INTERNATIONAL COURT OF JUSTICE

MARITIME DELIMITATION
BETWEEN NICARAGUA AND HONDURAS
IN THE CARIBBEAN SEA
(NICARAGUA v. HONDURAS)

MEMORIAL SUBMITTED BY THE GOVERNMENT OF NICARAGUA

VOLUME I

21 MARCH 2001

TABLE OF CONTENTS

I : INTRODUCTION

1. The present Memorial is submitted pursuant to the Order of the Court of 21 March 2000.

2. On 8 December 1999 the Government of the Republic of Nicaragua filed an Application with the International Court of Justice instituting proceedings against the Republic of Honduras concerning a dispute over the delimitation of the maritime boundary in the Caribbean Sea. The Government of the Republic of Nicaragua has asked the Court in its Application:

> "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, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary."

3. This is not the first time that Nicaragua has come before the International Court of Justice in order to find a solution for its territorial differences with Honduras. In 1957 Nicaragua and Honduras were before the Court on the basis of a Special Agreement in order to settle a difference of opinion on the validity of the Arbitral Award of the King of Spain of 1906 that determined the land boundary of both Parties.

4. This time Nicaragua is pleading before the Court having filed a unilateral Application against Honduras on the basis of the Declarations made by both countries under Article 36 (2) of the Statute of the Court and on Article 36 (1) of the aforesaid Statute through the effects of Article XXXI of the American Treaty on

Pacific Settlement of 30 April 1948 (known as the Pact of Bogotá) to which both States are Partie.[1]

5. Both Honduras and Nicaragua are Parties to the United Nations Convention on the Law of the Sea of 10 December 1982. Nicaragua ratified this instrument on 3 May 2000 and Honduras on 5 October 1993. Thus both Nicaragua and Honduras are bound by the provisions of this Convention on matters pertinent to this delimitation including the extent and nature of maritime zones and the principles that should be applied to effect a maritime delimitation.

6. This Application has been filed in the context of several failed attempts at effecting a negotiated solution that began in the late seventies. Nicaragua has consistently maintained the position that its maritime Caribbean boundary with Honduras has not been delimited. Honduras for its part has maintained the position since the early eighties that there exists a *de facto* delimitation line that follows a parallel of latitude from the end point of the land boundary that was fixed in 1962 through the mediation of the Organization of American States (see Chapter III).

7. The land area abutting upon the maritime areas in dispute is known as the Miskito or Mosquito Coast because mainly the Nicaraguan native Indian community known as the Miskitos has traditionally inhabited it. It is of special interest to the Government of Nicaragua to obtain an equitable solution that will guarantee to the Miskito and other Nicaraguan Indian communities of the

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1. Article XXXI of the Pact of Bogotá provides:

"In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory ipso facto, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:

(a) The interpretation of a treaty;

(b) Any question of international law;

(c) The existence of any fact which, if established, would constitute the breach of an international obligation;

(d) The nature or extent of the reparation to be made for the breach of an international obligation."

area, the traditional access they have had to the resources. The importance of these communities can be appreciated by the fact that Nicaragua is the only State in the area that recognizes a certain degree of autonomy in respect of these communities in its Constitution.[2]

8. The maritime areas in dispute are located in an area in the Caribbean known as the Nicaraguan Rise. This geographical area is the most extensive maritime zone in the Caribbean Sea with depths of no more than 200 meters. It is one of the most promising new areas in the Caribbean for oil and gas and has been an area traditionally used by fishermen in this region of the world.

9. Nicaragua's Application asks 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." Nicaragua has not asked for a definitive line with a beginning and an end: just an indication of the course it should follow. The idea behind this request is to avoid entirely the extremely difficult problem posed by defining any starting point on the highly mobile mouth of the Coco River where the land boundary ends, and to also avoid the indication of any maritime end point that might cause misunderstandings with third States.

10. After further thoughts on this question, Nicaragua considers that it would be convenient for the Parties to have a definitive delimitation line as far as the circumstances will permit. As

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2. Article 89. The communities of the Atlantic Coast are an indissoluble part of the people of Nicaragua and, as such, enjoy the same rights and have the same obligations.

The communities of the Atlantic Coast have the right to preserve and develop their cultural identity within the national union; to provide themselves with their own forms of organization and to administrate their local affairs in accordance with their traditions.

The State recognizes the forms of communal property of the lands of the communities of the Atlantic Coast. Likewise it recognizes the enjoyment and possession of the waters and forests of its communal lands.

stated above, the two problems to be avoided are the confusing situation at the mouth of the Coco River and any third party interests in the area. With this intention in mind, the concrete proposal, as explained in Chapter VII, is that the line of delimitation should start on a fixed point located 3 nautical miles from the mouth of the River Coco. This line will be drawn out to the limit of the territorial sea in the way that is explained in Chapter X. Chapter VIII will take up from the limit of the territorial sea and draw the line following a bisector to the angle formed by the general direction of the coastlines, until reaching a point seawards that will end quite short of any possible third party interests in the area. From that point further seawards just an indication will be made of the direction the line should follow.

11. As the Government of Nicaragua has indicated in the Application, whilst the principal purpose of these proceedings is to obtain a declaration concerning determination of the maritime boundary or boundaries, the Government of Nicaragua reserves the right to claim compensation for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua, found to the north of the parallel of latitude claimed by Honduras to be the course of the delimitation line. Nicaragua also reserves the right to claim compensation for any natural resources that may have been extracted or may be extracted in the future to the south of the line of delimitation that will be fixed by the Judgment of the Court. The Government of Nicaragua maintains these reservations at this stage of the pleadings.

12. The Government of Nicaragua has taken the step of bringing this case to the Court, in order to remove the legal uncertainties that exist in this area of the Caribbean and promote the legal security of those seeking to go about their lawful business in the region.

II : THE GEOGRAPHICAL AND GEOMORPHOLOGICAL FRAMEWORK

A. Preliminary: general geography of the region[3]

1. Geography is the essential element that must be taken into consideration for obtaining an equitable result in any maritime delimitation. In the *Gulf of Maine* case the Chamber of the Court indicated the criteria that should be applied for reaching an equitable result:

> "international law...lay(s) down in general that equitable criteria are to be applied, criteria...which are essentially to be determined in relation to what may be properly called the geographical features of the area." (*I.C.J. Reports 1984*, p. 246 at para. 176).

2. In the present Chapter Nicaragua will give an overview of the geographical features of the area under consideration and explain their implications for the methodology to be used for reaching an equitable solution in this very complex geographical context.

3. The general geographic context of the area in question is the basin of the western Atlantic Ocean, lying between 9° to 22° N and 89° to 60° W and commonly known as the Caribbean Sea. Figure I annexed to this volume shows an overview of the general geographic area involved in this case.

4. The Caribbean Sea is slightly more extensive than the Mediterranean Sea, embracing an area of approximately 1,063,000 square miles (2,754,000 square kilometres) and, like the **mare nostrum**, intercontinental because of its location between the two continental landmasses of North and South America. The continen-

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[3] See, generally, the article on the Caribbean Sea in the Britannica 2001 Standard Edition CD-ROM, Britannica.com Inc.

tal coasts of Venezuela, Colombia, and Panama bound it to the south and Costa Rica, Nicaragua, Honduras, Guatemala, Belize, and the Yucatán Peninsula of Mexico bound it to the west. To the north and east it is bound by the Greater Antilles islands of Cuba, Hispaniola, Jamaica, and Puerto Rico and by the Lesser Antilles chain, consisting of the island arc that extends from the Virgin Islands in the northeast to the islands of Tobago and Trinidad, off the Venezuelan coast, in the southeast.

5. The Caribbean Sea is divided into four main submarine basins that are separated from one another by submerged ridges and rises. These are the Yucatán, Cayman, Colombian and Venezuelan basins. The northernmost is the Yucatán Basin, separated from the Gulf of Mexico by the Yucatán Channel, which runs between the island of Cuba and the Yucatán Peninsula of Mexico. Located further south, the Cayman Basin is partially separated from the Yucatán Basin by the Cayman Ridge that extends from the southern part of Cuba toward the Central American State of Guatemala and, midway, rises to the surface to form the Cayman Islands. The Nicaraguan Rise is a wide triangular ridge that extends from the continental landmass triangle formed by Honduras and Nicaragua, via the island of Jamaica, to the island of Hispaniola (Dominican Republic and Haiti). The Nicaraguan Rise separates the Cayman Basin from the Colombian Basin that, in its turn, is partly separated from the Venezuelan Basin by the Beata Ridge.

B. The area in dispute

6. Following in Figure I the continental coastlines from Colombia to the Mexican Peninsula of Yucatan, it can be appreciated that the arc formation of the continental coastline is broken by the protrusion of the Nicaragua/Honduras coasts into the Caribbean Sea. This obtrusion creates a frontal relation between the coasts of Nicaragua and Colombia and between the coasts of Honduras and Belize and the Yucatan Peninsula that would otherwise face Colombia. This projection of the mainland into the Caribbean continues underwater to form the Nicaraguan Rise,

where the area in dispute is located. This can be also appreciated in Figure I.

7. The coasts of Nicaragua and Honduras on the Caribbean Sea roughly constitute the two sides of an inverted right angle, open to the southwest, inside of which are located the continental masses of both States. Nicaragua deploys around 275 nautical miles of coastline in front of the Caribbean Sea, without taking into consideration the inlets and projections that form lagoons and peninsulas. The coast runs in an almost straight and continuous north to south direction between meridians 83° and 84° of west longitude. Honduras, for its part, has a coastal front of approximately 335 nautical miles that runs in an east to west direction between the parallels 15° to 16° of north latitude.

C. The Mosquito Coast is one of deltas, sandbars, and lagoons[4]

8. There is no relief in the present Nicaraguan territory that has suffered more extensive and rapid morphological changes – even on a historical scale – than the coast fronting the Caribbean. It is in truth a coast in a process of continuous emersion.

9. The most notable effect is the rapid accretion and inevitable advance of the coastal front due to the constant deposition of terrigenous sediments carried by the rivers to the sea. The materials are returned to the coast by the current under the impetus of contrary winds. The volume of sediments that the Nicaraguan rivers contribute to the Caribbean Sea has been estimated at between 25 and 30 million cubic metres per year. The strong erosion of the mountains in the interior, the abundant rain and the considerable flow of the rivers that drain the Caribbean slope of the country cause this deposition. Citing studies by authorities on the subject, the Nicaraguan geographer Dr. Jaime Incer Barquero, indicates that, in terms of unity of length of coast, the submarine

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4. Encyclopedia Britannica, article on Central America, The Land, Britannica 2001 Standard Edition CD-ROM, Britannica.com Inc.

platform of Nicaragua receives around 3 times more fresh water due to the discharge of the rivers than the Atlantic platform in front of the United States. (Incer, *Viajes, Rutas y Encuentros (1502-1838),* San José, Costa Rica 1993, pp. 29-30).

10. As a consequence of the process of accretion a series of barriers has been formed that runs parallel to the coast, and which intercept the flow of the rivers at their mouths, forcing them in some cases to form deltas as is the situation with the Coco River, the boundary with Honduras. Dr. Incer describes the present day situation of the Miskito coastline as follows:

> "A collection of coastal lagoons extends from Cape Camaron in Honduras to Bluefields in Nicaragua...The chain of lagoons, separated from the sea by thin sand barriers, forms in this area the most remarkable feature of the Caribbean Coast. The lagoons are more in the nature of pools formed by the rivers at their mouths than inroads from the sea. They would be excellent ports if it were not for their shallow depths, the continuous sediments that are deposited in them and the sand barriers that obstruct their entrance." (*Ibid.* p. 290).

11. This phenomenon was recorded by Mr. Pablo Levy, a French engineer and Member of the Societies of Geography, Botany and Anthropology of Paris, who in his geography of Nicaragua in the year 1873, wrote:

> "Between Cape Gracias a Dios and Cape Camarón (today in present day Honduras)[5] the coast is low and marshy; the same is repeated to the south of the cape up to Point Mico. The rivers that flow through it extend in the form of a lagoon before reaching the sea. During winter these lagoons communicate among each other in such a way that the coast is like a row of islands." (Levy, *Notas Geográficas sobre la República de Nicaragua*, Managua, Nicaragua 1976, p. 93).

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5. As may be appreciated in Chapter III, Nicaragua until 1963 claimed and administered territories much further to the North of the present boundary at the Coco River. This is why Mr. Levy includes in his geography of Nicaragua descriptions of what is present day Honduras.

D. The continental shelf

12. Nicaragua has an ample continental shelf that projects under the sea like a shoal, relatively smooth and with a moderate slope until it ends abruptly in a continental escarpment. The continental shelf up to the 200 metre isobath, though not so generous in the south, widens remarkably towards the north, forming an ample submerged territory covered by a tropical sea of very little depth. Its extension is approximately that of forty percent (40%) of the continental landmass of Nicaragua.

13. The platform includes what is known as the Nicaraguan Bank or Rise. The average depth along the spine of the platform is around 20 metres and it deepens gradually until it reaches the 200 metres level on the border of the so-called Hess Escarpment, from whence it drops down to the continental slope until it reaches the abyssal plain. Taking as the external limit the 200 metres isobath, the continental shelf fronting Nicaragua is widest in the region of Cape Gracias a Dios whence it continues along the Nicaraguan Rise in a north easterly direction. Figure II illustrates the extent of the continental shelf up to the 200 metres isobath.

14. The Nicaraguan continental shelf, as in the case of other wide platforms in the Caribbean area like that of Yucatan, slopes gently and almost uniformly from the coast to the continental slope. The moderate slope and the shallow depths of the sea have permitted, in the widest part of the shelf, the formation of the extensive reefs and great submarine rises that are characteristic of the area in front of Cape Gracias a Dios.

15. Among these rocks, reefs and cays appertaining to Nicaragua we may mention Hall Rock, South Cay, Arrecife Alargado, Bobel Cay, Port Royal Cay, Porpoise Cay, Savanna Cay, Savanna Reefs, Media Luna Cay, Burn Cay, Logwood Cay, Cock Rock and Arrecifes de la Media Luna. These reefs and cays have traditionally been used as resting and fishing places by the Indian Communities in the area, in particular by the Sambo Miskito Indians of the Miskito Coast of Nicaragua.

E. The land boundary

16. Figures I and III clearly show the extreme convexity of the location of the Nicaragua/Honduras land boundary on the Caribbean. In effect, the entire coastline of both countries forms a triangle that juts out into the sea. This general convexity of the coastline is greatly compounded by the Cape formed at the end of the land boundary located at the mouth of the River Coco. It is a cape with two points, one on each margin of the River, and separated only by a few hundred meters.

17. The boundary through much of the central and eastern land territory follows the thalweg of the River Coco that flows generally in a northeasterly direction for the greater part of its course in that area. The Coco River is the longest river of the Central American isthmus and bears one of the largest volumes of water. The Coco River forms an unstable delta – "a veritable vortex where winds and currents are split" (Incer, *Op. Cit.* p. 31) – before it finally empties into the Caribbean Sea at Cape Gracias a Dios.

18. There is a description of the Coco River in a document prepared by Commander Kennedy at the request of the Secretariat of the United Nations. The document is titled "A Brief Geographical and Hydrographical Study of Bays and Estuaries the Coasts of which belong to different States." This document was to serve the purpose of illustrating the existing cases to the First United Nations Conference on the Law of the Sea of 1958. The brief description of the Coco River is based on the *West Indies Pilot,* Volume I, Tenth Edition, 1941. It states:

> "Information regarding the estuary is scanty and old; it is known that the coastline and depths are liable to frequent changes due to the alluvial deposits from this large river."

And adds:

> "A shifting bar fronts the river entrances, having depths from 3 to 6 feet, and the sea constantly breaks on it. At high water, vessels drawing 4 feet can at times cross the bar to reach

Puerto Cabo Gracias a Dios on the south side of Isla Martinez." (UN Document A/CONF.13/15, p. 208.)

19. The delta of the Coco, where the land boundary ends as it enters the sea, has been rapidly increasing and projecting Cape Gracias a Dios towards the sea. It is estimated that this Cape shifted in the 19th Century from 83° 11' to 83° 09' of west longitude, that is to say the equivalent of 3.7 kilometres. The explanation for this advance is the great volume of sediments that the river discharges into its delta (about 6.5 million cubic metres per year) and the coastal current is not sufficiently strong to carry them off as soon as they reach the sea. (Incer, *Op. Cit.* p. 31)

20. As will be explained below and further in Chapter III, Nicaragua and Honduras established a Joint Boundary Commission under the auspices of the Organization of American States. The Commission's Report of 14 July 1962 has the following report after its in situ inspection of the delta of the River Coco:

"In comparing this map (the one prepared by the Commission) with that prepared by the British Navy for the area of Cabo de Gracias a Dios, and with that of Maximiliano Sonnenstern – but especially with the former, which appears to have been prepared more carefully and in greater detail – it is noted that the topography of this area has undergone constant changes throughout the years, some caused by the closing of secondary channels and the appearance of new ones, while others resulted when part of the Gracias a Dios Bay filled up and Sunbeam appeared. In general, it has been noted that in this region of the mouth of the Coco River, the land has been advancing toward the sea. On the British map mentioned there are various notes that indicate topographical changes in the years 1883, 1886 and 1912. The numerous changes in the topography of the region through the years can be seen very clearly in the aerial photographs taken." (emphasis added) (See Annex 1. p. 28).

21. A relevant feature of the river mouth is that the Nicaraguan margin of the Coco River has traditionally projected further seawards than the Honduran margin. The Report of the Mixed

Commission verifies this and the Chart it prepared illustrates this quite clearly (see Chapter III). This point is further emphasized at p. 25 of the Report:

> "INSPECTION...e) On the north-eastern tip of the island, which is south of the Brazo del Este, is a narrow strip of land that extends to the sea, or in geographic terms, a cape, at which point the seacoast shifts abruptly." (see Annex 1 for the Report and the Chart pp. 24-29)

22. The projection further seawards of the Nicaraguan margin of the river has been a constant throughout the years and can be verified in the following collection of illustrations in which the mouth of the Coco River can be appreciated. These date from the mid 19th Century to the present:

23. It is necessary to begin with two maps annexed to the Honduran Reply in the *Pleadings* of the case concerning the *Arbitral Award of the King of Spain*. (*I.C.J. Reports 1960*, Vol. II).

Map C is a reproduction of maritime chart No. 1219, designed by the Royal Britannic Navy and published in June 1843 (*Pleadings,* Vol II p. 540). The projection further seaward of what later became the margin of the Coco River appertaining to Nicaragua is quite clear. This map is here reproduced as Figure IV.

Another of these – map B – is a reproduction of the North East section of the map of Nicaragua prepared in 1895 by Mr. Sonnenstern (*Pleadings,* p. 539). The shape of the river mouth is quite visible. The prolongation further seaward of the Nicaraguan margin of the mouth of the river is clear. Map B is here reproduced as Figure V.

24. Figure VI is a representation of the map designed from the aerial photography taken in 1962 for use by the Mixed Boundary Commission. It shows plainly that the Nicaraguan margin abuts further seaward than the Honduran (see Chapters III and VII).

25. Finally, the quite recent satellite image taken in February 2000 (Figure VII) shows the situation today. The river mouth

shows further movement seaward towards the north and east than was the case in 1962. In this changing situation one fact appears constant: the Nicaraguan margin has always extended further seaward than the Honduran.

26. The Nicaragua-Honduran boundary as it is today was determined by the several procedures that will be explained and detailed further in Chapter III. For present purposes suffice it to say that the western maritime spaces and the land boundary have been completely determined but that nothing has been agreed or determined on the eastern maritime boundary.

27. These delimitation procedures began with a Nicaragua-Honduras Mixed Boundary Commission that in 1900 delimited the western maritime spaces and part of the land boundary. In 1906 the Arbitral Award of the King of Spain, which was confirmed as valid by the Court in 1960, fixed the rest of the land boundary up to its contact with the Caribbean Sea (*I.C.J. Reports 1960*, p. 192).

28. Since there were some points of the Arbitral Award that remained to be clarified on the ground, Nicaragua and Honduras signed an agreement on 13 March 1961, whereby under the auspices of the OAS they constituted a Mixed Commission that, *inter alia,* would

> "...determine the point of departure of the natural limit between both countries at the mouth of the Coco River" (reconocer el punto de partida del límite natural entre ambos países en la desembocadura del río Coco) (see Annex 1, p. 3)

29. The Mixed Commission travelled to the mouth of the river and determined which was its principal arm and fixed the geographic coordinates of the starting point. This is transcribed in the Minutes of the 12th Session of the Mixed Commission that indicates that the "point of departure of the natural limit...is located at 14°59.8' N and 83°08.9' W". (See Annex 1, p. 6).

30. This endpoint, at the geographic coordinates indicated above, is located at present about a mile inland or up river and

is no longer situated at the closing line of the mouth of the Coco. As has occurred in previous periods, the mouth of the Coco has ambled north and east, leaving inland the point fixed by the OAS as the thalweg at the mouth of the river in 1962. For an illustration of the present day situation at the mouth, a satellite picture of the area can be seen in Figure VII. As indicated above, this picture was taken in February 2000 and has marked on it the present day location of the geographical coordinates determined by the Mixed Boundary Commission in 1962.

F. General observations on the geographical features involved

i. The elbow formation of the continental landmass at the boundary

31. The nature of the coastal configurations is probably one of the most relevant geographical circumstances taken into consideration by the Court since the *North Sea Cases*. (*I.C.J. Reports 1969*, p. 3). In that case Germany's concave coastline *vis à vis* The Netherlands' and Denmark's was seen as a relevant circumstance for determining the appropriate method to be used in the delimitation. A cursory glance at any map shows that Germany's concave coast is a mild geographical accident compared to the extreme convexity of the Nicaraguan-Honduran boundary.

32. It is true that the general aspect of the Nicaraguan-Honduran landmass has an elbow formation that has been described above as roughly constituting the two sides of an inverted right angle, open to the southwest, inside of which are located the continental masses of both States. This of itself would be a remarkably relevant circumstance, but what makes the situation *sui generis* is that the exact location where the land boundary ends is like the points of protruding needles. There is no other boundary in the world ending on such a pointed cape on a river delta and resulting in such a pronounced turn in the direction of the coast precisely on the boundary line. The consequences of this geographical feature is that the only two points that would dominate any delimitation based on median line or equidistance calculations are the two margins of the River. This remains the same

even at a distance of 200 nautical miles if only the mainland coast is used.

ii. The land boundary coincides with the coast on a river delta

33. The second important geographical element that enters into play is the fact that the land boundary ends in the main mouth of a river delta. All deltas are by definition physical-geographical accidents of an unstable nature and suffer changes in size and form in relatively short periods of time. This is what has happened in the delta of the Coco as can be seen in the illustrations indicated above.

iii. The delimitation is in an enclosed sea

34. A third geographical element is that the delimitation is taking place in a semi-enclosed sea where other delimitations have been made and will continue to be made. It is evident that in this enclosed sea with sharp changes in the coastal directions, any delimitation is bound to affect others. This situation has been aptly described as the "knock-on effect" (Evans, *Relevant Circumstances and Maritime Delimitation*, Clarendon Press, Oxford, 1989, p. 235). The most obvious example in a quite similar geographic situation – the semi-enclosed Mediterranean Sea – would be the *Libya/Malta Case*. In this case the Court took into account as a pertinent circumstance the fact that Malta was only a "minor feature" of the northern littoral of the Mediterranean Sea (*I.C.J. Reports 1985*, p. 13, at para. 69) But even in the more unencumbered African coastline, the *Guinea/Guinea-Bissau* Arbitral Tribunal adopted a delimitation method "qui s'intègre aux délimitations actuelles ou futures de la région." (*RGDIP*, 1985, p. 528 at para. 108).[6]

35. The use of a parallel of latitude to define the Nicaragua-Honduras maritime boundary, as Honduras proposes, is inherently

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[6] The translation reads as follows: "which is integrated into the present or future delimitations of the region as a whole" (*International Law Reports* 77, p. 636 at para. 108).

unfair in the macrogeographical situation created in a semi-enclosed sea. To use the words of the Court in the *North Sea Cases*, the result of using certain methods of delimitation – in the present case a parallel of latitude in a semi-enclosed sea – produces results "that appear on the face of them to be extraordinary, unnatural or unreasonable"(*I.C.J. Reports 1969,* para. 24).

36. Experienced legal advisers have commented:

> "(T)he use of parallels or meridians is effectively limited to situations where the general direction of the coasts in question is roughly north-south or east-west. In other situation this method will produce precisely the result it is meant to avoid: the inequitable cut-off of the maritime extensions of one or more of the parties." (Legault, L. and Blair Hankey, *International Maritime Boundaries*, Vol. I, 1993, p. 212)

37. The use of parallels of latitude is inherently unfair. It has the same logic behind it, as would a Nicaraguan claim that the delimitation with Honduras should follow a meridian of longitude straight north from the mouth of the Coco River! Figure VIII illustrates the directions followed by the parallel and the meridian at the boundary. As can be appreciated, the use of a meridian would deprive Honduras of substantial maritime areas as the use of a parallel would so deprive Nicaragua.

38. In the *Gulf of Maine Case*, the Chamber made some observations on the use of the method of drawing a perpendicular to the general direction of the coastline. This method was certainly behind the idea of the use of parallels in situations where the coastlines were more or less straight and had a general south-north direction like the coasts of South America. The comment of the Chamber fits the present situation exactly:

> "It is almost an essential condition for the use of such a method in a specific case that the boundary to be drawn in the particular case should concern two countries whose territories lie successively along a more or less rectilinear coast, for a certain distance at least. The ideal case so to speak, would be one in which the course of the line would leave an

angle of 90° on either side." (*I.C.J. Reports 1984*, p 246 at para. 176).

39. In that case the Chamber was considering a perpendicular that would divide equally into two 90° angles on either side. In the present case, since there is precisely a sharp change of direction at the mouth of the Coco River, the area to be divided is greater than 180°. The direction of the Nicaraguan coasts basically follows a meridian of longitude. If the Honduran coast also continued in a generally northerly direction, then the parallel of latitude would bisect the maritime spaces and leave an equitable amount of maritime areas to each State; in fact, somewhere around the 90° angle on each side envisioned by the Chamber. But the situation is quite different: the Honduran coast turns sharply and follows roughly a parallel of latitude. A glance at Figure VIII shows that a delimitation following the parallel of latitude eastward from the end of the land boundary would leave a disproportionately greater amount of maritime areas to Honduras. In the words quoted above in paragraph 36 from the *North Sea Cases:* the result could not possibly be more "extraordinary, unnatural or unreasonable."

40. In the *Tunisia-Libya Case* the Court referred to the so-called "cut-off" effect as a factor productive of inequitable results.

> "The question of the 'cut-off effect' arises only in the context of the application of a geometrical method, such as that of equidistance, whereby the delimitation line is directly governed by points on the coast concerned, or in relation to a line drawn from the frontier point on the basis of a predetermined direction, such as the northward line contended for by Libya." (*I.C.J. Reports 1982,* p. 18 at para. 76) (emphasis added).

41. If any illustration were needed of what the Court had in mind, the use of a parallel in the present circumstances could serve that purpose quite well. It is basically this inequitable claim by Honduras that underlies the present proceedings.

iv. Geomorphology of the Nicaraguan Rise

42. Another physical element that must not be lost sight of in the present case is the geomorphology of the Nicaraguan Rise. As can be appreciated in Figure III, or in any map of the area reflecting bathymetric data, the Nicaraguan Rise is the maritime "shadow", the prolongation of the mainland of Nicaragua and Honduras into the sea. This prolongation clearly heads in a north-easterly direction towards Jamaica.

43. The continental shelf of Nicaragua and Honduras in the Caribbean is undoubtedly a natural prolongation of the angle formed by the coasts of both States. This prolongation follows a northeasterly direction quite similar to that resulting from the method of delimitation that Nicaragua will propose as an equitable solution to this case, that is a bisector to the angle formed by the general direction of the coastlines. In other words, there is a quite distinct continuity and consistency between the continental physical and political geography, the direction of the coasts and the morphology and orientation (projection) of the continental shelf of both countries.

44. The continental shelf of Nicaragua and Honduras that encompasses the Nicaraguan Rise is not a minor oceanographic incident. It is a remarkably relevant oceanographic feature on the scale of the entire Caribbean Sea: the natural submarine prolongation of the continental spaces of Nicaragua and Honduras in the direction of Jamaica generates a sort of corridor or ridge that divides the Caribbean in two great basins situated northwest and southeast of that geographical accident.

45. A glance at any bathymetric chart will show the projection of the continental mass of Nicaragua and Honduras into the sea. It is a phenomenon that has no relation with the coasts of any of the surrounding neighbours in the continent.

G. The position of the parties

46. The position of the Parties and its development to the present date will be explained amply in Chapters III, IV and V. For present purposes the following summary has been prepared.

47. The position of Nicaragua with relation to its northern Caribbean maritime spaces is that they have not been delimited with Honduras. This, in fact, is a situation that Nicaragua has with all its neighbours and not only with Honduras. On the latest official Map of Nicaragua, see Figure B, Volume III (maps), the following inscription is written: "The maritime frontiers in the Pacific Ocean and the Caribbean Sea have not been juridically delimited." As will be further explained in Chapters IV and V, Nicaragua has constantly maintained this position *vis à vis* Honduras since the 60's. Before that period, from the time of independence in the first half of the XIXth Century until the decision of the Court in 1960 and the intervention of the OAS in 1962, Nicaragua claimed and administered territories as of right much further north of the present boundary line on the Coco River. This story can be partly appreciated in the 3 Volumes of Pleadings to the case concerning the *Arbitral Award Made by the King of Spain on 23 December 1906.*

48. It was precisely this lack of delimitation and the confusion it created that led Nicaragua in the late 70's to propose negotiations with Honduras for the delimitation of the maritime areas in the Caribbean. At the time Honduras accepted this proposal without conditions and without any indication that she considered that a maritime boundary was already in place. The regional conflict that started in 1979 with the fall of the Nicaraguan Government of that period put an end to any further negotiations. (See Chapters IV and V for more details).

49. It was in the light of these political developments, which pitted the new Government of Nicaragua against its neighbours

and the United States[7] in the early 80's, that Honduras began to claim that the maritime areas had already been delimited and that this delimitation ran eastward into the sea following a parallel of latitude from the terminus point of the river mouth boundary that had been fixed at 14° 59.8' N and 83° 08.9' W. Nicaragua has vigorously contested this allegation from the first moment it was made as will be seen in Chapter V.

7. See the cases brought by Nicaragua before the International Court of Justice against the United States, Honduras and Costa Rica. The *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* was filed on 8 April 1984 and, inter alia, a Judgment on the Merits was rendered by the Court and can be seen in *I.C.J. Reports 1986*, p. 14. The cases against Honduras and Costa Rica – *Border and Transborder Armed Actions* – were filed by Nicaragua on 28 July 1986. Nicaragua subsequently discontinued these cases but in both cases the Memorial of Nicaragua on the Merits was filed. El Salvador for its part attempted to intervene unsuccessfully in the Case of Nicaragua against the United States: see the Order of 4 October 1984 in *I.C.J. Reports 1984*, p. 215.

III : THE HISTORICAL BACKGROUND OF THE BOUNDARY UP TO 1963

A. History of the Boundary Before 1960

1. The diplomatic history of the delimitation of the boundary of Nicaragua and Honduras began with the Treaty on the Limits of Nicaragua and Honduras (Tratado Ferrer-Medina) signed at San Marcos de Colon on 4 July 1869. The Treaty did not enter into force and its relevance is the express recognition it makes of a relevant historical fact. Article 6 provides:

> "The two Commissioners fix their attention on the question of determining if the Coco River will be the boundary line up to its mouth in the Atlantic and, noting that Nicaragua has been in exclusive possession of this river and of the port of the same name, the boundary in that eastern sector should follow parallel to the northern ridges of the mountains that make up one of the borders of its basin, and following the same direction until reaching the Atlantic Ocean." (Case concerning the *Arbitral Award made for the King of Spain on December 1906* judgements of 18 November 1960; *I.C.J., Reports 1960*, Pleadings pp. 224-226)

2. The following year another Treaty was signed in Managua (Ferrer-Uriarte Treaty) on 1 September 1870 that established the boundary with greater precision. Thus Article VI and VII of this Treaty fixed a line that ran north of the Coco River that was recognized as "appertaining to Nicaragua". The boundary ended at the "Atlantic Ocean exactly at parallel 15° 10' of north latitude and 83° 15' of longitude west of the Greenwich Meridian"(*Ibid.* pp. 227-229).

