

*CR 2007/9*

**International Court  
of Justice**

**THE HAGUE**

**Cour internationale  
de Justice**

**LA HAYE**

**YEAR 2007**

*Public sitting*

*held on Thursday 15 March 2007, at 10 a.m., at the Peace Palace,*

*President Higgins presiding,*

*in the case concerning Maritime Delimitation between Nicaragua and Honduras in the  
Caribbean Sea (Nicaragua v. Honduras)*

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**VERBATIM RECORD**

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**ANNÉE 2007**

*Audience publique*

*tenue le jeudi 15 mars 2007, à 10 heures, au Palais de la Paix,*

*sous la présidence de Mme Higgins, président,*

*en l'affaire de la Délimitation maritime entre le Nicaragua et le Honduras dans  
la mer des Caraïbes (Nicaragua c. Honduras)*

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**COMPTE RENDU**

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*Present:* President Higgins  
Vice-President Al-Khasawneh  
Judges Ranjeva  
Shi  
Koroma  
Parra-Aranguren  
Buergenthal  
Owada  
Simma  
Tomka  
Abraham  
Keith  
Sepúlveda-Amor  
Bennouna  
Skotnikov  
Judges *ad hoc* Torres Bernárdez  
Gaja  
  
Registrar Couvreur

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*Présents :* Mme Higgins, président  
M. Al-Khasawneh, vice-président  
MM. Ranjeva  
Shi  
Koroma  
Parra-Aranguren  
Buerghenthal  
Owada  
Simma  
Tomka  
Abraham  
Keith  
Sepúlveda-Amor  
Bennouna  
Skotnikov, juges  
MM. Torres Bernárdez  
Gaja, juges *ad hoc*  
  
M. Couvreur, greffier

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The PRESIDENT: Please be seated. Professor Sands.

Mr. SANDS: Thank you very much, Madam President, Members of the Tribunal . . .

The PRESIDENT: Tribunal? Are we Members of the Tribunal?

Mr. SANDS: I apologize. I have written that word in error and I hope you will forgive me.

## **THE CONDUCT OF THE PARTIES II — THE 15TH PARALLEL**

### **I. Introduction**

1. Madam President, Members of the Court, on Tuesday I addressed Honduras's *effectivités* in support of its sovereignty argument on the islands that lie north of the 15th parallel. Today, I will address a closely related issue: the conduct of the Parties recognizing and accepting the 15th parallel as the line that divides the maritime spaces of the Parties. I use the words “closely related” because it will be apparent that conduct in relation to the islands and the maritime boundary are closely, even intimately, connected. Many of the acts expressing sovereignty over the islands also constitute conduct recognizing the 15th parallel as the boundary. That is particularly true for acts relating to oil exploration, such as the construction of the antenna on Bobel Cay, erected under the concession granted by Honduras to Union Oil in 1967. It is also true for the fisheries licences that provided the commercial rationale for the fishermen to base themselves on Savanna Cay and other islands and cays and who engage in fishing activities down to the 15th parallel but not beyond.

2. My presentation this morning focuses on the conduct of Honduras and Nicaragua mainly in relation to the two main elements of conduct — oil concessions and fisheries — although I will touch also on the question of naval patrols. I can briefly summarize the arguments we made in our written pleadings, before turning once again in detail to the actual evidence that is before the Court.

3. In our submission, the Parties' conduct demonstrates the existence of a tacit agreement that the 15th parallel has long been treated as the line dividing the maritime spaces. There is *no ambiguity* in the mutual practice in granting oil concessions from as far back as the mid-1950s, through the 1960s, into the 1970s and even beyond. The conduct in relation to oil concessions is crystal clear: *both* sides have treated the 15th parallel as the dividing line of their respective areas

of sovereignty and exercise of jurisdiction. There is no evidence before the Court that Honduras has ever granted a concession that goes south of the 15th parallel. There is no evidence before the Court that Nicaragua has ever granted a concession that goes to the north of the 15th parallel. Last Thursday, Professor Remiro Brotóns conjured up what we thought was the rather novel idea of the open-ended oil concession, the oil concession that has no limit. Professor Remiro Brotóns referred to concessions with a northern limit that was “*ouverte et indéfinie*”<sup>1</sup>. On our side of the table we have been debating what the word “*indéfinie*” means, is it “indefinite” or is it “undefined”? Not much turns on it, but it seems to us that the only thing that is open-ended and undefined or indefinite in this case is Nicaragua’s capacity to conjure up new legal arguments. Everyone in this room knows that there is no such thing as an open-ended oil concession. I will show that all of Nicaragua’s concessions in the area in question — every single one of them — extends precisely to the 15th parallel and no further north. The practice has been absolutely consistent. Professor Remiro Brotóns also suggested that these concessions represented nothing more than the actions of private oil companies. The truth is that all of the concessions — every single one of them — were granted in the knowledge of the other Party’s conduct. There is no evidence of any reservation of rights, or of protest. And exactly the same may be said in relation to the fisheries licences and concessions that have been granted. Honduras has introduced several licences, as well as those documents known as *bitácoras*, that show the significance of the 15th parallel. Nicaragua has introduced no documents. No legislation. No licences. No *bitácoras*. Nicaragua has introduced nothing to show the grant of any fishing rights beyond the 15th parallel, at any time, ever; nothing in documentary form. How curious it is that a State that argues for rights north of the 15th parallel has been unable to produce a single contemporaneous document over a period of 50 years in relation to that area.

4. The relevant documentary expressions of conduct in the area north of the 15th parallel are exclusively Honduran. The Court will have noted that, in its Memorial, Nicaragua made no reference to oil concessions or fishing licences. The reason is now clear: they had, apparently, none which could support their case. And none were introduced in the Reply. I want to be clear

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<sup>1</sup>CR 2007/4, p. 25, para. 38.

also about the nature of our case on the law, which Professor Dupuy talked about yesterday, and I simply refer to his arguments. It is not our assertion that concessions and oil wells and fishing licences are *in themselves* to be considered as relevant circumstances justifying the adjustment or shifting of a provisional delimitation line; it is not just that. Rather, as the Court put it in its 2002 Judgment in the *Cameroon v. Nigeria* case, “the existence of an express or tacit agreement between the parties on the siting of their respective oil concessions may indicate a consensus on the maritime areas to which they are entitled” (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Judgment, I.C.J. Reports 2002, p. 447, para. 304). In that case, the Court concluded that there was no consensus or tacit agreement. But the facts in that case — as well as others like the *Gulf of Maine* case — were rather different from this one. In those cases there was no example akin to the two Coco Marina oil concessions that were granted north and south of the 15th parallel, respectively by Honduras and Nicaragua. And in *Tunisia/Libyan Arab Jamahiriya*, the mutual practice that was referred to by the Parties was rather shorter in time and not quite as consistent. These concessions, north and south of the 15th parallel, reflect a geological reality that straddled — in the case of Coco Marina — the consensually recognized boundary across the 15th parallel. To take the words of this Court, they “indicate a consensus” and Nicaragua has been notably defensive about Coco Marina in its written pleadings<sup>2</sup>.

## II. Oil concessions

5. So, let me turn to the oil concessions. The concessions reflect a perfect agreement between the Parties as to the location of their northern and southern oil concession boundaries. Professor Remiro Brotóns showed you seven plates during his presentation last week<sup>3</sup>. Every one of them was prepared for the purposes of this oral hearing; none of them was contemporaneous. (Figure 1) On the screen you can see one example; it is ARB2/2, and it shows, in blue, the apparent concessions for Union II, Union III and Union IV. On this graphic, no northern limit is shown to any of these concessions. The message it seeks to convey is that Nicaragua granted concessions that went to the north of the 15th parallel — we have added a red line showing where

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<sup>2</sup>See RN, para. 5.26.

<sup>3</sup>Nicaragua, judges’ folder, 8 March 2007, plates ARB2/1-ARB2/7.

the 15th parallel is located — or perhaps *could* have gone to the north of the 15th parallel. Plate ARB2/2, like each of the other six plates that Professor Remiro Brotóns and some of his colleagues put up, is manifestly inaccurate. It is not an accurate representation of the facts or of the evidence that is before the Court. What counsel for Nicaragua did not do was take you to the plates which the Government of Nicaragua itself had prepared *before* this case came to Court, before the Application was filed. And they tell a rather different story.

6. On the screen now (figure 2) you can see a graphic entitled *Mapa de Concesiones Petroleras* (RH, plate 32). This was prepared in March 1969, not by Honduras, not by any counsel, not by a private company but by the Directorate General of Natural Resources of the Nicaraguan Ministry of Economy, Industry and Commerce. It is an official map, it is authoritative map, it is an expression of public authority. What does it show? The concessions for Union II, III and IV followed the 15th parallel. It does not show open-ended concessions. You cannot get much more authoritative than this.

7. And now on the screen (figure 3) is an extract from a report published by another Nicaraguan governmental body, the Instituto Nicaragüense de Energía, published in June 1994<sup>4</sup> — 25 years later. The Instituto is a public body that regulates and supervises the energy sector in Nicaragua. This report shows the oil concessions that were available as at 1986. And, once again, you will see that the northern limit follows the 15th parallel boundary, as it did 25 years earlier, in 1969; it does not show any extension north of the 15th parallel or any availability north of the 15th parallel — or any reservation of rights to be permitted to go north of the 15th parallel. There are no open-ended concessions here. And you will see, in close up, the Coco Marina area is very clearly marked. It goes north and south of the 15th parallel, but there is no suggestion that the area to the north is available.

8. Now on the screen (figure 4) you see an extract from the report published by the Instituto Nicaragüense de Energía in June 1995<sup>5</sup>. It is the following year but it shows the oil concessions available in 1995 — the year of publication. The colours have changed, but the line has not. Curious indeed that, as recently as 1995, a State that believes it has sovereignty over the islands

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<sup>4</sup>RH, plate 33, p. 1.

<sup>5</sup>RH, plate 33, p 2.

north of the 15th parallel and sovereign rights over the appurtenant maritime spaces, should not have offered any oil concessions in those areas, or indicated its sovereignty over those areas, or indicated that those areas were in dispute or subject to any reservations. The Nicaraguan practice in 1995 was as it was in 1969. You have got before you evidence of three decades of consistent practice.

9. Why were you not shown these plates by the Nicaraguan counsel, prepared by the Government of Nicaragua itself? We respectfully suggest that the question admits of only one possible answer.

10. It is appropriate to look in a little more detail now at the concessions. I am going to try to proceed systematically and fairly. *First*, we will look at the concessions granted by Honduras, which treat the 15th parallel as the southern boundary. *Second*, we will consider the concessions granted by Nicaragua, which treat the 15th parallel as the northern boundary. *Third*, we will look at the concessions that have been granted in association, jointly or collaboratively, by the two Governments, where a potential oil and gas field straddles the 15th parallel. It is very difficult to conceive of many governmental acts that could be more indicative of agreement as to the location of a maritime boundary than the simultaneous grant of public concessions for an oil field which straddles the 15th parallel.

11. Let us begin with the area to the north of the 15th parallel. In 1955 Honduras initiated the process of granting oil concessions in that area. By 1980 no less than 21 concessions had been granted: it is quite a lot of concessions. Each has been identified in Honduras's Counter-Memorial<sup>6</sup>. A copy of each concession has been made available to the Court and to Nicaragua. There is no evidence before the Court to show that Nicaragua has ever objected to any of these 21 concessions. Information on each and every one was published in Honduras's *La Gaceta*, the official journal. All the relevant information has long been in the public domain. In its written pleadings Nicaragua did not claim that it was unaware of the concessions. Now it seems to have changed direction. Again. Professor Remiro Brotóns claimed that Nicaragua could not have known of all of these concessions<sup>7</sup>. With great respect, that is a most surprising suggestion,

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<sup>6</sup>CMH, paras. 6.24 to 6.28 and related annexes.

<sup>7</sup>CR 2007/4, p. 34, paras. 76-77.

and one that is not supported by any evidence. The information was publicly available. We may recall that in its Judgment of 1951 in the *Fisheries* case this Court rejected the argument by the United Kingdom Government that the Norwegian system of delimitation was not known to it. The Court noted that the United Kingdom was a maritime power, a coastal State on the relevant sea — the North Sea — greatly interested in the fisheries in the area in question. “[T]he United Kingdom could not have been ignorant of the [Norwegian] Decree of 1869”, the Court ruled. “Nor, knowing of it,” added the Court, “could it have been under any misapprehension as to the significance of its terms” (*Fisheries (United Kingdom v. Norway)*, *Judgment*, *I.C.J. Reports 1951*, p. 139) — no misapprehension as to the significance of its terms. We say, Nicaragua could not have been ignorant of the oil concessions or under any misapprehensions as to their terms, especially over so long a period of time as pertains in this case.

