paragraph (b) above;
- (iii) in the initial sector, connecting, using a geodetic line, Point FP1 and the point constituting the low-water mark on the right bank of the San Juan River at its mouth, as it may exist from time to time.

In the case concerning *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, for the reasons set out in the written and oral pleadings, Costa Rica respectfully requests the Court:

1. (a) to adjudge and declare that Nicaragua's submission that the stretch of coast abutting the Caribbean Sea which lies between the Harbor Head Lagoon and the mouth of the San Juan River constitutes Nicaraguan territory is inadmissible, on the basis that the issue has already been settled by the Judgment of the Court dated 16 December 2015 in the *Certain Activities* case;
- (b) to reject all other submissions made by Nicaragua.
2. (a) to determine the precise location of the land boundary separating both ends of the Los Portillos/Harbor Head Lagoon sandbar from Isla Portillos, and in doing so to determine that the only Nicaraguan territory existing today in the area of Isla Portillos is limited to the enclave consisting of Los Portillos/Harbor Head Lagoon and the sandbar separating the lagoon from the Caribbean Sea, in so far as this sandbar remains above water at all times and thus this enclave is capable of constituting territory appertaining to a State. Consequently, that the land boundary runs today from the north-eastern corner of

the lagoon by the shortest line to the Caribbean Sea and from the north-western corner of the lagoon by the shortest line to the Caribbean Sea;

(b) to adjudge and declare that, by establishing and maintaining a new military camp on the beach of Isla Portillos, Nicaragua has violated the sovereignty and territorial integrity of Costa Rica, and is in breach of the Judgment of the Court of 16 December 2015 in the *Certain Activities* case. Consequently, Costa Rica further requests the Court to declare that Nicaragua must withdraw its military camp situated in Costa Rican territory and fully comply with the Court's 2015 Judgment.

Mr. President, Members of the Court, that concludes Costa Rica's submissions.

Mr. President, before I close, allow me to thank the Registry and its personnel, for their tireless and able assistance to the Parties in these proceedings. I would also like to thank the interpreters for their invaluable work. Finally, but not least, let me thank you, Mr. President, and the Members of the Court, for your kind attention. This brings to a close Costa Rica's case.

The PRESIDENT: Thank you, Mr. Ambassador. The Court takes note of the final submissions which Your Excellency has now read on behalf of Costa Rica. The Court will meet again on Thursday 13 July, between 10 a.m. and 1 p.m., to hear Nicaragua begin its second round of oral argument. Thank you.

L'audience est levée.

*The Court rose at 3.50 p.m.*

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