3. These Treaties did not enter into force. Their present relevance is that they also prove that – whatever the location of the boundary finally fixed by the Arbitral Award of the King of Spain in 1906 – the only tradition that existed in the area was that "Nicaragua had been in possession of that river (the Coco) and

of the harbour of the same name" ("Nicaragua a été en possession exclusive de ce fleuve et du port du même nom"). This "possession" only ended after the intervention of the OAS in 1962 that will be elaborated upon subsequently.

4. In 1893 the liberal party in Nicaragua started a revolution that ousted the conservative party that had been in power many years. Shortly afterwards the new Nicaraguan President, General Jose Santos Zelaya, instigated a similar revolution in Honduras and placed in power his Honduran friend from the Liberal Party, Dr. Policarpo Bonilla. The aspiration of President Zelaya was to recreate the union of the five Central American States that had disintegrated in 1838. Throughout his long presidency, which lasted until 1909, this was his constant aim. The story of the Nicaragua-Honduras relations of this period can be read in the *Pleadings* presented on behalf of Nicaragua in the *Arbitral Award Case* by Mr. Philip Jessup, as he then was, shortly before his election as Member of the Court. (*Pleadings* Vol II, p. 221 and pp. 226-229).

5. President Zelaya's ascent to power, and that of the friend he installed in the Honduran Presidency, made possible the conclusion of a general treaty on boundaries in 1894. After all, national boundaries were of little importance when the object was to be reunited in a single State. This lack of interest in the border situation can clearly be appreciated in the events that took place later on. A change of Government in Honduras in 1903 provoked a new invasion of Honduras. This time General Zelaya's liberal forces entered the Honduran capital of Tegucigalpa on 25 March 1907. A new President was installed, Mr. Miguel Davila, and peace talks started. In the mean time, the boundary situation had been submitted to the Arbitration of the King of Spain in accordance with the Boundary Treaty of 1894. The Award had been rendered in 1906 and had wholly favoured the position of Honduras as will be seen later. Nonetheless that Award was never an object of the negotiations that ensued after the surrender of Honduras. It was not the reason for the war and General Zelaya had no interest in it and had in fact congratulated his Honduras colleague when the Award was given. (*I.C.J Reports 1960*, p. 192 at para. 210). What interested Mr. Zelaya was the Central Ameri-

can reunification and not borders.[8] When a Peace Treaty was finally signed in October 1907 and the Washington Peace Conference took place, the position backed by Nicaragua and Honduras was that of the reunification of Central America. What finally came about fell quite short of that and mention of this is made only to emphasize the little interest General Zelaya had in the border problem. Some have even insinuated that he was quite content with having lost the Arbitral Award because it gave him an opportunity of showing his Central American spirit and his love for Honduras. Others have written that this lack of interest in the affair was also shown in Nicaragua's negligent handling of its defence before the King of Spain. (Pasos Argüello, *Los Conflictos Internacionales de Nicaragua,* Managua, 1982, pp. 95-96).

6. The general boundary treaty was signed on October 7, 1894 and came into force in December 26, 1896 when the exchange of instruments took place. This Treaty, according to Latin American usage, is known as the Gámez-Bonilla Treaty. (This treaty is reproduced in *I.C.J. Reports 1960*, p. 192 at pp. 199-202). In accordance with its provisions, Nicaragua and Honduras set up a Mixed Boundary Commission, whose duty was to settle in a friendly manner all pending doubts and differences, and to demarcate on the spot the dividing line which was to constitute the boundary between the two Republics (article I).

7. Among the rules governing the Commission's task, it was enjoined first of all to apply the *uti possidetis iuris* of 1821, the year of the independence of Central America from Spain. Failing this, the Commission should determine the equitable line after studying all available maps and documents. The possibility was also left open for the Commission, if it deemed it appropriate, to grant compensations in order to establish, in so far as possible, a well-defined, natural boundary line (article II.3, 5,6). The point

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8. A recent general publication characterizes Zelaya as "a committed nationalist. He promoted schemes for Central American reunification..." See Article on Nicaragua, History of, Section on Independence in Encyclopedia Britannica 2001 Standard Edition CD Rom. Further Articles in same Encyclopedia under Zelaya, José Santos and under Honduras: The 20th Century.

or points of the boundary line that could not be settled by the Commission were to be submitted to arbitration (article III).

8. The Mixed Boundary Commission provided for by the Gámez-Bonilla Treaty met from 24 February 1900 onwards. The last of its eight meetings was held on August 29, 1904. The Commission succeeded in fixing the boundary from the territorial waters in the Pacific (Gulf of Fonseca) to the Portillo of Teotecacinte that is located more or less one third of the way across the land territory. However, it was unable to agree on the boundary from that point to the Atlantic Coast and recorded its disagreement at its meeting of 4 July 1901.

9. The Parties agreed to appoint the King of Spain as Sole Arbitrator on October 2, 1904. King Alfonso XIII handed down the Arbitral Award on December 23, 1906, in accordance with which the dividing line between Nicaragua and Honduras from the Atlantic Ocean to the *Portillo de Teotecacinte,* where the Mixed Boundary Commission had abandoned it in 1901, is fixed in the following manner:

> "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, 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.
>
> Starting from the mouth of the Segovia or Coco, the frontier line will follow the *vaguada* or thalweg of this river upstream without interruption until it reaches the place of its confluence with the Poteca or Bodega, and thence said frontier line will depart from the River Segovia, continuing along the thalweg

of the said Poteca or Bodega upstream until it joins the River Guineo or Namaslí.

From this junction the line will follow the direction which corresponds to the demarcation of the *Sitio de Teotecacinte* in accordance with the demarcation made in 1720 to terminate at the *Portillo de Teotecacinte* in such a manner that said Sitio remains wholly within the jurisdiction of Nicaragua" (This award is quoted in *I.C.J. Reports 1960*, p. 192 at paras. 202-203).[9]

10. On 25 April 1911, after the fall from power of General Zelaya in Nicaragua, the Foreign Minister of Honduras addressed a Note to the Foreign Minister of Nicaragua pointing out that "it would be desirable to demarcate the small portion of the line which...extends from the junction of the Poteca or Bodega River with the Guineo or Namaslí River as far as the Portillo de Teotecacinte, since the Arbitral Award fixed the rest of the line along natural boundaries".

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9. The Original Spanish text: "El punto extremo limítrofe común en la costa del Atlántico será la desembocadura del río Coco, Segovia ó Wanks en el mar, junto al Cabo de Gracias á Dios, considerando como boca del río la de su brazo principal entre Hara y la isla de San Pío, en donde se halla el mencionado Cabo, quedando para Honduras las isletas o cayos existentes dentro de dicho brazo principal antes de llegar á la barra, y conservando para Nicaragua la orilla Sur de la referida boca principal con la mencionada isla de San Pío, más la bahía y población del Cabo de Gracias á Dios y el brazo ó estero llamado Gracias, que va á la bahía de Gracias á Dios, entre el continente y la repetida isla de San Pío.

A partir de la desembocadura del Segovia ó Coco, la línea fronteriza seguirá por la vaguada o talweg de este río, aguas arriba sin interrupción hasta llegar al sitio de su confluencia con el Poteca o Bodega, y desde este punto, la dicha línea fronteriza abandonará el río Segovia, continuando por la vaguada del mencionado afluente Poteca o Bodega, y siguiendo aguas arriba hasta su encuentro con el río Guineo o Namasli.

Desde este encuentro la divisoria tomará la dirección que corresponde a la demarcación del sitio de Teotecacinte, con arreglo al deslinde practicado en 1720, para concluir en el Portillo de Teotecacinte, de modo que dicho sitio quede íntegro dentro de la jurisdicción de Nicaragua".

11. The Foreign Minister of Nicaragua, however, far from expressing his accord, sent a long Note to the Foreign Minister of Honduras on March 19, 1912, challenging the validity and binding character of the Award. This represented a complete change of position from that adopted by General Zelaya in 1906 when he had congratulated his Honduras colleague upon hearing the news of the Award.

12. The precarious relations between the two countries caused by the dispute, led to numerous boundary incidents, frustrated mediations, and led to the expression of the most radical territorial claims.

13. The importance of the 1957 boundary incidents, sparked off by the Honduran attack upon the Nicaraguan post of Mokorón, led to the intervention of the Council of the Organization of American States (OAS) on May 1st (Unión Panamericana, "Honduras y Nicaragua", *Aplicaciones del Tratado Interamericano de Asistencia Recíproca 1948-1960*, 3ª ed., pp. 219-292.)

14. The *Ad hoc* Committee established by the Council to mediate between Nicaragua and Honduras achieved the acceptance by the Governments of both countries of the submission to the Court of their disagreement with respect to the Arbitral Award handed down by His Majesty the King of Spain on 23 December 1906, with the understanding that each State "shall present such facets of the matter in disagreement as it deems pertinent".

15. Honduras maintained that the Court had to declare that Nicaragua was under the obligation to give effect to the Award, which was in force and unassailable.

16. Nicaragua, in contrast, considered that the point was to answer the claim of Honduras, presenting facts and arguments considered appropriate, in order to impugn the validity of the Arbitral Award and the reasons as to why it was, in any case, incapable of execution by reason of its omissions, contradictions and obscurities. On that score, Nicaragua mentioned, inter alia, the impossibility of execution of the Award, due to the equivocal references as to the principal arm of the Coco River and to the

junction between the Portillo de Teotecacinte and the position of the Sitio de Teotecacinte.

17. The Agreement to submit the case to the Court was approved by the OAS Council on July 5, 1957 and formalized and completed by the Parties on the 21st.

18. The International Court of Justice held in its Judgment of 18 November 1960 (*I.C.J. Reports 1960* p. 192 ff.), "that the Award made by the King of Spain on 23 December 1906 is valid and binding and that Nicaragua is under an obligation to give effect to it" (p. 217).

19. Whilst the decision of the Court was pending, Honduras amended its Constitution in order to raise its territorial claims to the highest level in its domestic law in order to impose on future Honduran Governments a policy that left no margin for compromise.

20. Article 6 of the Constitution of December 19, 1957 thus proclaimed that the limits of the territory of Honduras with the Republic of Nicaragua were:

> "those established by the Mixed Honduran-Nicaraguan Boundary Commission, in 1900 and 1901, according to the description of the first section of the dividing line, contained in the second act of June 12, 1900, and in later acts, to Portillo de Teotecacinte, and from that place to the Atlantic Ocean in accordance with the Arbitration Award issued by His Majesty the King of Spain on December 23, 1906".

21. Looking to the maritime areas which the Award of the King of Spain had ignored, the Honduran legislators replaced the quite brief and clear wording its previous Constitutions had traditionally used to define its territorial issues[10] by the formulation

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10. The Constitution of 1924 had only stated that (Article 5): "The territory of Honduras and its territorial division will be determined by law": The Constitution of 1936 repeated (Article 4) the same disposition.

of expansive claims in all directions. Thus, in the Caribbean, the Constitution claimed as Honduran:

> "The Bay Islands, The Swan Islands, Santanilla or Santillana, Viciosas, Misteriosas and the cays: Gorda, Vivorillos, Cajones, Becerro, Cocorocuma, Caratasca, Falso, Gracias a Dios, Los Bajos, Pichones, Palo de Campeche and all others located in the Atlantic which historically and juridically belong to it".

22. According to the 1957 Constitution, the rights of Honduras also extended to:

> "the air space, the stratosphere, the territorial sea, the bed and subsoil of the submarine platform, continental and insular shelf, and other underwater areas adjacent to its territory outside the zone of territorial waters and to a depth of two hundred meters or to the point where the depth of the superjacent waters, beyond this limit, permits the exploitation of the natural resources of the bed and subsoil".

23. At that time, the Constitution in force in Nicaragua was the one promulgated on November 1st, 1950 which, following the previous Constitutions of March 22, 1939, and January 21, 1948, defined the Republic with sobriety as comprising the territory "between the Atlantic and the Pacific Oceans and the Republics of Honduras and Costa Rica", and including also "the adjacent islands, the subsoil, the territorial sea, the continental shelf, the submarine slope, the air space and the stratosphere" (Article 5).

B. Effects of the Court's Judgment and the Intervention of the OAS (1960- 1963)[11]

24. In view of the Parties' failure to agree on the way the Award of 1906 should be implemented, Nicaragua requested the

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11. See *Informe de la Comisión Interamericana de Paz sobre la terminación de las actividades de la Comisión Mixta, July 16, 1963* (OEA/Ser.L/III/II.9), with appendices including, inter alia, the Arbitral Award of 1906, the Basis of Arrangement agreed by the Parties March 13, 1961, the Minutes of the Mixed Commission

intervention of the Inter-American Peace Committee on February 16, 1961. The Committee prepared a document entitled Basis of Arrangement that was accepted by the Parties on March 13.

25. According to the said Basis a Mixed Commission, composed of the Chairman of the Inter-American Peace Committee and a representative of each Party, was constituted with the mission

> "...to fix on the ground the boundary line from the juncture of the Bodega or Poteca River with the Guineo River as far as Portillo de Teotecacinte"; and,
>
> "to verify the starting point of the natural boundary between the two countries at the mouth of the Coco River"
>
> [...]
>
> "under the terms of the Arbitral Award of December 23, 1906".[12]

26. Both the zone of Teotecacinte and Cape Gracias a Dios were under the control of the Nicaraguan authorities at that time. The parties agreed to the immediate withdrawal of Nicaragua from the territory that according to the Award belonged to Honduras – more than eight thousand square kilometres – except for the zone of Teotecacinte where it would proceed in conformity with the results of the demarcation of the said zone.

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established in application of the said Basis and the Reports of the Committee of Engineers upon which the la Mixed Commission based its determinations. The O.A.S. assured an English translation of the original Spanish text *(Report of the Inter-American Peace Committee to the Council of the O.A.S. on the termination of the activities of the Honduras-Nicaragua Mixed Commission).* This Report can be seen in Annex 1.

12. Original Spanish text: "fijar sobre el terreno, en los términos del Laudo de 23 de diciembre de 1906, la línea divisoria desde el encuentro del río Bodega o Poteca con el río Guineo hasta el Portillo de Teotecacinte"; and "reconocer el punto de partida del límite natural entre ambos países en la desembocadura del río Coco". See Basis of Arrangement, paragrah 4.b, at Appendix 1 of the Report of the Inter-American Peace Committee, pp. 13-14. Annex 1.

27. By May 1961, Nicaragua had not only withdrawn from the territories attributed to Honduras by the Award which did not require a demarcation because there were natural limits, but had also received a great part of the population – more than four thousand persons – that did not want to stay under Honduran sovereignty.

28. A demarcation by agreement was achieved in the area of Teotecacinte, at the Sitio de Teotecacinte up to the point named Murupuxí. The problems of demarcation up to the Portillo were resolved by a decision of the Chairman of the Mixed Commission, Ambassador Vicente Sánchez Gavito, of August 5, 1961. The placement of boundary markers began on September of that year. On December 17, the Mixed Commission verified that the boundary markers had been erected, and that they were placed exactly on the line described[13].

29. The starting point of the natural boundary between Nicaragua and Honduras at the mouth of the Coco River was determined by the Mixed Commissión on December 15, 1962, "at the mouth of the main branch of the Coco River, indicated on the map prepared by the Committee of Engineers as "Brazo del Este", a point situated at fourteen degrees, fifty-nine minutes and eight tenths of minute (14° 59.8') North Latitude and eighty-three degrees, eight minutes and nine tenths of minute (83° 08.9') West Longitude, Greenwich meridian"[14].

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13. See Minute of December 19, 1962, at Appendix 5 of the Report of the Inter-American Peace Committee, pp. 32-33. Annex 1.

14. This translation corresponds faithfully to the original Spanish text of the Minutes of the 12th meeting of the Honduras-Nicaragua Mixed Commission. According to the original text (paragraph 4) the Commission verified that the starting point of the natural boundary between Honduras and Nicaragua was at: "la desembocadura del brazo principal del río Coco, señalado en el plano de la Comisión de Ingenieros con el nombre de "Brazo del Este", punto que está situado a los catorce grados cincuenta y nueve minutos y ocho décimos de minuto (14° 59.8') Latitud Norte y ochenta y tres grados ocho minutos y nueve décimos de minuto (83° 08.9') Longitud Oeste del meridiano de Greenwich" (see Appendix 4 of the *Informe de la Comisión Interamericana de Paz*, p. 31). The content of this paragraph was subsequently reproduced by the Informe itself (see section II, pp. 6-7). The English version of the original Spanish text of the Informe and its appendices translated erroneously the expressions "ocho décimos de minuto" and "nueve décimos de minuto" for "eight

30. In exercising the powers mentioned above the Mixed Commission availed itself of the Committee of Engineers already created by the two Governments.

31. On January 23, 1963, the Chairman of the Inter-American Peace Committee notified the completion of its mission to the representatives of Nicaragua and Honduras at the OAS Council. In this way, as it is recorded in the final considerations (section IV) of the *Report of the Inter-American Peace Committee to the Council of the O.A.S.*, of July 16, 1963, the Mixed Commission "fully complied with the duties with which it was charged under the Basis of Arrangement approved by the two governments, and the controversy that existed between the neighbouring republics of Honduras and Nicaragua concerning the Arbitral Award pronounced by the King of Spain on December 23, 1906, was definitively settled"[15].

32. Once the land boundary between Nicaragua and Honduras was established, other issues remained pending between the Parties in the Caribbean. One of those issues was the delimitation of the respective maritime areas, which is the object of the present Application of Nicaragua to the Court.

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seconds" and "nine seconds", transforming the 14° 59.8' North Latitude and 83° 08.9' West Longitude in 14° 59' 08" North Latitude and 83° 08' 09" West Longitude. On this point, see Chapter VII of this Memorial.

15. See *Report of the Inter-American Peace Committee*, pp. 8-9, Annex 1.

IV : THE RELATIONS BETWEEN NICARAGUA AND HONDURAS (1963-1979)

A. Introduction

1. The long-lasting land boundary dispute produced considerable damage to the relations of both countries and their peoples. The authorities of both States tried to avoid new boundary conflicts during the years following the implementation of the Award of 1906. To this effect they abstained from expressing precisely the limits of their sovereignty and jurisdictional claims over the maritime areas.

2. Besides, it is proper to observe that in this period Honduras had serious reasons for seeking good relations with Nicaragua, not only because of the affinity of their political regimes (General López Arellano arrived at the Presidency of Honduras through a *coup d'état* on October 3, 1963) and the empathy of their armed forces, but particularly because of the imperative need of Honduras to count on good relations with Nicaragua at a moment when there was the possibility of a confrontation between Honduras and her other neighbour, El Salvador. This threat developed into a full-scale war between them in 1969 and it was only in 1980 that a General Treaty of Peace was signed which eventually brought the parties to this Court.[16] All of this contributed to the fact that this period witnessed perhaps the best relationships between Honduras and Nicaragua in all of the XXth Century.

3. Throughout this period there was no reference to the existence of a maritime boundary in the Caribbean. Nicaragua has found no records in this period of the claim made by Honduras in the 1980's that the boundary followed a parallel of latitude. Apart from diplomatic correspondence, Nicaragua has checked

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16. *Land Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua Intervening)*, Judgement of 11 September 1992, *I.C.J. Reports 1992*, p. 351. Pages 380-386 of the Judgment give a short history of the dispute.

declarations of Honduran officials in the appropriate international *fora* where such claims could have been voiced and also in the constitutions of Honduras that, since 1957, have indicated its territorial claims in great detail.

B. The Third United Nations Conference on the Law of the Sea

4. The Third United Nations Conference on the Law of the Sea took place during the last years of the period in review. The subject of this Conference offered to Honduras and Nicaragua a most suitable opportunity for expressing their positions regarding the rules in force, their priorities and their maritime aspirations.

5. Honduras for example declared through its representative, Mr. Carías Zapata, that she attached *particular importance* to two questions. The first was related to the waters of the *Gulf of Fonseca* on the Pacific Ocean, which she regarded as internal waters subject to the sovereignty of each of the three coastal States in their respective zones. The second question to which she attached particular importance was the Department of *Islas de la Bahía* in the Caribbean, which she regarded as an archipelago forming part of her national territory (Plenary Sessions, 25th meeting, 2 July 1974, *UNCLOS, Official Documents*, New York, 1975, Vol I, pp. 81-82).

6. A few days later, another Honduran representative, Mr. Herrera Cáceres, returned again to the questions of the *Gulf of Fonseca* and the *Islas de la Bahía* as Honduran "*geographical characteristics that would require special legal regulation*".[17]

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[17] Introducing the subject of the Islas de la Bahía Herrera Cáceres said: "In the Atlantic Ocean, at the distance of less than twice the breadth of the territorial sea, there was a fringe of islands which constituted a single geographical whole, the Department of Islas de la Bahía. Those islands had always been regarded as part of the mainland of Honduras, which considered they formed a coastal archipelago and maintained that the baseline of the territorial sea was, in that sector, the line between the mainland and the corresponding points on those islands, and that consequently the waters between those lines were internal waters" (see 2nd Committee Sessions, 3rd meeting, 11 July 1974, vol. II, pp. 100-101).

7. The Honduran representative did not hesitate to start a bilateral discussion with the representative of El Salvador when the latter expressed his Government's different position over the regime of the *Gulf of Fonseca* and the status of its waters (see 2nd Committee, 5th meeting, 16 July 1974, vol. II, p. 108). The Honduran representative insisted, on the other hand, on the particularities of the *Islas de la Bahía*.[18] These were, he said, "*geographical features*" worthy of consideration for the determination of lateral boundaries with neighbouring States. As can be seen in Figure A, in Volume III of maps, these Islands are located far to the west of the Nicaragua-Honduras Boundary and the reference to lateral delimitations has no relevance to the present case.

8. What is significant is that after a careful review of all the documents reproducing the comments made during that Conference, no reference has been found to the area presently in dispute with Nicaragua that could parallel the "particular importance" the Honduran representatives attached to the Gulf of Fonseca and the Islas de la Bahía.

C. The constitutions of Nicaragua and Honduras

9. The constitutions of the Parties during this period were basically the same as in the late fifties. The Honduran Constitution of 1965 reiterated (Article 5) the territorial clauses of that of 1957 (Article 6), and basically added that the Arbitral Award issued by the King of Spain on December 23, 1906 had been declared valid by the Court on November 18, 1960.

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18. "Honduras's archipelago Islas de la Bahía was a Department of his country with close geographical and economic dependence on the mainland. Its nearest island was 20 miles from shore and the distance between the islands, not counting intermediate cays and shoals, did not exceed 16 miles. Honduras had taken into account its geographical, political and economic unity with the mainland by giving it the highest legal status; in the light of that fact, in the area where the archipelago was located, the baseline of Honduras's territorial sea, which for most of the Atlantic coast followed the low-water line, was drawn to join the mainland with the appropriate points on the islands. The waters within those baselines were therefore internal waters" (see 2nd Committee, 36th meeting, 12 August 1974, vol. II, pp. 263-264).

10. Nicaragua, for her part, maintained her traditional constitutional approach to this matter. The territorial clauses of the Constitution of 1950, affirming in generic terms Nicaraguan sovereignty over the islands on its continental shelf adjacent to its coasts, were not changed when the Constitution was amended in 1962 and 1964. Later, Article 3 of the Constitution of 1974 provided that: "The national territory extends, under the full sovereignty of the State, between the Atlantic and Pacific Oceans and the Republics of Honduras and Costa Rica. It also comprises, in the same condition, the islands, the cays, the promontories, the adjacent banks, the submarine bases, the territorial sea and the continental shelf, as well as the air space, the stratosphere and all the submarine area which corresponds to it as sovereign, in conformity with International Law".

11. A Geographical Index of Nicaragua (*Índice Geográfico de Nicaragua*) prepared by an official institution, the National Geographic Institute (*Instituto Geográfico Nacional*), and published on September, 1971, enumerated and described the "Rivers, Lakes and Coasts" (*Ríos, Lagos y Litorales*) of Nicaragua.

12. The list included, among others, the Cays of Media Luna with the following description (Instituto Geográfico Nacional, *Índice Geográfico de Nicaragua*, Vol. I (Ríos, Lagos y Litorales), Managua, 1971, p. 124):

> "Group of cays and reefs located at some seventy km. to the East of Cape Gracias a Dios on the submarine shelf. It comprises the following islets: Logwood, Bobel, Savanna, South, Half Rock, Alargado Reef and Cock Rock. It is located at the latitude 15° 10' North and longitude 82° 35'."

D. Bilateral negotiations

13. The first bilateral negotiations on matters relating to the maritime boundary in the Caribbean began in the first half of 1977 at the request of Nicaragua.

14. In order to put this initiative in its proper context it is worth calling attention to a series of public declarations made by Dr. Alejandro Montiel Argüello, at that time Foreign Minister of Nicaragua, between November 6, 1976, and March 8, 1977. These declarations were recorded in a booklet that was edited in Managua in 1977 by the Foreign Ministry with the title of *Diálogos con el Canciller (Dialogues with the Minister of Foreign Affairs).*

15. Thus, the *dialogue* of January 16, 1977, mentions a communiqué of the Foreign Ministry announcing the beginning of conversations with neighbouring countries in order to delimit the maritime boundaries. Dr. Montiel Argüello explains that the lack of previous diplomatic exchanges on this issue was due to the fact that before: "Nobody had any interest in discussing a few meters when the subject-matter was a territorial sea of 3 or 12 miles. However, with the development of the Law of the Sea there are enormous national interests linked to delimitation". "The delimitations", the Foreign Minister adds, "are carried out by joint agreement between the parties, and if this does not exist, then by one of the procedures of settlement of disputes indicated by International Law" (see Annex 2).

16. A few weeks later, on March 7, 1977, the Foreign Minister responded to a report published in the Honduran newspaper "La Tribuna", declaring that the existence of a maritime frontier between Nicaragua and Honduras in the Caribbean is "absolutely false". He said: "The maritime border between Nicaragua and Honduras has not been determined. The Arbitral Award by the King of Spain in 1906 only said that the land border begins at the mouth of the River Coco, considering as such its main branch. When this Award was implemented after the judgment of the International Court of Justice that declared it valid in 1960, a controversy developed about which was the main branch of the Coco. This was resolved on December 15th, 1962, by the Honduras-Nicaragua Mixed Commission..., but on the Caribbean side there still exists no line dividing the territorial sea, the exclusive economic zone and the continental shelf of Nicaragua and Honduras" (see Annex 3).

17. Afterwards, asked about the principles which should be followed by the Governments of Nicaragua and Honduras in order to draw such a line, Dr. Montiel Argüello invoked the then Single Revised Text which was being discussed at the Third United Nations Conference on the Law of the Sea, where it was provided "that these questions are to be resolved by applying equitable principles, using a median line...where possible" (*Ibid*)

18. It was Nicaragua that through its Note G-286 of May 11, 1977, proposed to Honduras "to initiate conversations leading to the determination of the definitive marine and sub-marine delimitation in the Atlantic and the Caribbean Sea zone" (see Annex 4).

19. The proposal was unconditionally accepted by Honduras. Indeed, after acknowledging receipt of the Nicaraguan Note, the Honduran Note N° 1025 of 20th of the same month, signed by the Foreign Minister, Roberto Palma Gálvez, indicates that his Government "accepts with pleasure the opening of negotiations and, in this respect, instructions to his Excellency Ambassador Jiménez Castro for the initiation of the preliminary stages of the conversations as soon as he takes possession of his post, have already been given" (see Annex 5).

20. Nevertheless, the revolution that toppled the Nicaraguan Government in July 1979 did not leave any margin for the continuation of a negotiation that had scarcely begun with the diplomatic notes exchanged in May 1977. As will be explained in the following Chapter, the relations after this event changed radically.

21. What is clear from these notes is that the position of the Parties in relation to the maritime delimitation in the Caribbean was totally open up to the revolutionary changes that occurred in Nicaragua in 1979.

V : SITUATION SINCE 1980: THE HISTORY OF THE DISPUTE ON THE DELIMITATION OF THE MARITIME AREAS OF NICARAGUA AND HONDURAS IN THE CARIBBEAN SEA

A. Introduction

1. The conflict of interests between Nicaragua and Honduras concerning the delimitation of the maritime areas in the Caribbean was dormant until the late 70's. With the outcome of the Revolution in Nicaragua that overthrew the Nicaraguan Government that had been in place for several decades, the situation changed dramatically. Gone were the relations of "compadrazgo" (buddy) that had been the rule of the previous Governments of both countries. From that point in time – on 19 July 1979 – until the election of a new Government in Nicaragua that was sworn into office – 25 April 1990 – Nicaragua was in constant conflict with her immediate neighbours and in particular with Honduras.

2. It was the regional tensions in the 1980's, involving the Government of the United States of America, which explains the change of attitude of Honduras.[19]

3. It is this context that explains the actions of Honduras during the 1980's to seek to advance its territorial interests *vis à vis* Nicaragua. These actions occurred on two fronts: the Gulf of Fonseca on the Pacific Ocean and the boundary in the Caribbean Sea. The first situation – the Gulf of Fonseca – is not before the Court. For this reason it is sufficient to recall that Honduras in its negotiations with El Salvador on its territorial problems had

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19. The regional situation can be appreciated in the documents brought by Nicaragua to the International Court of Justice in the cases against the United States and Honduras. See the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgement, I.C.J. Reports 1986*, p. 14 and the case concerning *Border and Transborder Armed Actions (Nicaragua v. Honduras)*. This last case was discontinued by Nicaragua for the reasons explained below.

consistently refused to include the situation of the legal regime of Gulf of Fonseca, alleging that a third Party had to be involved, namely Nicaragua (see Volume II, Annex IV.1.44 of the Honduran Memorial in the *Land, Island and Maritime Frontier Dispute*). In December 1980 – a year and a half after the Nicaraguan Revolution – Honduras had no further reticence in including the situation of the Gulf of Fonseca – without taking into consideration Nicaragua's interests – as part of the provisions in the Peace Treaty signed with El Salvador.[20] The other action taken by Honduras was the agreement signed with Colombia on 2 August 1986 by which Colombia reaffirmed the Honduran claim that its boundary with Nicaragua followed a parallel of latitude and Honduras for her part reaffirmed the Colombian claim against Nicaragua that the boundary followed a meridian of longitude (see Annex 6).

4. One of the first actions taken by the new Government of Nicaragua was to enact the Continental Shelf and Adjacent Sea Act (Ley sobre Plataforma Continental y Mar Adyacente) on December 19, 1979.[21] "Until July 19 of this Year of Liberation", proclaimed the preamble of the Act, "foreign intervention did not permit the full exercise by the People of Nicaragua of its rights over the Continental Shelf and Adjacent Sea –rights which correspond to the Nicaraguan Nation by history, geography and International Law.[22]

5. The Act did not contain any provision on the delimitation of these maritime spaces *vis à vis* the neighbouring States. However, the Official Map of the Continental Shelf of Nicaragua of 1980, and the Official Map of the Republic of 1982, included a box comprising Rosalinda, Serranilla and adjacent areas up to

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20. See Chapter IV on the Peace Treaty and generally the proceedings before the Chamber of the Court in which Nicaragua was allowed a limited intervention as a "non party": *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgement of 11 September 1992, I.C.J. Reports 1993*, p. 351.

21. Decreto N. 205 (La Gaceta, December 20), in force since the date of publication.

22. Ibid. in the Preamble of the Act, 3rd paragraph.

Parallel 17°, areas claimed as Nicaraguan in the diplomatic correspondence with Honduras.

6. Honduras, on its side, promulgated a new Constitution on January 11, 1982, which introduced an extremely long Article 10 with the most radical territorial claims. The list of islands, cays and banks that Honduras claims as appertaining to it in the Atlantic included, for the very first time, the Cays of Media Luna and the banks Salmedina, Providencia, De Coral, Rosalinda and Serranilla.

7. On the ground, relations changed drastically between the new Government of Nicaragua and the Honduran Government and, particularly, the previously very friendly relations of its armed forces. Naval incidents became numerous and recurrent. Most of them involved the capture of fishing vessels of both sides within the disputed area to the north of the parallel of latitude claimed by Honduras since 1982. These incidents are registered in a copious diplomatic correspondence.

8. In the next sections the following issues will be examined (a) the elements of the controversy between Nicaragua and Honduras relating to the delimitation of their maritime areas in the Caribbean Sea; and (b) the failure of the bilateral negotiations to settle the dispute by means of agreement.

B. The Existence of a Controversy Between Nicaragua and Honduras on the Delimitation of Their Maritime Areas in the Caribbean Sea

9. Both Nicaragua and Honduras concur on the need for the application of International Law to the delimitation of their maritime areas in the Caribbean Sea. Furthermore, both countries are parties to the United Nations Convention on the Law of the Sea, of December 10, 1982. Honduras deposited its instrument of ratification on October 5, 1993. Nicaragua did so on May 3, 2000 (see Chapter VI of this Memorial).