12. Nicaragua has failed to explain its argument as to lack of knowledge. Counsel for Nicaragua referred to a passage in this Court’s Judgment in the *Pulau Ligitan and Pulau Sipadan* case, at paragraph 48<sup>8</sup>. But that passage does not assist Nicaragua. In that case Indonesia argued that a map attached to an Explanatory Memorandum that had been sent by the Dutch to the British was part of an agreement within the meaning of the 1969 Vienna Convention on the Law of Treaties, and, very understandably, the Court did not buy that argument. In this case that is not the argument we are making. We simply say, that over a very lengthy period of time, after Nicaragua had implemented the 1960 Judgment of this Court, Honduras adopted a pattern of behaviour in respect of which Nicaragua had knowledge but to which it did not object. Coupled with Nicaragua’s own practice in relation to oil concessions, its silence can only be taken as expressing consent to Honduras’s actions. Such silence reflects, at the very least, a tacit agreement to which Nicaragua has lent its active support or to which it has acquiesced. Our argument goes no further than that.

13. What has Nicaragua tacitly agreed to? You can see that graphically illustrated on the screen (figure 5). That is a large version of plate 11 of the Honduran Counter-Memorial. That plate shows the concessions, all of them which have been granted since 1955. It is taken from a

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<sup>8</sup>CR 2007/4, p. 33, para., 75.

chart originally produced in 1977 by an organization called Petroconsultants, taking into account the official petroleum concession map of Honduras. The plate identifies blocks in three categories. *First*, in light green, are blocks that are held in national reserve; *second*, in darker green, are blocks that are free; and *third*, in purple, are those blocks in use.

The PRESIDENT: Mr. Sands, could you help us identify this map, or chart, in our files? It may be that we do not have it.

Mr. SANDS: It ought to be chart No. 5. I apologize. It should be marked on the bottom right-hand corner —chart No. 5 (PS2-5).

The PRESIDENT: This, now the one behind you is 5 — something else was previously showing. Do you want to start the section again and then we will follow you better?

Mr. SANDS: Thank you very much. The first map that I had shown was in fact the overall picture and this focuses in on the area that is in question. What you can see on this map, which dates back to 1977, is concessions in three categories of colour. In light green, blocks which are held in national reserve, in darker green, blocks which are free — have not yet been awarded — and, in purple, blocks which are in use. And the blocks which are in use, as well as the blocks in national reserve, follow precisely the 15th parallel. The map shows clearly that Honduras's islands fall within some of those blocks, as I explained yesterday. And this confirms, we say, Honduras's sovereign intent and actions over those islands. Nicaragua has never objected to Honduras's concessions. It did not reserve its rights in relation to these concessions. It did not object to the concessions that included the insular territory of Palo de Campeche, as well as the other islands located north of the 15th parallel, to which the Constitution of 1957 explicitly referred as belonging to Honduras.

14. These Honduran concessions were granted on the basis that the 15th parallel was the southern boundary in the sea. Honduras's concessions explicitly refer to the line of 14° 59' 08" as



the southern limit of the concession<sup>9</sup>. Professor Remiro Brotóns told the Court that none of the concessions that refer to that limit “ne précisait une quelconque relation avec la frontière maritime des Parties”<sup>10</sup>. Now I cannot have misheard him, because he said it not once but twice: “aucune des concessions honduriennes ne précise que sa limite sud coïncide avec la frontière maritime avec le Nicaragua”<sup>11</sup>. And the distinguished Agent of Nicaragua said the same thing: “The Honduran concessions . . . had no indication that their southern limit coincided with the maritime limit with Nicaragua.”<sup>12</sup> These statements, I am afraid, are factually wrong. On the screen is one example of a Honduran concession that expressly refers to the 15th parallel as the southern limit and boundary with Nicaragua (figure 6)<sup>13</sup>. It concerns the 1967 concession granted by Honduras to the “Pure Oil Company of Honduras, Inc.” — it is the Coco Marina concession — to explore and exploit oil in lot or block 8, that is the area that comprises the islands. It was published in *La Gaceta* of Honduras on 17 April 1967. And I want to read out the relevant extracts, and you can then follow the lines of the concession on the map that is projected. This is of course the Coco Marina block, and I am going to read from the text:

“then to the East to meridian 82° 10' West longitude; then to the South until the maritime border between Honduras and Nicaragua; then to the West following that borderline until it intersects with the coast in the estuary of River Wans Coco or Segovia which is the natural limit between Honduras and Nicaragua, and from the point we follow the coastline setting a northwest direction of 83° 10' West longitude which is the original starting point of this lot. The area of this block encompasses a total of TWO HUNDRED AND FIFTEEN THOUSAND AND FOUR POINT NINE HECTARES (215,004.9).”

So you have got a concession that refers no less than three times to the border between the two countries. And we invite the Court to read all of the primary material with great care, as we know

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<sup>9</sup>Certification of Decree Concerning an Oil Concession granted to “Pure Oil Company of Honduras, Inc.”, published in the official gazette of Honduras No. 19.140 of 17 April 1967, CMH, Vol. 2, Ann. 192. See also extensions thereof at CMH, Vol. 2, Anns. 197 and 200. Certification of Decree Concerning an Oil Concession granted to “Signal Exploration (Honduras) Company”, published in the official gazette of Honduras No. 19.111 of 9 March 1967, CMH, Vol. 2, Ann. 108 (parallel 15°00); Certification of Decree Concerning an Oil Concession granted to “Texaco Caribbean, Inc.”, published in the official gazette of Honduras No. 23.233 of 17 October 1980, CMH, Vol. 2, Ann. 114 (parallel 15°00); Certification of Decree Concerning an Oil Concession granted to “Lloyd Honduras, Inc.”, published in the official gazette of Honduras No. 19.668 of 11 January 1969, CMH, Vol. 2, Ann. 194 (parallel 15°00); Certification of Decree Concerning an Oil Concession granted to “Texaco Caribbean, Inc.”, published in the official gazette of Honduras No. 22.313 of 4 October 1977, CMH, Vol. 2, Ann. 201 (parallel 15°00).

<sup>10</sup>CR 2007/4, p. 34, para. 78.

<sup>11</sup>*Ibid.*, p. 27, para. 48.

<sup>12</sup>CR 2007/1, (figure 6) p. 42, para. 94 (B).

<sup>13</sup>See another example of such a concession in CMH, Vol. 2, Ann. 107.

it always does, and to form its own view on these concessions. Now we appreciate that this is a very laborious and time-consuming task, but it is a necessary and important one in proceedings such as these.

15. Nicaragua has adopted a similar approach in its treatment of witness statements. Counsel explained that Nicaragua “a renoncé à se lancer dans un concours d’affidavits”<sup>14</sup>. Well, that is Nicaragua’s right. But the witness statements are evidence before the Court, they have been sworn on oath, and they have not been contradicted by evidence from Nicaragua. So all the witness statements stand, as uncontradicted evidence. Let me take one example. The witness statement of Mr. Rafael Leonardo Callejas Romero, at Annex 247<sup>15</sup>. He is not just another person, as counsel for Nicaragua described him<sup>16</sup>. From 1972 to 1980 he was Under Secretary of State and Secretary of State in the Honduran Ministry of Natural Resources, precisely in the period of time when the oil concessions were granted. And he then went on to become President of Honduras. As he said in his statement, the oil concessions were granted against the background of what he understood to be a mutual understanding of Honduras and Nicaragua, that the 15th parallel was the location of the maritime boundary between the two States. Now that is compelling evidence. It stands unchallenged before this Court. Has Nicaragua put any witness statement from its own Minister at the time to contradict the statement of Mr. Callejas Romero? It has not.

16. What about Nicaragua’s concessions? The Memorial maintained a conspicuous silence. A reader of that document would have been blissfully unaware that any oil activity had ever taken place south of the 15th parallel, would also have been unaware that there had been any fisheries activities south of the 15th parallel or indeed any other activity apart from what paragraph 15 of Chapter II of the Memorial referred to as traditional activities of Sambo Miskito Indians. And that silence resonates. The fact is Nicaragua has never granted an oil concession in any area north of the 15th parallel, and it has never sought it. It makes no claim that it has ever done so. No evidence before the Court from Nicaragua to show that it ever treated any area north of the

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<sup>14</sup>CR 2007/4, p. 35, para. 81.

<sup>15</sup>RH, Vol. 2, Ann. 247.

<sup>16</sup>CR 2007/4, p. 35, para. 80.

15th parallel as one in which it was even entitled to grant any oil concessions. The two reports of the Instituto Nicaragüense de Energía that I took you to makes that very clear<sup>17</sup>.

17. So it fell to Honduras to introduce the evidence on Nicaragua's oil concessions. These are depicted at plate 12 of the Honduras Counter-Memorial, which you can now see on your screen in large scale. This plate shows the concessions granted by Nicaragua, and here you ought to have a document that is PS2-7 (figure 7), granted by Nicaragua for the exploration or exploitation of oil and gas within the territory of Nicaragua, in 1979, on the basis of another synopsis prepared by Petroconsultants. In cream colour are concessions where petroleum rights have been granted; in light orange are areas where replacement licences have been granted; in deeper orange are areas where rights have been relinquished; and in pink are areas where applications were pending. Like the earlier plate of 1969 produced by the Government, to which I took you earlier, this plate demonstrates clearly that Nicaragua never went north of the 15th parallel. You've got consistency: 69, 77, 86, 95. Nicaragua's oil concessions are *all* located south of the 15th parallel. Nicaragua has not challenged the accuracy of this plate. And we say it cannot do so: the evidence before the Court is very clear.

18. These concessions apparently have given rise to a certain difficulty for Nicaragua's counsel. Several of the Nicaraguan concessions refer *explicitly* to the 15th parallel as the northern limit<sup>18</sup>. And that has led their counsel to put together what we thought were some quite interesting arguments. Professor Remiro Brotóns told the Court that the references to the 15th parallel in the Nicaraguan concessions (as well as those of Honduras) "suggèrent que les dispositions concernant ces concessions furent préparées dans les bureaux des entreprises concessionnaires"<sup>19</sup>. Now, when he said that I thought I might have misunderstood him, since he seemed to be saying that the

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<sup>17</sup>See RH, paras. 4.27-4.28. The reports of the Instituto Nicaragüense de Energía are at RH, Vol. 2, Ann. 255.

<sup>18</sup>See e.g. Certification of Decree Concerning an Oil Concession granted to "Western Caribbean Petroleum Company", official gazette of Nicaragua No. 117 of 29 May 1967, CMH, Vol. 2, Ann. 203; Certification of Decree Concerning an Oil Concession granted to "Western Caribbean Petroleum Company" and "Occidental of Nicaragua, Inc.", official gazette of Nicaragua No.161 of 18 July 1968, CMH, Vol. 2, annexes 115-116; Certification of Decree Concerning an Oil Concession granted to "Western Caribbean Petroleum Company" and "Occidental of Nicaragua, Inc.", official gazette of Nicaragua No. 272 of 28 November 1974, CMH, Vol. 2, Ann. 117; Certification of Decree Concerning an Oil Concession granted to "Mobil Exploration Corporation", official gazette of Nicaragua No. 202 of 4 September 1968, CMH, Vol. 2, Ann. 202; Certification of Decree Concerning an Oil Concession granted to "Western Caribbean Petroleum Company", official gazette of Nicaragua No. 259 of 14 November 1975, CMH, Vol. 2, Ann. 206. Some of these concessions were later extended.

<sup>19</sup>CR 2007/4, p. 27, para. 47.

concession limits were not the responsibility of Nicaragua. But then he said that the oil companies that had sought the concessions “pouvaient définir à discrétion les limites de l’aire prétendue là où elles le considéraient opportun. . . . L’administration nicaraguayenne accorda donc les concessions sollicitées.”<sup>20</sup> Now, that truly is a remarkable statement. It seems to say that the oil companies could act at will. The reality is rather different, as the evidence shows. I refer you to the 1994 Report of the Instituto Nicaragüense de Energía which makes clear how different the true story is. That is Annex 255 and at page 6, it states: “All oil exploration activities in Nicaragua from 1958 to 1981 were regulated by ‘The General Law on Exploration of Natural Resources’ and ‘The Special Law on Exploration and Exploitation of Petroleum’.”<sup>21</sup> There is no indication that oil companies are free to come to Nicaragua and choose where they want to put their concessions, choose the co-ordinates themselves and even have open-ended oil concessions.

19. On your screen now (figure 8) is a copy of relevant passages in *La Gaceta* of Nicaragua, of 4 September 1968, and that shows the grant of the oil concession “Mobil Uno” to Mobil Exploration Corporation in 1966<sup>22</sup>. This also deals with the Coco Marina area in part and it states:

“The description of the limits starts on a point where parallel 14 degrees 59 minutes 8 seconds latitude north intercepts with meridian 82 degrees 15 minutes longitude west . . . From this point it continues eastwards along the parallel 14 degrees 59 minutes 8 seconds latitude north for an approximate distance of 38 kilometres up to its intersection with meridian 81 degrees 54 minutes longitude west.”