10. Nevertheless the principles and methods of delimitation developed in international law have not been addressed because Honduras has alleged since the eighties that there already exists a dividing line in the Caribbean Sea tacitly agreed or consented to by Nicaragua.

11. The *official position* of the Honduran Government, reiterated for example at the time of the Application of Nicaragua to the Court, is that the maritime boundary "has been delimited and historically and customarily respected by both countries at the Parallel 14° 59' 08"." (see Annex 7). Nicaragua denies that any such boundary exists.

12. The dispute between Nicaragua and Honduras on the delimitation of their maritime spaces in the Caribbean Sea began on 21 March 1982 when Nicaraguan coastguards captured four Honduran fishing vessels in the vicinity of the Nicaraguan Cays Bobel and Media Luna, located about 40 miles from the Nicaraguan coast and approximately sixteen miles to the North of Parallel 15°.

13. On March 23, the Honduran Foreign Ministry[23] referred to the capture two days before as a "flagrant violation of our sovereignty" and, for the first time in the diplomatic correspondence with Nicaragua, identified Parallel 15° as a line "traditionally recognised by both countries" in the Atlantic Ocean.

14. The Foreign Minister of Nicaragua immediately and emphatically rejected the Honduran claim in its Note of April 14, 1982 (ACZ/gg. N. 124), which marked a systematic, continued and unequivocal opposition to the new position adopted by Honduras.

15. As regards the Honduran affirmation that Parallel 15° is *traditionally recognised* by both countries as the dividing line in the Atlantic Ocean, the Note of April 14 remarked that,

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23. See Annex 8, Note N. 0031-DSS, of March 23, 1982.

"This affirmation, at the very least, surprises us since Nicaragua has not recognised any maritime frontier with Honduras in the Caribbean Sea, being undefined until today the maritime boundary between Honduras and Nicaragua in the said sea"

"Nicaragua", the Note adds, "understands that in Honduras there is a criterion that aspires to establish said Parallel as the boundary line. At no time has Nicaragua recognised it as such since that would imply an attempt against the territorial integrity and national sovereignty of Nicaragua. According to the established rules of international law, territorial matters must be necessarily resolved in treaties validly celebrated and in conformity with the internal dispositions of the contracting States, not having effected to date, any agreement in this regard. Therefore, Nicaragua rejects Your Excellency's affirmation in the sense that it claims to establish Parallel 15 as the boundary line between our two countries in the Caribbean Sea" (see Annex 9).

16. The Nicaraguan Foreign Ministry was of the opinion that the establishment of the maritime boundaries between Nicaragua and Honduras in the Caribbean, the only area awaiting delimitation[24], should be the result of negotiations undertaken through mixed commissions, under appropriate conditions to discuss such a delicate question in a friendly and sincere manner, without any kind of pressure. Therefore, taking into account the prevailing political circumstances, which could produce the impression that "these sudden and excessive territorial aspirations (of Honduras) were destined to prepare the conditions for justifying a major escalation of aggressions against Nicaragua", the Foreign Ministry, "with the intention of preventing the elevation of these questions to major levels of friction between our countries", proposed "that discussions on these problems be postponed, in order to wait the adequate moment to proceed with negotiations".[25]

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24. See also Notes of September 19, 1982 (N. 112), April 19 and 28, and November 6, 1983 (DAJ N. 056, 063 y 226) (Annexes 10, 11, 12 and 13).

25. See Annexes 9, 14 and 15, the Note of April 14, 1982 (ACZ/gg. N. 124) was later recalled by other Notes: e.g., the Notes of November 9, 1983 (DAJ N. 128) and January 6, 1996 (N. 96007).

17. The Nicaraguan answer must have had some effect, because afterwards Mr. Paz Barnica, the Honduran Foreign Minister, who had not signed the Note of March 23 (N. 0031-DSS) [26], stated in Note N. 254-DSM, of May 3, 1982[27]:

> "I agree with Your Excellency when you affirm that the maritime border between Honduras and Nicaragua has not been legally delimited. Despite this, it cannot be denied that there exists, or at least that there used to exist, a traditionally accepted line, which is that which corresponds to the Parallel which crosses through the Cape Gracias a Dios. There is no other way of explaining why it is only since a few months ago that there have occurred, with worrying frequency, border incidents between our two countries".

18. However, as "this is not the appropriate moment at which to open a discussion on maritime borders" and it was prudent to avoid new points of controversy, Mr. Paz Barnica considered that it was necessary:

> "to adopt some sort of criterion, albeit informal and transitional, in order to prevent incidents...The temporary establishment of a line or zone might be considered which, without prejudice to the rights that the two States might claim in the future, could serve as momentary indicator of their respective areas of jurisdiction"

19. The Foreign Minister of Honduras himself raises doubts as to the existence of a traditional line, which in any case did not have legal force, since he recognizes that the maritime border "has not been legally delimited" and proposes "the temporary establishment of a line or zone...which...could serve as momentary indicator of their respective areas of jurisdiction".

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26. The Honduran Note of March 23, 1982 (N. 0031-DSS) had been signed by the Honduran Deputy Foreign Minister in his capacity as acting Minister of Foregin Affairs (Ministro de Relaciones Exteriores por la Ley), Rodolfo Rosales Abella.
27. See Annex 78.

20. As stated in the Note of Reply of Nicaragua of September 28, 1982 (S/R), "it is only possible to speak of temporary establishment of a zone of jurisdiction if this zone does not previously exist. In the other case the only possible thing is to ask that the pre-existing line should be respected or that it should be ratified but, but never to propose the establishment of a line that would serve as a momentary indicator".[28]

21. The increase of the border and transborder armed actions and the complexity of the Central America crisis did not allow the initiation of negotiations even upon this proposal, which was limited to the possibility of agreeing on a merely provisional dividing line.[29]

22. A new incident occurred on September 18, 1982, when a Nicaraguan and a Honduran patrol opened fire, accusing each other of violation of territorial sovereignty.[30] The episode concluded with an Honduran Note N. DSS-502, of September 20, 1982, which clearly indicates the non-enforceable character which the Honduran Foreign Ministry accorded to the parallel:

> "The Government of Honduras has never denied that between my country and the Republic of Nicaragua there does not exist, in the Atlantic, a legally delimited frontier. However, it is an undeniable fact that traditionally the two Governments have considered the parallel that passes through Cape Gracias a Dios as the dividing line between the two States, so long as a definitive delimitation is not arrived at. When speaking of tradition and of Governments I refer to situations shaped by the passage of time and by the juridical entities which, over the years, have represented our respective States".

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28. See Annex 16. This Note inspired the Note of August 29, 1995 (N. 950369), Annex 17.

29. "Owing to reasons alien to the will of the Nicaraguan Government up to this moment it has not been possible to establish with Honduras provisional jurisdictional lines in the Caribbean Sea". See Annex 10 the Note of September 19, 1982 (N. 112).

30. See Annexes 10 and 18, for the Honduran Note N. 2176-SD of September 18, and the Nicaraguan Note S/R of September 19, 1982.

The Honduran Foreign Minister adds:

> "The current Government of Nicaragua, making use of its sovereign rights, has decided to ignore this tacit agreement that, for many years, has prevented unfortunate incidents, such as that which now concerns us and which negatively affects the already fragile relations between our countries. It was precisely in order to avoid reaching these extremes that this Ministry stated that "the temporary establishment of a line or zone might be considered which, without prejudice to the rights that the two States might claim in the future, could serve as a momentary indicator of their respective areas of jurisdiction"".[31]

23. Honduras toughened its approach in the Notes exchanged subsequently with Nicaragua concerning new seizures of fishing boats or new incidents between naval patrols North of Parallel 15° .[32]

24. The Notes of the Nicaraguan Foreign Ministry concerning these events are either protests in response to the capture of Nicaraguan fishing ships by Honduran patrols North of Parallel 15° N, or responses to the Honduran protests concerning the seiz-

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31. Some weeks before, on the occasion of the seizure of another Honduran boat by a Nicaraguan patrol in the vicinity of Cays of Media Luna, the Honduran Foreign Ministry limited itself to request the liberation "as soon as possible" of the crew and the boat captured, showing surprise because the incident had occurred "less than a week from having celebrated the meeting between the Naval Chiefs in the Port of Corinto, one of the main objectives being precisely to convene measures in order to avoid this type of incidents". See Annex 20, Note N. 1653, of July 16, 1982).

32. See, e.g., in the eighties, the Notes of April 15, 19 and 21, May 11, August 17 and October 17, 1983 (N. 228-DSM, 243-DSM, 245-DSM, 202-DA, 406-DA and 479-DA), January 16 and October 9, 1984 (EHN-006-85 and 552-DA), January 29 and April 19, 1985 (053-DA and 162-DA) and February 5, 1989 (018-CAYM-89); and, in the last decade, the Notes of August 26 and 27, and October 26 and 27, 1992 (205-DGCA, 218-DGCA, 362-DSM and 363-DSM), November 9 and 16, 1994 (487-DSS and EHN-573/94), April 19 and December 18, 1995 (0-216-DSM and S/R), January 3, 1996 (001-DSM), June 19, July 8 and September 18, 1998 (180-DSM, 243-DSM and 393-DSM), March 19 and November 30, 1999 (115-DSM and EHN-301/99). Annexes: 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45.

ure of Honduran fishing ships by Nicaraguan coastguards. These responses may also be classified in two categories: first, Notes which admit the location of the seizure North of Parallel 15° but reject the Honduran protest because of the sovereign rights of Nicaragua over the area concerned[33]; and second, Notes that dissent from the account of facts and/or the location of the seizures, below Parallel 15°, but as a matter of principle reaffirm Nicaraguan rights North of that Parallel.[34]

25. Besides the Diplomatic Notes stemming from the captures of fishing vessels, the Nicaraguan Foreign Ministry has always reacted against the acts of the Honduran Government that could be interpreted as steps in the direction of an affirmation of sovereignty over the areas that appertain to Nicaragua. Such was the case in relation with the successive stages in the formation of the Treaty of Maritime Delimitation finally celebrated between Honduras and Colombia, or when both Central American Repub-

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33. See, in the eighties, Notes of September 28, 1982 (S/R), February 2 and July 5, 1985 (DAJ N. 014 and DAJ N. 022). In the nineties see Notes of November 4 and December 12, 1994 (MRE/ 94/05142, N. 940507 and N. 940508), April 12 and 25, May 5, and December 20, 1995 (S/R, N. 950191, N. 950184 and N. 9505335), January 6 and November 21, 1996 (N. 96007 and N. 960668), February 3 and August 8, 1997 (N. 970030 and N. 9700501). Annexes: 16, 46, 47, 48, 49, 50, 51, 52, 53, 54, 15, 55, 56, 57) The Note N. 96007, of January 6, 1996, *inter alia* declares, that the Nicaraguan Government "cannot permit the exploitation by third States of its natural resources in its legitimate national maritime spaces where, furthermore, It has exercised its sovereignty, jurisdiction and rights with specific and categorical actions. This has been established", the Note adds, "in a variety of Notes that at various times and circumstances were addressed by the Republic of Nicaragua to the Republic of Honduras. These communiqués have been reiterated and comprehensive of the maritime spaces alluded to, including both Parallel 15° and to the North of Parallel 15°". See Annex 15.

34. See, e.g., in the eighties, Notes of April 19 and 28, August 30 and November 6, 1983 (DAJ N. 056, DAJ N. 063, DAJ N. 137 y DAJ N. 226), November 16, 1984 (DAJ N. 166), February 2 and 4and April 29, 1985 (DAJ N. 014, DAJ N. 016 y.DAJ N. 084). Annexes: 11, 12, 58, 13, 59, 46, 60, 61) The Note of April 19, 1983 (DAJ N. 056) expresses: "Nicaragua cannot accept the considerations you (Honduras) state in your Diplomatic Note (N. 228-DSM, of April 15) when you say that the Bobel and Media Luna Cays are located in jurisdictional waters of Honduras". In the nineties, Notes of May 20, October 2 and 5, 1992 (N. 920119, N. 920275 and N. 920273), January 4, 1993 (N. 930101 y 930102), July 2 and September 22, 1998 (MRE/98/00357 and MRE/98/00533) and December 7, 1999 (MRE/3620/99). Annexes: 62, 63, 64, 65, 66, 67, 68 and 69.

lics published their Official Maps, including cays and banks claimed by both countries.

26. Thus, on the occasion of the signature of the Treaty on Maritime Delimitation between Honduras and Colombia, Nicaragua addressed a Note to the Honduran Foreign Minister[35], stating that: "the referred instrument pretends to divide between Honduras and Colombia extensive zones that include insular territories, adjacent seas and continental shelf that historically, geographically and legally correspond to the sovereignty of Nicaragua".

27. Afterwards, before the ratification of this Treaty by Honduras, Nicaragua reiterated her "deep concern" in face of a treaty "which attempts to seriously injure the sovereign and jurisdictional rights of Nicaragua in the Caribbean Sea"[36], and her "categorical rejection to claims according to which the maritime boundary between Honduras and Nicaragua in the Caribbean Sea is parallel 14° 59' 08"."[37]

28. Finally, when Honduras decided to express its consent to be bound by the treaty, Nicaragua reiterated her well-known statements of rejection.[38]

29. As regards the Maps, when Honduras protested[39] the inclusion in the Official Map of Nicaragua of "various banks and cays...,including the Serranilla Cays", which are located in the area geographically and historically identified as the "*Nicaraguan Rise*" (*Promontorio de Nicaragua*), the Nicaraguan Foreign Minister noted in his answer[40] that the opinions expressed in the Honduran Note "only represent the point of view of Honduras, and at all the time contradicted by the Republic of Nicaragua".

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35. Note of September 8, 1986 (DAJ N. 080). Annex 70.

36. See Annex 71 Note N. 910102, of July 9, 1991, last paragraph). See also Note N. 930154, of June 21, 1993, Annex 72.

37. See Annexes: 65, 66, 73. Notes N. 930101 and 930102 of January 4, 1993, and N. 930276, of June 25, 1993.

38. See Notes MRE/DM/3578/12/99, of December 1, 1999, and MRE/DM/3699/12/99, of December 21, 1999. Annexes: 74 and 75.

39. Note N. 124-DSM, of April 7, 1994. Annex 76.

40. Note N. 940286, of April 14, 1994. Annex 77.

30. The Nicaraguan Note recalls that: "Nicaragua's position in relation to these areas under her Sovereignty and Jurisdiction North of Parallel 14° 59' 08" has been expressed in innumerable Notes, among which are found, to give only recent examples, those dated on January 4, 1993, N° 930101 and 930102, and on June 25 of the same year, under N° 930276". Furthermore, "without prejudice of the rights that correspond to Nicaragua", the Official Map of the Republic "clarifies most strictly and categorically, that the maritime frontiers in the Caribbean Sea have not been legally delimited", a fact that Honduras already had acknowledged in Note N. 254-DSM, of May 3, 1982.

31. Nicaragua, for her part, reacted to the Honduran Official Map, elaborated by the National Geographic Institute (Instituto Geográfico Nacional), edition 1994. This Map included as Insular Possessions of Honduras in the Caribbean Sea a series of cays, banks and reefs, including among others the *Arrecifes de la Media Luna, Arrecife Alargado,* and *Serranilla Cays,* all of which appertain to Nicaragua and are located on the "*Nicaraguan Rise*".

32. While protesting and reiterating her total disagreement with the inclusion in the Honduran Official Map of certain areas located on the "*Nicaraguan Rise*" (*Promontorio de Nicaragua*) which are subject to the sovereign rights of Nicaragua, Note N° 950282, of June 9, 1995, repeated that the Republic of Nicaragua "has and exerts full sovereignty and jurisdiction along the entire length of the Nicaraguan geography up to Parallel 17° Latitude North".[41]

33. In Note N. 930101, of January 4, 1993, the Foreign Minister of Nicaragua judges "absolutely inadmissible and unacceptable from all standpoints" the Honduran affirmation that "the maritime borderline between Nicaragua and Honduras in the Caribbean Sea is established in total compliance with International Law on Parallel 14° 59' 08"." The Minister reiterates the "most categorical rejection" of that claim, recalling that "on the contrary, the areas under Nicaraguan sovereignty and jurisdiction in the

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41. See Note N° 950282, of June 9, 1995. Annex 79.

Caribbean Sea have always historically extended to the North beyond said Parallel".[42]

34. These concepts are reproduced in Notes of June 25 of the same year (N° 930276)[43] and of December 12, 1994 (N° 940507 and 940508).[44]

35. Note N° 940507, of December 12, 1994, reaffirms that "the areas under Nicaraguan sovereignty and jurisdiction in the Caribbean Sea, geographically and historically have always extended North of said Parallel (14° 59' 08"). There does not exist any Treaty or Agreement of any type between Honduras and Nicaragua establishing said Parallel as the maritime frontier between both countries. Finally, Nicaragua has always executed jurisdictional acts in those maritime spaces, up to Parallel 17°. In the last analysis, the Ministry of Foreign Affairs recalls that the Republic of Honduras has recognized in relation to the Caribbean Sea that the maritime frontier between our countries has not been legally determined."[45]

36. The Note of the Honduran Foreign Ministry N. 197-SAM-95, of June 13, 1995, answering the Nicaraguan N. 940507, of December 12, 1994, summarizes the reiterated assertion of Honduras that Parallel 14° 59' 08" N was the maritime boundary. This Parallel –the Note says- "has been a border traditionally respected by both our States". The Note adds, "this bilateral recognition is demonstrated beyond any doubt by documentary proofs and effectivités". The Honduran Government rejects the Nicaraguan assertion that the areas located to the North had been under the sovereignty and jurisdiction of Nicaragua, "since

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42. In similar terms, see Note 930102, of the same date. Annexes: 65 and 66.

43. Annex 73. This Note was the answer to the Honduran Note of June 4 (N. 295-DSM). (See Annex 80).

44. Annexes: 49 and 50. These Notes were the answer to the Honduran Notes of November 9, 1994 (487-DSS and N. EHN 564/94). See Annex 36 and 81.

45. See Annex 49. In similar terms, Notes N. 950184, of May 5, 1995, and MRE/95/03771, of August 23, 1995. See Annexes: 53 and 82.

Honduras presently exercises effective control within those maritime spaces".[46]

37. The Honduran Note N° 197-SAM-95, of June 13, 1995, was followed by the Note of the Nicaraguan Foreign Ministry N° 950369, of August 29, of the same year, which, once again, repeats that there does not exist any agreement establishing Parallel 14° 59' 08" as the maritime borderline between the two countries, and reiterates that there "neither does exist or has ever existed any 'de facto situation', or any 'traditional border'" on that Parallel. "Nothing could be farther from the truth", the Note continues: "The Republic of Honduras, on one occasion, proposed to Nicaragua 'the temporary establishment of a line or zone that, without prejudice to the rights that in the future could be alleged by both countries, could serve as a provisional indicator of their respective jurisdictional spheres', which by logic supposes that even to your own country 'said line' never existed and there can be no proofs or facts supporting it".[47]

38. As already mentioned, there are numerous Notes of the Foreign Ministry of Nicaragua which have recalled the *Paz Barnica Note,* of May 3, 1982 (N. 254-DSM), in order to make clear that there are no grounds for the claim of Honduras that Parallel 14° 59' 08" constitutes the maritime boundary with Nicaragua in the Caribbean Sea.[48] In a situation like this, the Honduran Government has done its best in recent years to substantially modify the scope of the *Paz Barnica Note* under the pretext of its interpretation.

39. Thus, the Honduran Note N.197-SAM-95, of June 13, 1995, purports to offer an authentic interpretation of the *Paz*

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46. (See Annexes: 83 and 49.)

47. (See Annex 17.)

48. E.g., Notes of September 19 and 28, 1982 (N. S/R and S/R), November 6 and 9, 1983 (DAJ N. 226 and DAJ N. 228), September 8, 1986 (DAJ N. 080), January 4 and June 25, 1993 (N 930101 and 930102 and N. 930276), April 14 and December 12, 1994 (N. 940286 and N. 940508), May 5, June 9, August 23 and 29, (N. 950184, N. 950282, MRE/95/03771, N. 950369). See Annexes: 10, 16, 13, 14, 70, 65, 66, 73, 77, 50, 53, 79, 82, 17 and 84.

Barnica Note arguing that: "when this Secretariat of State said that at the present time there is no bilateral agreement as to the definition of the maritime boundary between Honduras and Nicaragua, we did nothing more than to point out a *de facto* situation, staments this, that in no way means to recognize any rights to Nicaragua or any other neighbour State of Honduras in the Caribbean Sea" (see Annex 83).

40. This interpretation was reproduced in Note 226-SAM-95, of July 11, 1995, and has been lately endorsed by the *Official Position* of the Honduran Government circulated on December 8, 1999, regarding what it calls the "*erroneous interpretation*" of the Nicaraguan Government.

41. According to this Official Position, "Nicaragua pretends to project an oblique line North of parallel 15... this pretension by Nicaragua was manifest as of 1980. Prior to that date, both countries recognised parallel 15 as the customary line for our delimitation in the Caribbean" (see Annex 7).

42. Nevertheless, when in Note N. 254-DSM, of May 3, 1982 the Foreign Minister Paz Barnica recognized without qualification that the maritime boundary had not been legally delimited; he did not in any way say that the maritime dividing line had not been established "by means of a treaty or a judgment", but only by way of custom. This rephrasing has been conceived by his successors many years later. Mr. Paz was in fact only recognizing what his predecessors had already acknowledged in 1977, when they accepted Nicaragua's proposal to initiate conversations on fixing a boundary in the Caribbean.

43. In this sense, the Nicaraguan Notes N. 930101 and 930102, of January 4, 1993, and N. 950369, of August 29, 1995, after recalling that there is no treaty between Nicaragua and Honduras establishing Parallel 14° 59' 08" as the maritime boundary, rightly point out that "delimitations should be made by agreement between the parties and not unilaterally" (see Annexes: 65, 66 and 17).

44. Honduras is forced to maintain the position that Nicaragua has recognized or *traditionally* consented to Parallel 14° 59' 08" N as the maritime boundary because it realizes that such claim is incompatible with general international law.

C. The Failure of the Negotiations between Nicaragua and Honduras

45. Once the Central American crisis became susceptible to political solutions, Nicaragua and Honduras could agree on the establishment of a Maritime Affairs Mixed Commission (Comisión Mixta de Asuntos Marítimos) as the institutional frame wherein to discuss the problems of maritime delimitation. According to the Joint Declaration of the Foreign Ministers of both countries, made in Managua on September 5, 1990, the purpose of the Commission, consisting of the Ministers or their Representatives, was "the prevention and solution of maritime problems between both countries"(n° 1), emphasizing that it should examine "as a priority, border issues in the maritime areas of the Gulf of Fonseca and the Atlantic coast, and the fisheries problems derived from the above" (n° 2)(see Annex 84).

46. The Maritime Affairs Mixed Commission was actually constituted on May 27, 1991 and celebrated its first meeting in Tegucigalpa. Point IV of the Agenda was "*Border Issues*" ("*Cuestiones limítrofes*").[49] The Nicaraguan Delegation expressed "*its deep concern*" about the Honduran-Colombian Treaty signed on August 2nd, 1986, at that stage not yet ratified, considering that "this Treaty seriously injures Nicaragua's sovereign rights in its jurisdictional waters, islands, cays, banks and continental shelf in the Caribbean Sea". The Honduran Delegation, for its part, "made a general reservation concerning its maritime territorial rights in the Caribbean Sea" and postponed the presentation of

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49. The other points of the agenda were: "*Fisheries Cooperation*" ("*Cooperación Pesquera*") (II), "*Conservation of Natural Resources*" ("*Conservación de Recursos Naturales*") (III) and "*Security Issues*" ("*Asuntos de Seguridad*") (V). All of them were clearly inter-related. See Annex 85.

"her legal arguments on this matter", without date, to a future sub commission, which had to be set up.

47. The state visit of the President of Nicaragua, Mrs. Violeta Barrios de Chamorro, to Honduras on September 18 and 19, 1991, had the intention, among other objectives, of verifying "the progression of the Maritime Affairs Mixed Commission".[50] The Meeting of the Presidents of the Commissions on Foreign Relations of both National Assemblies convened at Tegucigalpa on November 28 and 29 of the same year. The visit was also intended to push the work of the Mixed Commission forward, within a general framework of a relationship that should be directed towards "the search for solutions consistent with the Central American integrationist ideals...and not to adopt measures that in any way damages the interests of both peoples".[51] The general intent of this Joint Declaration was that Nicaragua and Honduras would not make agreements with non-Central American States that could prejudice either Party. The specific intention was that Honduras would not ratify the maritime delimitation Treaty she had concluded with Colombia in August 1986. Nicaragua for her part agreed to discontinue the case it had pending against Honduras in the Court.

48. In spite of the good intentions, the second meeting of the Maritime Affairs Mixed Commission did not take place until August 5, 1992, in Managua. Concerning the "*Border Issues*", the meeting was a repetition of the previous session. Honduras, once again, postponed the creation of a Sub-Commission on Limits to a later meeting "in order to study the border issue in an integral fashion" (see Annex 88). By that time, Nicaragua had requested the discontinuance of its case against Honduras and the Court had already ordered, in accordance with Nicaragua's request, the discontinuance of the *Border and Transborder Armed Actions* case.[52] Honduras was rid of an embarrassing case and Nicaragua

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50. Joint Declaration of September 19, 1991, third paragraph. See Annex 86.

51. See Joint Declaration of November 29, 1991, I.3. Annex 87.

52. See Order of 27 May 1992, *I.C.J. Reports 1992*, p. 222. According to the words of the President of the Republic of Nicaragua, Mrs. Violeta Barrios de Chamorro: "My Government established direct contact with the Presidents of Honduras, Rafael

received the promise of good neighbourly relations based on the apparent mutual wish for the future reunion of the Central American States.

49. The Mixed Commission for Maritime Affairs did not convene again[53], and on April 20, 1995, was merged, with the Commission of Boundary Cooperation (Comisión de Cooperación Fronteriza), in a new *Binational Commission (Comisión Binacional)*, set up in Managua on that date. During the meeting, both parties highlighted "the importance of starting the negotiations on maritime delimitation"[54], programming for its next meeting the establishment of the Sub-Commission for "Issues of Delimitation in the Caribbean Sea and demarcation of areas already delimited in the Gulf of Fonseca according to the 1900 Minutes"[55]

50. According to the schedule, the Second Meeting of the Binational Commission took place at Tegucigalpa on June 15 and 16, 1995, and the Subcommission was finally established. However, during the time it survived, the Sub-Commission did not find

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Leonardo Callejas and Carlos Roberto Reyna in order to find a peaceful solution to existing disagreement or situations that might lead to regional conflict or prejudice peacemaking or regional integration. In the same spirit and based on the mutual understanding, my Government proceeded to withdraw the case "armed frontiers and transfrontiers acts" against the Government of Honduras. At the same time Honduras refrained from ratified a Treaty that infringed the rights of a Central American neighbour such as Nicaragua. In this contexts both countries committed themselves to start a discussions on the delimitation of the mutual maritime border, and established to this end a bilateral commission" "*Honduras debe honrar sus compromisos con Nicaragua*", La Prensa, Managua, December 1, 1999. See in Annex 89.

53. The third meeting of the Maritime Affairs Mixed Commission was programmed for July 7, 1993, but it was postponed. According to the Government of Nicaragua (Note N. 930155, of June 25, 1993), it was "it would be best to wait for some time" for its celebration, so as to meet the conditions that "the Agreements reached during the meeting to be favourable to Central America interests and the integrationist". This happened just after the visit of the President of Honduras, Rafael Leonardo Callejas, to the island of San Andrés which involves a well known claim by Nicaragua against Colombia. Annex 90.

54. See in Annex 91. Minutes of the Binational Commission, April 20, 1995, penultimate paragraph.

55. Ibid. 2nd Resolution, B.

the opportunity to tackle the "delimitation issues on the Caribbean Sea".[56]

51. The incident that occurred in the Caribbean Sea on December 17, 1995, as a result of the seizure of several Honduran fishing boats by Nicaraguan coastguards to the North of parallel 15°, led to an exchange of diplomatic notes[57] and the meeting of an *Ad Hoc* Commission[58] with the purpose of seeking " a simple mechanism, a transitory agreement or a special regime in order to avoid the arrest of fishermen from either country".[59]

52. The *Ad Hoc* Commission met twice, first in Managua on the 22 January 1996, and then in Tegucigalpa on 31 January. These meetings did not produce any results and were eventually discontinued.

53. In their first meeting, the delegations agreed to recommend to the Governments "the establishment of a common fishing zone" (see Annex 93, Minutes of Meeting of January 22, 1996 para. 2), which would have a provisional character. However, they did not reach any agreement on its definition, notwithstanding the reservation of the sovereign rights of each State added to every proposal.

54. For Honduras, the common fishing zone should be traced "three nautical miles to the North and three nautical miles to the South of Parallel 15° 00' 00" Latitude North and between the meridians 83° 00' 00" and 82° 00' 00" Longitude West" (*Ibid*). This was unacceptable to Nicaragua, because, as a matter of fact,

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56. See Annex 92. The last meeting of the Subcommission, programmed for April 25, 1997, was suspended by with the consent of both parties shortly after it began.

57. See Honduran Notes of December 18, 1995 (S/R) and January 3, 1996 (N. 001-DSM), and Nicaraguan Notes of December 20, 1995 (N. 9505335) and January 6, 1996 (N. 96007). Annexes: 39, 40, 54 and 15.

58. The constitution of this *Ad Hoc* Commission was the result of the talks held between the Presidents of Nicaragua, Mrs. Violeta Barrios de Chamorro, and Honduras, Mr. Carlos Roberto Reina, on January 14, 1996, on the occasion of the investiture of Mr. Alvaro Arzú as President of Guatemala.

59. See Annex 93 and 94 for the minutes of these two meetings of the Ad hoc Commission.

it supposed the implicit acceptance of Parallel 15° as the dividing line between the Parties.

55. Logically, Nicaragua was only prepared to establish a common fishing zone within the limits of the disputed area, which was "the area where the claims of both countries overlap, located between the Parallels 15° 00' 00" and 17° 00' 00""(*Ibid*).

56. No serious possibility of agreement existed because the Honduran negotiators were constrained by the all-inclusive and detailed description of the territories claimed by Honduras in its 1982 Constitution (see para. 6 above).

57. Only twenty months after the failure of the *Ad Hoc* Commission, a Memorandum of Understanding signed by the Foreign Ministers of Nicaragua and Honduras at New York on September 24, 1997, allowed for a revival of bilateral negotiations on the boundary issues through the constitution of a new Mixed Commission "in order to explore possible solutions to the situations existing in the Gulf of Fonseca, the Pacific Ocean and the Caribbean Sea" (see Annex 95).

58. The "exploratory talks" agreed in the *Memorandum* of September 24, 1997, were observed with "due confidentiality" in Antigua (Guatemala), during the first two days of October, and in San José (Costa Rica), on November 6 and 7, 1997.

59. The Mixed Commission was able to make some progress on the subject of the demarcation of the boundary in the Gulf of Fonseca by means of buoys; however, it could not transform its conversations into "a process of flexible and fluid negotiation, which can lead to specific proposals to the two Governments, as soon as possible, as to immediate or eventual solutions to the various problems identified".[60]

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[60] See Annex 96. Minute of the First Meeting of the Honduras-Nicaragua Mixed Commission (October 2, 1997), para. 3.

60. In the second meeting of the Mixed Commission there was a suggestion of using the inaugural ceremony, which was intended to place the first buoy in the Gulf of Fonseca, to announce the agreement of both States "to arrive at an integral solution to the territorial disputes in the Gulf of Fonseca, the Pacific Ocean and the Caribbean Sea, either by direct negotiation or by any other means of pacific settlement of disputes provided by International Law, including recourse to the International Court of Justice".[61]

61. Adhering to this recommendation, the Foreign Ministers of Nicaragua and Honduras expressed in the Joint Declaration of Potosí, of May 25, 1998, "the firm disposition...to arrive at an integral solution to the existing territorial disputes in the rest of the Gulf of Fonseca, in the Pacific Ocean and, in the Caribbean Sea" (see Annex 98). Nevertheless, there was no positive result.

62. The last phase of "negotiation" took place on November 28, 1999, when the President of the Republic of Nicaragua was unexpectedly informed of the decision of the Honduran Government to ratify four days later the Treaty of August 2, 1986 on Maritime Delimitation with Colombia. The President of Nicaragua, Mr. Arnoldo Alemán Lacayo, and the Honduran President, Mr. Carlos Roberto Flores Facussé, agreed to a meeting of their respective Foreign Ministers at Managua the day after. The visit, however, was cancelled by Honduras.

63. It must be recognized that Nicaragua did not spare any efforts, be they political, diplomatic or parliamentary, to dissuade Honduras from the ratification of the Treaty on Maritime Delimitation with Colombia. Nevertheless, Honduras' unexpected insistence on going ahead with the ratification made further negotiations with Nicaragua out of the question.

64. According to the presentation made by the Foreign Minister of Honduras, Flores Bermúdez, at the Permanent Council of

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61. See Annex 97. Minute of the Second Meeting of the Honduras-Nicaragua Mixed Commission (November 7, 1997), para. 3.

the O.A.S. on December 6, 1999, Nicaragua was responsible for not willing to discuss limits in the Caribbean Sea. The Honduran Minister stated that, "on several occasions and, specially in 1997, multiple approximations were made to convene or confirm our limits, (with Nicaragua)...we received negative signs. The results were fruitless, despite the fact that our sovereign rights North of parallel 15°, are customary, as well as historical and geographical. Nicaragua", he added, "pretends to project an oblique line to the North of parallel 15°, up to Parallel 17°, ignoring approximately 60,000 square kilometres of spaces legitimately Honduran, and customarily recognized as such by Nicaragua" (see Annex 7).

65. From the speech of Foreign Minister Flores Bermúdez it can be inferred that the method of the bilateral negotiations was indeed exhausted because of the systematic and continued refusal of Nicaragua to surrender to the point of view of Honduras, according to which all should be reduced to the formalization of the so-called "traditional, historical and customary line along the Parallel 15° N to the meridian 82° W". The efforts to open *a constructive process* consisted of trying to convince Nicaragua to yield unconditionally to the claim of Honduras, and all this under the threat of ratifying the Treaty on Maritime Delimitation with Colombia.

66. This Treaty between Honduras and Colombia met the most radical aspirations of the Parties in relation to Nicaragua through their reciprocal recognition of each other's claims *vis à vis* Nicaragua. The *raison d'être* of the Treaty is to take over and share among themselves a substantial portion of the maritime spaces appertaining to Nicaragua in the Caribbean Sea.

67. The intention behind the Colombia-Honduras Treaty has been seen from the perspective of the benefits it brings to Colombia. Thus David Colson observes:

> "It is worth noting that occasionally a maritime boundary agreement between two states will purposely (or perhaps not) seek to affect the sovereignty claim of a third state. The 1977 Colombia-Costa Rica and 1986 Colombia-Honduras agree-

ments (neither of which is in force)[62] and the 1976 Colombia-Panama agreement which is in force, are based upon the extension of marine jurisdiction from Colombian islands in the Caribbean, which are claimed by Nicaragua." (Colson, D. *The Legal Regime of Maritime Boundary Agreements, in International Maritime Boundaries*, edited by Charney and Alexander, Dordrecht, 1993, Vol. I, p. 66).

68. What is missing from the analysis is that in the present case both Colombia and Honduras were mutually boosting their claims to Nicaraguan maritime areas. Colombia recognized as Honduran the areas to the North of Parallel 14° 59' 08", with the exception of Serranilla Bank, asymmetrically divided to its benefit, and Honduras recognized as Colombian the areas to the South of said Parallel from the Meridian 82° W towards the east, see Figure IX for an illustration of the treaty lines.

69. The Treaty has no legal validity and its provisions cannot affect the rights of Nicaragua. Nicaragua has protested at the successive stages of the formation of the Treaty. Notes of protest were made at the moment of the signature of the Treaty[63]; they were reiterated on the occasion of a visit of the President of Honduras, Rafael Leonardo Callejas, to the island of San Andrés[64]; then during the proceedings involving ratification of

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62. The Colombia-Honduran Treaty is presently in force for the Parties. The Colombia-Costa Rica Treaty has not entered into force since its signature nearly 25 years ago.

63. The protest Note stated: "The referred instrument pretends to divide between Honduras and Colombia extensive zones that include insular territories, adjacent seas and continental shelf that historically, geographically and legally correspond to the sovereignty of Nicaragua". The Note adds: "On the basis of the inalienable rights of Nicaragua to protect and defend the territorial integrity of the nation, the Republic of Nicaragua rejects the treaty subscribed between Honduras and Colombia on August 2, 1986; it manifests that it does not recognise nor admits any effect whatsoever of the referred instrument, and reaffirms her sovereign rights over the cays, sandbars and islands that constitute the maritime and insular territory of Nicaragua to which the treaty in questions pretends to apply". See Note DAJ N. 080, of September 8, 1986 in Annex 70.

64. See Note N. 930154, of June 21, 1993 (Annex 72), and, before, Note N. 910102, of July 9, 1991, (Annex 71) last paragraph. See also the Resolution of the National Assembly of the Republic of Nicaragua, of June 22, 1993. (Annex 99)

the Treaty; and, finally, at the time of its entry into force and international registration.[65]

70. This sequence of diplomatic notes reveals:

The persistent opposition of Nicaragua to the Honduran claim to a "traditional" or "customary" boundary line in the Caribbean; and,

The impossibility of reaching a delimitation through direct negotiations. All negotiations had failed in the past because of the unacceptable claims of Honduras. Future negotiations became impossible once Honduras took the step of ratifying the Treaty with Colombia in which the parties had agreed on a sort of *shared unilateralism* at the expense of the sovereign rights and jurisdiction of Nicaragua.

The Resolution reproved the decision of the Honduran President, Rafael Leonardo Callejas, to meet the President of Colombia, César Gaviria, in the island of San Andrés on June 21; besides, the Resolution recalls that the National Assembly of Nicaragua by the Act of March 31, 1992, had made possible the discontinuance of the case against Honduras submitted to the International Court of Justice by Nicaragua (*Border and Transborder Armed Actions*); finally, the Resolution declares that it will expect from the Congress of the Republic of Honduras "reciprocity from the Congress of the Republic of Honduras in the sense of no ratified any agreement that might injure the sovereignty of Nicaragua regarding her territorial rights".

65. See Notes MRE/DM/3578/12/99, of December 1, 1999, and MRE/DM/3699/12/99, of December 21, 1999. Annexes: 74 and 75.

VI : THE APPLICABLE LAW

1. The object of the present chapter is to indicate briefly the principles which, according to the Republic of Nicaragua, are applicable to the delimitation between Honduras and Nicaragua in the Caribbean Sea.

2. Nicaragua will first examine the legal instruments relevant to this delimitation, that is mainly the 1982 United Nations Convention on the Law of the Sea (Section A), before showing briefly that, in any case, the relevant legal principles applicable in the specific circumstances of the case reflect or have obtained a customary "status" (Section B). It will then indicate, in the succeeding chapters of this Memorial, the manner in which it considers that these principles must be applied to the facts of the present case.

A. The Relevant Legal Instruments the United Nations Convention on the Law of the Sea

3. "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply" in the first place "(a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting State" (*I.C.J., Statute*, Article 38.1.). In the present case, the maritime boundary between the two States remains undetermined and has not been the subject of any agreement between them; nevertheless, a number of bilateral agreements between the Parties are of some relevance to the present dispute; these instruments are mentioned, as necessary, in the previous or succeeding chapters of this Memorial. Conversely, the bilateral treaties concluded between one Party and a third State, including the Colombia/Honduras Treaty of 2 August 1986, are *res inter alios acta* and should not to be taken into consideration by the Court in resolving the dispute before it. This is not the case, however, for the multilateral treaties to which Nicaragua and

Honduras have become Parties, especially the United Nations Convention of the Law of the Sea of 10 December 1982.

4. As regards the relevant multilateral conventions concerning maritime delimitation, neither Nicaragua nor Honduras has ratified any of the four 1958 Geneva Conventions on the Law of the Sea. Thus, these Conventions are "not, as such, applicable to the delimitations involved in the present proceedings" (*North Sea Continental Shelf Cases, I.C.J. Reports 1969*, p. 28, para. 37). This does not mean that the principles stated in these Conventions are lacking in all pertinence; but they cannot be applied or taken into consideration by the Court unless such use "is, or must now be regarded as involving, a rule that is part of the *corpus* of general international law; and, like any other rules of general or customary international law, is binding on the [Parties] automatically and independently of any specific assent, direct or indirect, given" (*Ibid*) by them. This may be the case either because such a rule would have "an *a priori* character of so to speak juristic inevitability" (*Ibid*, p. 29, para. 37), or because the Geneva Conventions would have embodied or crystallized pre-existing or emergent rules of customary law[66], or even because, by its subsequent effect, they have been constitutive of such rules (*Ibid,* p. 45 para. 81).

5. Nicaragua will examine whether such is the case in section B below, but it is clear that, as such, the Geneva Conventions of 1958 are not applicable to relations between the Parties.

6. The situation is different for the United Nations Convention on the Law of the Sea signed at Montego Bay on December 10, 1982, which entered into force on November 16, 1994 and which both Parties have ratified: Honduras on October 5, 1993[67] and Nicaragua on May 3, 2000; the former without any declaration, while the latter, which had accompanied its signature of 9 December 1984 by declarations made in accordance with Articles

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66. Cf. *Ibid.*, p. 41, para. 69, and preceding paragraphs on which these conclusions are based.

67. See ST/LEG/SER.E/17, *Multilateral Treaties Deposited with the Secretary-General*, Status as at 30 April 1999, United Nations, Sales N°. E. 99.V.5, Chapter XXI.6, p. 755.

310, 287 and 298 (*Ibid*, p. 771), specified, at the time of deposit of its instrument of ratification:

"In accordance with article 310 of the United Nations Convention on the Law of the Sea, the Government of Nicaragua hereby declares:

"1. That it does not consider itself bound by any of the declarations or statements, however phrased or named, made by other States when signing, accepting, ratifying or acceding to the Convention and that it reserves the right to state its position on any of those declarations or statements at any time.

"2. That ratification of the Convention does not imply recognition or acceptance of any territorial claim made by a State party to the Convention, nor automatic recognition of any land or sea border.

"In accordance with article 287, paragraph 1, of the Convention, Nicaragua hereby declares that it accepts only recourse to the International Court of Justice as a means for the settlement of disputes concerning the interpretation or application of the Convention.

"Nicaragua hereby declares that it accepts only recourse to the International Court of Justice as a means for the settlement of the categories of disputes set forth in subparagraphs (a), (b) and (c) of paragraph 1 of article 298 of the Convention.

"The Convention will enter into force for Nicaragua on 2 June 2000 in accordance with its article 308 (2) which reads as follows:

"For each State ratifying or acceding to this Convention after the deposit of the sixtieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day

following the deposit of its instrument of ratification or accession, subject to paragraph 1".[68]

7. Given that the United Nations Convention on the Law of the Sea came into force, with regard to Nicaragua, after the Application was filed, the question arises whether the Court in the present case can apply the said treaty. In the opinion of Nicaragua, this question must be answered in the affirmative.

8. "[G]iven the lack of formalism characteristic of the Court's procedure" (Shabtaï Rosenne, *The Law and Practice of the International Court*, vol. II, *Jurisdiction*, Nijhoff, The Hague, Boston, London, p. 661; see also pp. 522-523), on numerous occasions the Court has held that it could hear a case even though the treaty conferring jurisdiction on it in accordance with Article 36 of the Statute had only come into force after the case was brought before the Court. Thus, in the case concerning the *Mavrommatis Palestine Concessions*, the *P.C.I.J.* said:

> "The Court, whose jurisdiction is international, is not bound to attach to matters of form the same degree of importance which they might possess in municipal law. Even, therefore, if the application were premature because the Treaty of Lausanne had not yet been ratified, this circumstance would now be covered by the subsequent deposit of the necessary ratifications".[69] (*P.C.I.J., Series A*, N° 2, p. 34)

9. These considerations concerning treaties conferring jurisdiction have even more force when applied to those governing the substantive issues in question. Indeed, Nicaragua could have withdrawn its Application in order to file, immediately, another

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68. http://www.un.org/Depts/los; 10 November 2000; refers to depositary notification C.N.302.2000.TREATIES-1 of 22 May 2000 (Nicaragua: Consent to be bound following the ratification of the Convention).

69. See also I.C.J., Judgment of 26 November 1984, *Case concerning Military and Paramilitary Activities in and against Nicaragua (Jurisdiction of the Court and Admissibility of the Request), I.C.J. Reports 1984*, pp. 428-429, para. 83 or Judgment of 11 July 1996, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, I.C.J. Reports 1996*, p. 613, p. 26.

application having the same subject, to which the 1982 Convention would clearly be applicable. In addition, the two States party to the dispute have, by the free expression of their consent, demonstrated their common will to be bound by the Convention; there would be little sense in refusing to apply a treaty to which they have both adhered.

10. In his opinion appended to the Award of 31 July 1989 in the case concerning the *Guinea-Bissau/Senegal* dispute, Judge Bedjaoui wrote:

> "Quant à la Convention de Montego Bay du 10 décembre 1982 sur le droit de la mer, la Guinée-Bissau et le Sénégal l'ont ratifiée tous deux; mais elle n'est pas encore entrée en vigueur. Il est clair cependant que cette particularité ne les fait nullement échapper à l'application de cette Convention. Celle-ci doit s'imposer à eux non pas en tant qu'ensemble de règles conventionnelles internationales (puisque non encore entrées en vigueur), mais en tant qu'ensemble de règles acceptées par eux. (...) [L]'opération de ratification de la Convention par chacune des deux Parties signifie disponibilité de chaque partie à l'appliquer à toute autre qui accepterait d'en faire autant. La ratification représente un engagement définitif et final qui, en toute bonne foi, impose à chacun des deux États de se considérer comme obligatoirement lié à l'égard de l'autre par la Convention".[70]

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[70] Reproduced in Guinea-Bissau's Application before the I.C.J., 23 August 1989, Annex, pp. 146-147, para. 80. The English text reads as follows:
"As for the Montego Bay Convention of 10 December 1982 on the Law of the Sea, it has been ratified by both Guinea Bissau and Senegal but it has not yet entered in force. It is, however, clear this fact does not exclude the application to them of that Convention. It is effective for them, not as a body of international treaty rules (since these have not yet entered into force), but as a body of rules accepted by them. (...) [T]he act of ratification of the Convention by each of the two Parties means that each of them is prepared to apply it to any other party which accepts to do the same. Ratification represents a final and definitive commitment which, in all good faith, makes it incumbent upon the two States to consider themselves bound with respect to each other by the Convention". (*International Law Reports*, p. 86 at para. 80)

11. *Mutatis mutandis,* this same reasoning applies in the present case. And this consideration is all the more persuasive that, in this case, the Convention is in force and now binds both Parties.

12. Finally, as the Court reiterated in a recent case:

> "it has become an established practice for States submitting an application to the Court to reserve the right to present additional facts and *legal* considerations. The limit of the freedom to present such facts and considerations is 'that the result is not to transform the dispute brought before the Court by the application into another dispute which is different in character' (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 427, para. 80)".[71] (*Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Preliminary Objections), I.C.J. Reports 1998*, pp. 318-319, para. 99 – emphasis added)

13. Indeed, in the present case, on the one hand, Nicaragua has expressly reserved the right to supplement or amend its Application (paragraph 8), and, on the other hand, the application of the Convention on the Law of the Sea clearly would not transform the dispute brought before the Court into another dispute, different in character. Rather, it removes uncertainty as to the law applicable to resolution of the dispute, in accordance with the will expressed by the two States party to the case.

14. In any case, in practice, this point is of limited importance since, as Nicaragua will establish hereinafter (see below section B), the principles laid down by the 1982 Convention in cases of maritime delimitation between States with opposite or adjacent coastlines have now acquired customary value and form part of general international law. In such a case, "customary inter-

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71. See also *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, I.C.J. Reports 1999*, p. 38, para. 15.

national law continues to exist alongside treaty law"[72] (*Case concerning Military and Paramilitary Activities in and against Nicaragua (Merits), I.C.J. Reports 1986,* p. 94, para. 176) and, as the two bodies of rules have the same content, their application leads to the same result.

B. The Applicable Principles of General International Law

15. As Professor Prosper Weil put it: "lorsqu'on parle du droit de la délimitation maritime, c'est le droit coutumier que l'on évoque au premier chef".[73] But customary rules, as expressed by the International Court and some arbitral tribunals, entirely coincide with conventional law, which they clarify and complement.

16. It cannot be denied that, for determining these customary rules, "the 1982 Convention is of major importance, having been adopted by an overwhelming majority of States" (*Case concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta), I.C.J. Reports 1985*, p. 30, para. 27). And, as noted in an important recent arbitral award in the case between *Eritrea and Yemen*, in this matter,

> "many of the relevant elements of customary law are incorporated in the provisions of the Convention" (*Case concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta), I.C.J. Reports 1985,* p. 30, para. 27)

17. This is certainly the case for the provisions of the 1982 Convention on the Law of the Sea relating to the delimitation of

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72. See also, Judgment of 26 November 1984, *Case concerning Military and Paramilitary Activities in and against Nicaragua (Jurisdiction of the Court and Admissibility of the Request), I.C.J. Reports 1984*, pp. 424-425, para. 73.

73. *(Le droit de la délimitation maritime*, Pedone, Paris, 1988, p. 12).
The English version reads as follow: "the law of maritime delimitation usually means the customary law." *(The law of maritime delimitation – Reflections.* Cambridge, 1989, p. 7).

maritime areas between States with opposite or adjacent coasts, which are the only provisions directly relevant in the present case.

18. They consist of Article 15 ("Delimitation of the territorial sea between States with opposite or adjacent coasts"), as far as the territorial sea is concerned, and Articles 74 and 83 regarding the sector beyond the territorial sea, these two provisions being drafted in a similar way. These two sets of provisions, which will be commented upon in more detail in Chapters VIII and X below, deserve a full quotation:

"Article 15

"*Delimitation of the territorial sea between States with opposite or adjacent coasts*

"Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith".

"Article [74] [83]

"*Delimitation of the [exclusive economic zone] [continental shelf] between States with opposite or adjacent coasts*

"1. The delimitation of the [exclusive economic zone] [continental shelf] between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

"2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

"3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice of the final delimitation.

"4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the [exclusive economic zone] [continental shelf] shall be determined in accordance with the provisions of that agreement".

19. Not only must both sets of provisions be regarded as reflecting customary rules, but they also converge in a single general principle of law: the delimitation, whether it relates to the territorial sea or to maritime areas beyond the territorial sea, whether it is effected by an agreement or decided by the Judge, must achieve an equitable solution.

20. As the Chamber of the Court noted in the case concerning *Delimitation of the Maritime Boundary in the Gulf of Maine Area*:

"these provisions [Articles 74, para. 1, and 83, para. 1, of the Convention on the Law of the Sea] even if in some respects they bear the mark of the compromise surrounding their adoption, may nevertheless be regarded as consonant at present with general international law on the question."[74] (*I.C.J. Reports 1984*, p. 294, para. 94).

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[74] See also Arbitral Award of 14 February 1985, *Délimitation de la frontière maritime Guinée/Guinée Bissau*, *RGDIP* 1985, p. 504, para. 43 and p. 520, para. 87.

And, as this same Chamber added, "in *every* maritime delimitation", general international law prescribes that, whether by agreement or by recourse to a third party:

> "delimitation is to be effected by the application of equitable criteria and by the use of practical methods capable of ensuring, with regard to the geographic configuration of the area and other relevant circumstances, an equitable result."[75] (*Ibid.*, pp. 299-300, para. 112).

21. This is "the fundamental norm of customary international law governing maritime delimitation" (*I.C.J. Reports 1984*, p. 300, para. 113).[76]

22. Similarly, in the case concerning *Maritime Delimitation in the Area Between Greenland and Jan Mayen*, the International Court recalled that:

> "That statement of an 'equitable solution' [in Article 74, para. 1, and Article 83, para. 1] as the aim of any delimitation process reflects the requirements of customary law as regards the delimitation both of the continental shelf and of the exclusive economic zone" (Judgment of 14 June 1993, *I.C.J. Reports 1993*, p. 59, para. 48).

23. And, as Nicaragua will show in more detail in Chapter X below, the equidistance-special circumstances rules embodied in Article 15 of the 1982 Law of the Sea Convention, is also "to be regarded as expressing a general norm based on equitable

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75. *See* also: I.C.J., Judgment of 24 February 1982, *Continental Shelf case (Tunisia/Libyan Arab Jamahiriya), I.C.J. Reports* 1982, p.49, para. 50 or Judgment of 3 June 1985, *Continental Shelf case (Libyan Arab Jamahiriya/Malta), I.C.J. Reports*, 1985, pp.30-31, para. 28.

76. See also the Arbitral Award of 30 June 1977 in the case concerning the *Continental Shelf between France and the United Kingdom, RIAA*, Vol. XVIII, p. 57, para. 97 or Arbitral Award of 10 June 1992, case concerning the *Delimitation between Canada and the French Republic, ILM* 1992, p. 1136, para. 38.

principles"[77], the purpose of which is to achieve an equitable solution.

24. Thus, in all sectors of delimitation,

"It is ... the result which is predominant; the principles are subordinate to the goal. The equitableness of a principle must be assessed in the light of its usefulness for the purpose of arriving at an equitable result. It is not every such principle which is in itself equitable; it may acquire this quality by reference to the equitableness of the solution. The principles to be indicated by the Court have to be selected according to their appropriateness for reaching an equitable result" (*Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya), I.C.J. Reports 1982*, p. 59, para. 70).

"It is clear that what is reasonable and equitable in any given case must depend on its particular circumstances. There can be no doubt that it is virtually impossible to achieve an equitable solution in any delimitation without taking into account the particular relevant circumstances of the area" (*Ibid.*, p. 60, para. 72).[78]

25. In other words, it appears:

"that each specific case is, in the final analysis, different from all the others, that it is monotypic and that, more often than not, the most appropriate criteria, and the method or combination of methods most likely to yield a result consonant with what the law indicates, can only be determined in relation to

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77. Cf. *ibid.*, p. 58, para. 46 and the quoted passage of the 1977 Arbitral Award in the case concerning the *Delimitation of the Continental Shelf (France/United Kingdom), RIAA*, vol. XVIII, p. 45, para. 70.

78. See also *Ibid* p. 92, para. 132 *Case concerning the Delimitation of the Maritime Boundary in the Gulf of Maine Area, I.C.J. Reports 1984*, p. 299, para. 111; p. 313, para. 158 or p. 315, para. 163.

each particular case and its specific characteristics" (*I.C.J. Reports 1984*, p. 290, para. 81).[79]

Since "[t]he underlying premise of [the] fundamental norm (see above para. 19) is the emphasis on equity and the rejection of any obligatory method" (*Case concerning the Delimitation between Canada and the French Republic, ILM* 1992, p. 1136, para. 38), it is the task of the Court, with the assistance of the Parties, to record the relevant circumstances of the case and, on this basis, to choose a method of delimitation adapted to those circumstances with a view to achieving an equitable result. This is the purpose of the remaining Chapters of the present Memorial.

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79. See also Arbitral Award of 14 February 1985, *Délimitation de la frontière maritime Guinée/Guinée Bissau, RGDIP* 1985, p. 521, para. 89.

VII : THE POINT OF DEPARTURE OF THE MARITIME DELIMITATION

1. The situation relating to the terminus of the land boundary near the mouth of the River Coco is examined in this chapter. As the particulars will reveal, the situation involves both geographical and legal complexities. In the respectful submission of the Government of Nicaragua it is appropriate that the Court should be reminded of the problems attending the terminus of the land boundary, and this, in particular, because it is these problems that explain one of the main reasons for the selection of the bisector as the appropriate method of delimitation.

A. The terminus of the land boundary as Agreed by the Parties in December 15, 1962

2. Chapter III examined the history of the land boundary. In order to proceed from that point to a maritime delimitation it is necessary to recall the three basic instruments that determined the land boundary and, in particular, the provisions that govern the terminus of the land boundary in the Caribbean coast. These instruments are:

1) The Arbitral Award made by the King of Spain on December 23, 1906, on the boundary situation of the Republics of Honduras and Nicaragua.
2) The Judgment of the Court of November 18, 1960 confirming the validity and binding effects of the Award of 1906.
3) The determination of the land terminus in the Caribbean made on 15 December 1962 by the Honduras-Nicaragua Mixed Commission that had been established through the intervention of the OAS.

3. The Arbitral Award of the King of Spain had indicated that:

> "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, 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" (Quoted in *I.C.J. Reports 1960*, p. 202).

4. The Award did not look seawards, but landwards when it subsequently held that:

> "Starting from the mouth of the Segovia or Coco, the frontier line will follow the vaguada or thalweg of this river upstream..." (*Ibid*, p. 203).

5. The Court declared the validity of the Award of the King of Spain in its Judgment of November 19, 1960 (*Ibid* pp. 192 ss). It also indicated that it was clear in the Award that "the thalweg was contemplated in the Award as constituting the boundary between the two States even at the 'mouth of the river'". Therefore, "In the opinion of the Court, the determination of the boundary in this section should give rise to no difficulty" (*Ibid* p. 216).

6. With the intervention of the Inter-American Peace Committee Nicaragua and Honduras established a Mixed Boundary Commission that was, *inter alia,* "to verify the starting point of the natural boundary between the two countries at the mouth of

the Coco River".[80] A Committee of Engineers that had already been established by the two Governments would help the Mixed Commission to comply with its assignment.[81]

7. On December 15, 1962, as a result of the technical works of the Committee of Engineers and of its own direct verification, the Mixed Commission, under the chairmanship of Dr. Roberto E. Quirós, Executive Secretary of the Inter-American Peace Committee as Representative of its Chairman, and with the participation of its Honduran member, the Foreign Minister, Dr. Roberto Perdomo Paredes, and Nicaraguan member, the Minister of Internal Affairs, Dr. Ignacio Román Pacheco, made the determination:

> "that the starting point of the natural boundary between Honduras and Nicaragua was at the mouth of the main branch of the Coco River, indicated on the map prepared by the Committee of Engineers as "Brazo del Este", a point situated at fourteen degrees, fifty-nine minutes and eight tenths of minute (14° 59.8') North Latitude and eighty-three degrees, eight minutes and nine tenths of minute (83° 08.9') West Longitude, Greenwich meridian".[82]

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80. Paragraph 4.b, *in fine*, of the *Basis of Arrangement*. The Mixed Commission was integrated by representatives of both Parties under the chairmanship of the chairperson of the Inter-American Peace Committee (or his representative, i.e. an O.A.S. official chosen by the Secretary General). See Appendix 1 of the *Report of the Inter-American Peace Committee*, pp. 13-14. See Annex 1.

81. *Ibid*, paragraph 5. The official name of this Committee was Honduran-Nicaraguan Joint Boundary Commission (Comisión Mixta de Límites Hondureño-Nicaragüense). The Committee consisted of two experts of each Party, presided by R.R. McIlwaine, from the U.S. See Annex 1.

82. This translation accurately responds to the original Spanish text of the *Minutes of the 12th meeting of the Honduras-Nicaragua Mixed Comisión*. This paragrah 4 affirms that the Commission verified "el punto de partida del límite natural entre Honduras y Nicaragua en la desembocadura del brazo principal del río Coco, señalado en el plano de la Comisión de Ingenieros con el nombre de "Brazo del Este", punto que está situado a los catorce grados cincuenta y nueve minutos y ocho décimos de minuto (14° 59.8') Latitud Norte y ochenta y tres grados ocho minutos y nueve décimos de minuto (83° 08.9') Longitud Oeste del meridiano de Greenwich" (see Appendix 4 of the *Informe de la Comisión Interamericana de* Paz, p. 31). The content of this paragraph was subsequently reproduced in the *Informe*. (see section II, pp. 6-7). The English version of the original Spanish text of the *Informe* and its appendices, done by the services of the O.A.S., translated erroneously the expres-

8. The location of the point where the land boundary of Nicaragua and Honduras ended at the Atlantic coast in December 1962 was determined very carefully by the Committee of Engineers in their **in situ** inspection and survey described in Chapter V. The engineers proudly stated that the geographical positions in the Official Map they had elaborated had been expressed "to the tenth of a minute, which is more precise than the old maps, expressed only to the minute".[83] Thus, the starting point of the border expressed in seconds is 14° 59' 48" N, 83° 08' 54" W.

9. The situation would seem to have been made very clear but here again Honduras has tried on many occasions to alter to its advantage this straightforward finding of the Mixed Boundary Commission in 1962. The diplomatic practice of Honduras has been making attempts to relocate the starting point of the boundary at 14° 59' 08" N, 83° 08' 09" W.[84]

10. In the early eighties, Honduras generically referred to its territorial claims in its diplomatic notes as those located north

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sions "*ocho décimos de minuto*" and "*nueve décimos de minuto*" by "*eight seconds*" and "*nine seconds*", transforming the 14° 59.8' North Latitude and 83° 08.9' West Longitude in 14° 59' 08" North Latitude and 83° 08' 09" West Longitude. See Annex 1.

83. This is an exact translation from the original Spanish text of the *Report of the Honduran-Nicaraguan Joint Boundary Commission on the studies made at the mouth of the Coco, Segovia, or Wanks River*. See section VI, last paragraph, which says that the geographic position of the intersection of the thalweg of the Brazo del Este with the seacoast has been expressed "hasta el décimo de minuto, precisión que es mayor que la que aparece en los mapas antiguos que sólo llegaban hasta el minuto" (Appendix 3 of the Report of the Inter-American Peace Committee, p. 28). Once again the English version of this text offered by the O.A.S. erroneously translated "hasta el décimo de minuto" for "the second". See Annex 1.

84. As will be explained below in paragraph 22 of this Chapter, Nicaragua is requesting that the delimitation of the maritime areas should start from a point located in the sea about 3 nautical miles from the mouth of the Coco. Furthermore, as indicated in paragraph 28 of this Chapter, Nicaragua is requesting that it be left to the Parties to negotiate the delimitation of the boundary from the point determined by the Mixed Commission in 1962 to the point at sea identified by Nicaragua as the starting point of the delimitation for present purposes. For this reason, the explanation given in the following paragraphs as to the position of the Parties with relation to the point determined by the Mixed Commission is for the record only. As the Court will readily appreciate, Nicaragua reserves its position on this question.

of the "parallel which passes through the Cape Gracias a Dios"[85], "(North of) parallel 15"[86] or to the rocks located in the disputed area, as the Media Luna or Bobel Cays, situated North of said parallel.[87]

11. However, in the Treaty on Maritime Delimitation, signed on August 2, 1986, Honduras agreed with Colombia on the adoption of Parallel 14° 59' 08" N, when it reaches the Meridian 82° 00' 00" W, as the starting point of the self-serving limit of their respective maritime spaces in the Caribbean:

> "The marine frontier between the Republic of Colombia and the Republic of Honduras", affirms Article I, "is constituted by geodetic lines that connect the points located in the following coordinates: Point N° 1. Lat.14° 59' 08" N Long. 82° 00' 00" W..." (*La Gaceta, diario oficial de la República de Honduras,* December 1, 1999).

12. Since then Honduras has persisted with the relocation of her claimed boundary line as is evidenced by the high number of diplomatic notes issued by the Honduran Foreign Ministry which insist on the prolongation to the East of the Parallel 14° 59' 08" N as the maritime boundary with Nicaragua.[88] The claim sometimes takes the form that this is the parallel that passes

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85. E.g., Notes of May 3, and September 20, 1982 (N. 254-DSM and DSS-502). See Annexes: 78 and 19.

86. E.g., Notes of August 17, and September 13, 1983 (N. 406-DA and 456-DA) and October 9, 1984 (N. 552-DA). See Annexes: 25, 100 and 28.

87. E.g., Notes of March 23, April 19, and September 18, 1982 (N. 0031-DSS, 235-DSM and 2176-SD), April 15 and 21, and August 29, 1983 (N. 228-DSM, 245-DSM and 426-DA) and April 19, 1985 (N. 162-DA). See Annexes: 8, 101, 18, 21, 23, 102 and 30.