And then it goes northwards. It takes the 15th parallel as the northern limit. It was published in *La Gaceta* and it was adopted as a presidential decree, you can go to the decree and trace the decision-making process internally in the Government of Nicaragua. So there is no question that the oil concession is anything but the exercise by the State of its sovereign authority. And that includes the limits of the concession, and in this case the choice *precisely* of the 15th parallel. It is an act of Nicaragua, a sovereign State, it is not an act of any other person.

20. Honduras submitted plenty of evidence on Nicaragua’s oil concessions in its Counter-Memorial<sup>23</sup>, and the evidence speaks for itself. Nicaragua’s oil concessions confirm tacit

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<sup>20</sup>*Ibid.*, p. 27, para. 50.

<sup>21</sup>INE Report, June 1994, RH, Vol. 2, Ann. 255, p. 6.

<sup>22</sup>CMH, Vol. 2, Ann. 202.

<sup>23</sup>See, e.g., CMH, paras. 6.27-6.28 and the related Anns. 115-118 and 202-215.

agreement between the Parties, peacefully applied as such for approaching two decades, until 1979 when Nicaragua saw fit to unilaterally change its practice. But it did then proceed to treat the 15th parallel as the basis for oil concessions, as the 1994 and 1995 reports show. By the time it unilaterally changed direction, 18 concessions had been granted by Nicaragua, so you have in total 39 concessions. Of the 18 concessions granted by Nicaragua in the area in question, nine explicitly referred to the 15th parallel as the northern limit: six of those were original concessions and three were renewals of original concessions. In its pleadings, and again last week, Nicaragua has provided no explanation as to why that line was chosen, other than as the northern limit of the concessions if it was not considered to be the northern limit of the maritime boundary. All of the concessions were approved by Nicaraguan presidential decrees and duly published in *La Gaceta* — that is how we were able to get hold of them. As late as 1976 Nicaragua was still granting concessions and renewing existing concessions that explicitly delimited by reference to parallel 15<sup>24</sup>.

21. Of the nine Nicaraguan decrees that do not refer explicitly to the 15th parallel, five are extensions or renewals of earlier concessions that did. So you are left with just four, out of the 18, which do not refer explicitly to the 15th parallel. Professor Remiro Brotóns told you that these concessions had northern limits which were “ouverte et indéfinie”<sup>25</sup>, and, with respect, that is not correct. No oil company would enter into a concession for an area which was not precisely defined. We all like and want certainty, but oil companies *have* to have certainty when they are investing very large sums of money on projects such as these. So, the four concessions *did* provide for limits: and they did so in the form of acreages. The four concessions are: the concession granted to Pure Oil in 1968 for blocks Pure II, Pure III and Pure IV<sup>26</sup>; the concession granted to Union Oil in 1972 for blocks Union II, Union III and Union IV — of the same extension as the Pure Oil concessions<sup>27</sup>; the concession granted to Union Oil in 1974 for block Union V<sup>28</sup>, and the

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<sup>24</sup>Resolution concerning renewal of petroleum concession to “Western Caribbean Petroleum Company” and to “Occidental of Nicaragua, Inc.”, official gazette of Nicaragua No. 140 of 23 June 1976, CMH, Vol. 2, Ann. 205.

<sup>25</sup>CR 2007/4, p. 25, para. 38.

<sup>26</sup>CMH, Vol. 2, Ann. 207.

<sup>27</sup>*Ibid.*, Ann. 208.

<sup>28</sup>*Ibid.*, Vol. 2, Ann. 210.

concession granted to Union Oil in 1975 for block Union VI<sup>29</sup>. In each case the presidential decree specified precisely and publicly the acreage of the concession. So it is therefore very easy to calculate the limits and we did so in the Rejoinder<sup>30</sup>. You can see the result at plate 34 of the Rejoinder, which will come up on the screen. Plate 34A (figure 9) shows Union III, it is there in yellow, marked I, II, III and IV, and it has an acreage of 192,800 hectares. The northern limit is precisely at the 15th parallel. Plate 34B (figure 10) shows Union IV, with an acreage of 192,800 hectares. The northern limit is at the 15th parallel. Plate 34C (figure 11), Union V, has an acreage of 65,500 hectares. The northern limit is the 15th parallel. And plate 34D (figure 12) shows Union VI, with an acreage of 350,000 hectares, and, again, the northern limit is at the 15th parallel. The next plate 34E (figure 13) is a composite and it shows you all the concessions combined. So you can see on the right-hand side that Union III and IV go slightly further north than Union V and VI, but that is only because they did not pick up the error that was made by the Commission in 1962 and to which Nicaragua referred last week. Now, we wanted to test the accuracy of our own calculations to make sure that they were correct, and we did that by comparing our calculations, which you have just seen, with those of the Nicaraguan Government itself, in the 1969 *Mapa de Concesiones Petroleras*, which I showed at the beginning and which you can now see on the screen in front of you (figure 14). On that 1969 map you can also see that Union V and VI do not go quite as far north up to the 15th parallel. And so we have compared, by superimposing, the 1969 map with our own calculations, and what you can see when the two plates are superimposed on top of each other (figure 15) is that they are identical in result. Now compare that with what Professor Remiro Brotóns showed you last week: you will see the concessions of the 1969 map and plate 34E as Nicaragua depicted them last Thursday: ) that is plate ARB2/4 (figure 16). That is rather different from what actually happened. The claim that Union II, III and IV somehow migrated north, or *could* migrate north, is the figment of a fertile imagination. And we trust the Court will base its decision on evidence, and not on anything else.

22. Lest there be any doubt as to the consistent practice of the two States — and it really is very difficult to see how there could be — nature has provided its own assistance in the form of a

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<sup>29</sup>*Ibid.*, Vol. 2, Ann. 211.

<sup>30</sup>RH, paras. 4.31 *et seq.*

possible oil deposit which appears to straddle the 15th parallel. This deposit is known as the Coco Marina Oil Field. I am now putting up on the screen plate 35 (figure 17) of the Honduran Rejoinder, which shows the location of Coco Marina — and you can see also its very limited distance from Bobel Cay, 5.735 nautical miles. Now the oilfield here was jointly authorized by Nicaragua and Honduras for exploration, in a project that was known as Operación Conjunta Coco Marina. Two concessions were granted. One was granted by Honduras — block 8 — to the Union Oil Company of Honduras, to the north<sup>31</sup>. The other was granted by Nicaragua — and this is known as Union III — to a sister corporation, the Union Oil company of Central America, to the south. This joint initiative was proposed privately by both corporations, but of course it required governmental approval. And that is what it got from the two Governments — the Government of Honduras and the Government of Nicaragua approved it. Operational expenses were shared equally between the Parties.

23. A well was drilled in 1969 on the Honduran side at a point located at 15° N, 82° 43' 30" W, but for the purpose of exploring both concessions. The Union Oil Company of Honduras reported to the Honduran Ministry of Natural Resources the precise location of the well. It indicated that this location was conditioned by seismic studies which had been carried out. In its report the Union Oil Company of Honduras stated expressly that the points picked out for the drilling of the oil well were set at the chosen location “to explore the common structure that was defined with the seismic survey and covers concession areas *in Honduras and Nicaragua*”<sup>32</sup>. I emphasize — *concession areas in Honduras and Nicaragua* — I make that emphasis. The Honduran Government issued an opinion on the matter, confirming that the maritime boundary with Nicaragua was at 14° 59' 8", and that all concessions granted by Honduras reached this limit and the information concerning activities north of this boundary had to be reported exclusively to the Honduran Government<sup>33</sup>. And we do not have the material that would, presumably, have flowed from the Nicaraguan side of the operation. It was for Nicaragua to put that material in, we do not have access to that, it has not been put before the Court. But, clearly, the Coco Marina Joint

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<sup>31</sup>See CMH, para. 6.28 and RH, para. 5.13 with the corresponding Annexes. See concessions to Pure Oil and to Union Oil in CMH, Vol. 2, Anns. 207-208.

<sup>32</sup>See CMH, Vol. 2, Ann. 110.

<sup>33</sup>See Opinion of the Interstate Study Commission (undated), CMH, Vol. 2, Ann. 109.

Operation confirms a tacit agreement, and perhaps it confirms more than that. I am not aware of an analogous arrangement in any case that has come before this Court, showing so precise acts of convergence over so extended a period of time. If Coco Marina did not reflect a tacit agreement then it is very difficult to see what would. The joint arrangement destroys in our view Nicaragua's opposition to Honduras's sovereignty or sovereign rights in the area north of the 15th parallel.

24. Now, Nicaragua has not challenged this evidence, with any evidence of its own; it's hard to see how it could. So what did counsel for Nicaragua have to say about it? Well, counsel said, if it was a joint enterprise, "c'est d'un projet conjoint des filiales de l'Union Oil, et non du Nicaragua et du Honduras"<sup>34</sup>. Again, we think that is a curious reading of the concessions granted on either side of the 15th parallel by the two States. So Nicaragua goes beyond that and takes refuge in attacking the quality of our evidence, but it introduces none of its own. It focuses its attention for example on the opinion I just referred to — the opinion by the Honduran Interstate Study Commission. It is undated; we accept that, but it explicitly refers to the Coco Marina project. It was introduced as Annex 109 to the Counter-Memorial and it speaks for itself. It confirms clearly that Honduras considered the 15th parallel as "the maritime boundary with the Republic of Honduras", and advised that the concessions granted by Honduras to the Union Oil Company of Honduras "should reach up to that limit in the bordering maritime zone, in order that none intermediate zone is left between that limit and the limit fixed for the granting of concessions by the Nicaraguan Government"<sup>35</sup>. That is precisely what happened; Nicaragua did grant a concession up to that parallel. And then the opinion added: "Any drilling carried out by the Union Oil Company of Honduras . . . North of the parallel . . . must be solely notified to the Government of Honduras." And that is precisely what happened. Madam President, Members of the Court, if Nicaragua had any documentary evidence to contradict this document one assumes that it would have been introduced as evidence. But nothing has been introduced as evidence.

25. There is one further aspect that has to be mentioned. These activities relating to Coco Marina were very closely associated with the islands. As you will recall, I mentioned on Tuesday that it was this very same Union Oil Company of Honduras that contributed to the

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<sup>34</sup>CR 2007/4, p. 30, para. 58.

<sup>35</sup>See opinion of the Interstate Study Commission (undated), CMH, Vol. 2, Ann. 109.



construction of the antenna on Bobel Cay. And you saw contemporaneous documents of 1975 explaining that. Bobel Cay is less than 6 nautical miles from the Coco Marina oil concession. That insular territory was used to assist in exploration activities. The evidence is irrefutable. In this way the activities associated with oil exploration on the Honduran side are very closely connected with Honduran sovereignty over the islands.

26. Madam President, I will conclude on oil concessions. The concessions granted by Nicaragua and Honduras are not tainted by any ambiguity or doubt whatsoever. On the screen (figure 18) is projected plate 13 of the Counter-Memorial. It is a composite plate, showing all Honduran and Nicaraguan oil concessions as at 1979 and 1977 respectively, taking the erroneous critical date of 1977 as a base for one of them. I would not say that it is as good as a painting by Piet Mondrian, but the precision of the lines is very striking, especially along the 15th parallel, which we show in red. There are no exceptions. Nicaragua has never gone north of the 15th parallel; it has never sought to do so; it has never reserved its right to do so.

### **III. Fisheries**

27. I turn now to the second indicator of Honduran activity around the islands and in the maritime areas that confirm that the 15th parallel was treated by both States as the maritime boundary. That is the conduct relating to fisheries. Professor Dupuy has already set out the legal criteria that are relevant for taking into account these activities.

28. You can see the Honduran fishing zones on the screen (figure 19). Gorda Bank — which is the circled light blue, bottom center light blue, circular construction — is located just to the north-east of the islands over which Honduras has sovereignty. The southernmost area of Gorda Bank is about 40 miles from Palo de Campeche and Savanna Cay, respectively.

29. As Honduras explained in the written pleadings<sup>36</sup>, for over 60 years third States and international organizations have recognized the fishing area immediately to the north of the 15th parallel and around the cays as falling within the jurisdiction of Honduras. For example, a 1943 report by the Fish and Wildlife Service of the United States Department of the Interior

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<sup>36</sup>See for example CMH, paras. 6.29 *et seq.* and its related annexes.

addressed the fishery resources of Honduras<sup>37</sup>. It described the potential fishing area in the Caribbean coast of Honduras. Nicaragua complains that it does not mention the islands in issue. Well, that is true, it was dealing with fisheries. So it mentions the banks. And this is what it says: “They include Gorda Bank, Rosalind Bank, Serranilla Bank, Thunder Knoll and others.” (Figure 20.) That is a 1943 document, treating the area in question as part of Honduras.