88. E.g., Notes of October 26 and 27, 1992 (N. 362-DSM and 363-DSM), June 4 and 30, 1993 (N. 295-DSM and 336-DSM), April 7 and November 9, 1994 (N. 124-DSM and 487-DSS), April 19, June 13, and December 18, 1995 (N. 0-216-DSM, 197-SAM-95, 226-SAM-95, EHN-297/95 and S/R) and, most recently, in the "Official Position" of the Government of Honduras of December 8, 1999 and in the *press release* of the Foreign Ministry of February 15, 2000 (released at the time also in http://www.ser.hn/limites-maritimos). See Annexes: 34, 35, 80, 103, 76, 36, 38, 83 and 39.

through the Cape Gracias a Dios[89], or that it is the terminal point of the land boundary located at the mouth of the Coco, Segovia or Wanks River.[90]

13. In response to these Notes the Nicaraguan diplomatic correspondence has referred to the Parallel 14° 59' 08" N only to express a categorical rejection of it as the maritime dividing line claimed by Honduras.[91]

14. In any case, although this Memorial will reproduce the references to the Parallel 14° 59' 08" N when quoting the Notes or other documents which mention it, it must always be understood that the terminal point of the land boundary between Nicaragua and Honduras in the Atlantic coast as established in the Minute of December 15, 1962, is the point situated "at fourteen degrees, fifty-nine minutes and eight tenths of a minute (14° 59.8') North Latitude and eighty-three degrees, eight minutes and nine tenths of a minute (83° 08.9') West Longitude, Greenwich meridian".[92]

15. On this question it should be pointed out that the appetite of Honduras for territory has placed it on a logically untenable position. On the one hand she alleges that there is a "traditional" boundary in place and at the same time it appears that it is a moveable line and the tradition moves with it.

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89. E.g., Notes of October 26 and 27, 1992 (N. 362-DSM and 363-DSM). See Annexes: 34 and 35.

90. E.g., Notes of June 4 and 30, 1993 (N. 295-DSM and 336-DSM) and November 9, 1994 (N. 487-DSS). See Annexes: 80, 104 and 36.

91. E.g., Notes of January 4, 1993 (N. 930101 and 930102), June 25, 1993 (N. 930276), April 14, 1994 (N. 940286), December 12, 1994 (N. 940507 and 940508), May 5, August 23 and 29, and December 20, 1995 (N. 950184, MRE/95/03771, 950369 and 9505335). See Annexes: 65, 66, 73, 77, 49, 50, 59, 82, 17 and 54.

92. *Minutes of the 12th meeting of the Honduras-Nicaragua Mixed Commission*, at Appendix 4 of the *Report of the Inter-American Peace Committee*, p. 31). This point is correctly mentioned by the Honduran Diplomatic Note of June 19, 1998 (N. 180-DSM), referred later by the Diplomatic Note of July 8 (N. 243-DSM). See Annexes: 41 and 42.

16. Perhaps to try to bring back some measure of consistency to its position, Honduras established a system of straight baselines from which the breadth of its territorial sea was to be measured and the pertinent end of its baseline on the Caribbean boundary with Nicaragua is indicated as being the thalweg of the Coco River located on the coordinates established in 1962, that is, at *14° 59.8' North Latitude and (83° 08.9') West Longitude*. It must, of course, not be lost to sight that this Honduran Law dates from March 29, 2000; that is some months after the Application was filed by Nicaragua in the present case. This degree was generally protested by Nicaragua.[93]

B. Consequences of the Changes in the Geographical Situation since 1963

17. An important factor that must been taken into consideration for the starting point of the line proposed by Nicaragua is the fact that the land boundary ends on a highly unstable river mouth. As explained and illustrated in Chapter II, the river mouth has, since the 19th Century at least, been moving in a northeasterly direction.

18. Even from as late as 1962 – when the end of the present land boundary was pinpointed at the mouth of the Coco River – to the present day, the movement north and east, due to the accretion of sediments and the trend of the marine streams, has been considerable: more than one mile. As a consequence the point of intersection between Parallel 14° 59.8' N and Meridian 83° 08.9' W is today located about a mile landwards from the actual mouth of the Coco River. At this point it is useful to recall the

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93. This Executive Decree (Decreto Ejecutivo) N. PCM 007-2000, of March 21, (*La Gaceta, diario oficial de la República de Honduras*, N. 29.135, March 29), establishing straight baselines – a Decree which is not, in any case, opposable to Nicaragua – Article 1.A disposes that the 16th – and last – of the straight baselines unilaterally adopted proceeds "from the Point on the right bank of the Cruta River (lat. 15° 14' 59" N, long. 83° 23' 07" W) to Point 17, the termination of the land boundary between Honduras and Nicaragua at the mouth of the Coco (Wanks) or Segovia River on Cape Gracias a Dios, with the following coordinates: 14° 59.8' north latitude, 83° 08.9' west longitude".

satellite image that has been provided showing the present situation at the mouth and the location of the border point established in 1962. (See Figure VII)

19. In this respect the situation of the present day natural environment has confirmed the observation made by the Committee of Engineers back in 1962 on the continuation of the "numerous changes in the topography of the region through the years" and that in the region of the mouth of the Coco River "the land has been advancing toward the sea".[94] (See Chapter II, para. 20).

20. In any case, it results from this fact that the prolongation of Parallel 14° 59.8' N cannot now be taken as the starting point of the maritime boundary between Nicaragua and Honduras, because it is no longer the "extreme common boundary on the coast of the Atlantic" fixed by the Arbitral Award of the King of Spain.

21. It is not the desire of Nicaragua to use this fact with the purpose of raising the problems that may stem from the progression of the land boundary with Honduras as a consequence of the sharp and continued natural mutations of the territory. These changes are mentioned only to justify the appropriateness of the Nicaraguan proposals regarding the location of the starting point of the maritime boundary.

22. Thus, seeking a certain degree of permanence of the maritime boundary, Nicaragua considers that the instability and the wide fluctuations in the course of the Coco River, particularly at its mouth, justifies setting the starting point of the maritime delimitation for present purposes at a prudent distance from the mouth of the River.

23. In the 40 years since the Mixed Commission fixed the position of the thalweg where it met the sea, as has been indicated above, the land mass and mouth of the river have moved. This

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94. *Report of the Honduran-Nicaraguan Joint Boundary Commission on the studies made at the mouth of the Coco, Segovia, or Wanks River*, "Remarks", at Appendix 3 of the *Report of the Inter-American Peace Committee*, p. 28. See Annex 1.

fact has brought Nicaragua to the conclusion that the starting point of the delimitation line should not be the river mouth but that it should be located at a point further out at sea from this point. As will be explained in Chapter X, the delimitation will follow an approximate median line up to the limit of the territorial sea. The proposed starting line would be located at a point along that median line direction situated 3 nautical miles out at sea from the mouth of the Coco River. This point is located in the following geographical coordinates: 15° 01' 53" N 83° 05' 36" W. Furthermore, Nicaragua's proposal is that those first 3 nautical miles of maritime areas up to the land position fixed in 1962, should be left to the Parties to negotiate an agreement that would take into consideration the constant changes in the river mouth.

24. The idea behind this proposal is not unknown or even new to State practice in the Region. Among the precedents on the location of the point of departure of the maritime boundary off the delta or estuary of the river where the land frontier ends, the American treaty practice offers the centennial treaty of limits between Guatemala and the United Mexican States, of September 27, 1882. The treaty took into account the instability of the mouth of the Suchiate River and the agreement parted from a point located at sea three leagues away from the mouth of the river (Article 3) (*Tratados y Convenios Vigentes*, México, 1909, Vol. I, pp. 473 ff).

25. Another more recent and sophisticated example is offered by the Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande (Río Bravo del Norte) and Colorado River as the International Boundary Between the United Mexican States and the United States of America, signed on November 23, 1970. Looking for a solution for the problems posed by the fluctuations at the mouth of the *Rio Grande*, the Parties agreed to fix a point at sea at some distance from the mouth of the river, which could act as a hinge in the boundary. Article V.a of the treaty stipulates that: "The international maritime boundary in the Gulf of Mexico shall begin at the centre of the mouth of the Río Grande, wherever it may be located; from there it shall run in a straight line to a fixed point, at 25° 57' 22.18" North latitude, and 97° 8' 19.76" West longitude, situated approximately 2000 feet

seaward from the coast; from this fixed point the maritime boundary shall continue seaward in a straight line the delineation of which represents a practical simplification of the line drawn in accordance with the principle of equidistance..." (see in 23 UST 373, 1972).

26. As regards the jurisprudence, the criterion of safeguarding the starting point of the maritime delimitation from the manifest instability of a river delta where the land boundary ends was adopted by the Arbitral Tribunal in the delimitation of the maritime boundary between Guinea and Guinea-Bissau that rendered its Award on February 14, 1985.

27. In this case the Arbitral Tribunal said: "Comme le thalweg du Cajet peut en pratique subir des déplacements au fil des ans, le Tribunal a fait partir la délimitation des territoires maritimes de l'intersection de ce thalweg avec un méridien approprié, sans indiquer une latitude plus précise. Il a choisi à cet effet le méridien de 15° 06' 30" de longitude ouest. Sur la carte, il n'a pas fait dessiner un tracé définitif pour la partie de la délimitation comprise entre l'extrémité de la frontière terrestre et le point A défini au paragraphe 130, alinéa 3) b) ci-après, mais il a fait indiquer en trait fin un tracé potentiel destiné à illustrer la continuité de la ligne de délimitation à tout moment sans correspondre forcément au tracé réel dans une période donnée" (*Revue Générale de Droit International Public,* 1985, p. 534).[95]

28. In the light of this reasoning the Tribunal declared that: "la ligne délimitant les territoires maritimes qui relèvent respect-

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95. Arbitral Award of February 14, 1985, para. 129. See *International Law Reports*, 77(1988), p. 691. English translation reads as follows: "As the thalweg of the Cajet River may, in practice, be subject to movement over the years, the Tribunal has started the line of delimitation of the maritime territories from the intersection of this thalweg with an appropriate meridian, without indicating a more precise latitude. For this purpose, it has chosen the meridian of 15° 06' 30" W longitude. No final line has been drawn on the chart to define that part of the delimitation between the end of the land boundary and the point A defined in paragraph 130 (3) (b) below, but a fine line was drawn to indicate a potential line designed to illustrate the continuity of the line of delimitation at any time, without necessarily corresponding to the actual line over a given period."

ivement de la République de Guinée-Bissau et de la République de Guinée: a) part de l'intersection du thalweg du Cajet et du méridien de 15° 06' 30" de longitude ouest" (*Ibid.*, 1985, p. 535)[96] and went on to give the points that were to be joined by loxodromic segments starting from point A which was located at 15° 09' 00" West longitude. This means that the line started in fact 2' 30" west of the thalweg of the Cajet River; that is at a distance of approximately 2.5 nautical miles from the landmass.

29. In conclusion, Nicaragua considers it more appropriate that the situation of the short strip of boundary located between the point determined in 1962 and the 3 mile outer limit it proposes as the starting point should be left for the determination of the Parties. The reasons for this are similar to those expressed by the *Anglo-French* Tribunal. It considered, from another angle, the complications involved for a Tribunal of fixing points and lines very near the shore. The Parties in that case did not accept that the Tribunal had jurisdiction to settle the maritime boundary "in the narrow waters which separate the Channel Islands from the coasts of Normandy and Brittany". The Tribunal for its part agreed that practical considerations favoured the choice of the Parties to settle that part of the maritime boundary through negotiations. The reasoning was that,

> "In narrow waters such as these, strewn with rocks, coastal States have a certain liberty in their choice of base points; and the selection of base points for arriving at a median line in such waters which is at once practical and equitable appears to be a matter peculiarly suitable for determination by direct negotiations between the Parties." (*Anglo-French Continental Shelf Arbitration of 30 June 1975, I.L R.* 54, p. 6 at para. 22)

30. Nicaragua believes that in the even more roiled and moveable waters of the Coco River as it enters and into the sea, it is better for the Parties to negotiate a solution. If a fixed point

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96. Ibid., para. 130. See *International Law Reports*, 77 (1988), p. 691. English version reads as follows: "the line delimiting the respective maritime territories:...a) starts from the intersection of the thalweg of the Cajet River and the meridian 15° 06' 30" West longitude."

is indicated at the mouth of the river and it continues to move as it has done since 1962, it would open up new and unforeseeable problems in the coming decades.

VIII : THE PROCESS OF DELIMITATION BEYOND THE TERRITORIAL SEA

1. As a matter of convenience, the alignment that is produced by the process of delimitation beyond the territorial sea will be examined first (further, see para. 2, Chapter X below). The process of delimitation within the territorial sea will be examined subsequently in Chapter X. As a preliminary to the examination of the delimitation beyond the territorial sea, it is appropriate to consider the applicable law.

A. A Single Maritime Boundary

2. In its Application, Nicaragua asks 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 accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary" (paragraph 6). As the Government of Nicaragua has indicated expressly in the Application, the request for a delimitation of the single maritime boundary is subject to the power of the Court to establish different delimitations, for shelf rights and fisheries respectively, if, in the light of the evidence, this course should be necessary in order to achieve an equitable solution.

3. There is no doubt that, as shown by Judge Oda in his separate opinion in the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen*, "[i]n the absence of an agreement between the States concerned, one cannot presuppose a single delimitation for two separate and independent régimes, the exclusive economic zone and the continental shelf, although the possibility of an eventual coincidence of the two lines may not be excluded". (*ICJ Reports* 1993, p. 109, para. 70) However, the legal régimes of both concepts cannot be entirely separated and, in the present case, Nicaragua does not perceive any

decisive circumstance which would move the Court to establish two distinct lines which would, unavoidably, be a source of difficulties and, possibly, of subsequent disputes.

4. It is Nicaragua's firm conviction that the modern law of maritime delimitation is entirely dominated by the principle according to which the purpose of delimitation is "to achieve an equitable solution". This rule is enunciated in similar terms by articles 74, paragraph 1, and 83, paragraph 1, of the 1982 United Nations Convention on the Law of the Sea, relating respectively to the exclusive economic zone and to the continental shelf.

5. In its Judgment of 20 January 1984 in the case concerning *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, the Chamber of the Court considered that these provisions may "be regarded as consonant at present with general international law on the question" (*I.C.J. Reports 1984*, p. 294, para. 94). Moreover, this same Chamber drew attention to "the identical definition" contained in both provisions (*Ibid* p. 294 para. 95) and noted that:

> "the symmetry of the two texts, relating to the delimitation of the continental shelf and of the exclusive economic zone, is most interesting in a case like the present one, where a single boundary line is to be drawn both for the sea-bed and for the superjacent fishery zone, which is included in the exclusive economic zone concept. The identity of the language which is employed, even though limited of course to the determination of the relevant principles and rules of international law, is particularly significant" (*Ibid.*, p. 295, para. 96) .[97]

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97. See also I.C.J., Judgment, 14 June 1993, *Case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen, I.C.J. Reports* 1993, p. 59, para 48. In his dissenting opinion in the case concerning the *Continental Shelf (Tunisia/ Libyan Arab Jamahiriya)*, Judge Oda noted "that the rules and principles applicable to the delimitation of the continental shelf will not be different from those applicable to the delimitation of the exclusive economic zone" (*I.C.J. Reports* 1982, p. 247, para. 145).

6. It is true that, in that case, the Chamber of the Court had been expressly asked, in the Special Agreement between Canada and the United States to decide "the course of the single maritime boundary that divides the continental shelf and fisheries zones" of the Parties (*I.C.J. Reports 1984*, p. 253). However,

- *first*, as the Chamber noted (see above, para. 3), the concept of fishery zone is included in the exclusive economic zone concept; and,
- *second*, that same Chamber stressed "the disadvantages inherent in a plurality of separate delimitations" (*I.C.J. Reports 1984*, p. 327, para. 195).

7. In the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen*, "the situation [was] quite different from that in the *Gulf of Maine* case" in that there was "no agreement between the Parties for a single maritime delimitation" (*I.C.J. Reports 1993*, p. 57, para. 42) and that, as far as the continental shelf was concerned, both Denmark and Norway were Parties to the 1958 Geneva Convention on the Continental Shelf.

8. However, the Court considered that "[t]he fact that it is the 1958 Convention which applies to the continental shelf delimitation in this case does not mean that Article 6 thereof can be interpreted and applied either without reference to customary law on the subject or independently of the fact that a fishery boundary is also in question in these waters" (*Ibid.*, p. 58, para. 46) and noted, without objection, the common position of the Parties which saw no obstacle "to the boundary of the fishery zones being determined by the law governing the boundary of the exclusive economic zone, which is customary law" (*Ibid.*, p. 59, para. 47), and which the Court effectively applied (*Ibid.*, pp. 61-64, para. 52-58). And the Court concluded that, "in the circumstances of [that] case", the identity of the position of the delimitation lines for the two categories of maritime spaces constituted "a proper application both of the law applicable to the continental shelf and of that applicable to the fishery zones" (*Ibid.*, p. 79, para. 90)

9. And even in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* where the Court was asked only to delimit the continental shelf boundary, it expressed the view that:

> "even though the present case relates only to the delimitation of the continental shelf and not to that of the exclusive economic zone, the principles and rules underlying the latter concept cannot be left out of consideration. As the 1982 Convention demonstrates, the two institutions – continental shelf and exclusive economic zone – are linked together in modern law. Since the rights enjoyed by a State over its continental shelf would also be possessed by it over the sea-bed and subsoil of any exclusive zone which it might proclaim, one of the relevant circumstances to be taken into account for the delimitation of the continental shelf of a State is the legally permissible extent of the exclusive economic zone appertaining to that same State" (*I.C.J. Reports* 1985, p. 33, para. 33).[98]

10. The arbitral jurisprudence is in the same direction. Thus, in its Award of 14 February 1985 in the case concerning *Delimitation of the Maritime Boundary between Guinea/Guinea-Bissau*, the Tribunal, after having determined that "aucune frontière maritime ne délimite les eaux territoriales, la zone économique exclusive et le plateau continental relevant respectivement de la Guinée et de la Guinée-Bissau" (*R.G.D.I.P.* 1985, p. 521, para. 86)[99], drew a single all-purpose "ligne délimitant les territoires qui relèvent respectivement de la République de Guinée-Bissau et de la République de Guinée" (*Ibid.*, dispositif, p. 535, para. 130.3).[100], without making any distinction between the continental shelf on the one hand, and the exclusive economic zone on

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98. See also the positive assessment of this position in Judge Oda's dissenting opinion, *Ibid.*, p. 156, para. 60; *I.C.J. Reports.* 1993, pp. 58-59, para. 46.

99. English translation: "there is no boundary delimiting the territorial waters, the exclusive economic zone or the continental shelf belonging respectively to Guinea and Guinea-Bissau." *77 ILR 1988*, p, 636 at p. 675.

100. English Translation: "The line delimiting the respective maritime territories of the Republic of Guinea – Bissau and the Republic of Guinea." *77 ILR 1988*, p 691 at para. 130. 3.

the other hand.[101] As noted by Professor Prosper Weil, "[l]a frontière unique est en quelque sorte perçue par le Tribunal comme une donnée immédiate du droit contemporain de la mer, contre laquelle il ne ressent le besoin d'élever, ou même d'examiner, aucune objection"[102] (*Perspectives du droit de la délimitation maritime*, Pedone, Paris, 1988, p. 137).

11. Similarly, in the case concerning *Delimitation of Maritime Spaces between Canada and France*, the Arbitral Tribunal was asked to establish "une délimitation unique qui commandera à la fois tous droits et juridictions que le droit international reconnaît aux Parties dans les espaces maritimes" under dispute (*R.G.D.I.P.* 1992, p. 679).[103] The Tribunal noted that "aucun obstacle matériel ne s'oppose à ce que le Tribunal trace une ligne unique de délimitation comme le lui demande le compromis d'arbitrage" (*Ibid.*, p. 692, para. 37)[104] and, as noted with approbation by Professor Prosper Weil in his dissenting opinion appended to the Award, "[l]a sentence s'inscrit ainsi dans l'évolution de la pratique des États et de la pratique judiciaire vers une frontière maritime unique couvrant l'ensemble du faisceau des droits et juridictions maritimes que le droit international reconnaît aux États côtiers" (*Ibid.*, p. 730, para. 39).[105]

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101. See also Judge Bedjaoui's dissenting opinion in the case concerning *Determination of the Maritime Boundary between Guinea-Bissau/Senegal*, joined to the Award dated 31 July 1989, reproduced in I.C.J., Application of Guinea Bissau in the case concerning the *Arbitral Award of 31 July 1989*, Annex, pp. 76-209.

102. The corresponding passage in English edition reads as follows: "[t]he single boundary as a fact of the current law of the sea, against which it saw no need to raise, or even examine, any objection" (*The Law of Maritime Delimitation – Reflections*, Cambridge, 1989, p. 126).

103. Accord instituant un Tribunal d'arbitrage chargé d'établir la délimitation des espaces marins entre la France et le Canada, 30 March 1989, Article 2, paragraph 1, reproduced in the Award of 10 June 1992, *R.G.D.I.P.* 1992, p. 679. The english text reads as follows: "... a single delimitation which shall govern all rights and jurisdiction which the Parties may exercise under international law in these maritime areas. " (*31 ILM*, 1145 (1992) at. p. 1152).

104. The english text reads as follows: "... there is no material impossibility in drawing a boundary of this kind." (*31 ILM*, 1145 (1992) at. p. 1163)

105. The English translation reads as follows: "The decision thus takes its place in the evolution of State and judicial practice toward a single maritime boundary covering the whole range of maritime rights and jurisdictions that international law reconizes to coastal States." (*31 ILM*, 1145 (1992) at. p. 1214).

12. Practice is more and more firmly established in favour of a single line of delimitation for both the continental shelf and the exclusive economic zone. Only in very specific circumstances do States choose different lines in order to delimit their respective continental shelves on the one hand and their exclusive economic zones (or their fishery zones) on the other hand[106] and it is revealing that, while Iceland and Norway had first envisaged making a distinction between the line dividing their continental shelves and their exclusive economic zones, they eventually accepted the recommendation made by the Conciliation Commission[107] to adopt a single line (see the *Agreement of 22 October 1981 between Iceland and Norway* relating to the continental shelf in the area of *Jan Mayen*, *A.F.D.I.* 1981, p. 736). As noted in 1996 by two French specialists of the law of the sea, "un critère clair s'impose de plus en plus: celui de la ligne séparative unique, valant délimitation d'ensemble ("*all-purpose line*"). Le nombre des accords recourant à cette formule est élevé (plus d'une cinquantaine) et ne cesse d'augmenter, car des raisons pratiques évidentes plaident en sa faveur" (Laurent Lucchini et Michel Vœlkel, *Droit de la mer*, tome 2, *Délimitation, navigation et pêche*, vol. 1, *Délimitation*, Pedone, Paris, 1996, p. 104).

13. This coincidence between the delimitation of the continental shelf and the exclusive economic zone is stressed, and usually approved, by the authorities. Thus, as early as 1983, President Guillaume, then the Legal Adviser of the French Ministry of Foreign Affairs, explained that he was in favour of unity "surtout pour une raison juridique": "Le concept de zone économique emporte des droits à la fois sur les eaux et sur le sol et le sous-sol. Par conséquent, dans la limite des 200 milles, dissocier ce concept

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106. One well known exception is the Treaty of 18 December 1978 between Australia and Papua-New Guinea, *18 I.L.M.* 1979, p. 291. This exception was justified by very specific geographic circumstances (proximity of Australian islands to the coast of Papua-New Guinea (see H. Burmester, "The Torres Strait Treaty: Ocean Boundary Delimitation by Agreement", *76 AJIL* 1982, p. 321, at p. 322 or J.I. Charney and L.M. Alexander, *International Maritime Boundaries*, vol. I, p. 929).

107. Conciliation Commission, *Jan Mayen Continental shelf*, 19-20 May 1981, Report and Recommendations to the Governments of Iceland and Norway, in *International Boundary Cases, The Continental Shelf*, vol. I, Cambridge 1992, pp. 683-713.

de celui du plateau continental ne semble pas conforme à l'esprit même de la Convention [des Nations Unies sur le droit de la mer]. ... Il y a [...] toute une série de modalités pratiques par lesquelles on peut contourner le problème; mais, conceptuellement, il me paraît difficile de dissocier les deux notions" ("Débats" in S.F.D.I., Colloque de Rouen, *Perspectives du droit de la mer à l'issue de la troisième conférence des Nations Unies*, Pedone, Paris, 1984, p. 328).

14. Similarly, during this same period, while the legal régimes of the continental shelf and the exclusive economic zone were not yet stabilized, several Judges expressed their convictions that "[a]t least in the large majority of normal cases, the delimitation of the exclusive eonomic zone and that of the continental shelf would have to coincide".[108] In particular, Judge Jiménez de Aréchaga declared that:

> "The uniqueness which characterizes the sovereign rights of the coastal State with respect of all natural resources of the shelf indicates that a dual régime, as suggested by Libya, cannot result from the rules of general international law. There may be examples in State practice of a 'vertical superimposition of rights' but they can only result from special agreements accepted by the Parties and are not imposed by the general rules of international law that the Court is called upon to identify..." (*Ibid.*, p. 130, para. 99).

No such agreement exists in the present case.

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108. Separate Opinion of Judge Jiménez de Aréchaga, I.C.J., Judgment 24 February 1982, *Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya), I.C.J. Reports* 1982, p. 115, para. 56; see also Judge Oda's dissenting opinion, above fn. 4, p. 232, para. 126, p. 234, para. 130 and p. 249, para. 146 and Judge Evensen's dissenting opinion, p. 288, para. 10.

15. The writings of publicists concur with these opinions and share these concerns. They agree that a single delimitation line is and should be the general rule.[109]

16. Only very extraordinary circumstances could, from the point of view of Nicaragua, induce the Court to depart from this general rule and the Republic of Nicaragua does not perceive any such circumstance in the present case.

17. As will be shown in more detail in the following sections, all specific circumstances that are relevant in the present case are generally relevant for the delimitation of the continental shelf and of the exclusive economic zone. Thus, there can be no doubt that, the very specific features of the coast, its convex character, the changing structure of the mouth of River Coco and the consequent technical difficulty of using a median line in its normal form, must be equally taken into consideration for both maritime zones.

18. Moreover, Nicaragua does not deny that, as the Court noted in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*:

> "Although there can be a continental shelf where there is no exclusive economic zone, there cannot be an exclusive economic zone without a corresponding continental shelf. It follows that, for juridical and practical reasons, the distance criterion must now apply to the continental shelf as well as to the exclusive economic zone; and this quite apart from the provision as to distance in paragraph 1 of article 76 [of the Convention on the Law of the Sea]. This is not to suggest that the idea of natural prolongation is now superseded by that of distance. What it does mean is that where the continental

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109. See e.g.: L. Caflisch, "La délimitation des espaces marins entre États dont les côtes sont adjacentes ou se font face" in R.J. Dupuy et D. Vignes dir., *Traité du nouveau droit de la mer*, Économica/Bruylant, Paris/Bruxelles, 1985, pp. 422-423; Sir Robert Jennings and Sir Arthur Watts, *Oppenheim's International Law*, 9th ed., Longman, Harlow, 1992, p. 781; L. Lucchini et M. Vœlckel, *op. cit.* fn. 25, pp. 103-105; Patrick Daillier et Alain Pellet, *Droit international public (Nguyen Quoc Dinh)*, L.G.D.J., Paris, 6th ed., 1999, p. 1128.

margin does not extend as far as 200 miles from the shore, natural prolongation, which in spite of its physical origins has throughout its history become more and more a complex and juridical concept is in part defined by distance from the shore, irrespective of the physical nature of the intervening sea-bed and subsoil. The concepts of natural prolongation and distance are therefore not opposed but complementary..." (*I.C.J. Reports 1985*, p. 33, para. 34; see also *I.C.J. Reports 1993*, pp. 58-59, para. 46 – above, fn. 14).

19. In the present case, as Nicaragua will show in more detail in the following Chapter, the distance element and the natural prolongation converge in a single line which achieves an equitable solution as confirmed by the various tests usually used in maritime delimitation.

B. The Articulation of the Delimitation beyond the Territorial Sea: the Bisector Method

20. The applicable law consists of the proposition that the principles and rules applicable to the delimitation of areas of exclusive economic zone and continental shelf are "those which are appropriate to bring about an equitable result": see further Chapter IV, Section B.

21. The outcome is that the method of delimitation must reflect the equitable criteria of the division of overlapping areas and thus bring about an equitable result. This overall aim justifies the method adopted. In this context the Government of Nicaragua proposes a method of delimitation overall which consists of the bisector of the angle produced by constructing lines based upon the respective coastal frontages and producing extensions of these lines.

22. The starting point of this sector of the delimitation is located at the outer limit of the territorial sea.

23. The boundary proposed for the purpose of dividing the overlapping exclusive economic zones of the parties is a continuation of a line which can be described as follows:

> The illustrated bisector is the bisector of two lines representing the entire coastal front of both states. As depicted in the illustration, it is a geodesic line originating at the point 15° 01' 53" N 83° 05' 36" W which is projected in a north easterly direction over a distance of approximately 250 kilometres on a geodetic azimuth of 53° 24' 07.9". The first section extends to the outer limit of the Territorial Sea, at 15° 06' 16" N 082° 58' 08" W.

24. This originating point constitutes the intersection of the two lines A and B indicated on Figure A in Volume III (maps). Line A reflects the coastal frontage of Honduras abutting on the areas to be divided. Line B reflects the coastal frontage of Nicaragua in the areas to be divided.

25. The proposed line is constituted by the bisector, as a line of continual bearing, of the angle formed by the intersection of Lines A and B.

26. The terminal point must remain to be determined because in this area the rights of third parties come into play. International tribunals have consistently recognised that the determination of maritime boundaries which would overlap with the interests of third States is outside the competence of the tribunal exercising jurisdiction : see the Judgment of the Court in *Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya), I.C.J. Reports 1982,* p. 64, para. 81; p. 91, para. 130; and also the *Dispositif,* where the Court states the following:

> "3) in the second sector, namely in the area which extends seawards beyond the parallel of the most westerly point of the Gulf of Gabes, the line of delimitation of the two continental shelves is to veer to the east in such a way as to take account of the Kerkennah Islands : that is to say, the delimitation line is to run parallel to a line drawn from the most westerly point of the Gulf of Gabes bisecting the angle formed

by a line from that point to Ras Kaboudia and a line drawn from that same point along the seaward coast of the Kerkennah Islands, the bearing of the delimitation line parallel to such bisector being 52° to the meridian : the extension of this line northeastwards is a matter falling outside the jurisdiction of the Court in the present case, as it will depend on the delimitation to be agreed with third States." (emphasis supplied) (*Ibid.*, p. 94)

27. In the *Libya/Malta case* at the Merits phase (subsequent to the application of Italy to intervene in the proceedings), the Court observed:

"The present decision must ... be limited in geographical scope so as to leave the claims of Italy unaffected, that is to say that the decision of the Court must be confined to the area in which, as the Court has been informed by Italy, that State has no claims to continental shelf rights. The Court, having been informed of Italy's claims, and having refused to permit that State to protect its interests through the procedure of intervention, thus ensures Italy the protection it sought. A decision limited in this way does not signify either that the principles and rules applicable to the delimitation within this area are not applicable outside it, or that the claims of either Party to expanses of continental shelf outside that area have been found to be unjustified : it signifies simply that the Court has not been endowed with jurisdiction to determine what principles and rules govern delimitations with third States, or whether the claims of the Parties outside that area prevail over the claims of those third States in the region." (emphasis supplied) (*I.C.J. Reports 1985*, pp. 25-6, para. 21).

28. More recently the principle was affirmed by the Arbitral Tribunal in the case of Government of the State of Eritrea and the Government of the Republic of Ethiopia, in the Award in the second stage of the proceedings. In the words of the Tribunal:

"There is also a problem relating to both the northern and the southern extremities of the international boundary line. The Tribunal has the competence and the authority according to

the Arbitration Agreement to decide the maritime boundary between the two Parties. But it has neither competence nor authority to decide on any of the boundaries between either of the two Parties and the neighbouring States. It will therefore be necessary to terminate either end of the boundary line in such a way as to avoid trespassing upon an area where other claims might fall to be considered." (emphasis supplied) (*Second Award*, 17 December 1999, para. 136; and see also para. 164)

29. The line produced by the application of the bisector method continues up to the area of seabed occupied by Rosalinda Bank, in which area the claims of third states come into play.

C. The Legal Provenance of the Method of the Bisector of an Angle

(a) The Foundation of the Method

30. The method of producing an alignment has no legitimacy *per se*. The construction of an alignment is a legal and political function of the judicial process resulting in a *dispositif* which is precise and effective. The alignment can only have a legal status if it conforms with equitable principles and these principles give primacy to geography and, in particular, the configuration of the coasts abutting upon the maritime areas to be divided.

31. The dependence of the method of delimitation upon the geographical circumstances has been emphasized by the jurisprudence. Thus, in the *Anglo-French Continental Shelf case*, the Court of Arbitration observed:

"96. In the pleadings mention has been made of Articles 62 and 71 of the Revised Single Negotiating Text still under negotiation at the Third United Nations Conference on the Law of the Sea. These Articles make provision for the delimitation, in the one case, of the 200-mile exclusive economic zone and, in the other, of the extended area of continental shelf which it is proposed at the Conference to allow to

coastal States; and their texts, which have not yet been adopted by the Conference, are still a matter of discussion. Even so, this Court has examined their provisions and it finds no reason to suppose that, if they were applicable, they would make any difference to the determination of the course of the boundary in the present case. Those texts speak of delimitation between "adjacent" or "opposite" States in accordance with equitable principles as distinct cases; and they envisage that, where appropriate, the equidistance or median line shall be employed, taking account of all the relevant circumstances.

Since it is the geographical circumstances which primarily determine the appropriateness of the equidistance or any other method of delimitation in any given case, the Revised Single Negotiating Text would not appear to visualise the solution of cases like the present one on principles materially different from those applicable under the 1958 Convention or under general international law. What the Court thinks evident, however, is that the extension seawards of the maritime zones of States, for which the Revised Single Negotiating Text provides, cannot fail to increase the significance of the effects of individual geographical features in deflecting the course of a lateral equidistance boundary between "adjacent" States.

97. In short, this Court considers that the appropriation of the equidistance method or any other method for the purpose of effecting an equitable delimitation is a function or reflection of the geographical and other relevant circumstances of each particular case." (emphasis supplied). (*International Law Reports*, Vol. 54, p.6 at p.66).

32. The distinguished Chamber of the Court in the *Gulf of Maine* case formulated the legal approach to delimitation in the following key paragraph:

"195. To return to the immediate concerns of the Chamber, it is, accordingly, towards an application to the present case of criteria more especially derived from geography that it feels bound to turn. What is here understood by geography is of course mainly the geography of coasts, which has primarily

a physical aspect, to which may be added, in the second place, a political aspect." (*I.C.J. Reports 1984*, p. 327, para. 195).

33. And in its Judgment in the *Continental Shelf case (Libyan Arab Jamahiriya/Malta)* the Court stated that:

"The pertinent general principle ... is that there can be no question of "completely refashioning nature"; the method chosen and its results must be faithful to the actual geographical situation."(*I.C.J. Reports 1985*, p. 45, para. 57).

(b) Judicial Authority

34. The use of the method of constructing the bisector of an angle has the support of a respectable jurisprudence. An analogue of this method was adopted by the Arbitral Tribunal in the *Grisbadarna case,* in accordance with the inter-temporal law, in the form of a line perpendicular to the general direction of the coast: *R.I.A.A.*, Vol. XI, pp. 159-160.

35. More significantly, in the *Gulf of Maine* case the Chamber adopted the bisector method in order to establish the significant first sector of the delimitation. The reasoning of the Court is of particular pertinence for the present case and thus is worth quoting in full:

"210. As it indicated in its comment on the line proposed by Canada, the Chamber has objections as to the advisability – or even the possibility – of making use, were it only in this sector, of the technical method whereby a lateral equidistance line, as defined by geometry and by the terms of paragraph 2 of Article 6 of the 1958 Convention on the Continental Shelf, would be drawn between the two adjacent coasts, and it has two grounds for these objections. In the first place, the Chamber must point out that a line drawn in accordance with the indications given by that provision ("equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured") might well epitomize the inherent defects of a certain manner of interpret-

ing and applying the method here considered, as stressed in paragraph 201 above; inasmuch as the likely end-result would be the adoption of a line all of whose basepoints would be located on a handful of isolated rocks, some very distant from the coast, or on a few low-tide elevations: these are the very type of minor geographical features which, as the Court and the Chamber have emphasized, should be discounted if it is desired that a delimitation line should result so far as feasible in an equal division of the areas in which the respective maritime projections of the two countries' coasts overlap."

"211. In the second place – and here is the main reason for the Chamber's objections – the determination in the sector envisaged of the course of a lateral equidistance line, from whatever basepoints established would encounter the difficulty of the persistent uncertainty as to sovereignty over Machias Seal Island and the Parties' choice of point A as the obligatory point of departure for the delimitation line. Point A was taken into consideration for the purposes of the Special Agreement only as the point where the lines then representing in graphical terms the Parties' respective claims happened to intersect. Hence it is not, as it should be in order to constitute an equidistance point, derived from two basepoints of which one is in the unchallenged possession of the United States and the other in that of Canada. And it is equally certain that point A is not a point that can be located on the path of any equidistance line traced by the Chamber or constitute the starting-point of any such line."

"212. The Chamber is therefore of the opinion that, on these grounds, and the better, moreover, to ensure the effective implementation of the criterion by which it has every reason to be guided, it is necessary to renounce the idea of employing the technical method of equidistance. It considers that preference must be given to a method which, while inspired by the same considerations, avoids the difficulties of application pointed out above and is at the same time more suited to the production of the desired result. The essential premise of the operation, as the Chamber sees it, is to take note of the fact that the point of departure of the delimitation line to be drawn,

and hence of its first segment, must be point A and no other point, whatever its justification. That understood, the Chamber considers that the practical method to be applied must be a geometrical one based on respect for the geographical situation of the coasts between which the delimitation is to be effected, and at the same time suitable for producing a result satisfying the repeatedly mentioned criterion for the division of disputed areas."

"213. Accordingly, to put the above requirements into practice, one may justifiably draw from point A two lines respectively perpendicular to the two basic coastal lines here to be considered, namely the line from Cape Elizabeth to the international boundary terminus and the line from that latter point to Cape Sable. These perpendiculars form, at point A, on the side an acute angle of about 82° and on the other a reflex angle of about 278°. It is the bisector of this second angle which the Chamber considers that it should adopt for the course of the first segment of the delimitation line. The Chamber believes that this practical method combines the advantages of simplicity and clarity with that of producing, in the instant case, a result which is probably as close as possible to an equal division of the first area to be delimited. It also believes that, in relation to the sector under consideration, the application of this equitable criterion is not open to any serious objections." (emphasis supplied) (*I.C.J. Reports 1984*, pp. 332-33).

36. An approach of a similar character was adopted by the distinguished Court of Arbitration in the *Guinea – Guinea (Bissau) Maritime Delimitation Case*. The relevant paragraphs of the Award are as follows:

"108. Une méthode valable pour le Tribunal consiste à commencer par embrasser d'un coup d'œil l'ensemble de la région de l'Afrique occidentale et à rechercher une solution tenant compte d'une façon globale de la forme de ses côtes. Il s'agit alors non plus de se limiter au *littoral court,* mais de considérer le *littoral long*. Or, tandis que le littoral continu des deux Guinée – ou des trois pays en comptant la Sierra

Leone – est plutôt concave, celui de l'Afrique de l'Ouest est incontestablement convexe. Sous cette vision, le Tribunal estime que la délimitation des territoires maritimes à attribuer aux Etats riverains pourrait se faire en suivant une des directions qui tiennent compte de cette circonstance. Ces directions seraient approximativement divergentes. Cette idée, qui dans la présente affaire semble conduire à un résultat équitable, condamne en soi le système des parallèles défendu par la Guinée et dont la limite de 10° 40' de latitude nord n'aurait représenté qu'un exemple. Mais elle condamme aussi l'équidistance telle qu'elle est vue par la Guinée – Bissau. Elle oriente vers une délimitation qui s'intègre aux délimitations actuelles ou futures de la région.

[.....]

"110. Un second système consisterait à utiliser la façade maritime et à choisir pour cela une ligne droite reliant deux points côtiers sur le continent. Cela aurait l'avantage de donner plus d'importance à l'orientation générale du littoral, au risque de partir d'une droite traversant les îles et même empiétant sur le continent. Il y aurait deux façades possibles: soit une droite joignant le cap Roxo à la pointe Sallatouk et mettant en jeu les deux Guinée seulement, soit une droite joignant la pointe des Almadies (Senegal) au cap Shilling (Sierra Leone) et impliquant donc deux pays tiers. Ce second système répond le mieux à la circonstance que le Tribunal a retenue, à savoir la configuration globale de la côte occidentale d'Afrique, et la ligne pointe des Almadies – cap Shilling traduit cette circonstance avec plus de fidélité."

"111. On entrevoit ainsi une délimitation équitable qui consisterait:

a) à suivre d'abord la "limit sud" de la convention de 1886, c'est – à – dire la passe des Pilotes à partir de l'embouchure du Cajet et le parallèle de 10° 40' latitude nord, jusqu'à la hauteur d'Alcatraz. Puisque, de cette façon, l'île en question n'aurait que 2,25 milles marins d'eaux territoriales vers le nord et qu'il existe d'autant moins de motif de lui en accorder

plus dans cette direction que la "limite sud" marque le revendication maximale de la Guinée dans ses conclusions, le Tribunal considérerait comme équitable de lui attribuer au moins vers l'ouest les 12 milles marins prévus par la convention sur le droit de la mer de 1982, sans toutefois tenir compte des récifs. La "limite sud" pourrait donc être adoptée jusqu'à 12 milles à l'ouest d'Alcatraz;

b) à se diriger ensuite ver le sud – ouest suivant une direction correspondant *grosso modo* à la perpendiculaire à la ligne unissant la pointe des Almadies au cap Shilling. Cela donnerait une ligne droite unique d'azimut 236°. Le Tribunal constate que pareille ligne réduirait au minimum les risques d'enclavement et serait à cet égard plus satisfaisante que les perpendiculaires aux autres lignes envisagées aux visaged in paragraphes 109 et 110 ci-dessus." (*Ibid*, parras. 108, 110 and 111).[110]

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110. "108. In the Tribunal's view, a valid method consists of looking at the whole of West Africa and of seeking a solution which would take overall account of the shape of its coastline. This would mean no longer restricting considerations to a *short coastline* but to a *long coastline*. However, while the continuous coastline of the two Guineas – or of the three countries where Sierra Leone is included – is generally concave, that of West Africa in general is undoubtedly convex. With this in mind, the Tribunal considers that the delimitation of maritime territories to be attributed to coastal States could be made following one of the directions which takes this circumstance into account. These directions would be approximately divergent. This idea, which in the present case would seem to offer an equitable result, automatically condemns the system of parallels of latitude defended by Guinea and of which the limit represented by the parallel of 10° 40' north latitude would have been just one example. However, it also condemns the equidistance method as seen by Guinea-Bissau. It leads towards a delimitation which is integrated into the present or future delimitations of the region as a whole.

[.....]

"110. A second system would consist of using the maritime facade and, for this purpose, selecting a straight line joining two coastal points on the continent. This would have the advantage of giving more weight to the general direction of the coastline, at the risk of starting from a line crossing through islands and even encroaching on the continent. There would be two possible facades: one would be a line joining Cape Roxo and Sallatouk Point and would concern only the two Guineas; the other would be a line joining Almadies Point (Senegal) and Cape Shilling (Sierra Leone) and would thus involve two third States. The second system

37. Both in the *Gulf of Maine* case and in the *Guinea – Guinea (Bissau)* case, the courts concerned were using geometrical methods in order to impose a solution in face of the geographical complexities, which were linked with the further complication presented by the position of the land boundary terminus. At the same time the courts emphasize that the method chosen is 'based on respect for the geographical situation of the coasts' in relation to which the delimitation is to be effected.

38. These two decisions have a further aspect of relevance for these proceedings. In both cases the status of the available starting point was problematical: see the Judgment of *Gulf of Maine*, above, para. 211, and see also the Award of the Tribunal in the *Guinea-Guinea (Bissau)* case, paras. 105-107.

39. In the *Guinea (Bissau) v. Senegal* case, Judge Bedjaoui was the only arbitrator to deal with the actual question of delimita-

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is better suited to the circumstance chosen by the Tribunal, i.e. the overall configuration of the West African coastline, and the Almadie's Point – Cape Shilling line reflects this circumstance more faithfully."

"111. This opens the possibility of an equitable delimitation which would consist of:

a) First following the "southern limit" of the 1886 Convention, i.e. the Pilots' Pass from the mouth of the Cajet River and the parallel of 10° 40' north latitude, as far as the island of Alcatraz. Because in this way, the island in question would have only 2.25 nautical miles of territorial waters to the north – and there is even less reason to grant more in this direction in that the "southern limit" marked the maximum claim by Guinea in its conclusions – the Tribunal would consider it equitable to grant it, at least towards the west, the 12 nautical miles provided for in the 1982 Law of the Sea Convention, without having taking into account any reefs. The "southern limit" could therefore be adopted as far as 12 miles west of Alcatraz.

b) The line would then go in a southwesterly direction, being *grosso modo* perpendicular to the line joining Almadies Point and Cape Shilling. This would give just one straight line bearing 236°. The Tribunal considers that such a line would reduce the risk of enclavement to a minimum and, in this respect, would be more satisfactory than any line drawn perpendicular to the other lines envisaged in paragraphs 109 and 110 above." (*International. Law Reports*, Vol. 77, p.635 at pp. 683-85).

tion. In his carefully reasoned Dissenting Opinion Judge Bedjaoui applied the bisector method in the following passages:

"145. The western front of the archipelago, represented by a line drawn from Acudama point on Caravela Island to Ancumbe point on Orango Island, is, according to the expert appointed by the Tribunal, approximately 33 miles long. This length is on the whole comparable to the relevant coast of Senegal (Casamance) which is 44 miles long, and does not possess any islands. It would not be equitable to give to the western front of the archipelago, stretching from Acudama to Ancumbe, the same importance for the purpose of delimitation as to the continental coast of Senegal. This is why a half-effect should be sufficient.

"146. Accordingly, the appropriate course is to draw for that purpose a line which bisects the angle having as its apex Cape Roxo and as one of its sides the general direction of the western front of the Bijagos Archipelgo (Roxo-Acudama, 260°), and as its other side the general direction of the mainland coast (Roxo-Catunco, 132°). This produces a line drawn at azimuth 146°, thereby giving half-effect to the islands."

"147. The Republic of Senegal has maintained that the Republic of Guinea-Bissau has accepted a line lying at azimuth 240° for the determination of the territorial sea of each of the two States. If this is the case, the delimitation to be effected by the arbitrator for the maritime spaces other than the territorial sea has to take as its starting point a point situated at the outer limit of that territorial sea defined by a line drawn at 240°. An arbitrator cannot of course decide *ultra petita.* In fact, however, I see no indication anywhere of an acceptance by Guinea-Bissau of azimuth 240° for its territorial sea. In its submissions, which are binding upon it and also upon the Tribunal, it has requested the application of the law of the sea, i.e. the rule of equidistance which, contrary to the 1960 Agreement, gives azimuth 247° for the territorial sea. For the rest, neither in the pleadings of the Republic of Guinea-Bissau nor in its oral argument has azimuth 240° been accepted by it up to 12 miles, either expressly or tacitly. Consequently,

the question of *ultra petita* does not arise. The line to be drawn will accordingly necessarily start from Cape Roxo without taking into account azimuth 240°."

"148. It is now possible to draw the line which, in this *ex novo* delimitation, constitutes the maritime boundary between the Republic of Guinea-Bissau and the Republic of Senegal. The line thus taken will bisect the angle having as its apex Cape Roxo and as one of its sides the general direction of the maritime front of Guinea-Bissau obtained after giving half-effect to its main islands (146°), and as the other side the general direction of the relevant Senegalese coast (358°). This produces a line drawn at azimuth 252°." (*International Law Reports*, Vol. 83, p.1, at pp. 113-14).

(c) Doctrine

40. The literature, including the opinions of leading publicists, has for long recognised the aptitude of the bisector method for the achievement of an equitable result in certain political and geographical circumstances.

41. The major French authority on the law of the sea, Gilbert Gidel, approved the method of a perpendicular to the general direction in the third volume of his great treatise, published in 1934. In his words:

"*Faveur généralement rencontrée en pratique et en doctrine par la solution de la ligne médiane perpendiculaire à la direction générale de la côte.* – La solution qui a la préférence est celle de la ligne médiane, c'est-à-dire la solution qui tend à attribuer aux Etats limitrophes une égale partie des eaux maritimes proches de la côte. La " ligne médiane" au sens étroit se rapporte aux cas où les voisins se font face vis-à-vis d'une manière complète ou partielle, c'est-à-dire dans les détroits, les archipels ou les baies ..."

"Lorsqu'il s'agit de souverainetés qui sont au contact latéral et non pas au contact de front, la solution de la ligne médiane consiste à tracer au point frontière terrestre une perpendiculaire à la direction générale de la côte n'est donc qu'une modalité spéciale de la ligne médiane entendue au sens large ..." (footnotes omitted) (*Le droit international public de la mer*, Tome III, Paris, 1934, pp. 768-69).

42. The solution proposed by Gidel is not formulated in terms of the bisector of an angle. However, the solution he prefers is closely related to the bisector method and is, in geometrical terms, the bisector of an angle of 180°.

43. The Indian expert, Dr. S.P. Jagota, examines the *Gulf of Maine* case without expressing any reservations about the approach of the Chamber to the first sector of the delimitation: see S.P. Jagota, *Maritime Boundary*, Dordrecht, 1985, pp. 313-14.

44. Similarly Professor Attard, in his learned treatise on the exclusive economic zone, expresses no reservations concerning the method selected by the Chamber: see D.J.Attard, *The Exclusive Economic Zone in International Law*, Oxford, 1987, p.242.

45. In his authoritative work on maritime delimitation, published in 1988, Professor Weil accepts the bisector method as appropriate in certain circumstances. In his opinion:

"Quant à la méthode appropriée pour obtenir la réduction spatiale équilibrée de chacune des deux projections en concurrence sur le même espace, il est dans la nature des choses qu'elle ait le même caractère que le titre juridique qui fonde ces projections: en d'autres termes, qu'elle soit comme ce dernier d'ordre spatial. La méthode la plus appropriée à cette fin est celle de l'équidistance, dont le caractère spatial est indiscutable, puisque c'est précisément par référence à la distance des deux côtes qu'elle détermine l'amputation que doit subir chacun des titres en concurrence; même si elle touche au quantum de la distance, la délimitation équidistante laisse intact le principe de distance. Il semble bien, en outre, que, de toutes les

méthodes, c'est celle de l'équidistance qui s'approche le plus de l'objectif de la division égale de la zone de chevauchement. Des études techniques seraient souhaitables pour avoir une connaissance plus précise de l'effet de cette méthode à cet égard; les hommes de science pourraient utilement assister la réflexion juridique sur ce point."

"On ne saurait cependant méconnaître que la division de la zone de chevauchement par parts à peu près égales peut être obtenue aussi par d'autres méthodes, "plus ou moins différentes bien qu'elles procèdent au fond d'une même inspiration" (1984, para. 200): la perpendiculaire, par exemple, ou la bissectrice de l'angle formé par les lignes côtières. A certains égards, il s'agit là de variantes de l'équidistance. Cela est vrai, en particulier, de la méthode de la perpendiculaire à la direction générale de la côte, qui a été préconisée parfois dans le passé pour la délimitation de la mer territoriale, parce qu'entre côtes limitrophes rectilignes elle aboutissait au même partage en parts égales de la zone de chevauchement que la ligne médiane entre côtes opposées. Gidel, par exemple, voyait dans la perpendiculaire une "modalité spéciale de la ligne médiane entendue au sens large "(footnotes omitted). (*Perspectives du droit de la délimitation maritime*, Paris, Pedone, 1988, p. 64; and see also at page 293).[111]

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[111] The corresponding passages in the English edition read as follows: "As for what method would be suitable to achieve a balanced spatial reduction of the two overlapping areas, it is in the nature of things that it should have the same character as the legal title on which the projections are based. In other words, like the latter, it will be spatial.

For this purpose, the most appropriate method is that of equidistance, the spatial nature of which is indisputable, since it is by reference to the distance between the two coasts that it determines what reduction has to be made to each of the two competing titles. Although it may affect the quantum, the equidistance method leaves the principle of distance intact. Moreover, of all methods, equidistance would seem to come closest to achieving the objective of an equal division of the overlapping area. Technical studies would be helpful here in order to establish more precisely the effect of this method. This is a case where the scientists could give the lawyers useful assistance."

"It should not, however, be overlooked that a more or less equal division of the overlapping area can be obtained by other methods, "differing from it in varying

46. In their essay in the work edited by Charney and Alexander the Canadian experts Legault and Hankey adopt the bisector method as a method of delimitation. In their words:

> "*c. Bisection of Angles Representing Coastal Fronts*
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> Another means of modifying the equidistance method in order to discount the effect of incidental coastal features and configurations on the course of the boundary is to construct two lines, each representing the coastal front of one of the parties, and then to bisect the angle between the two construction lines."(Charney and Alexander (eds.), *International Maritime Boundaries*, Vol. I, Dordrecht, 1993, p. 210).

47. The official manual published by the International Hydrographic Organization includes the bisector method as one of the methods "related to the "general direction" of the coastline". The relevant passage is this:

> "A variant of the perpendicular is the bisector line. In this method the general direction of the coast, or part of the coast, of both the adjacent States, opposite States in certain circumstances is determined. The delimitation line is then taken to be the bisector of the angle formed by these two lines of general direction at the land boundary terminus. This solution is suited to a coast where the general direction changes markedly at or near the boundary. Although superficially attractive, the solution may result in unbalanced areas on the ellipsoid." (International Hydrographic Organization, Special Publication No. 51, *A Manual: Technical Aspects of the United*

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degree even while prompted by similar considerations", for example, the perpendicular, or the bisector of the angle formed by the two coastlines. In some respects these are just variations on the equidistance theme. This is particularly the case with the perpendicular to the general line of the coast, a method recommended in the past for delimiting the territorial seas because, when used between adjacent straight coasts, it achieves the same equal division of the overlapping area as does the median line between opposite coasts. Gidel, for example, saw the perpendicular as a "special variant of the median line understood in its broad sense". " (footnotes omitted) (*The Law of Maritime Delimitation – Reflections*, Cambridge, 1989, pp. 58-9; and see also at p. 276).

Nations Convention on the Law of the Sea, 1982, 2nd ed., Monaco, December 1990, p. 126, para. 6.3.4.6.); 3rd ed., Monaco, July 1993, para. 6.3.4.6.

48. The bisector method is also recognised as a form of delimitation by Lucchini and Vœlckel, in their substantial treatise: *Droit de la mer*, Tome II, Vol. I, Paris, pp. 143-5.

49. The availability of the bisector method is thus well established both in the jurisprudence and in the doctrine.

(d) State Practice

50. The bisector method and its congenor, the perpendicular to the general direction of the coast, are appropriate in certain geographical situations and thus their incidence in State practice is inevitably determined by geography. Eight episodes of state practice, involving eighteen States and virtually every continent, provide clear evidence of the role of the bisector method and its associated techniques in producing an equitable result. The delimitations involved have not provoked protests related to the use of these methods of delimitation.

51. The relevant agreements will be examined in temporal sequence.

52. The first such delimitation took the form of an Exchange of Notes between *France and Portugal* on 26 April 1960, regarding the territorial sea and continental shelf boundary between *Guinea (Bissau) and Senegal*: see Charney and Alexander, op. cit., Vol. I, p. 867 (Report Number 4-4); *Limits in the Seas*, U.S. Dept. of State, No. 68. The 240° azimuth adopted bisects the angle formed by lines approximating to the general directions of the coast of Senegal and Guinea (Bissau), (see Figure X).

53. The second such agreement is the Seabed Boundary Agreement between the Rulers of Sharjah and Umm al Qaywayn concluded in 1964: see Charney and Alexander (eds.), *International Maritime Boundaries*, Vol. II, pp. 1549-55 (Report Num-

ber 7-10) (see Figure XI). The origins of the agreement are of interest and these are described by Charney and Alexander as follows:

> "Geography was a prime factor in delimiting the boundary between Sharjah and Umm al Qaywayn. In 1963, the British proposed a series of five consecutive continental shelf boundaries between certain of the adjacent states (including enclaves thereof) on the Trucial Coast as follows (from west to east): (1) Dubai-Sharjah, (2) Sharjah-Ajman (south), (3) Sharjah-Ajman (north), (4) Sharjah-Umm al Qaywayn, (5) Umm al Qaywayn-Ras Al Khaimah. All of these proposed boundaries were delimited using the bisector of the angle formed by drawing straight lines between the coastal terminal points of the land frontiers."

> "The British authorities thus used a single method of delimitation which they deemed to be appropriate to the geography of the region for a comprehensive delimitation of continental shelf boundaries between the Trucial States. However, only Sharjah and Umm al Qaywayn accepted the British proposals." (emphasis supplied) (at p. 1551).

54. The Offshore Boundary Agreement concluded between Abu Dhabi and Dubai on 18 February 1968 establishes a continental shelf boundary which is roughly perpendicular to the general direction of the coast: see Charney and Alexander, op. cit., Vol. II, p. 1475 (Report Number 7-1) (see Figure XII).

55. The fourth episode of state practice involves the two treaties between the United States of America and the United Mexican States, signed on 24 November 1976 and 4 May 1978 respectively: Charney and Alexander, op. cit., Vol. I, p.427 (Report Number 1-5). The second of these is not in force. The two agreements produce a delimitation within the Gulf of Mexico which, in the sector eastward to point GMW 4, is very similar to a perpendicular to the general direction of the coast (see Figure XIII).

56. The next example is provided by the Agreement between the Government of Brazil and the Government of Uruguay Relating to the Maritime Delimitation between Brazil and Uruguay, concluded on 21 July 1972, and which entered into force on 12 June 1975: Charney and Alexander, op. cit., Vol. I, p. 785 (Report Number 3-4); *Limits in the Sea*, U.S. Dept. of State, No. 73. The delimitation agreed upon involved a line nearly perpendicular to the general direction of the coast: see Charney and Alexander, p.788; *Limits in the Sea*, No. 73, p.3 (see Figure XIV).

57. The sixth example of state practice concerns the Agreement between the Government of Argentina and the Government of Uruguay Relating to the Delimitation of the River Plate and the Maritime Boundary between Argentina and Uruguay, signed on 19 November 1973, and which entered into force on 12 February 1974: see Charney and Alexander, op. cit., Vol. I, p.757 (Report 3-2), and *Limits in the Seas*, No. 64. The first sector of the maritime boundary (from Point 23 to Point A) is a perpendicular to the line adopted by the parties as the closing line of the Rio de la Plata (see Figure XV).

58. The seventh episode of the state practice takes the form of the Treaty Concerning Delimitation of Marine Areas and Maritime Co-operation Between the Republic of Costa Rica and the Republic of Panama signed on 2 February 1980, and which entered into force on 11 February 1982: Charney and Alexander, Vol. I, p.537 (Report Number 2-6); *Limits in the Seas*, No. 97 (see Figure XVI). The Geographer of the Department of State observes in relation to the boundary in the Pacific:

> "The boundary extends from the land boundary terminus at Punta Burica southwestward to a point on the 5° parallel of north latitude 200 nautical miles from Punta Burica."
>
> [.....]
>
> "Although the treaty states that this boundary also is a median line, it also is more akin to a perpendicular to the general direction of the coast. To consider the boundary an equidistant line one would have to disregard coastal irregularities and a

number of near-shore Panamanian islands and the Costa Rican Isla del Coco, the latter of which is about 165 nautical miles from the terminus of the maritime boundary." (*Limits in the Seas*, pp. 4-5).

59. Charney and Alexander adopt the same characterisation: op. cit., p.544.

60. The eighth episode of State practice consists of the Agreement between the Government of Brazil and the Government of France Relating to the Maritime Delimitation Between Brazil and French Guiana concluded on 30 January 1981: see Charney and Alexander, op.cit., Vol. I, p. 777 (Report Number 3-3); *I.L.M.*, Vol. 25 (1986), p. 367. The boundary established is perpendicular to the general direction of the coasts of Brazil and French Guiana. The Agreement entered into force on 19 October 1983 (see Figure XVII).

D The Equitable Character of the Bisector Method in the Present Case

(a) Introduction

61. In conclusion it is appropriate to review the elements which dictate that the bisector method is well qualified to achieve an equitable result in the present case.

(b) The Method is an effective reflection of coastal relationships

62. In the first place the bisector method is an effective reflection of the coastal relationships prevailing in the present case. The Court has consistently emphasised the primacy of the general configuration of the coasts of the parties. Thus in its Judgment in the *Continental Shelf case (Tunisia/Libyan Arab Jamahiriya)* the Court observed that:-

"The coast of each of the Parties, therefore, constitutes the starting line from which one has to set out in order to ascer-

tain how far the submarine areas appertaining to each of them extend in a seaward direction, as well as in relation to neighbouring States situated either in an adjacent or opposite position. The only areas which can be relevant for the determination of the claims of Libya and Tunisia to the continental shelf in front of their respective coasts are those which can be considered as lying either off the Tunisian or off the Libyan coast. These areas form together the area which is relevant to the decision of the dispute. The area in dispute, where one claim encroaches on the other, is that part of this whole area which can be considered as lying both off the Libyan coast and off the Tunisian coast." (*I.C.J. Reports 1982*, p. 61, para. 74).

63. In the same context the Chamber in the *Gulf of Maine* case insisted on the primacy of coastal configuration:

"Regarding the choice and use of methods, one general observation must be made. The delimitation line to be drawn in a given area will depend upon the coastal configuration. But the configuration of the Gulf of Maine coastline, on which the delimitation to be effected between the maritime and submarine zones of the two countries depends throughout its length, is such as to exclude any possibility of the boundary's being formed by a basically unidirectional line, either over the whole distance between the point of departure and the terminal triangle or even over the sector between the point of departure and the closing line of the Gulf."(*I.C.J. Reports 1984,* pp. 330-31, para. 205).

64. Similarly in the Continental Shelf Case *(Libyan Arab Jamahiriya/Malta),* the Court reaffirmed the principle as follows:

"The nature of equity is nowhere more evident than in these well-established principles. In interpreting them, it must be borne in mind that the geography which is not to be refashioned means those aspects of a geographical situation most germane to the legal institution of the continental shelf; and it is "the coast of each of the Parties", which "constitutes the starting line from which one has to set out in order to

ascertain how far the submarine areas appertaining to each of them extend in a seaward direction, as well as in relation to neighbouring States situated either in an adjacent or opposite position" (*I.C.J. Reports 1982*, p. 61, para. 74).

"In a semi-enclosed sea like the Mediterranean, that reference to neighbouring States is particularly apposite, for, as will be shown below, it is the coastal relationships in the whole geographical context that are to be taken account of and respected." (*I.C.J. Reports 1985*, p. 40, para. 47).

65. The *Dispositif* in this case lists 'the circumstances and factors to be taken into account in achieving an equitable delimitation' and the first item is:

"the general configuration of the coasts of the parties ..." (*ibid.*, p. 57).

66. Professor Weil thus concludes:

"Hence, the primacy of geographic considerations is found in each and every maritime delimitation, regardless of whether it concerns territorial sea, continental shelf, fishery zone, or exclusive economic zone; or whether it is negotiated and agreed by the interested parties, or decided by a third party in judicial or arbitral proceedings. Already in 1969 the International Court of Justice stated that it is 'necessary to examine closely the geographical configuration of the coastlines of the countries whose maritime areas are to be delimited"(footnote omitted) (Charney and Alexander (eds.), *International Maritime Boundaries*, Vol. I, Dordrecht, 1993, p. 116).

67. The bisector method translates the coastal frontages into a figure, the prolongations of the frontages as lines of construction, which is a perfect representation of the overlapping coastal projections of the Parties. The method thus does justice to the coastal frontages of the parties.

68. Whilst the bisector method is not appropriate in all situations, as Professor Weil points out, it is applicable "dans le cas

où deux lignes côtières nettement dessinées forment entre elles un angle nettement déterminé".[112] (*Perpectives du droit de la délimitation maritime*, Pedone, Paris 1988, p. 65)

(c) The Principle of Equal Division of Areas of Convergence

69. As the graphic shows, the bisector method produces a result which clearly satisfies the equitable criterion which was confirmed by the Chamber of the Court in the *Gulf of Maine* case. The two most relevant passages are as follows:

> "To return to the immediate concerns of the Chamber, it is accordingly towards an application to the present case of criteria more especially derived from geography that it feels bound to turn. What is here understood by geography of course mainly the geography of coasts, which has primarily a physical aspect, to which may be added, in the second place, a political aspect. Within this framework, it is inevitable that the Chamber's basic choice should favour a criterion long held to be as equitable as it is simple, namely that in principle, while having regard to the special circumstances of the case, one should aim at an equal division of areas where the maritime projections of the coasts of the States between which delimitation is to be effected converge and overlap." (*I.C.J. Reports 1984*, p. 327, para. 195).

> "At this point, accordingly, the Chamber finds that it must finally confirm its choice, which is to take as its starting point the above-mentioned criterion of the division – in principle, equal division – of the areas of convergence and overlapping of the maritime projections of the coastlines of the States concerned in the delimitation, a criterion which need only be stated to be seen as intrinsically equitable.

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112. The English edition reads as follows: "where two clearly distinguished coastlines form a sharply defined angle": *The Law of Maritime Delimitation – Reflections*, Cambridge, 1989, p. 59.