30. In 1971 the United Nations and the Food and Agriculture Organization (FAO) published a biological study of crustaceans in the Western Caribbean. The study was based on scientific research cruises — three in Honduras and one in Nicaragua. The 1971 study states that the Honduran research included areas between 15° 00' N and 16° 00' N; the research in Nicaragua was undertaken in areas between 13° 50' N and 14° 15' N, well south of the 15th parallel<sup>38</sup>. In the 1980s the FAO, in collaboration with the United Nations Development Programme and the Inter-American Development Bank supported further fisheries studies in Honduras, including right in the very area now claimed by Nicaragua. These studies were initiated by a proposal from the Honduran Government, which sought financial assistance to examine the potential for fisheries in the northern area of Honduras, including specifically around the fisheries banks of Rosalinda and Thunder Knoll, as well as the Media Luna reefs — Half-Moon reefs — which were expressly mentioned in the document<sup>39</sup>.

31. The evidence of Honduran fisheries authority in the area to the north of the 15th parallel even at this stage — 1943, 1971, early 1980s — is rather compelling and there is none from Nicaragua that goes the other way: Honduras has authorized fisheries activities in the waters down to the 15th parallel without protest or objection from Nicaragua. It has provided documentary evidence in support of that, some of it predating Nicaragua’s artificial critical date of May 1977. Honduras’s evidence includes licences and *bitácoras*, and it also includes numerous witness statements. We say, it is simply not good enough for Nicaragua to criticize the testimony of

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<sup>37</sup>CMH, Vol. 2, Ann. 162.

<sup>38</sup>“Exploratory and Simulated Commercial Fishing Operations in the Western Caribbean Sea. R/V ‘Canopus’, May to November 1970” by Marcel Giudicelli, CCDO-FAO-UNDP, San Salvador 1971, CMH, Vol. 2, Ann. 163.

<sup>39</sup>CMH, Vol. 2, Ann. 161.

fishermen on the grounds that it is “highly selected”<sup>40</sup>. The distinguished Agent of Nicaragua and his counsel have provided no evidence to support that charge.

32. There was no basis either for the distinguished Agent’s claim that “[a]ll of the activities that refer to the areas in question, as an identifiable area, occur[red] after 1977”<sup>41</sup>. Or for his claim that all the material filed as evidence by Honduras in relation to fisheries referred to “activities occurring for the first time after” Nicaragua’s critical date. Or to the claim that the evidence “has no clear reference to any specifically identifiable maritime area”<sup>42</sup>. Yet again those assertions are simply not true, on the basis of the evidence that is before this Court. The document now on the screen (figure 21) shows that. This is a resolution from the Honduran Ministry of Natural Resources to a Honduran fishing company that extends for one year — and I emphasize the word *extends* — a provisional fisheries licence that was originally granted on 16 December 1974. This resolution is dated 7 January 1977 — well before Nicaragua’s erroneous critical date. At Clause 6 it defines the limits of the fishing area. It does so by specific co-ordinates. For the avoidance of all doubt I want to read out the co-ordinates, so that I am not accused of reading the document selectively. This is what it says:

“From 15° 44' North Latitude, 88° west longitude, From 85° 57' West Longitude, 18° 01' North Latitude. From 84° 02' West Longitude, 18° 58' North Latitude. From 80° 38' West Longitude, 16° 30' North Latitude, 79° 51' West Longitude, 15° North Latitude. From 83° 09' Longitude, 15° North Latitude.”<sup>43</sup>

And please note the signature of the person who signed the resolution: it is the same Mr. Rafael Leonardo Callejas who was Under-Secretary of State and Secretary of State in the Honduran Ministry of Natural Resources and who provided the witness statement to which I referred earlier. So, this is contemporaneous documentary evidence corroborating his witness statement as to the use of the 15° parallel as the southern boundary. And you may well now ask, where on earth is this limit? So, hopefully, depicted on the screen right now is the fisheries limit that that resolution adopts (figure 22), and you will see that it runs — the southernmost part of it — precisely along the 15th parallel. It includes all the islands and reefs that are now in issue. It is

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<sup>40</sup>CR 2007/1, p. 41, para. 90 (i).

<sup>41</sup>CR 2007/1, p. 35, para. 66.

<sup>42</sup>CR 2007/1, p. 34, para. 65.

<sup>43</sup>This is a corrected translation of the co-ordinates of the fisheries concession set out in Ann. 258.

January 1977, extending a resolution previously adopted in 1974. So, with very great respect, when Nicaragua says there is no evidence of fisheries licences that predates its critical date and specifically refers to the area in question, that is simply wrong.

33. Can Nicaragua show us any equivalent document that it has issued in an area north of the 15th parallel? Apparently, it cannot. Nicaragua has put no contemporaneous evidence — none — before the Court to demonstrate that it has ever applied or enforced its fisheries laws in areas north of the 15th parallel, and I emphasize the word *contemporaneous* documents. If Nicaragua had granted any licences to the north of the 15th parallel, *why has she not put them before the Court?* There is only one inference to be drawn, and that is that none were issued.

34. The fact is there has been a consistent and longstanding practice of Honduras in granting licences and issuing *bitácoras* in this area. This is confirmed by documentary evidence, by witness statements that are in evidence before the Court, and by recognition of third States and international organizations.

35. There is one document in which Nicaragua did try to go north of the 15th parallel and it provides evidence that Nicaragua was persuaded to recognize that the 15th parallel was indeed the northern limit of its fisheries boundary. On 17 November 1986, well after the critical date that Nicaragua has chosen, the Nicaraguan Fisheries Authorities (INPESCA) granted a lobster fishing permit to a Mr. Ramon Sánchez Borba. It extended to the north of the 15th parallel<sup>44</sup>. It was not published, but when it came to the attention of the Honduran authorities, they reacted very firmly and at the highest levels of government. On 20 March 1987, the Minister for Foreign Affairs, no less, of Honduras sent a protest Note to his counterpart, and you can see that projected on the screen (figure 23). Paragraph 3 of the protest Note reads as follows: “The above-mentioned contract goes against the traditional maritime border existing between Honduras and Nicaragua, established at parallel 14° 56' 09".”<sup>45</sup> That is an error that has obviously fallen into the letter. Nicaragua’s reaction? It did not object. It did not enter a reservation of rights. What did it do? It amended the contract. By an act on 7 April 1987, INPESCA amended the contract. You can see that on the screen (figure 24). Clause 6 of the amendment to the contract changes the fishing area.

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<sup>44</sup>RH, para. 5.37.

<sup>45</sup>See CMH, Vol. 2, Ann. 123.

Clause 6 says: “The fishing area for each fishing boat shall be determined by INPESCA in areas south of parallel 15.” That is rather clear evidence and the Court will note that nowhere did Nicaragua reserve its rights. Is there any equivalent objection in writing by Nicaragua to any sovereign act of Honduras north of the 15th parallel in relation to licences issued? It appears there is none.

36. I really do apologize, Madam President, for descending into such mind-numbing detail, but we are really concerned that the Court should be directed to specific evidence so that it can see for itself what the evidence actually says, not what Nicaragua claims that it says. Nicaragua has no evidence of its own, so its strategy seems to be to raise a smokescreen of concerns about the quality and substance of Honduras’s evidence. Once we go into the detail, into the minutiae, it becomes apparent, we say, that Honduras has presented evidence and done so in a fair and balanced way. We respectfully submit that we have not gone beyond what the evidence will sustain. We appreciate the limitations of the exercise for both States — developing countries that perhaps do not have the best record-keeping systems that all States may wish to have. But given the inhospitable nature of the area in question we say that it is abundantly clear that the evidence before the Court is compellingly in favour of Honduras’s argument.

37. There is another technique that is used by Nicaragua in relation to the witness statements, and that is the technique of mockery. Professor Remiro Brotóns referred to the statement of Mr. Santos Calderón Morales, noting his stupefaction that Mr. Calderón should have been aware of this Court’s Judgment of 1960<sup>46</sup>. Well, it is true that Mr. Calderón is not a professor of international law, but surely that cannot be held against him. In 1978, he was the Mayor of the municipality of Ramon Villeda Morales, in Cape Gracias a Dios, so he does know a thing or two about the fisheries communities that work in the area and about land disputes. And it is not surprising at all that he should know about the Court’s Judgment of 1960, or the Arbitral Award of 1906. Anyone who has been to that area will come to understand the significance of the Award and of the Court’s Judgment enforcing it. The Court’s Judgment of 1960 caused Nicaragua to leave great areas of land territory. Many of this Court’s judgments are very well known in the

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<sup>46</sup>CR 2007/4, p. 41, para. 102.

areas they affect. Another Judgment, after all, of this Court dating back to the 1980s, is still rather well known in Nicaragua. I remember many years ago reading a book by the British author Salman Rushdie, published in 1989; it was called *The Jaguar Smile*. The subtitle is *A Nicaraguan Journey*<sup>47</sup>. And I was struck by the numerous passages in that book which referred to the resonance of this Court's Judgment in the 1980s to people in Nicaragua. That book described very clearly how judgments of this Court can and do permeate public consciousness in very important ways. And that is a reflection of the Court's authority.

38. Counsel for Nicaragua was equally scathing about the statement of Daniel Santos Solabarrieta Armayo. He attested to the fact that he had fished in the waters around the cays between 1958 and 1974, under licences granted by the Honduran authorities<sup>48</sup>. Mr. Armayo gave his statement in Guanaja in July 2001, when he was in his eighties — he was an elderly man. What could justify such harsh words from counsel for Nicaragua in the absence of any evidence at all? He and many others were based in Guanaja. They would take very lengthy fisheries expeditions to fish around the islands, including Savanna, Bobel and Media Luna. Anyone who troubles to read all of his statement will see that he is an educated man. He was born in Spain, he studied in France and he went to Honduras as a political refugee. His evidence has not been challenged by Nicaragua. On rereading his statement, which I did after I listened to Nicaragua — it is at Annex 82 — it struck me that there was nothing in it that would suggest that it was anything other than that of a balanced and honest individual. It attested that when he visited the cays 40 or so years ago they were not then occupied by anyone. If he had been manipulated in some way, why would he have said that? If we were being selective in our choice, why would we have included his statement in our presentation of witness statements? The evidence is unchallenged — the man says he fished pursuant to licences — and that is clear, Honduras stands by it. In the absence of evidence to the contrary there is no reason to doubt his integrity. Mockery, Madam President, is not a substitute for hard evidence.

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<sup>47</sup>Salman Rushdie, *The Jaguar Smile: A Nicaraguan Journey*, Picador; reprint ed. (1 Sept. 2003).

<sup>48</sup>CR 2007/4, p. 42, para. 105; CMH, Vol. 2, Ann. 82.

39. The fishing area in question is depicted at plate 14 of Honduras's Counter-Memorial (figure 25). This is the area over which Honduran fisheries conservation laws apply<sup>49</sup>. Witness statements and other evidence show that Honduras has regulated fisheries activities in the area for several decades. Those statements are consistent with the terms of Honduras's Constitution of 1957, which expressly mentioned one cay in the area — Palo de Campeche — as being part of Honduras. and fishermen attesting to Honduran regulation<sup>50</sup>. All but four refer to the role of the cays in sustaining Honduran authorized fisheries activities. In its Rejoinder Nicaragua ignored most of these witness statements, which have gone unchallenged. These powerful testimonies confirm Honduras' longstanding regulatory role in respect of fisheries around the islands and in the waters up to the 15th parallel. The Court before it has no less than 28 witness statements from government officials and fishermen attesting to Honduran regulation<sup>51</sup>, backed by contemporaneous documentary evidence. All but four — in some cases — all but four of those witness statements refer to the role of cays in sustaining Honduran authorized fisheries activities. In its Reply Nicaragua ignored most of these witness statements, which remain unchallenged. These powerful testimonies confirm Honduras's long-standing regulatory role in respect of fisheries around the islands and in the waters up to the 15th parallel.

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<sup>49</sup>For example, a resolution adopted in 2000 by the Ministry of Agriculture and Livestock and the Directorate-General on Fisheries, provides that all fishing boats that fish north of the 15th parallel up to the limit of Honduras's maritime jurisdiction shall be decommissioned and their fishing licences suspended. See Annex "E", resolution N.06-2000 to Operations Order N.21-2000, CMH, Vol. 2, Ann. 142. The resolution includes a map which clearly shows that the resolution shall apply to the waters around the cays, as well as the fishing banks in the area. The resolution extends an earlier resolution dating back to 1999, and is based on Article 340 of the Honduran Constitution, Article 116 of the General Law on Administration, and Article 43 of the Law of Fisheries.

<sup>50</sup>See, as e.g., Statement of Edgar Henry Haylock Arrechavala, CMH, Vol. 2, Ann. 74 ("during all the time he has been in charge of fishing boats [30 years], Honduras has regulated the fishing activities . . . he represents that the fishing permits were obtained in Tegucigalpa"; statement of Mario Domínguez, CMH, Vol. 2, Ann. 80 ("to his knowledge since he occupied Cay South, the Jamaicans have been fishing in Savanna Cay with permits issued by the Honduran authorities and they only capture fish"); statement of Angela Green de Johnson, Vol. 2, Ann. 77 ("as far as she is aware the Jamaicans have been in those cays since the year [1972] and have been granted work permits by the Honduran authorities"); statement of Robert Richard Gough, Vol. 2, Ann. 84 ("the fishing permits were issued by the Natural Resources Ministry and it was the Honduran authorities who provided documents to the seamen").

<sup>51</sup>See as, e.g., statement of Edgar Henry Haylock Arrechavala, CMH, Vol. 2, Ann. 74 ("during all the time he has been in charge of fishing boats [30 years], Honduras has regulated the fishing activities . . . he represents that the fishing permits were obtained in Tegucigalpa"; statement of Mario Domínguez, CMH, Vol. 2, Ann. 80 ("to his knowledge since he occupied Cay South, the Jamaicans have been fishing in Savanna Cay with permits issued by the Honduran authorities and they only capture fish"); statement of Angela Green de Johnson, Vol. 2, Ann. 77 ("as far as she is aware the Jamaicans have been in those cays since the year [1972] and have been granted work permits by the Honduran authorities"); statement of Robert Richard Gough, Vol. 2, Ann. 84 ("the fishing permits were issued by the Natural Resources Ministry and it was the Honduran authorities who provided documents to the seamen.")

40. One example is at Annex 84 of the Honduran Counter-Memorial. It was the statement of Robert Gough, a Honduran fisherman, who stated that between 1980 and 1983 he fished in Nicaraguan waters, south of the 15th parallel, with a permit from the Nicaraguan authorities. North of the 15th parallel he obtained fishing permits issued by the Honduran Natural Resources Ministry. And he confirms that if they went south of the parallel 15, their boats were captured by the Nicaraguan authorities. However, he states categorically that in all the time they engaged in fishing, they never encountered any Nicaraguan fishing boats or Nicaraguan patrols north of parallel 15<sup>52</sup>.

41. So, Honduras has also put in evidence before the Court confirming that when fishing licences or concessions were not complied with, or where they had expired, the Honduran authorities take the necessary enforcement measures<sup>53</sup>. These statements have not been challenged by Nicaragua.

42. Some fisheries concessions are granted by congressional decree, and published in Honduras's official journal, *La Gaceta*. The concessions indicate the maritime areas to which they apply<sup>54</sup>, as well as the type of fish to be harvested and the proposed duration of the concession. Copies of the fisheries concessions dating back to 1962 are before this Court<sup>55</sup>. They have not been challenged by Nicaragua. A number of witness statements confirm the effect of these

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<sup>52</sup>Statement of Robert Richard Gough, CMH, Vol. 2, Ann. 84.

<sup>53</sup>See statement of Fabián Flores Ramirez, CMH, Vol. 2, Ann. 73; statement of Ramón Antonio Nell Manister, CMH, Vol. 2, Ann. 72.

<sup>54</sup>See, e.g., area described in Notification Concerning an Application for Fishing concession submitted by "Hondureña de Pesca, S. de R.L.", published in the official gazette of Honduras No. 17.611 of 23 February 1962, CMH, Vol. 2, Ann. 119.

"The area destined for fishing will include the area from the Bay of Puerto Cortés up to the mouth of the River Wans Coco or Segovia, in a North bound direction, up to where the territorial sea of Honduras extend to, in the bed and subsoil of the submarine shelf, continental shelf and other zones that correspond to Honduran sovereignty, in accordance with the provisions of the Constitution of the Republic."

See also area described in Notification Concerning an Application for Fishing permit, submitted by "Alimentos Marinos Hondureños, S. A.", published in the official gazette of Honduras No. 22.551 of 17 July 1978, CMH, Vol. 2, Ann. 120:

"from the Bay of Puerto Cortés, in the Department of Cortés up to the mouth of the River Wans Coco o Segovia, in the territorial sea, in the bed and subsoil of the submarine shelf and other adjacent submarine zones in its territory, and up to where the depth of those waters allow for the exploitation of the marine resources, in accordance with the Law and International Treaties . . ."

<sup>55</sup>CMH, Vol. 2, Anns. 119 and 120. See also RH, Vol. 2, Anns. 256-259.



concessions<sup>56</sup>. They too have not been challenged. Their value to this case was first questioned last week by counsel for Nicaragua, who said that only one of the concessions referred to by Honduras in the Rejoinder takes as reference the 15° parallel beyond meridian 80°<sup>57</sup>. But there is no reason why all the concessions should extend as far as Nicaragua's counsel would wish. An extension of three miles into the sea, or seven miles or 12 miles along the 15th parallel is as valid and relevant for the purposes of recognizing the 15th parallel as an extension of 40 miles or 60 miles or 80 miles. To illustrate, let me show you the graphical representation of the extension of two such concessions. On the screen you will see plate 38 (figure 26) of Honduras's Rejoinder. This shows a concession granted to fishing company "del Mar" in 1975 — well before Nicaragua's artificial critical date<sup>58</sup>. As you can see — in yellow, the line —, the southern limit of the area licensed for fishing follows the 15th parallel up to meridian 83° E latitude. Similarly, you can see now on the screen plate 39 (figure 27) of Honduras's Rejoinder, the graphic description of the area of delimitation of a concession granted by Honduras to the company Mariscos de Bahía in 1976. It too takes the 15th parallel as the southern limit<sup>59</sup>.

43. In addition to licences and concessions, Honduran authorities provide fishermen with a document known as a *bitácora*, and they have done so since the 1970s<sup>60</sup>. A *bitácora* indicates the area in which fishing is permitted. It is to be returned to the Honduran authorities with an indication of the quantity and type of the fish that has been caught, as well as the location where the catch occurred. To ascertain the location, the area in question is divided into grids. The *bitácora* issued for the area now claimed by Nicaragua uses the 15th parallel as the southernmost limit of Honduras's fishing area. On the screen you can see plate 31 (figure 28) of Honduras's

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<sup>56</sup>See *inter alia* statement of Edgar Henry Haylock Arrechavala, CMH, Vol. 2, Ann. 74, who states:

"[T]hey fished in the area from Patuca to the parallel 15° and from there out to sea until they reached the Rosalind Fishing Bank . . . the company that hired them was called Alimentos Marinos; . . . ; he further deposes that within the fishing areas we find South Cay, Savanna Cay and Bobel Cay because there are fishing banks next to these Cays; the fishing boats sold their captures in Guanaja except those boats hired by Alimentos Marinos (Marine Foods) that unloaded their production in Puerto Lempira; he started out as a Master with Alimentos Marinos and later continued working for local fishing boats of the islands; the owners of the fishing boats paid their taxes in Guanaja and those of Alimentos Marinos in Puerto Lempira."

<sup>57</sup>CR 2007/4, p. 39, para. 97.

<sup>58</sup>RH, Vol. 2, Ann. 256.

<sup>59</sup>RH, Vol. 2, Ann. 259.

<sup>60</sup>CMH, para. 6.44 as well as RH, para. 5.18.

Counter-Memorial. It was shown to you last week by counsel for Nicaragua. It shows two *bitácoras* dating to 1978. They clearly show that the 15th parallel is the southern limit of the area authorized for fishery, in the red line. Dr. Elferink was heroically inventive in his efforts to attack this evidence<sup>61</sup>. But the simple fact is — no getting away from it — it confirms that Honduras regulated fisheries activities in the waters down to the 15th parallel. Nicaragua has not put a single *bitácora* before the Court, not a single *bitácora* to show that it has ever treated waters to the north of the 15th parallel as falling within *its* fisheries jurisdiction.

44. Nicaragua made *no* claim in its Application that it had ever applied or enforced its fisheries laws in the area north of the 15th parallel. Its Memorial produced no evidence whatsoever. Only in response to Honduras's Counter-Memorial did Nicaragua come to this issue. And we say it has done so inadequately, it has failed to engage with the evidence. And we make three points. *First*, Nicaragua challenges the *sufficiency* of Honduras's evidence, not its authenticity. In our submission the evidence tendered by Honduras is overwhelmingly sufficient. *Second*, Nicaragua provides no evidence to show that it has ever protested a Honduran authorized fishery activity, including the ones published in *La Gaceta*.

45. And *third*, Nicaragua provides no contemporaneous documentary evidence that shows that it has ever granted any fishing licence north of the 15th parallel. It has provided no evidence that it has ever advertised licences in that area. It has produced no logbooks. It has produced no *bitácoras*. There are no licences, no concessions. There is nothing at all. And that may explain why Nicaragua is now so defensive, even arguing that fishing licences and fisheries regulation are “not directly relevant”<sup>62</sup>. In our submission that argument is not well-based, as this Court's consistent jurisprudence has shown<sup>63</sup>. In the *Qatar v. Bahrain* case, the Court expressly referred to the licensing of fish traps as one of the activities carried out by Bahrain in support of its claim to sovereignty (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Judgment, I.C.J. Reports 2001*, pp. 99-100, paras. 196-197). In *Pulau Ligitan and Pulau Sipadan* the Court ruled that private fishing activities may be taken as *effectivités* where

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<sup>61</sup>CR 2007/3, p. 40, para.11.

<sup>62</sup>RN, para. 6.107.

<sup>63</sup>RH, para. 4.35.

they take place “on the basis of official regulations or under governmental authority”, i.e., under governmental licence or pursuant to a governmental concession (*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, *Judgment*, *I.C.J. Reports 2002*, p. 683, para. 140). The activity set forth in Honduras’s evidence shows that fisheries have taken place under Honduran governmental authority.

46. All Nicaragua has to offer is the five witnesses that I mentioned on Tuesday. And we have gone through each of these very carefully: I refer you to our Rejoinder and what I said on Tuesday. The five statements are wholly inadequate. None emanates from any person who is or was a government official. Three make no reference whatsoever to the existence of any fishing licence granted by Nicaragua. The two that remain provide no supporting evidence, no documentary evidence of a contemporaneous or other character, to buttress even their modest claims. So we invite you to read the five Nicaraguan witness statements, and then compare these statements and the contemporaneous documentary evidence tendered by Honduras. The differences are, we say, very, very telling.

47. Bringing together the threads, the evidence before the Court overwhelmingly points to the fact that Honduras has authorized fisheries activities in the waters north of the 15th parallel and around the cays for many decades, without interruption, without protest pursuant to a tacit agreement that the 15th parallel was treated as the maritime boundary. By contrast, Nicaragua has provided no contemporaneous evidence that it has ever sought to regulate fisheries activities north of the 15th parallel.

#### **IV. Naval patrols**

48. I turn finally to naval patrols. I have already referred in passing to these: they enforced Honduran Laws in maritime and insular areas north of the 15th parallel, as long ago as 1976. Plate 15 of the Honduran Counter-Memorial, now on the screen (figure 29), depicts the geographic extent of the Honduran naval patrol zone. These naval patrols perform a number of functions, including the enforcement of fisheries laws, the enforcement of immigration laws, and the maintenance of security in Honduras.

49. Honduras has put before the Court the testimonies of two officials — a Honduran immigration officer and a port supervisor — who worked with the Honduran navy in undertaking patrols to the cays to enforce immigration laws<sup>64</sup>. Honduras has also provided documentary evidence, in the form of patrol logbooks and other materials, showing Honduran patrols around the cays, the reefs and the banks in the areas to the north of the 15th parallel<sup>65</sup>. These patrols began in 1976, once Honduras had created its navy. They have been routine ever since. Since 1986 two dedicated patrol boats have carried out regular operations, visiting the cays as well as Rosalinda and Thunder Knoll Banks. These naval patrols inspect fishing boats and catches<sup>66</sup>, occasionally arresting ships fishing or trading illegally<sup>67</sup>. Again, the evidence before the Court shows that they assist boats in distress<sup>68</sup> and they provide injured sailors with first aid and other medical assistance<sup>69</sup>.

50. After 1982 the evidence shows that patrols have also had to respond to occasional incursions into Honduran waters by Nicaraguan vessels, including military vessels<sup>70</sup>. Since 1995, special patrols have been undertaken with three objectives: first, to ensure that Nicaraguan vessels do not enter Honduran waters and harass or apprehend Honduran fishing vessels; secondly, to prevent and control narco-trafficking activities; and thirdly, to ensure that duly authorized fishing

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<sup>64</sup>Statement of Harley Seision Paulisto, CMH, Vol. 2, Ann. 71 and Statement of Fabián Flores Ramirez, CMH, Vol. 2, Ann. 73.

<sup>65</sup>CMH, paras. 6.60-6.62 and HR, paras. 5.54-5.57 and related annexes.

<sup>66</sup>See e.g., logbooks of the two boats (*Honduras* and *Hibueras*) patrolling around the various cays and banks including Media Luna, South Cay and Bobel Cay, CMH, Vol. 2, Ann. 133-136. See also CMH, Additional annexes, Anns. 20-224.