However, in the Chamber's view, the adoption of this starting point must be combined with the parallel adoption of the appropriate auxiliary criteria in so far as it is apparent that this combination is necessitated by the relevant circumstances of the area concerned, and provided they are used only to the extent actually dictated by this necessity. By this approach the Chamber seeks to ensure the most correct application in the present case of the fundamental rule of international law applicable, which requires that any maritime delimitation between States should be carried out in accordance with criteria that are equitable and are found more specifically to be so in relation to the particular aspects of the case under consideration." (*ibid.*, p. 328, para. 197).

70. The principle of equal division is stated in various sections of the Judgment of the Chamber: see also pages 300-1, para. 115; page 327, para. 195; pages 331-2, para. 209; page 334, para. 217; and page 339, para. 228.

71. As the *Gulf of Maine case* clearly indicates, the equal division of the overlapping areas can be obtained not only by employing the method of equidistance, but by other methods, including the bisector of the angle formed by the two coastlines.

72. In the circumstances of the present case, the bisector method produces a result compatible with the equitable principle of equal division.

(d) The Principle of Non-encroachment by one party on the Natural Prolongation of the Other

73. This is an equitable principle first formulated in the *North Sea cases*: see *I.C.J. Reports 1969*, pp. 46-47, para. 85; p. 53, para. 101. The principle was affirmed by the Court in the *Continental Shelf case (Libyan Arab Jamahiriya/Malta), I.C.J. Reports*, p. 39, para. 46. The editors of *Oppenheim's International Law* describe it as "a primary requirement of equity": *Oppenheim's International Law*, 9th ed., Vol. I, edited by Sir Robert Jennings and Sir Arthur Watts, London, 1992, p. 779.

74. The fundamental requirement of equity is that a delimitation line cannot pass too close to one of the coasts involved. Thus, in the words of Judge Lachs, President of the Arbitration Tribunal in the *Guinea/Guinea-Bissau Award*:

> "Aux circonstances économique, les Parties ont lié une circonstance tirée de la sécurité, laquelle n'est pas sans intérêt, bien qu'il convienne de souligner que ni la zone économique exclusive, ni le plateau continental ne sont des zones de souveraineté. Cependant les implications que cette circonstance aurait pu avoir sont déjà résolues par le fait que, dans la solution qu'il a dégagée, le Tribunal a tenu à ce que chaque Etat contrôle les territoires maritimes situés en face de ses côtes et dans leur voisinage. Cette préoccupation a constamment guidé le Tribunal dans sa recherche d'une solution équitable. Son objectif premier a été d'éviter que, pour une raison ou pour une autre, une des Parties voie s'exercer en face de ses côtes et dans leur voisinage immédiat des droits qui pourraient porter atteinte à son droit au développement ou compromettre sa sécurité." (*ibid,* para. 124).[113]

75. Of particular significance in the present context is the applicability of the principle of non-encroachment in relation to the delimitation of a single maritime boundary and not exclusively to the delimitation of continental shelf areas. Thus the principle was affirmed by the Chamber in the *Gulf of Maine case*: see the Judgment, *I.C.J. Reports 1984*, pp. 312-13, para. 157. And it was

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[113] The English translation reads as follows: "To the economic circumstances, the Parties linked a circumstance concerned with security. This is not without interest, but it must be emphasized that neither the exclusive economic zone nor the continental shelf are zones of sovereignty. However, the implications that this circumstance might have had were avoided by the fact that, in its proposed solution, the Tribunal has taken care to ensure that each State controls the maritime territories situated opposite its coasts and in their vicinity. The Tribunal has constantly been guided by its concern to find an equitable solution. Its prime objective has been to avoid that either Party, for one reason or another, should see rights exercised opposite its coast or in the immediate vicinity thereof, which could prevent the exercise of its own right to development or compromise its security." (*International Law Reports*, Vol. 77,p. 636 at p. 689, para. 124).

also affirmed, and applied, by the distinguished Court of Arbitration in the *Guinea-Guinea (Bissau) Award*, above, paragraph 124.

76. In the geographical circumstances of the present case, the bisector method produces a line which avoids a result which compromises the principle of non-encroachment.

(e) The Principle of Preventing, as far as possible, any cut-off of the Seaward projection of the coast of either of the States Concerned

77. This principle was propounded in the Judgment in the *North Sea Continental Shelf cases*: see *I.C.J. Reports 1969*, pp. 17-18, para. 8. The principle of avoiding any cut-off is obviously a close relative of that of non-encroachment.

78. Once again, it is clear that this principle applies in relation to a single maritime boundary and not exclusively to the delimitation of continental shelf areas. Thus the principle was affirmed and applied in the *Gulf of Maine* case: see *I.C.J. Reports 1984*, pp. 298-9, para. 110; pp. 312-13, para. 157; p. 328, para. 196; and p.335, para. 219. The principle was also applied to the single maritime boundary delimitation effected by the Court of Arbitration in the *Guinea-Guinea (Bissau)* case, *International Law Reports*, Vol. 77, p. 635 at pp. 680-1, paras. 102-3.

(f) The Method and the Result must be consistent with the Concepts underlying the Attribution of Legal Title to Maritime Areas

79. It is also axiomatic that the method of delimitation and the result should be consistent with the concepts of legal title applicable. In the Judgment of the Court in the *Continental Shelf (Libyan Arab Jamahiriya/Malta) case*, this relationship is explained clearly in the following passage:

"61. The Court has little doubt which criterion and method it must employ at the outset in order to achieve a provisional

position in the present dispute. The criterion is linked with the law relating to a State's legal title to the continental shelf. As the Court has found above, the law applicable to the present dispute, that is, to claims relating to continental shelves located less than 200 miles from the coasts of the States in question, is based not on geological or geomorphological criteria, but on a criterion of distance from the coast or, to use the traditional term, on the principle of adjacency as measured by distance. It therefore seems logical to the Court that the choice of the criterion and the method which it is to employ in the first place to arrive at a provisional result should be made in a manner consistent with the concepts underlying the attribution of legal title"(*I.C.J. Reports 1985*, pp. 46-7).

80. This relationship had already been emphasized by the Court in the *Aegean Sea case*. The Court then stated that:

"it is solely by virtue of the coastal State's sovereignty over the land that rights of exploration and exploitation in the continental shelf can attach to it, *ipso jure,* under international law. In short, continental shelf rights are legally both an emanation from and an automatic adjunct of the territorial sovereignty of the coastal State." (*I.C.J. Reports 1978*, p. 36, para. 86).

81. It is reasonable to assume that these legal considerations apply to the process of determining a single maritime boundary.

(g) Conclusion

82. The Government of Nicaragua submits that in the geographical circumstances of the present case the bisector method is conspicuously the most appropriate method for achieving an equitable result. Because of the particular characteristics of the area in which the land boundary intersects with the coast, and for other reasons, the technical method of equidistance is not feasible. In this respect, there is a useful comparison with the situation that the Chamber faced in the *Gulf of Maine case*: see above para. 35.

83. The bisector method avoids the technical and political difficulties, and effectively reflects the major elements of the pertinent coastal geography. In addition it achieves a result that is as close as possible to an equal division of the area to be delimited.

IX : EQUITABLE CRITERIA CONFIRMING THE EQUITABLE RESULT PRODUCED BY THE BISECTOR METHOD

A. Introduction

1. In the present Chapter of the *Memorial* the equitable character of the delimitation proposed above (Chapter VIII, Section C) will be assessed in the light of additional criteria: namely, the incidence of natural resources in the disputed area, the principle of equitable access to the natural resources of the disputed area, the geology and geomorphology of the Nicaraguan Rise, security considerations, the relationship of the bisector method and equidistance in the present case, and the treatment it gives to islets and cays on their merits; each of these elements being generally recognised as relevant circumstances in the process of delimitation.

B. The Incidence of Natural Resources in the Disputed Area: a Relevant Circumstance

2. Since the *North Sea Continental Shelf* cases it has been recognised that the incidence of natural resources in the disputed area may constitute a relevant circumstance affecting a delimitation. In the *Dispositif* in the *North Sea* cases the Court specified "the factors to be taken into account" to include the natural resources of the continental shelf areas involved "so far as known or readily ascertainable": *I.C.J. Reports 1969*, p.4 at pp. 53-4.

3. In its Judgment in the *Continental Shelf case (Tunisia/ Libyan Arab Jamahiriya)* the Court observed that:

> "As to the presence of oil wells in an area to be delimited, it may, depending on the facts, be an element to be taken into account in the process of weighing all relevant factors to achieve an equitable result."(*I.C.J. Reports 1982*, p.18 at pp. 77-8, para. 107).

4. The I.CJ. reaffirmed this view in the *Libya-Malta* case. In that case, the Court observed:

> "The natural resources of the continental shelf under delimitation "so far as known or readily ascertainable" might well constitute relevant circumstances which it would be reasonable to take into account in a delimitation, as the Court stated in the *North Sea Continental Shelf cases*...). Those resources are the essential objective envisaged by States when they put forward claims to sea-bed areas containing them". (*I.C.J. Reports 1985*, p. 13 at p. 41, para. 50).

5. The Award of the Court of Arbitration in the *Guinea – Guinea (*Bissau) case (1985) is also relevant. The relevant passages are complex and thus require full quotation:

> "121. Les Parties ont invoqué les circonstances économiques en les qualifiant diversement et en appuyant leurs thèses respectives d'exemples relatifs notamment à leur économie, à l'insuffisance de leurs ressources et à leurs plans en vue de leur développement. Elles ont discuté de questions relatives au transport maritime, à la pêche, aux ressources pétrolières, etc., et la Guinée- Bissau a fait valoir en particulier l'intérêt que pourrait présenter pour elle à l'avenir le libre accès au port de Babu par le chenal d'Orango et l'estuaire du rio Grande."

> "122 Le Tribunal constate que la Guinée et la Guinée-Bissau sont deux Etats en développement, confrontés l'un et l'autre à de grandes difficultés économiques et financières qu'une augmentation des ressources provenant de la mer pourrait atténuer. Chacun d'eux aspire à juste titre à tirer de ses richesses présentes ou potentielles de juste profits au bénéfice de son peuple. Certes, pas plus que la Court international de Justice en l'affaire du *Plateau continental (Tunisie/Jamahiriya arabe libyenne) (I.C.J. Reueil 1982*, pp. 77-78, paragraphe 107), le Tribunal n'a acquis la conviction que les problèmes économiques constituent des circonstances permanentes à prendre en compte en vue d'une délimitation. Puisque seule une évaluation actuelle est du ressort du Tribunal, il ne serait

ni juste ni équitable de fonder une délimitation sur l'évaluation de données qui changent en fonction de facteurs dont certains sont aléatoires.

"123. Certains Etats peuvent avoir été dessinés par la nature d'une manière favorable à l'établissement de leurs frontières ou à leur développement économique; d'autres peuvent avoir été désavantagés. Les frontières fixées par l'homme ne devraient pas avoir pour objet d'augmenter les difficultés des Etats ou de compliquer leur vie économique. Il est vrai que le Tribunal n'as pas le pouvoir de compenser les inégalités économiques des Etat intéressés en modifiant une délimitation qui lui semble s'imposer par le jeu de considérations objectives et certaines. Il ne saurait non plus accepter que les circonstances économiques aient pour conséquence de favoriser l'une des Parties au détriment de l'autre en ce qui concerne cette délimitation. Il ne peut toutefois complètement perdre de vue la légitimité des prétentions en vertu desquelles les circonstances économiques sont invoquées, ni contester le droit des peuples intéressés à un développement économique et social qui leur assure la jouissance de leur plein dignité. Le Tribunal pense que ces préoccupations économiques si légitimement avancées par les Parties doivent pousser tout naturellement celles-ci à une coopération mutuellement avantageuse susceptible de les rapprocher de leur objectif qui est le développement."

"124. Aux circonstances économiques, les Parties ont lié une circonstance tirée de la sécurité, laquelle n'est pas sans intérêt, bien qu'il convienne de souligner que ni la zone économique exclusive, ni le plateau continental ne sont des zones de souveraineté. Cependant les implications que cette circonstance aurait pu avoir sont déjà résolues par le fait que, dans la solution qu'il a dégagée, le Tribunal a tenu à ce que chaque Etat contrôle les territoires maritimes situés en face de ses côtes et dans leur voisinage. Cette préoccupation a constamment guidé le Tribunal dans sa recherche d'une solution équitable. Son objectif premier a été d'éviter que, pour une raison ou pour une autre, une des Parties voie s'exercer en face de ses côtes et dans leur voisinage immédiat des droits qui pourraient

porter atteinte à son droit au développement ou compromettre sa sécurité." (emphasis supplied) (footnotes omitted) (Ibid at para. 121-124).[114]

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[114]. The English text reads as follows:

"121. The Parties have invoked economic circumstances, have qualified them in various ways and have based their respective arguments on examples relating for the most part to their economy, their lack of resources and their development plans. They have put forward arguments relating to maritime transport, fishing, petroleum resources, etc., and Guinea-Bissau has mentioned its particular interest in having future free access to the port of Buba by the Orango channel and the Rio Grande estuary."

"122 The Tribunal has taken note that both Guinea and Guinea-Bissau are developing countries, both being confronted with considerable economic and financial difficulties which increased resources from the sea could help to attenuate. Both of them justly aspire to obtaining fair profits from this present or potential wealth for the benefit of their peoples. However, this Tribunal has not, any more than the International Court of Justice in the *Tunisia/Libya* case (*I.C.J. Reports 1982*, pp. 77-78, paragraph 107), acquired the conviction that economic problems constitute permanent circumstances to be taken into account for purposes of delimitation.

"As the Tribunal can be concerned only with a contemporary evaluation, it would be neither just nor equitable to base a delimitation on the evaluation of data which changes in relation to factors that are sometimes uncertain."

"123. Some States may have been treated by nature in a way that favours their boundaries or their economic development; others may be disadvantaged. The boundaries fixed by man must not be designed to increase the difficulties of States or to complicate their economic life. The fact is that the Tribunal does not have the power to compensate for the economic inequalities of the States concerned by modifying a delimitation which it considers is called for by objective and certain considerations. Neither can it take into consideration the fact that economic circumstances may lead to one of the Parties being favoured to the detriment of the other where this delimitation is concerned. The Tribunal can nevertheless not completely lose sight of the legitimate claims by virtue of which economic circumstances are invoked, nor contest the right of the peoples concerned to a level of economic and social development which fully preserves their dignity. The Tribunal is of the opinion that the economic preoccupations so legitimately put forward by the Parties should quite naturally encourage them to consider mutually advantageous cooperation with a view to achieving their objective, which is the development of their countries."

"124. To the economic circumstances, the Parties linked a circumstance concerned with security. This is not without interest, but it must be emphasised that neither the exclusive economic zone nor the continental shelf are zones of sovereignty. However, the implications that this circumstance might have had were avoided by

6. The factors invoked by President Lachs and his distinguished colleagues, Judges Bedjaoui and Mbaye, must apply in the circumstances of the present case.

C. The Incidence of Fisheries and Hydrocarbons in the Disputed Area

7. As Nicaragua has indicated already in the introduction to the present *Memorial*, the object of the present proceedings is to establish a stable basis for the activities of the two parties and their nationals in a region with an abundance of natural resources and rich fisheries. These fisheries have a correlation with the geomorphology of the Nicaraguan Rise, including the Llanuras de Cayo Gorda, and the Gran Llanura de Banco Rosalinda.

8. A similar correlation can be assumed to exist in relation to the incidence of oil and natural gas.

9. As a developing State with pertinent coastal fronts and a natural prolongation in the form of the Nicaraguan Rise, Nicaragua has a legitimate expectation that any delimitation will lead to an equitable result, that is, a result which necessarily takes account of the incidence of natural resources. The alignment based upon the bisector method produces a conspicuously equitable result in this context. As the graphic shows, the bisector results in an equitable division of the Nicaraguan Rise (see Figures II and III.a and XVIII).

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the fact that, in its proposed solution, the Tribunal has taken care to ensure that each State controls the maritime territories situated opposite its coasts and in their vicinity. The Tribunal has constantly been guided by its concern to find an equitable solution. Its prime objective has been to avoid that either Party, for one reason or another, should see rights exercised opposite its coast or in the immediate vicinity thereof, which could prevent the exercise of its own right to development or compromise its security." (emphasis supplied) (footnotes omitted) (*International Law Reports*, Vol. 77, p.635 at pp. 688-9)

D. The Principle of Equitable Access to the Natural Resources of the Disputed Area.

10. In addition to the incidence of natural resources as a relevant circumstance, there is the recently formulated principle of equitable access to the natural resources of the disputed area. In truth, the two principles are logically interrelated.

11. The Award of the Court of Arbitration in the *Guinea-Guinea (Bissau) case* (above, para. 5) contains reference to considerations which are closely related to the concept of equitable access. The emphasis on the right to economic development in that Award must be presumed to rest on the premise that there is an *equal* right to development.

12. In any event the first formulation of the principle of equitable access in terms appears in the Judgment of the Court in the *Jan Mayen case*. The most relevant passages are as follows:

> "72. The Court now turns to the question whether access to the resources of the area of overlapping claims constitutes a factor relevant to the delimitation. So far as sea-bed resources are concerned, the Court would recall what was said in the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* case:
>
> "The natural resources of the continental shelf under delimitation "so far as known or readily ascertainable" might well constitute relevant circumstances which it would be reasonable to take into account in a delimitation, as the Court stated in the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969*, p. 54, para 101(D) (2)). Those resources are the essential objective envisaged by States when they put forward claims to sea-bed areas containing them." (*I.C.J. Reports 1985*, p. 41, para. 50.)"
>
> "Little information has however been given to the Court in that respect, although reference has been made to the possibility of there being deposits of polymetallic sulphides and hydrocarbons in the area."

"73. With regard to fishing, both Parties have emphasized the importance of their respective interests in the marine resources of the area ..."

[.....]

"75. As has happened in a number of earlier maritime delimitation disputes, the Parties are essentially in conflict over access to fishery resources: this explains the emphasis laid on the importance of fishing activities for their respective economies and on the traditional character of the different types of fishing carried out by the populations concerned. In the *Gulf of Maine* case, which concerned a single maritime boundary for continental shelf and fishery zones, the Chamber dealing with the case recognized the need to take account of the effects of the delimitation on the Parties' respective fishing activities by ensuring that the delimitation should not entail "catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned" (*I.C.J. Reports 1984*, p. 342, para. 237). In the light of this case-l.aw, the Court has to consider whether any shifting or adjustment of the median line as fishery zone boundary, would be required to ensure equitable access to the capelin fishery resources for the vulnerable fishing communities concerned."

"76. It appears to the Court that the seasonal migration of the capelin presents a pattern which, north of the 200-mile line claimed by Iceland, may be said to centre on the southern part of the area of overlapping claims, approximately between that line and the parallel of 72° North latitude, and that the delimitation of the fishery zone should reflect this fact. It is clear that no delimitation in the area could guarantee to each Party the presence in every year of fishable quantities of capelin in the zone allotted to it by the line. It appears however to the Court that the median line is too far to the west for Denmark to be assured of an equitable access to the capelin stock, since it would attribute to Norway the whole of the area of overlapping claims. For this reason also the median line thus requires to be adjusted or shifted eastwards (cf. Paragraph 71 above)."

[.....]

"90. The Court has found (paragraph 44 above) that it is bound to apply, and it has applied, the law applicable to the continental shelf and the law applicable to the fishery zones. Having done so, it has arrived at the conclusion that the median line provisionally drawn, employed as starting-point for the delimitation of the continental shelf and the fishery zones, must be adjusted or shifted so as to attribute a larger area of maritime spaces to Denmark. So far as the continental shelf is concerned, there is no requirement that the line be shifted eastwards consistently throughout its length: if other considerations might point to another form of adjustment, to adopt it would be within the measure of discretion conferred on the Court by the need to arrive at an equitable result. For the fishery zones, equitable access to the resources of the southern part of the area of overlapping claims has to be assured by a substantial adjustment or shifting of the median line provisionally drawn in that region. In the view of the Court the delimitation now to be described, whereby the position of the delimitation lines for the two categories of maritime spaces is identical, constitutes, in the circumstances of this case, a proper application both of the law applicable to the continental shelf and of that applicable to the fishery zones."

[.....]

"92. The southernmost zone 1, corresponds essentially to the principal fishing area referred to in paragraph 73 above. In the view of the Court, the two parties should enjoy equitable access, to the fishing resources of this zone ..." (emphasis supplied) (*I.C.J. Reports 1993,* pp. 70-72, 79).

13. In the present case the line based upon the bisector method produces a result which satisfies the criterion of equitable access to the resources located in the area of Nicaraguan Rise.

E. The Geology and Geomorphology of the Nicaraguan Rise

14. The single maritime boundary, whose course the Court is asked to determine by Nicaragua, is located wholly within the Nicaraguan Rise. This location provides a further confirmation of the equitable character of the boundary proposed by Nicaragua. As was noted in Chapter II, the Nicaraguan Rise is a wide triangular ridge, extending from Honduras and Nicaragua to Hispaniola, bearing the island of Jamaica and separating the Cayman Basin from the Colombian Basin. In geological terms, the Nicaraguan Rise can be classified as a microcontinent. Microcontinents are, as their name indicates, of continental origin and occur in all ocean basins. These continental fragments are isolated from major continental land masses. Little is known about why or how this process occurred.

15. The triangular configuration of the Nicaraguan Rise is reflected in the geomorphology of the seabed in the Western Caribbean Sea. This is illustrated by the location of the 200 metre isobath (see Figure II) which indicates the central part of the Nicaraguan Rise, and by the contours of the Nicaraguan Rise as indicated on a bathymetric chart, see Figure III and Figure A in Volume II (maps). Along the western edge of the Nicaraguan Rise, the 200 isobath and the edge of the Rise are relatively close to the continental coast of Honduras. Due to their general orientation and the east west orientation of the Honduran mainland coast, the isobath and the edge of the Rise move further away from the continent further east. A similar situation exist along the southern edge of the Nicaraguan Rise. In this case, the orientation of the mainland coast of Nicaragua is generally north south and moving north the 200 meter isobath and the outer edge of the Rise become more distant from the coast, as they head in a northeasterly direction. The areas within the 200 meter isobaths can be contained in a roughly triangular shape, with its apex in Rosalind Bank. The edges of the Nicaraguan Rise as reflected in the seabed morphology continue further out into the Caribbean Sea, running to the north and south of the island of Jamaica.

16. If a bisector is traced between either the 200 meter isobaths or the outer edges of the Nicaraguan Rise, it would have

a direction that is *grosso modo* the same as the bisector based on coastal geography advanced by Nicaragua as representing the course of the single maritime boundary (see Figures II, III.a and XVIII). It is submitted that this is a further indication of the equitable character of the latter line.

17. It is recognized by Nicaragua that this Court has rejected the view that geologic or geomorphologic discontinuities of the seabed can be used to establish the location of maritime boundaries within the 200 nautical mile limit. However, the present argument of Nicaragua is basically different, namely that the Nicaraguan Rise is one single feature shared by Nicaragua and Honduras, which is characterized by the absence of any natural dividing lines.

18. Support for the argument that the unitary character of the sea-bed has to be respected in dividing areas of overlapping claims to maritime zones is found in a number of pronouncements of the jurisprudence. Thus, the Tribunal in the *Guinea/Guinea Bissau Arbitration* observed that

> "les variations du relief du plateau continental dans la présente espèce et celles de la nature de son terrain ne sont pas assez connues en l'état actuel de la recherche, et surtout pas assez marquées, pour constituer des facteurs séparateurs valables. Le plateau continental en face des deux Guinée est un. Il doit donc être délimité comme tel."[115] (*Reports of International Arbitral Awards*, Vol. XIX, p. 192, para. 117)

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115. The English translation reads:
"the variations in the relief of the continental shelf in the present case and the variations in the nature of its terrain are not well enough known and above all not sufficiently characterized, to constitute valid separative factors, given the present state of research. The continental shelf opposite the two Guineas is one and the same. It must therefore be delimited as such." (*International Boundary Cases: The Continental Shelf*, Cambridge, 1992, Vol. II, p. 1352, para. 117)

19. Likewise, in the award in the *Canada/France Maritime Delimitation* the Court of Arbitration observed that the continental shelf in this area is a continuum characterized by the unity and uniformity of the whole sea-bed, "from the Arctic to Florida", as admitted by Canada and recognized by the Chamber of the International Court of Justice in the *Gulf of Maine* case. In that case the Chamber concluded that "the continental shelf of the whole area is no more than an undifferentiated part of the continental shelf of the eastern seaboard of North America" (para. 45). Since it is all one shelf it cannot be considered as exclusively Canadian. Each coastal segment has its share of shelf. (*International Law Reports*, Vol. 95, p. 665, para. 46)

20. Finally, reference can be made to the conclusion of Evans in respect of the relevance of natural features in the water-column or the seabed as an element in the delimitation process:

> "Natural features, be they in the water column or on a part of the seabed, may produce natural boundaries, but they do not produce boundary *lines* that can be drawn on a map. At best, they tend to indicate boundary *zones*." (Evans, *Relevant Circumstances and Maritime Delimitation*, Oxford, 1989, p. 118).

21. The Nicaraguan Rise, as reflected in its geomorphological alignment, can be considered to constitute such a boundary zone. As such, its alignment does not mandate a boundary, but it does confirm the equitable nature of the course of the boundary arrived at on the basis of other considerations. This boundary proposed by Nicaragua respects the unitary character of the Nicaraguan Rise, by dividing the Rise in approximately equal halves between Nicaragua and Honduras. In view of the general equality of the coastal fronts of Nicaraguan and Honduras facing the submerged parts of the Nicaraguan Rise, such an equal division is inherently equitable (see also *I.C.J. Reports 1969*, p. 50, para. 91).

F. Security Considerations

22. International tribunals have given firm recognition to the relevance of security considerations to the assessment of the equitable character of a delimitation.

23. The principle was expressed and applied by the distinguished Court of Arbitration in the *Guinea-Guinea (Bissau)* case. In the words of the Court:

> "124. Aux circonstances économiques, les Parties ont lié une circonstance tirée de la sécurité, laquelle n'est pas sans intérêt, bien qu'il convienne de souligner que ni la zone économique exclusive, ni le plateau continental ne sont des zones de souveraineté. Cependant les implications que cette circonstance aurait pu avoir sont déjà résolues par le fait que, dans la solution qu'il a dégagée, le Tribunal a tenu à ce que chaque Etat contrôle les territoires maritimes situés en face de ses côtes et dans leur voisinage. Cette préoccupation a constamment guidé le Tribunal dans sa recherche d'une solution équitable. Son objectif premier a été d'éviter que, pour une raison ou pour une autre, une des Parties voie s'exercer en face de ses côtes et dans leur voisinage immédiat des droits qui pourraient porter atteinte à son droit au développement ou compromettre sa sécurité." (emphasis supplied) (footnotes omitted) (*Ibid* at para. 121-124).[116]

24. The principle has also been recognised by this Court in the *Libya/Malta case (I.C.J. Reports 1985*, p. 42, para. 51), and

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116. "To the economic circumstances, the Parties linked a circumstance concerned with security. This is not without interest, but it must be emphasized that neither the exclusive economic zone nor the continental shelf are zones of sovereignty. However, the implications that this circumstance might have had were avoided by the fact that, in its proposed solution, the Tribunal has taken care to ensure that each State controls the maritime territories situated opposite its coasts and in their vicinity. The Tribunal has constantly been guided by its concern to find an equitable solution. Its prime objective has been to avoid that either Party, for one reason or another, should see rights exercised opposite its coasts or in the immediate vicinity thereof, which could prevent the exercise of its own right to development or compromise its security." (International Law Reports, Vol. 77, p. 689, para. 124).

again in the *Jan Mayen case* (*ibid., 1993*, pp. 74-5, para. 81). In the latter Judgment the Court affirmed that the principle applied to all maritime delimitations:

> "Norway has agreed, in relation to the Danish claim to a 200-mile zone off Greenland, that
>
> "the drawing of a boundary closer to one State than to another would imply an inequitable displacement of the possibility of the former State to protect interests which require protection"
>
> It considers that, while courts have been unwilling to allow such considerations of security to intrude upon the major task of establishing a primary boundary in accordance with the geographical criteria, they are concerned to avoid creating conditions of imbalance. The Court considers that the observation in the *Libya/Malta* Judgment (*I.C.J. Reports 1985*, p. 42, para. 51) that "security considerations are of course not unrelated to the concept of the continental shelf", constituted a particular application, to the continental shelf, with which the Court was then dealing, of a general observation concerning all maritime spaces. In the present case the Court has already rejected the 200-mile line. In the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* case, the Court was satisfied that
>
> "the delimitation which will result from the application of the present Judgment is ... not so near to the coast of either Party as to make questions of security a particular consideration in the present case" (*I.C.J. Reports 1985*, p. 42, para. 51).
>
> The Court is similarly satisfied in the present case as regards the delimitation to be described below."

25. The reasoning set forth by the Court of Arbitration in the *Guinea/Guinea-Bissau case* applies very aptly to the political and geographical circumstances of the present case. The bisector method produces an alignment which effectively ensures 'that each State controls the maritime territories situated opposite to its coasts

and in their vicinity'. In contrast, the alignment espoused by Honduras (see para. 11, Chapter V) is conspicuously incompatible with this principle of security and with the protection of the legitimate interests of Nicaragua.

G. The Relationship of the Bisector Method and Equidistance in the Present Case

26. For reasons explained elsewhere (Chapters II, VIII and X) the application of the equidistance method would be artificial in the geographical circumstances of the present case. This approach does not imply that the equidistance method does not have virtues in appropriate circumstances. As Professor Weil observes:

> "Il semble bien, en outre, que, de toutes les méthodes, c'est celle de l'équidistance qui s'approche le plus de l'objectif de la division égale de la zone de chevauchement."[117] (*Perspectives du droit de la délimitation maritime.* Pedone, Paris, 1988 p. 64)

27. But Professor Weil goes on to say:

> "On ne saurait cependant méconnaître que la division de la zone de chevauchement par parts à peu près égales peut être obtenue aussi par d'autres méthodes, "plus ou moins différentes bien qu'elles procèdent au fond d'une même inspiration", la perpendiculaire, par exemple, ou la bissectrice de l'angle formé par les lignes côtières. A certains égards, il s'agit là de variantes de l'équidistance. Cela est vrai, en particulier, de la méthode de la perpendiculaire à la direction générale de la côte qui a été préconisée parfois dans le passé pour la délimitation de la mer territoriale, parce qu'entre côtes limitrophes rectilignes elle aboutissait au même partage en parts égales de la zone de chevauchement que la ligne mé-

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[117] The English edition reads as follows: "Moreover, of all methods, equidistance would seem to come closest to achieving the objective of an equal division of the overlapping area." (*The Law of Maritime Delimitation-Reflections*, Cambridge, 1989, p. 59).

diane entre côtes oppossées." (footnotes omitted) (*ibid.*, p. 64).[118]

28. The relationship between equidistance and the bisector method has also been recognised by Legault and Hankey, two distinguished Canadian experts on the law of the sea. In their words:

"Another means of modifying the equidistance method in order to discount the effect of incidental coastal features and configurations on the course of the boundary is to construct two lines, each representing the coastal front of one of the parties, and then to bisect the angle between the two construction lines. In the Sharjah-Umm al Qaywayn agreement, 1964 (No. 7-10), the parties constructed lines between the terminal points of adjacent land frontiers and then bisected the angle formed by the two construction lines.

"In its judgment in the *Gulf of Maine* case between Canada and the United States (No. 1-3), the Chamber rejected the use of equidistance in the innermost part of the Gulf because of the numerous isolated rocks and islands along the coast and because of the dispute over Machias Seal Island. The Chamber therefore constructed two lines representing the general direction of the coasts of each of the parties (Cape Elizabeth to the international boundary terminus on the United States side, the Cape Sable to the same terminus on the Canadian side), bisected the angle formed by perpendiculars to these construction lines, and then transposed the resulting azimuth to the point of commencement established by the parties in the

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118. The English edition reads as follows: "It should not, however, be overlooked that a more or less equal division of the overlapping area can be obtained by other methods, "differing from it in varying degree even while prompted by similar considerations", for example, the perpendicular, or the bisector of the angle formed by the two coastlines. In some respects, these are just variations on the equidistance theme. This is particularly the case with the perpendicular to the general line of the coast, a method recommended in the past for delimiting the territorial seas because, when used between adjacent straight coasts, it achieves the same equal division of the overlapping area as does the median line between opposite coasts." (footnotes omitted) (*ibid.*, p. 59).