<sup>67</sup>For, e.g., a United States vessel captain was arrested in May 1988, at 16° 20' N 80° 09' W with 3,000 pounds of lobster and no permits, Report of the Naval Squadron of the Atlantic of Puerto Cortés (May 1988), CMH, Vol. 2, Ann. 132; see also a report regarding the capture of a Nicaraguan vessel while engaged in illegal activities to the north of the 15th parallel (15° 09' N 82° 12'), CMH, Vol. 2, Ann. 141.

<sup>68</sup>See, e.g., logbook of the *Hibueras*. CMH, Vol. 2, Ann. 130. See also Logbook of the *Hibueras* (Patrolling of 18 January 1989, describing rescue of fishing crew at South Cay), CMH, Additional Annexes, Ann. 226.

<sup>69</sup>See, e.g., logbook of the *Hibueras*. Naval Base of Puerto Cortés (Patrolling of 6, 7 and 8 August 1986 and 6 May 1987 on an incident at South Cay), CMH, Vol. 2, Ann. 130.

<sup>70</sup>See, e.g., logbook of the *Hibueras*, entries of 18 September 1982 (incident at Bobel Cay), April 1983 (incident at Bobel Cay), 9 September 1983 (incident at 15° 02' 00" N 82° 30' 00" W), 6 November 1983 (incident at 15° 01' 00" N 82° 58' 00" W), CMH, Vol. 2, Ann. 129; Note dated 21 March 1982, addressed by the Chief of the Honduran Armed Forces to the Minister of Foreign Affairs of Honduras Regarding an Incident with Sandinista Patrol boats in Bobel and Media Luna Cays, CMH, Vol. 2, Ann. 139; Report dated 9 December 1982, addressed to the Commander in Chief of the Honduran navy about an Incident with a Nicaraguan Patrol boat in the Bobel Cay Area, CMH, Vol. 2, Ann. 140. There are also other documents that have been filed as additional annexes. See CMH, p. 122.

vessels respect Honduran fisheries conservation measures<sup>71</sup>. In its Rejoinder Honduras provided further evidence of military patrols in the area<sup>72</sup>.

51. By contrast, Nicaragua has produced no compelling evidence to show that it has sought to enforce its fisheries or other laws in any insular or maritime areas north of the 15th parallel, whether before or after 1979. Honduras has provided extensive evidence: 17 annexes of official military records<sup>73</sup>; six witness statements<sup>74</sup>, several diplomatic Notes. What does Nicaragua rely on? Just two witness statements. Even this limited testimony is flawed. On the basis of the first witness statement offered by Mr. Arturo Möhrke Vega, Nicaragua refers to Honduran patrols as not being present in the area before Nicaragua's "critical date" of 1977<sup>75</sup>. But his statement deserves to be read carefully. Mr. Möhrke Vega does not actually mention any date in his statement as to when he was there. It is simply not possible to know when Nicaraguan naval patrols in the area he describes are said to have occurred<sup>76</sup>.

52. The second statement on which Nicaragua relies is by Mr. Clark Mclean<sup>77</sup>. He describes fishing in the areas where, he says, "Nicaraguans patrolled". Those two words constitute the full extent of his description of alleged patrols. There is no indication of any date, no indication of any precise location and no sense of whether they overlapped with Honduras's oil concessions in the area and the construction of the antenna on Bobel, facts which appear to be in contradiction with his evidence.

53. So in sum, we are very content to leave the Court to weigh up the evidence on patrols provided by Honduras with that provided by Nicaragua. In the balancing exercise that follows, in our submission, the scales can only go in one direction.

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<sup>71</sup>See e.g., Operations Order N.003-95 of the Naval Base of Puerto Castilla (patrolling of February 1995 at Bobel Cay, Cabo Falso Cay, Cape Gracias a Dios and La Mosquitia), CMH, Vol. 2, Ann. 137. See also Ann. 38, 142 and others.

<sup>72</sup>See RH, para. 5.57 and related documents.

<sup>73</sup>CMH, Vol. 2, Anns. 129-145.

<sup>74</sup>CMH, Vol. 2, Anns. 68, 71, 72, 73, 75 and 78.

<sup>75</sup>RN, paras. 5.4 (iv), and 6.65.

<sup>76</sup>RN, Vol. 2, Ann. 23; RN, para. 6.110.

<sup>77</sup>RN, Vol. 2, Ann. 22; RN, para. 6.110.

## V. Conclusions

54. Madam President, Members of the Court, that brings me to my conclusions. The Court has a mass of evidence before it. In our submission, the evidence on oil concessions, fisheries concessions, naval patrols, points decisively towards the existence of a tacit agreement over two decades of the 15th parallel as the maritime boundary, and its mutual recognition as such by Honduras and Nicaragua. Taken together the cumulative evidence presents an overwhelming expression of Honduras's long-established sovereignty and exercise of jurisdiction over waters that lie to the north of the 15th parallel.

55. Amidst all of this evidence there is one piece that I found particularly telling. It is the witness statement of Mr. Bob Ward Macnab Bodden (CMH, Ann. 86 — figure 30). Mr. Bodden describes how a fishing vessel registered in Honduras was found by Nicaraguan patrols in waters south of the 15th parallel, where it was alleged to have been fishing illegally in Nicaraguan waters. The Nicaraguan patrol apprehended the vessel, escorted it to the 15th parallel, and then released it<sup>78</sup>. That happened in 2000, after Nicaragua filed its Application in this case, and as the National Assembly in Managua was preparing to approve the 1998 Central American Free Trade Agreement, which they did in November of that year. So the National Assembly was not alone in acting in support of Honduras's claim. The National Assembly of Nicaragua was in good company. The authorities in Managua that created this claim in December 1999 somehow forgot to tell Nicaraguan navy patrols about the case.

56. Madam President, Members of the Court, before I conclude there are just two points I would like, with your permission, to address. The first is a minor correction of something that Professor Dupuy said yesterday. He made inadvertent reference to a 1994 Note from Nicaragua. I need to just clear up the fact that the Note referred only to the maritime spaces; it did not refer to any islands, as he inadvertently suggested<sup>79</sup>. And second, on a personal note, I would like to record my deep thanks to all of my colleagues for their assistance in navigating this vast amount of material on *effectivités* and conduct, and in particular to Anjolie Singh of the Indian Bar and to Adriana Fabra of the University in Barcelona. Gathering all of this material has not always been

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<sup>78</sup>Statement of Bob Ward McNab Bodden, CMH, Vol. 2, Ann. 86.

<sup>79</sup>CR 2007/8, p. 49 and footnote 56.

the easiest of tasks, as I am sure the Members of the Court will appreciate. So I want to express my gratitude, in particular to all of my Honduran colleagues, but in particular to one, Engineer Luis Torres. He took a great role on the issues of conduct and *effectivités*, but very sadly he passed away between the close of the written pleadings and the opening of these oral hearings. He was a man of dedication and integrity. He and I were the same age, so I feel his loss very keenly. The Republic of Honduras and his family have every right to be deeply proud of the contribution that he made to this case.

57. Madam President, I thank you very much for your kind attention and invite you, perhaps after the coffee break, to call to the Bar Mr. David Colson.

The PRESIDENT: Thank you very much, Professor Sands. The Court will now rise.

*The Court adjourned from 11.25 to 11.40 a.m.*

The PRESIDENT: Please be seated. Yes, Mr. Colson.

Mr. COLSON: Thank you very much, Madam President. Madam President, Members of the Court, before I begin perhaps I could just say a word about the plans of the Honduras team for the next remainder of today and tomorrow. It has been decided that I will be the last speaker for Honduras in this first round of pleadings. I have a longish speech which will certainly go through today. I will make every effort to end it at about the time of the coffee break tomorrow, the normal coffee break time. The Registry and the translators have a portion of that speech for today. I will not get all the way through it, but we will pick up wherever we end today and we will supplement it and we will then proceed tomorrow with additional maps in your folders.

#### **THE HONDURAN LINE**

1. My task is to present the Honduran line and to discuss its equitable character.

2. Honduras and Nicaragua are party to the 1982 Law of the Sea Convention. Thus, the law governing this case, the maritime delimitation in this case, is Articles 15, 74 and 83 of the Convention, as has been reviewed by Professor Dupuy.

3. There is nothing in the Law of the Sea Convention pertaining to lines of allocation of sovereignty, which is what Nicaragua requests. The Convention is based — and its Articles of delimitation are based — on an understanding of the territorial sovereignty of coasts, both the mainland and the islands, and then the application of that law and the application of delimitation method based upon that appreciation. The approach of Nicaragua is backward; it has no basis in law; it is without precedent; and were the Court to go down the road suggested by Nicaragua of deciding a maritime boundary line without reference to territorial sovereignty, letting sovereignty be determined by reference to the line created, I submit it would have far-reaching implications, worldwide, in island and maritime boundary disputes.

4. In consideration of the application of Articles 15, 74 and 83 of the Law of the Sea Convention to this case, Honduras believes that its line is fully in keeping with those provisions. Why?

5. First, the line that is proposed by Honduras runs east separating the islands that belong to Honduras from the islands that belong to Nicaragua.

6. Second, as you have just heard and has been amply demonstrated by Professor Sands, the line proposed by Honduras marks a tacit *modus vivendi* honoured for a period of almost two decades, reflected clearly, and unmistakably, in the oil conduct of the Parties. The Court has been right to be wary of oil conduct arguments in the cases. The Court, however, after review of oil conduct that has been presented to this Court, at paragraph 304 of its Judgment in the *Cameroon v. Nigeria* case, the Court indicated that where oil conduct reflects a *modus vivendi* it has relevance to the delimitation and Honduras believes that the facts in this case make that holding applicable here.

7. Third, the line proposed by Honduras follows a line of latitude. Lines of latitude and lines of longitude are widely used in the practice of States to mark their maritime delimitations and certainly, we may say, more so than the bisector method.

8. Fourth, as we shall see when we review the matter tomorrow, the Honduras line is a line that is more equitable. It is more favourable to Nicaragua than a provisional equidistance line would be.



**THE BASIS AND CHARACTERISTICS OF THE TRADITIONAL LINE,  
WHICH IS THE HONDURAN POSITION**

9. To begin the discussion of the Honduran line, it may be useful to review first its technical characteristics, and then I will turn to its legal basis, in history and geography and the conduct of the Parties. And then, in the second part of this presentation, we will use those factors again to demonstrate the equitable character of the Honduran line.

**A. The technical characteristics of the traditional line**

10. So, let us begin the discussion of the technical characteristics of the line.

**1. Where the land boundary meets the Sea**

11. In its Application, Nicaragua requested the Court to

*“determine the course of the single maritime boundary between the areas of territorial sea, continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Honduras . . .”*

in the Caribbean Sea.

12. This formulation of the question avoids reference to the starting-point. However, as I think we all understand by now, the position of the starting-point must be determined if there is to be a delimitation of the territorial sea, the continental shelf and the exclusive economic zone. The determination of the position of the starting-point is made difficult here because of the accretion, in particular, that occurs at the mouth of the river where the land boundary meets the sea.

13. Both Parties have suggested solutions to this problem. And before coming to them, however, it might be useful, as others have done, to review the legal process once again by which it was determined that the land boundary between Honduras and Nicaragua reaches the Caribbean Sea at the mouth of the Rio Coco.

**(a) *The 1906 Award***

14. In the years leading to the beginning of the twentieth century, Honduras and Nicaragua contested the location of their land boundary resulting in very large areas to be in dispute between the two countries. Ultimately, there was a 1994 treaty which established a Mixed Commission and it provided for arbitration if the Mixed Commission could not complete its work. The Mixed Commission had success. It had success from the Gulf of Fonseca into the interior, to the vicinity

of the Portillo de Teotacacinte. From there to the Caribbean coast, however, the dispute remained, and it was the boundary from the Portillo to the Caribbean coast that was the subject of the King of Spain's Award in 1906, an Award, as we know, that was based in the *uti possidetis* principle, as the parties had requested.

15. Nicaragua argued at that time that it was entitled to a land boundary that reached the sea at Cape Camarón. We are going to put on the screen now a map that you have seen before. This is a map that represents Nicaragua's claim before the King of Spain (plate 9 from the Honduran Counter Memorial (figure 1). Professor Greenwood referred to this map and Professor Sánchez Rodríguez used something similar in his presentation. This shows Nicaragua's view of its *uti possidetis* entitlement. And as this figure records in the lower right-hand corner, it records the words or a part of what Nicaragua requested from the King of Spain. Nicaragua requested "the meridian which passes through Cape Camarón, which follows this meridian until it loses itself in the sea, leaving to Nicaragua Swan Island". And you can see at the upper part of that blue-shaded area the location of Swan Island that Nicaragua claimed at the time. Nicaragua claimed a substantial part of the coast that is today accepted as Honduras and, likewise, Nicaragua expressly claimed Swan Island.

16. Why did Nicaragua's claim refer to Swan Island and to this island alone? We know by now that there are many other islands in that blue shaded area. Presumably Nicaragua then would also have claimed all of those other islands that are north of 15° latitude — that are covered in blue shade in this figure — but Nicaragua's claim did not refer to them. Why not? By virtue of the *uti possidetis* principle, these islands were not *terra nullius*. Nor, presumably, did Nicaragua believe these islands belonged to Honduras if Nicaragua claimed the coast all the way to Cape Cameron. Could it be simply that it was understood — understood at the time and understood in the Spanish Empire — that the small islands off the coast — adjacent to the coast — automatically followed the sovereignty attributed to the coast, but that Swan Island, being larger and more remote and about 100 nautical miles from the coast, was named, in its pleadings, to leave no doubt about its claim?

17. Now in all events, the King of Spain awarded this coast to Honduras — this long stretch of coast between Cape Camarón and Cabo Gracias a Dios, the coast that we measure to be about

130 nautical miles long. It is true that the King of Spain's Award makes no reference to islands, but having regard to the *uti possidetis* principle it is impossible, I submit, to avoid the conclusion that sovereignty over islands and sovereignty over the coast off which those islands lie could only be different if there was an affirmative finding to that effect.

18. As for the land boundary, the 1906 Award determined that the land boundary on the Caribbean side begins at the mouth of the Rio Coco. I apologize now for reading the key passage from that Award which was quoted by the Agent for Honduras on Monday, but I believe it is important to focus our minds once again on this passage at this stage in our discussion. The Award states, in the translation recorded at page 202 of this Court's 1960 Judgment:

“The extreme common boundary point on the coast of the Atlantic will be the mouth of the River Coco, Segovia or Wanks, where it flows out in the sea close to Cape Gracias a Dios, taking as the mouth of the river that of its principal arm between Hara and the Island of San Pío where said Cape is situated . . .”

And the Award continues, and indeed that sentence continues:

“leaving to Honduras the islets and shoals existing within said principal arm before reaching the harbour bar, and retaining for Nicaragua the southern shore of the said principal mouth with the said Island of San Pío, and also the bay and town of Cape Gracias a Dios and the arm or estuary called Gracias which flows to Gracias a Dios Bay, between the mainland and said Island of San Pío.”

And further on in the Award, the Award determines that the boundary “will follow the . . . thalweg . . . upstream” as the boundary between the two countries.

19. Now let us put on the screen a map — this was map AP1 in Professor Pellet's presentation on 8 March 8 (figure 2). There are two matters concerning this map that I would like to point out. First, there is a point that is identified by a diamond which purports to indicate that this location marked the mouth of the river in 1906. Now I cannot say that it does not, because I don't know. But I would submit that this is an entirely speculative demonstration by Nicaragua. It has absolutely no evidence to support this position. The second point that I would like to point out, is simply at this stage to take note of the island that is in the mouth of the river. We will talk quite a bit about islands in the mouth of the river in the next few minutes. The King of Spain Award says that the islands and shoals in the principal arm of the river belong to Honduras. As we shall see, when we look at the satellite images, these sediment islands — and they are sediment islands, they are sand shoals really, that build up in the river mouth — they build up in the river routinely,

they disappear routinely, and they often end up attaching themselves to one bank or the other on either side of the principle arm of the Rio Coco.

**(b) *The 1960 ICJ case***

20. Now we know, of course, that Nicaragua challenged the 1906 Award on various grounds. Ultimately, Honduras was able to bring the continuing dispute before this Court (figure 3). Now on the screen is a map that Professor Greenwood showed in his presentation on Monday, it was his No. 2 (CJG2). And this was a map that is found in the Honduran pleadings in the case. The map is dated 1959, but we should make clear that it is not clear to us now when the data that is shown on this map was collected. But let's look at this map and what the King of Spain's Award says. You can see the river, you can see the large Honduran island of Hara, you can see the island of San Pío that is left to Nicaragua, you can see the very slender estuary of Gracias, you can see Gracias a Dios Bay, and you can see the location of a very small town of Gracias a Dios on Gracias a Dios Bay. You can also see that there were islands then in the mouth of the river, and there is a line that marks the thalweg as understood by Honduras at the time, running between the islands belonging to Honduras and the coast of Nicaragua's San Pío.

21. Now I would like to pause for just a moment here in this discussion to speak of this small town of Gracias a Dios. Last week in his opening statement the Agent of Nicaragua spoke as if this town was a port, and he referred to it as being located "at the mouth of the Coco River" (CR 2007/1, p. 26, paras. 37-38). There was even a graphic prepared by the Nicaraguan team that had a label of a port — a Nicaraguan port — on the Rio Coco, at the mouth (graphic 13). Now Honduras is unaware of a Nicaraguan port or town on the Rio Coco anywhere near its mouth. No Nicaraguan port on the Rio Coco is shown on modern nautical charts. Charts and maps of this area show a small town located on Gracias a Dios Bay, just as is shown on this 1959 Honduran map. Now if Honduras is in error about this, Nicaragua will have the opportunity to provide some evidence of the location of the Nicaraguan port, that it says exists at the mouth of the Rio Coco, in its second round.

22. Among Nicaragua's arguments before this Court almost 50 — or more than 50 years ago now — was the argument that the 1906 Award was not capable of execution by reason of

omissions, contradictions and obscurities. And in this regard, Nicaragua argued that the mouth of a river is not a fixed point and cannot serve as a common boundary.

23. This Court, in its 1960 Judgment, made the following observation.

“The operative clause of the Award [speaking of the King of Spain’s Award], as already indicated, directs that ‘starting from the mouth of the Segovia or Coco the frontier line will follow the *vaquada* or thalweg of this river upstream’. It is obvious that in this context the thalweg was contemplated in the Award as constituting the boundary between the two States even at the ‘mouth of the river’. In the opinion of the Court, the determination of the boundary in this section should give rise to no difficulty.” (*I.C.J. Reports 1960*, p. 216.)

24. Thus, the *uti possidetis* boundary between Honduras and Nicaragua — determined by the 1906 Award and confirmed in the 1960 case before the Court — reaches the sea at the intersection of the thalweg of the Rio Coco with the line that closes the river mouth. The islands and shoals in the river belong to Honduras.

## **2. Characteristics of the mouth of the Rio Coco**

### **(a) *The Rio Coco***

25. As the Court appreciates, the Coco River drains a large area of the interior of Central America. Thus, it carries a heavy load of sediment, and it reaches the sea where the coastal currents are relatively weak. The result is that the river mouth is constantly changing its shape, and unstable islands and shoals form in the mouth where the river deposits much of its sediment. I believe the Parties agree on this.

### **(b) *The 1962 Mixed Commission***

26. The pleadings of the Parties detail the work of the 1962 Mixed Commission<sup>80</sup> and there is little to be added here, except the following. The Commission found that the Rio Coco then emptied into the sea through three branches: there was a northern branch, and a southern branch, and an eastern branch, and it determined that the thalweg was in the eastern branch — the middle branch — which it referred to as the Brazo del Este. The report of the Commission referring to this branch states: “[a]nd the third branch, which flows in an easterly direction, is generally about 160 m wide, but at certain points as much as 500 meters wide, and empties into the sea. It was

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<sup>80</sup>MN, Vol. II, Ann. 1.

noted that there are no islets in this branch.”<sup>81</sup> So by the time the 1962 Commission did its work, the islands in the mouth of the river, that had been shown on the 1959 Honduran map, had disappeared, and — as we will see when we look at the satellite photos — we can see that that might well be the case, the common case, in these islands that form and disappear at the mouth of the river. It would seem that in this case, in those years at the end of the 1950s and early 1960s, the islands that Honduras had observed in the mouth of the river probably became attached to the Nicaraguan shore.

27. The point marking the mouth of the river agreed by the 1962 Mixed Commission is the only precise point that is established in the practice of the Parties, in implementation of the 1906 Award, that is relevant here. Now let us refer for a moment to the map prepared by the 1962 Mixed Commission. This is the same map that Professor Pellet showed last week as his map AP2.1. However, we are using our own scan of this map (figure 4) because we feel it is a bit clearer, but it is indeed the same map taken from the Mixed Commission’s report. Here one can see the northern arm, observed by the Mixed Commission, called the Canal del Norte. You can see the southern arm, which the Mixed Commission referred to as Canal Roman, and you can see the middle or eastern arm — and if you can read the fine print it says “Brazo del Este”. I would like also simply to point out here that there is no town of Gracias a Dios on this river. It is shown here, located on the bay of Gracias a Dios, considerably south of the mouth of the river, and it appears in the same location as it appeared in the 1959 Honduran map.

### **3. State practice in similar circumstances to that of the Rio Coco**

28. It is not uncommon for the boundary between two States to follow a river to the sea. It is also not uncommon for the mouth of a river to be subject to accretion and erosion as it is in this case, or for unstable islands and shoals to build in the mouth of the river. Thus, while the position may be fixed in law, the geographical position will shift as the mouth of the river shifts, and this creates difficulties in establishing the starting-point for maritime boundaries. However, as the practice of States shows, this problem can be dealt with in numerous ways.

29. I would just now refer to three examples from State practice.

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<sup>81</sup>Report of the Honduran-Nicaraguan Joint Boundary Commission on the Studies Made at the Mouth of the Coco, Segovia, or Wanks River. *Id.*, p. 19.

**(a) *Mexico-United States***

30. One approach is that adopted by Mexico and the United States to deal with the changing character of the mouth of the Rio Grande. Nicaragua has referred favourably to this example. In the negotiations that led to the 1970 Mexico-United States treaty, it was understood that the mouth of the Rio Grande could shift by as much as 1.5 nautical miles from north to south in any given year. The parties to that treaty agreed to establish a fixed point at sea, seaward of the river mouth as it then existed at the time of the negotiations. They agreed further that from the middle of the mouth of the river, as it might exist at any time, the first segment of the territorial sea boundary would extend from that ambulatory point — it would extend though in a straight line to the seaward fixed point. This technique is recorded in Article 5 of the 1970 Mexico-United States treaty<sup>82</sup>. There are citations to these treaties in the International Maritime Boundaries Reports of the American Society of International Law in the prepared text.

**(b) *China-Vietnam***

31. The second example that I would note is the 2000 China-Vietnam maritime boundary accord<sup>83</sup>.

32. In this situation, the China-Vietnam land boundary follows the Beilun River to the sea. And this river mouth creates the same kind of problems — it is always shifting about and banks and flats and sand bars form. That agreement establishes a territorial sea boundary extending from a defined point 1, through points 2 to 6, to a defined point 7. Article 3 (3) of that agreement provides that no matter what topographical changes may occur, the delimitation line will not change unless mutually agreed. Thus, in this example of practice, the agreed territorial sea boundary will continue to serve as a national border no matter what physical changes occur at the river mouth, including that line actually could divide between the parties island and low-tide elevations as they form in future years.

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<sup>82</sup>International Maritime Boundaries, Vol. I, Report No. 1-5.

<sup>83</sup>International Maritime Boundaries, Vol. V, Report No. 5-25.

**(c) *Angola-Namibia***

33. Just a third example, and this is found in the 2002 agreement between Namibia and Angola. There the land boundary follows the Cunene River to the sea, and there is the same problem of a river mouth that shifts about, where shoals and flats and islands form in the mouth of the river. The parties there agreed that their maritime boundary will be a line of latitude. This line of latitude will extend all the way to the 200 nautical-mile limit. But, since the exact mouth of the river may not always be on the latitude that the parties agreed to, the parties agreed to establish a commission to deal with that irregularity, and like in the China-Vietnam agreement, those countries provided in Article V of their treaty that if the line of latitude that serves as the maritime boundary crosses an island that may form, the line of latitude will continue to be the border between the two States<sup>84</sup>.

34. Now, Honduras brings these examples to the Court's attention to illustrate some of the methods States use to deal with shifting river mouth problems. There is no right or wrong way; it is simply a matter of adopting a technique that makes sense in the circumstances.

**4. The present situation**

**(a) *Accretion/erosion***

35. Since the Mixed Commission determined the mouth of the Rio Coco more than 40 years ago, there has been a constant reshaping of this river mouth, with the overall result that it has moved eastward. It is also the case that an unstable island feature has now reformed in the mouth of the river. There is a major difference, obviously, between the Parties. Nicaragua's pleadings have assumed that it is sovereign over the islands and shoals in the mouth of the river. Nicaragua has not explained this departure from the 1906 Award, which is specific that the islands and shoals within the principal arm of the Rio Coco belong to Honduras.

36. On the screen we are putting up a figure which you have seen before (figure 5, plate 19 CMH). Several of my colleagues have referred to this figure and it appeared in both the Honduran Counter-Memorial and Rejoinder. It shows a set of satellite photos of the river mouth in seven different years from 1979 to 2001. On this set of images, the white dot represents the 1962 Mixed

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<sup>84</sup>International Maritime Boundaries, Vol. V, Report No. 4-13.



Commission point. I might explain that each one of these grid squares is 1' of latitude and 1' of longitude. Roughly, and I say roughly, laymen might look at this and think of those as 1-mile squares. A close examination of these figures — and I will take you through them in a moment, each one of them individually — reveals the power of nature to reshape the river mouth. No two photos are identical and each differs in substantial ways from the one that precedes it in time.

37. Now I propose to look closely at each image, and as you examine the features that change, I would urge you to keep your eye on the line of longitude that we have highlighted on this map in yellow, which is  $83^{\circ} 08' W$ , and the grid line marking  $15^{\circ} N$ . I am simply highlighting these for no specific, shall I say, legal purpose, but I think it will help you as we go through this demonstration to keep your eye on those grid lines as you see the figures change shape. And as we end this demonstration, we will add to this, using the same 2006 image that Honduras has introduced in this pleading.

38. In 1979 one sees an island that is forming just north of  $15^{\circ} N$ , and it is at this time west of  $83^{\circ} 08' W$ .

39. Two years later, in 1981, that island is getting bigger — in two years — its eastern edge is now up to  $83^{\circ} 08' W$ , and, as well, we can see that there are two small features forming south of  $15^{\circ} N$ .

40. In 1985, the shape of the larger island north of  $15^{\circ} N$  has changed — its shape has changed — but overall, we would say, its location is about the same. But we could also say that the features south of  $15^{\circ} N$  are expanding.

41. In 1989, the large island north of  $15^{\circ} N$  has again changed shape but overall its location has remained about the same. But look what happened to the south. The Nicaraguan mainland has migrated east, all the way to  $83^{\circ} 08' W$ . And now, we can see also, there is a new island forming that is east of  $83^{\circ} 08' W$ .

42. When we look at the 1993 image, there really is not much to note that is different from 1989.

43. So, we will move on to 1997. North of  $15^{\circ} N$ , the large island that has been apparent since 1979 has disappeared. It has become part of the Honduran mainland. And, as we can see, the

little island that was forming east of 83° 08' W, has become a much larger island and it is now clearly straddling 15° N.

44. Now, looking at the 2001 image, unfortunately, we find that there is a cloud in the wrong spot — some shadow in the wrong spot and we cannot see things quite so clearly as we might like. But, it is possible to say that the island straddling 15° N has become larger.

45. Now we will turn to the 2006 image that Nicaragua has provided and what can we see here? The island straddling 15° N would appear to have become larger, and we can see also that there is a new island forming a bit to its north and east of the tip of the Honduran mainland. Professor Queneudec pointed this out yesterday when he showed the 2004 satellite image that Honduras introduced. He showed the initial formation of this little feature in 2004 and now you can see in this 2006 image that there is a significant feature forming in that location.

46. About all that can be said is that the Parties have it right when they agree that the mouth of the river changes. What is not correct is when Nicaragua argues that the mouth of the river always opens to the north or north-east. It is hard to see how Nicaragua could provide evidence of that in light of the satellite images over almost a 30-year period. The fact is that in any given year the river mouth — and we normally think of river mouths as being marked by the headlands on the mainland — that the river mouth changes — it may face east, may tilt a bit to the north of east, it may tilt a bit to the south of east but mostly it faces east and it will change its characteristics every year.

47. Now, there is no evidence before the Court concerning the thalweg in the mouth of the river; no evidence before the Court concerning the thalweg in the mouth of the river anywhere east of the 1962 Mixed Commission point; nor has Nicaragua set forth an argument as to why it is sovereign over an island in the river when the Award of 1906 says that the islands and shoals belong to Honduras. And it seems obvious based on these satellite images that as islands have formed in the mouth of the Rio Coco, as the river drops its sediment where it reaches the sea, those islands have become connected to the mainland on either side of the river, over time; sometimes on the Honduran side and sometimes on the Nicaraguan side. The central characteristic of these changes being that the peninsula formed by the Rio Coco overall accretes east along 15° N latitude; as Professor Queneudec emphasized yesterday, the accretion building up on either side of the

Rio Coco, does so in a rather symmetrical way and this has led to the symmetrical shape of the peninsula of Cabo Gracias a Dios on either side of the Rio Coco.

48. The characteristics of the river mouth led both Parties to agree by the close of the written pleadings that it would not make sense to give the problem of how to address the shifting river mouth to the Court — that is to say, how to get from the 1962 Mixed Commission point to a point seaward of the river from which the maritime delimitation can begin. The Parties, by the close of the written pleadings, had agreed. They had agreed that from the point fixed by the 1962 Mixed Commission to a point to be determined by this Court seaward of the mouth of the river, the Parties would bear the responsibility of determining their jurisdictional relationship in that area. The Parties of course chose different locations for that seaward fixed point but they were prepared to leave that issue — they were prepared to leave it for the Court to decide where that seaward fixed point should be. But now it no longer appears that Nicaragua agrees that the boundary between the 1962 Mixed Commission point, and the seaward fixed point to be determined by the Court, is to be left to the Parties. Nicaragua, apparently, wants the Court to determine that boundary. Honduras does not agree with that position.

**(b) *Nicaragua's position and criticism***

49. Now, before coming to this new point of disagreement, let me turn to the Nicaraguan position for the seaward fixed starting-point. Now we are placing on the screen a new figure and this is all eight images now and we have simply expanded the geographic scope of these images — this is my figure 6 in the judges' folder. This is the same set of satellite photos but we have expanded the geographic range of the boxes a bit, so that we can put on these images the location of the point proposed by Nicaragua and the point proposed by Honduras.

50. The Nicaraguan position appears to be as follows, as expressed in paragraph 23 of Chapter VII of its Memorial:

“The proposed starting line would be located at a point along that median line direction situated 3 nautical miles out to sea from the mouth of the Coco River. This point is located in the following geographic coordinates: 15° 01' 53" N, 83° 05' 36" W.” (P. 83.)

51. We are now adding a label to show Nicaragua's proposal for the fixed point to be determined by the Court. Nicaragua later refers to this fixed point at paragraph 10.6 of its Reply:

“[t]his point . . . represents an approximate median line and the sector produced by this method is coincident with the alignment resulting from the bisector method . . .” (p. 197).

52. So, if we understand correctly, the following may be said about Nicaragua’s proposed seaward fixed point.

1. First, when Nicaragua identified this point, the point was three nautical miles from the opening of the river — from *some* opening of the river — presumably as that opening existed at some moment in time, but we are not told when.
2. Second, when Nicaragua identified this point, the point was on a version of an equidistance or median line extending from what Nicaragua refers to as the mouth of the river, again presumably as that mouth and that consequent equidistant line existed at some moment in time, but we are not told when. This is a major problem. It would appear that Nicaragua has assumed that the developing islands and shoals in the mouth of the river belong to Nicaragua, which they do not. The King of Spain awarded the islands in the river to Honduras. Nicaragua cannot use a Honduran island at the mouth of the river as a Nicaraguan base point in applying the equidistance method. Thus Nicaragua has applied the equidistance or median line method incorrectly by taking Honduran islands to be Nicaraguan base points.
3. Third, we are told that Nicaragua’s proposed seaward fixed starting-point just so happens to align with Nicaragua’s bisector proposal, but that it also arises from the application of the median line or equidistance line method, even though Nicaragua argues that the equidistance method is impossible to apply in this case. Nicaragua’s approach is curious; it uses equidistance in the most unstable of situations and it refuses to acknowledge its application elsewhere.

53. So, indeed, Nicaragua proposes a seaward fixed point. Its geographic co-ordinates are precise, we know where that point is, but that is its only merit. What is the basis for that seaward fixed point? Both Parties have proposed to identify a seaward fixed point because they both agree that the mouth of the river moves. Yet Nicaragua proposes that the Court adopt a point that was itself established by reference to the unstable character of the river mouth — a median line point three nautical miles seaward of the mouth of the river based on Nicaragua’s interpretation of the mouth of the river at some unknown moment in time: and we have seen that Nicaragua apparently

used a Honduran island as a base point in its calculations. Whatever may be the case, if you applied Nicaragua's method today you would get a different fixed point. You would get a different one next year. Moreover, if you applied it correctly by treating the island in the mouth of the river as Honduran, Nicaragua's seaward fixed point would be located well south of the 15th parallel. So Nicaragua's proposed seaward fixed point is based in theory on the ambulatory nature of the river, it is based on an incorrect assumption in the application of the equidistance method; and it just so happens to coincide with the bisector line.

***(c) The merits of the Honduran position***

54. Now let me turn to the Honduran position for the seaward fixed starting-point. Honduras believes that it is for the Parties to determine their jurisdictional relationship between the 1962 Mixed Commission point and the seaward fixed starting-point to be established.

55. In the Rejoinder Honduras proposed that the seaward fixed starting-point lie at 14° 59.8' N., 83° 05.8' W. We have now added the Honduran point to each of the boxes on the screen. Thus the Court can see the mouth of the river in selected years, the 1962 Mixed Commission point, and the Honduran and Nicaraguan proposals for a seaward fixed starting-point.

56. The Honduran seaward fixed starting-point is located 3 nautical miles east of the point fixed by the 1962 Mixed Commission. Honduras believes that between the point fixed in 1962 and the Honduran proposed seaward point it is for the Parties to arrive on an arrangement on delimitation requirements. The Honduran position has the merit of being based upon an agreed and established point rather than on the shifting river mouth, where unstable islands and shoals form. And as can be seen, in most years, the Honduran proposal is in a more normal alignment with the opening of the mouth of the river than the point proposed by Nicaragua.

57. Now, in concluding this discussion of the starting-point, it might be useful to examine the eight conclusions of Professor Pellet which he set out in his presentation on 9 March (CR 2007/5, pp. 12-13, para. 45), just to see where the Parties agree and disagree.

58. His first conclusion was that the land is accreting seaward. We agree.

59. His second conclusion was that it will do so in an east-north-east direction. We disagree. As shown on the satellite images we have presented, the accretion that occurs in the building up on

both sides of the Rio Coco, that accretion builds up so that the peninsula overall moves virtually due east along 15° N latitude. And the symmetry of the peninsula formed by its shape is evidence of the symmetrical deposition of the sediments.

60. His third conclusion was that the 1906 Award should be respected. We agree with that conclusion.

61. His fourth conclusion was that the thalweg at the mouth of the river marks the end of the land boundary. We agree, but we do so noting Professor Pellet's acknowledgment that there is no evidence in the record as to the location of the thalweg absent the 1962 Mixed Commission point, and subject to the King of Spain's Award, that the islands and shoals in the river belong to Honduras.

62. His fifth conclusion was that the mouth of the river shifts. Again we agree.

63. His sixth conclusion was that the Parties have agreed to limit the problems to be posed to the Court in connection with the starting-point. Our response is that we thought that was true until we heard last week the elaboration of a new position by Nicaragua that the Court should address the line from the 1962 Mixed Commission point to the seaward fixed point to be decided by the Court.

64. His seventh conclusion was that there should be a "neutral" point — the word he used was "neutral" — at sea from which the maritime delimitation should begin. We have agreed that there should be a point at sea to be determined by the Court from which the delimitation of the single maritime boundary should begin. The point is not designed to be "neutral", however, it is designed to serve as a hinge, it connects on the one hand a delimitation to be undertaken by the Parties between the 1962 Mixed Commission point and that hinge point, and on the other hand, the delimitation that this Court will establish that will run seaward from that hinge point.

65. Finally, Professor Pellet's eighth conclusion introduces Nicaragua's new idea that the Court articulate how the boundary is to run from the 1962 Mixed Commission point to the seaward fixed point. Honduras believes this should be left to the Parties, as both expressed in their written pleadings.

66. To conclude the discussion of the starting-point, let me present one other graphic with a figure shown by Nicaragua (figure 7). This is Mr. Brownlie's (IB14) showing Nicaragua's version

of an equidistance line at the mouth of the Rio Coco. It is fatally flawed as it assumes that islands at the mouth of the river belong to Nicaragua. So, let us add to this figure a short median line that is correctly drawn using Nicaragua's mainland and Honduras's island. You can see that now. Now we will add the location of the Honduran proposal for a seaward fixed point. We believe this graphic clearly demonstrates the merit of the Honduran proposal. We also believe it demonstrates the wisdom of leaving it to the Parties the question of how the line is to run and how it is to deal with these islands in the mouth of the river issues, how that is to happen out to the seaward fixed point. The relevant issues associated with the legal characteristics at the mouth of the river, and the technical characteristics — the hydrology and the location of the thalweg have not been addressed in the pleadings before the Court. Thus we believe the prudent course would be to leave this to the Parties as both had agreed in their written pleadings.

Madam President, this brings me to a point where it would be convenient for me to stop and, if you would agree, we could do that now and we will resume the discussion tomorrow?

The PRESIDENT: Yes, we can do that and we can be flexible about the coffee break time or the ending time tomorrow morning as well. Thank you, Mr. Colson.

The Court now rises.

*The Court rose at 12.55 p.m.*

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