Special Agreement." (Charney and Alexander, *International Maritime Boundaries*, Dordrecht, 1993, Vol, I, p. 210).

29. And the classical authority, Gidel, made the point in his treatise:

> "Lorsqu'il s'agit de souverainetés qui sont au contact latéral et non pas au contact de front, la solution de la ligne médiane consiste à tracer au point frontière terrestre une perpendiculaire à la direction générale de la côte n'est qu'une modalité spéciale de la ligne médiane entendue au sens large ..." (footnotes omitted). (*Le droit international public de la mer,* Tome III, Paris, 1934, pp. 768-69).

30. In the present context the Government of Nicaragua has the objective of emphasizing that *the result* of using the bisector method is compatible with the result of using the equidistance method *in the geographical circumstances of the present case*, the use of the bisector method is made necessary for two reasons. First, it avoids entanglement with the problematical aspects of the terminus of the land boundary and, secondly, it avoids giving undue influence to very minor and aberrant coastal features.

H. The Method Treats the Islets and Rocks off the Mainland Coasts on Their Merits

31. The direction of the bisector proposed by Nicaragua is calculated by taking into account the general direction of the mainland coasts of Nicaragua and Honduras. The islets and rocks off the mainland coasts have not been taken into consideration in this exercise. It is submitted that the jurisprudence and state practice confirm this approach, in view of the geography of the area in which the delimitation takes place.

32. These islets and rocks form a screen in front of the northern mainland coast of Nicaragua. Further to the north, off the mouth of the Río Coco, these features lie a larger distance from the mainland coast (up to some 30 to 40 nautical miles) and the distances between them are larger. A number of separate

groups of islets and rocks can be distinguished. Furthest to the south, off Gorda Point on the Nicaraguan mainland coast, lie the Miskito Cays. The principal island of the Miskito Cays is Isla Grande. Isla Grande is by far the largest island off the mainland coasts in the area near the land boundary of Nicaragua and Honduras. To the north of the Miskito Cays lie a number of areas of islets and rocks. This concerns inter alia, from south to north, Edinburgh Reef, Half Rock, South Cay, Alargado Reef and Media Luna Reef. Further to the north, and separated from the most northerly of the above features (Media Luna Reef) by a wide Channel, lie a further number of groups of islets and rocks, including among others, the followings cays, Cayos Cocorocuma, Vivorillo, Cajones and Pichones. This second area is also characterised by the absence of any significant islands. The bisector line proposed by Nicaragua lies in the Channel between these latter features and those situated further south, see Figure A in Volume III (maps).

33. In the *Gulf of Maine* case, the Chamber of the Court applied the bisector method to establish the first part of the delimitation line inside the Gulf of Maine. To explain the reasons for employing this method the Chamber observed that:

> "In this connection, the Chamber would emphasize the necessity of not allowing oneself to be too easily swayed by the perfection which is apparent *a priori*, from the viewpoint of equally dividing a disputed area, in a line drawn in strict compliance with the canons of geometry, i.e., a line so constructed that each point in it is equidistant from the most salient points on the respective coastlines of the parties concerned. In an apposite passage of the 1969 Judgment on the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969*, p. 36, para. 57), the Court showed how, in determining the course of a delimitation line intended to "effect an equal division of the particular area involved" between two coasts, no account need be taken of the presence of "islets, rocks and minor coastal projections, the disproportionally effect of which can be eliminated by other means". In pursuance of this remark, the Chamber likewise would point out the potential disadvantages inherent in any method which takes tiny islands,

uninhabited rocks or low-tide elevations, sometimes lying a considerable distance from terra firma, as basepoint for the drawing of a line intended to effect an equal division of a given area. If any of these geographical features possess some degree of importance, there is nothing to prevent their subsequently being assigned whatever limited corrective effect may equitably be ascribed to them, but that is an altogether different operation from making a series of such minor features the very basis for the determination of the dividing line, or from transforming them into a succession of basepoints for the geometrical construction of the entire line. It is very doubtful whether a line so constructed could, in many concrete situations, constitute a line genuinely giving effect to the criterion of equal division of the area in question[.]" (*I.C.J. Reports 1984,* pp. 329-330, para. 201).

34. In a subsequent passage of the Judgment, the Chamber indicated that these considerations applied in the first sector of the boundary it was to establish inasmuch as the likely end result of the application of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured:

"would be the adoption of a line all of whose basepoints would be located on a handful of isolated rocks, some very distant from the coast, or on a few low-tide elevations: these are the very type of minor geographical features which, as the Court and the Chamber have emphasized, should be discounted if it is desired that a delimitation line should result so far as feasible in an equal division of the areas in which the respective maritime projections of the two countries' coasts overlap."(*ibid.*, p. 332, para. 210).

35. In the *Guinea/Guinea Bissau Arbitration* the Tribunal also had to address a complex geographical situation, in which islands played an important role. In order to determine the extent to which these islands should be taken into account the Tribunal distinguished between three types of islands:

"a) Les îles côtières, qui ne sont séparées de la terre ferme que par des bras de mer ou cours d'eau de faible largeur et qui lui sont souvent reliées à marée basse, doivent être considérées comme partie intégrante du continent.

b) Les îles Bijagos, dont la plus proche est à 2 milles marins du continent et la plus éloignée à 37 et qui ne sont jamais séparées entre elles par plus de 5 milles, ont, si l'on applique la règle des 12 milles reconnue par les Parties, leurs eaux territoriales liées entre elles et à celles du continent.

c) Il y a aussi les îlots éparpillés plus au sud au milieu de hauts-fonds (Poilão, Samba, Sene, Alcatraz), dont certains peuvent compter pour l'établissement des lignes de base et entrer dans les eaux territoriales."[119] *(R.G.D.I.* 1985, pp. 522-523, para. 95).

36. The Tribunal concluded that:

"S'il est incontestable que la délimitation à opérer devra, d'une manière ou d'une autre, laisser à chaque Etat les îles dont il a la souveraineté, il n'en demeure pas moins qu'aux fins de la recherche des critères généraux à appliquer ce sont surtout les îles des catégories *a* et *b* qui devront être tenues pour pertinentes."[120] *(ibid.)*

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119. The English translation reads:

"a) The coastal islands, which are separated from the continent by narrow sea channels or narrow watercourses and are often joined to it at low tide, must be considered as forming an integral part of the continent.

b) The Bijagos Islands, the nearest of which is two nautical miles from the continent and the furthest 37 miles; and no two of which are further apart than 5 miles, can be considered, if the 12-mile rule accepted by the Parties is applied, as being in the same territorial waters as each other and as being linked to the continent.

c) There are also the most southerly islands scattered over shallow areas (Poilao, Samba, Sene, Alcatraz), some of which may be taken into account for the establishment of baselines and be included in the territorial waters." (*International Boundary Cases: The Continental Shelf*, Cambridge, 1992, Vol. II, p. 1341-1342, para. 95)

120. The English translation reads:

"Although it cannot be denied that, somehow or other, the delimitation must leave to each State the islands over which it has sovereignty, it nevertheless remains that, in search for the general criteria to be applied, it is above all the islands of the categories (a) and (b) that are considered as relevant." (*ibid.*)

37. To establish the method of delimitation it was to apply, the Tribunal indicated that coastal configuration and orientation formed an important factor. It held that this configuration had to include the relevant islands, i.e. the coastal islands and the Bijagos Archipelago, as they had been defined in paragraphs 95 (a) and (b) of the Award. The scattered islands referred to in paragraph 95(c) were not taken into account in this respect (*ibid.*, pp. 184-185, paras. 97 and 98).

38. The Tribunal returned to the role of the latter islands in the delimitation in evaluating lines advanced by the parties. It observed that:

> "En ce qui concerne l'équidistance, le Tribunal, qui est, comme on l'a vu, en présence de deux lignes d'équidistance, doit reconnaître qu'en l'espèce l'une et l'autre auraient sérieux inconvénients. Au voisinage de côtes, donnant une importance exagérée à certains accidents non significatifs du littoral, elles produiraient un effet d'amputation que ne justifierait aucun principe équitable et que le Tribunal ne saurait admettre."[121] (*ibid.*, p. 526, para. 103).

39. A distinction between different islands and island groups was also made by the Tribunal in the second phase on maritime delimitation in the *Eritrea/Yemen Arbitration*. In establishing the northernmost stretch of the boundary line, the Tribunal clearly distinguished between islands, which were a considerable distance from the mainland coasts, and islands, which were considered to be an integral part of the mainland coast. Whereas the latter were taken into account in establishing a median line boundary, the former were not (*Eritrea/Yemen Award, Phase II: Maritime De-*

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121. The English translation reads:

"Where equidistance is concerned, the Tribunal, which as we have seen is confronted here with two lines of equidistance, is forced to accept that both would have serious drawbacks in the present case. In the vicinity of the coast, they would give exaggerated importance to certain insignificant features of the coastline, producing a cut-off effect which would satisfy no equitable principle and which the Tribunal could not approve." (*ibid.*, p. 1346, para. 103)

limitation, Chapter V, paras. 139-153). In respect of the former, the Tribunal observed that

> "This requirement of an equitable result directly raises the question of the effect to be allowed to mid-sea islands which, by virtue of their mid-sea position, and if allowed full effect, can obviously produce a disproportionate effect – or indeed a reasonable and proportionate effect – all depending on their size, importance and like considerations in the general geographical context." (*ibid.*, para. 117).

> "These islands do not constitute a part of Yemen's mainland coast. Moreover, their barren and inhospitable nature and their position well out to sea, which already have been described in the Award on Sovereignty, mean that they should not be taken into consideration in computing the boundary line between Yemen and Eritrea." (*ibid.*, para. 147).

40. The recurrent theme in these pronouncement of this Court and the Arbitral Tribunals is that islands have to be treated on their merits. This reflects the more general principle, already enunciated by the Court in the *Dispositif* in the *North Sea Continental Shelf* cases, that delimitation must take into account "the general configuration of the coasts of the Parties, as well as the presence of any special or unusual features" (*I.C.J. Reports, 1969*, p 54, para. 101(D)). As far as islands are concerned, consideration has been given to such factors as size, distance from the mainland coasts, population or absence thereof and nearness to the delimitation line.

41. State practice also provides numerous examples of giving varied weight to islands in the delimitation of maritime boundaries, depending on their characteristics and the other circumstances of the case. Instead of giving an overview of all relevant agreements, for the moment it suffices to refer to the conclusions of Professor Prosper Weil in his authoritative work on maritime delimitation. He finds that:

> "Selon le cas, l'île se verra accorder un effet complet ou un effet partiel; dans certains cas elle sera ignorée; dans d'autres

encore elle sera enclavée, ce qui signifie que la délimitation sera effectuée entre masses continentales comme si l'île n'existait pas et que l'île sera dotée d'un espace maritime propre entourant son littoral. Les auteurs ont abondamment décrit et analysé ces solutions, dont la pratique des Etats fournit de nombreux exemples."[122] (*Perspectives du droit de la délimitation maritime*, Paris, 1988, p. 244).

42. As is shown by the graphic representation of the bisector line proposed by Nicaragua (see Figure A in Volume III) all islets and rocks under the sovereignty of Nicaragua are situated to the south of this line and those under the sovereignty of Honduras to the north of the line. As is set out above (see Chapter VIII), this result is achieved without taking the islets and rocks explicitly into account. Nonetheless, the bisector line proposed by Nicaragua has the effect that the numerous islets and rocks off the mainland coasts are treated on their merits.

43. Although the rocks and islets have a very limited size in comparison to the mainland coasts, the bisector line, while reflecting the geographical relationship of the mainland coasts of Nicaragua and Honduras, leaves all of the islets and rocks with considerable maritime zones. The jurisprudence indicates that in these circumstances the use of a bisector of the general directions of the mainland coasts as a maritime boundary produces an equitable result.

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122. The English translation reads:

"Depending on the circumstances, the island will be given full or partial effect. In certain cases it will be ignored. In others it will be enclaved, which means that the delimitation will be carried out between the mainlands as if the island did not exist, and it will be given its own maritime spaces around its coasts. These various approaches have been dealt with extensively in the literature, and there are many examples in State practice." (*The Law of Maritime Delimitation – Reflections*, Cambridge, 1989, p. 230)

X : THE DELIMITATION IN THE TERRITORIAL SEA

A. Introduction

1. Nicaragua's Application 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." Chapter VIII dealt with the course the maritime boundary should follow between the overlapping areas of continental shelf and exclusive economic zones and explained the legal and technical reasons that evidenced the appropriateness of the use of a bisector in the particular circumstances of this case. Chapter IX, for its part, gave an account of the equitable criteria that confirmed the equitable result produced by the bisector method proposed by Nicaragua. This chapter will deal with the particular requirements that the United Nations Convention on the Law of the Sea imposes for delimitations within the territorial sea.

2. The reasons for having first addressed the question of the delimitation in the areas located beyond the territorial sea will become clear in this Chapter. Nicaragua, after consultations with her technical and legal experts, came to the conclusion that the application of the special methods required by international law for delimitation within the territorial sea, in the particular geographical circumstances of this case, coincided greatly with the result produced by the use of the bisector method that Nicaragua proposes should be used to delimit those considerably more extensive maritime areas located beyond the territorial sea. For reasons of exposition, it has been considered more logical to first explain the reasons behind the use of the bisector method because the maritime boundary in the territorial sea would be adjusted to coincide with the course of the maritime boundary generated by the application of the method. Thus, in fact, since the line produced by the bisector is going to be used overall it was decided that the explanation for the use of the bisector method should be approached first in the Memorial.

3. As has been indicated in para. 5 of Chapter I, Nicaragua and Honduras are Parties to the United Nations Conventions on the Law of the Sea of 1982. In accordance with article 3 of this Convention, both Parties have the right to a territorial sea of a breadth of 12 nautical miles. The delimitation of this territorial sea must be effected on the basis of the principles set out in Article 15 of the Law of the Sea Convention, which provides:

> "Delimitation of the territorial sea between States with opposite or adjacent coasts"
>
> "Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith".

4. In the present Chapter Nicaragua will demonstrate that the provisions of Article 15 are to be understood in the light of the equitable principles of international law that are generally applicable to delimitations in the other maritime areas subject to the jurisdiction and rights of sovereignty of States. Afterwards it will be established that even applying the provisions of Article 15 literally, the special circumstances that surround this case and that have been explained in Chapters II and VII, make imperative the use of a line at variance with the strict median that would otherwise be applicable. It will also be seen that the line resulting from the application of the special circumstances to the strict median line results in a line that follows a course quite similar to that generated by the bisector method.

B. Meaning of the rule: median line-special circumstances

5. The generally accepted opinion is that the formulation of the principles applicable to the delimitation of the territorial sea between States with adjacent coasts in Article 15 of the Convention on the Law of the Sea represents the relevant principles of general international law. The majority of the standard works express this opinion. Thus, in his major work on maritime delimitation, Professor Prosper Weil writes: "délimitation de la mer territoriale est dominée par la règle équidistance-circonstances spéciales: établie par l'article 12 de la Convention de 1958 sur la mer territoriale et la zone contiguë et reprise sans difficulté par la troisième conférence dans l'article 15 de la Convention de 1982, cette règle est généralement regardée comme ayant acquis valeur coutumière pour ce qui est de la délimitation de la mer territoriale" (*Perspectives du droit de la délimitation maritime*, Paris, Pedone, 1988, pp. 147-148).[123]

6. The following works are a sample of such opinion:

i) R.R. Churchill and A.V. Lowe, *The Law of the Sea,* 2nd ed., 1988, pp. 154-155.
ii) Lucius Caflisch, "La délimitation des espaces entre États dont les côtes se font face ou sont adjacentes" in René-Jean Dupuy et Daniel Vignes eds., *Traité du nouveau droit de la mer*, Économica/Bruylant, Paris/Bruxelles, 1985, p. 391.
iii) *Restatement of the Law Third: The Foreign Relations Law of the United States,* The American Law Institute, 1990, Vol. 2, pp. 70-71, para. 516.
iv) Sir Robert Jennings and Sir Arthur Watts, *Oppenheim's International Law,* Vol. 1, *Peace,* Longman, London, 9th ed., 1992, p. 613, para. 197.

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123. The English edition reads as follow: "the delimitation of the territorial sea is governed by the equidistance/special circumstances rule. Established by the Article 12 of the 1958 Convention on the Territorial Sea and Contiguos Zone and incorporated without any difficulty by UNCLOS III in the Article 15 of the 1982 Convention, this rule is regarded as having become part of customary law for purposes of territorial sea delimitation." (*The Law of Maritime Delimitation – Reflections*, Cambridge, 1989, p. 136).

7. Recent case law concerning delimitation of the territorial seas of States with adjacent or opposite coasts is limited, attention having been given principally to delimitation of the continental shelf and the exclusive economic zone. However, in the *Dubai/ Sharjah Border Arbitration*, the Arbitral Tribunal equated the customary and the conventional rules (91 *ILR* 543, p. 663; see R.R. Churchill and A. V. Lowe, *The Law of the Sea,* 2nd ed., 1988, p. 183).

8. As recalled above (para. 6), the provisions of Article 15 of the 1982 Convention are an almost exact replica of Article 12, paragraph 1, of the Convention on the Territorial Sea and Contiguous Zone of 1958:

> "1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary , to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision".

9. The principles embodied in this provision were agreed upon in the *International Law Commission* as early as 1953 after the Report of the Experts Committee consulted by Special Rapporteur J.P.A. François. It is worth noting that, according to the experts, who had advocated the equidistance principle:

> "Dans certains cas, cette méthode ne permettra pas d'aboutir à une *solution équitable*, laquelle devra alors être recherchée dans des négotiations"(Additif au deuxième rapport de M. J.P.A. François, Rapporteur spécial, doc. A/CN.4/61/Add.1, *ILC Yearbook* 1953, vol. II, p. 79; italics added).

10. This was the origin of the inclusion of the mention of "special circumstances" in the relevant provisions of the 1958 and

1982 Conventions, and shows that the main object of any maritime delimitation, including in the territorial sea is to achieve an equitable solution.

11. The Report of the International Law Commission had this to say about the reference to special circumstances in this draft provision:

> "The delimitation in case of disagreement between those States, of the territorial seas between two States the coasts of which are opposite each other, was one of the main tasks of the committee of experts which met at The Hague in April 1953 at the Commission's request. The Commission approved of the experts' proposals (A/CN.4/61/Add.l) and took them as a basis for this article. It considered, however, that it would be wrong to go into too much detail and that the rule should be fairly flexible. Consequently, it did not adopt certain points of detail laid down by the experts. Although the Commission noted that special circumstances would probably necessitate frequent departures from the mathematical median line, it thought it advisable to adopt as a general rule, the system of the median line as a basis for delimitation" (*Yearbook of the International Law Commission,* 1956, vol. II, p. 271. Commentary, para 2).

12. The draft provision on continental shelf delimitation in the same Commission Report adopted a similar approach. The relevant draft article and the Commentary are as follows:

> Article 72
>
> i. "1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite to each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the baselines from which the breadth of the territorial sea of each country is measured".

ii. "2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the baselines from which the breadth of the territorial sea of each of the two countries is measured".

Commentary

"(1) For the determination of the limits of the continental shelf the Commission adopted *the same principles* as for the articles 12 and 14 concerning the delimitation of the territorial sea. As in the case of the boundaries of the territorial sea, provision must be made for departures necessitated by any exceptional configuration of the coast, as well as the presence of islands or of navigable channels. This case may arise fairly often, so that the rule adopted is fairly elastic" (*Ibid.*, p. 300) (emphasis supplied).

13. There are strong reasons for regarding the reference to "special circumstances" in Article 15 of the Convention of 1982 (and Article 12 of the Convention of 1958) as very flexible and encompassing considerations similar to those applying in the context of the delimitations of opposite or adjacent continental shelves or exclusive economic zones.

14. The need for flexibility emphasised during the *travaux préparatoires* of the 1958 Convention, regarding the delimitation of both the continental shelf and the territorial sea between States with adjacent or opposite coasts has been recognised in a number of more recent sources, including the rare recent cases where the question was at issue. Thus, in the *Beagle Channel* case the Tribunal, in delimiting the territorial waters in the Channel, applied the following criteria:

"In drawing its own line on the attached Boundary Line Chart, as described in paragraphs 104 and 105 above, the Court has

been guided by the considerations indicated in Annex IV hereto (which shows how the line has been traced), – in particular by mixed factors of appurtenance, coastal configuration equidistance, and also of convenience, navigability, and the desirability of enabling each Party so far as possible to navigate in its own waters. None of this has resulted in much deviation from the strict median line except, for obvious reasons, near Gable Island where the habitually used navigable track has been followed" (*Beagle Channel Arbitration Report and Decision of the Court,* 52 *ILR,* p. 93, at p. 185, para. 110).

15. Similarly, in the *Guinea/Guinea-Bissau Arbitration* the Tribunal made no distinction between the principles or rules that were to apply to the sector involving the territorial sea and to the sector relating to both the continental shelf and the exclusive economic zone (*ILR*, Vol. 83, p.1). The methods might differ according to the geographical realities in each area but the principles and rules applied for the selection of the method were the same: to achieve an equitable result.

16. The jurisprudence has long indicated the close relationship between "special circumstances" and equitable principles. This was explained in cogent reasoning in the *Anglo-French Continental Shelf* case. In the words of the Tribunal:

"69. It also follows that the relevance of "special circumstances" in the application of Article 6 does not depend on a claim to invoke special circumstances having been advanced by the interested State when ratifying or acceding to the Convention. That this is the legal position under Article 6 is fully recognised by the United Kingdom which concedes that the French Republic may put forward a claim to "special circumstances" in these proceedings, whether or not in 1965 it made a reservation with regard to those special circumstances. Clearly, this feature of Article 6 further underlines the full liberty of the Court in appreciating the geographical and other circumstances relevant to the determination of the continental shelf boundary, and at the same time reduces the possibility

of any difference in the appreciation of these circumstances under Article 6 and customary law.

"70. The Court does not overlook that under Article 6 the equidistance principle ultimately possesses an obligatory force which it does not have in the same measure under the rules of customary law; for Article 6 makes the application of the equidistance principle a matter of treaty obligation for Parties to the Convention. But the combined character of the equidistance-special circumstances rule means that the obligation to apply the equidistance principle is always one qualified by the condition "unless another boundary line is justified by special circumstances". Moreover, the *travaux préparatoires* of Article 6, in the International Law Commission and at the Geneva Conference of 1958, show that this condition was introduced into paragraphs 1 and 2 of the Article because it was recognised that, owing to particular geographical features or configurations, application of the equidistance principle might not infrequently result in an unreasonable or inequitable delimitation of the continental shelf. In short, the role of the 'special circumstances' condition in Article 6 is to ensure an equitable delimitation; and the combined "equidistance-special circumstances rule", in effect, gives particular expression to a general norm that, failing agreement, the boundary between States abutting on the same continental shelf is to be determined on equitable principles. In addition, Article 6 neither defines "special circumstances" nor lays down the criterion by which it is to be assessed whether any given circumstances justify a boundary line other than the equidistance line. Consequently, even under Article 6 the question whether the use of the equidistance principle or some other method is appropriate for achieving an equitable delimitation is very much a matter of appreciation in the light of the geographical and other circumstances. In other words, even under Article 6 it is the geographical and other circumstances of any given case which indicate and justify the use of the equidistance method as the means of achieving an equitable solution rather than the inherent quality of the method as a legal norm of delimitation" (*Anglo-French Continental Shelf Case, ILR*, Vol. 54, p.6 at pp. 55-56).

17. The Court adopted this reasoning in the *Jan Mayen* case. In the words of the Judgment:

> "The fact that it is the 1958 Convention which applies to the continental shelf delimitation in this case does not mean that Article 6 thereof can be interpreted and applied either without reference to customary law on the subject, or wholly independently of the fact that a fishery zone boundary is also in question in these waters. The Anglo-French Court of Arbitration in 1977 placed Article 6 of the 1958 Convention in the perspective of customary law in the much-quoted passage of its Decision, that:
>
> "the combined "equidistance-special circumstances rule", in effect, gives particular expression to a general norm that, failing agreement, the boundary between States abutting on the same continental shelf is to be determined on equitable principles". (United Nations, *Reports of International Arbitral Awards (RIAA),* Vol. XVIII, p. 45, para. 70).
>
> "If the equidistance-special circumstances rule of the 1958 Convention is, in the light of this 1977 Decision, to be regarded as expressing a general norm based on equitable principles, it must be difficult to find any material difference – at any rate in regard to delimitation between opposite coasts – between the effect of Article 6 and the effect of the customary rule which also requires a delimitation based on equitable principles" (*I.C.J. Reports* 1993, p. 58, para. 46).

18. This significant element in the jurisprudence of delimitation has been recognised by the publicists. Thus, Professor Weil in a work first published in French ten years ago, then translated into English, wrote:

> "Si le divorce paraît consommé entre le droit de la délimitation de la mer territoriale et celui de la délimitation du plateau continental et de la zone économique, cette rupture ne repose sur aucune raison décisive. Aussi est-il permis de penser que la faille sera comblée un jour prochain et que le droit de la délimitation maritime, commun à l'origine à la mer

territoriale et au plateau continental, et dont le bloc a été désintégré par l'évolution ultérieure, retrouvera son unité."

"Les signes avant-coureurs de cette réunification se manifestent d'ores et déjà, de façon encore discrète certes, mais trop nombreux pour que l'on n'y prête pas attention. Dans l'affaire du *Canal Beagle*, le Tribunal a, pour délimiter les eaux territoriales dans la partie resserrée du Canal, pris en considération "des facteurs mélangés de relevance, de configuration côtière, d'équidistance, et aussi de commodité, de navigabilité, ainsi que le souci de permettre à chaque partie de naviguer autant que possible dans ses propres eaux": le raisonnement aurait–il été différent s'il s'était agi de délimiter des plateaux continentaux ou des zones économiques exclusives? Non moins significative est l'absence de toute suggestion, dans *Guinée/ Guinée-Bissau,* d'une quelconque distinction entre les règles à appliquer à la partie de la ligne délimitation afférente à la mer territoriale et celles à appliquer à la partie de la ligne afférente à la fois au plateau continental et à la zone économique exclusive."

"C'est apparemment autour des règles de droit coutumier élaborées par la jurisprudence que l'unité perdue se reconstitue, plutôt qu'autour de la règle équidistance-circonstances spéciales; tant et si bien que c'est le régime juridique de la délimitation de la mer territoriale qui semble perdre sa spécificité pour se fondre dans le régime juridique de la délimitation du plateau et de la zone." (foot note omitted) (*Perspectives du droit de la délimitation maritime,* Paris, Pedone, 1988, p. 152-153.[124]

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[124] The English translation reads as follows: "The divorce between the law of territorial sea delimitation and the delimitation of the continental shelf and exclusive economic zone may seem to be final, but there is no overriding reason for the split. It is conceivable that the gap may soon be breached and the law of maritime delimitation, at its origin common to both the territorial sea and the continental shelf and only later suffering disintegration, may be reunified."

"There are already some signs of this, still modest, it is true, but too numerous to be ignored. In the *Beagle Channel* case, the Tribunal, in delimiting the territorial waters in the narrow part of the Channel, took into consideration 'mixed factors

19. Other writers, who have expressed very similar views, include the following:

(i) Lucius Caflisch, in Daniel Bardonnet and Michel Virally eds., *Le nouveau droit international de la mer,* Paris, 1983, p. 35 at pp. 45-47 and "La délimitation des espaces marins" in René-Jean Dupuy and Daniel Vignes eds., *Traité du nouveau droit de la mer*, Economica/ Bruylant, Paris/Bruxelles, 1985, p. 391.

(ii) Malcolm Evans, *Relevant Circumstances and Maritime Delimitation*, Oxford, 1989, pp. 78-79.

(iii) Patrick Daillier and Alain Pellet, *Droit international public (Nguyen Quoc Dinh)*, LGDJ, Paris, 6th ed., 1999, p. 1117, para. 677.

20. It is then apparent that the law has evolved in such a way that the principles governing delimitation of overlapping zones of territorial sea are broadly the same as the principles governing the delimitation of shelf areas and overlapping exclusive economic zones. As indicated in Chapter VIII, paras. 18-24, above, these principles and rules applicable to the delimitation of areas of

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of appurtenance, coastal configuration, equidistance, and also of convenience, navigability, and the desirability of enabling each party so far as possible to navigate its own waters'. Would the reasoning have been different if it had been a question of delimiting the continental shelves or the exclusive economic zones? No less significant is the absence in *Guinea/Guinea-Bissau* of all suggestion of any distinction between the rules to be applied to that part of the delimitation line relating to the territorial sea and that relating to both the continental shelf and the exclusive economic zone."

"The lost unity seems to be reconstituting itself around the rules of customary law developed by the courts rather than on the rule of equidistance/special circumstances, so much so that it would appear to be the legal regime for the delimitation of the territorial sea which is losing its particularity and becoming merged in the legal regime appertaining to the delimitation of the continental shelf and the exclusive economic zone" (*The Law of Maritime Delimitation - Reflections,* Cambridge, 1989, pp. 140-1).

exclusive economic zone and continental shelf are "those which are appropriate to bring about an equitable result".[125]

21. The Government of Nicaragua does not suggest that the general rule has superseded the more specific rule stated in Article 15 of the 1982 United Nations Convention on the Law of the Sea (see above, para. 4). It simply notes that according both to unanimous judicial decisions and "the teachings of the most highly qualified publicists of the various nations", the latter is an illustration of the former.

22. In particular, as noted by the Court in its 1993 Judgment in the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen*, there exist striking similarities between the concept of "special circumstances" mentioned in Article 15 of the 1982 Convention (or Article 6 of the 1958 Convention on the Continental Shelf, which was applicable in that case) and the "relevant circumstances" the investigation of which is required by the customary law based upon equitable principles:

> "The concept of "special circumstances" was discussed at length at the First United Nations Conference on the Law of the Sea, held in 1958. It was included both in the Geneva Convention of 29 April 1958 on the Territorial Sea and the Contiguous Zone (Art. 12) and in the Geneva Convention of 29 April 1958 on the Continental Shelf (Art. 6, paras. 1 and 2). It was and remains linked to the equidistance method there contemplated, so much so indeed that in 1977 the Court of Arbitration in the case concerning the delimitation of the continental shelf (United Kingdom/France) was able to refer to the existence of a rule combining "equidistance-special circumstances" (...). It is thus apparent that special circumstances are those circumstances which might modify the result produced by an unqualified application of the equidistance principle. General international law as it has developed through the case-law of the Court and arbitral jurisprudence,

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125. See e.g.: *Continental Shelf case (Tunisia/Libyan Arab Jamahiriya), I.C.J. Reports 1982*, p. 49, para. 50 and the case law quoted in Chapter VI above at para. 20 to 23.

and through the work of the Third United Nations Conference on the Law of the Sea, has employed the concept of "relevant circumstances". This concept can be described as a fact necessary to be taken into account in the delimitation process."

"Although it is a matter of categories which are different in origin and in name, there is inevitably a tendency towards assimilation between the special circumstances of Article 6 of the 1958 Convention and the relevant circumstances under customary law, and this if only because they both intended to enable the achievement of an equitable result" (*I.C.J. Reports 1993*, p. 62, para. 55-56).

C. The special circumstances in this case:

23. Chapter II explains the geographical and geomorphological features of the area to be delimited and the particular incidence they have on the search for an adequate method that would bring about an equitable delimitation. Some of the features singled out in Chapter II are of greater relevance in some areas than in others, but they must all be taken into consideration, at least in a general fashion, in all the areas subject to delimitation. Of these features noted in Chapter II, the following are of particular relevance to the territorial sea delimitation: the elbow formation of the continental land mass at the boundary and that the land boundary coincides with the coast on a river delta.

i. The elbow formation of the continental landmass at the boundary:

It has been explained in Chapter II that the configuration of the coast at the mouth of the Coco River is such that a median line constructed from the river mouth and using only mainland basepoints uses a single point at either side of the river mouth for the mathematical calculation of the entire line. This means that at no time is any other point on either the Honduran or Nicaraguan coast closer to the median line than the single points at the river mouth: two points situated at a distance of only a few hundred metres from each other.

ii. The coincidence of the land boundary with the coast on a river delta:

Chapter II describes the constant changes of the location of the mouth of the Coco River. The figures provided in that Chapter illustrate the movement north and east this feature has suffered at least in the past 150 years of recorded cartography and photography of the area. Chapter VII drew the consequences of this changing feature on the starting point of the line of delimitation and proposed a starting point situated at sea some 3 nautical miles from the mouth.

The fluctuations of the river delta provide an inadequate basis for calculation of the median line because this circumstance makes it difficult to decide on the precise and stable single (see Chapter II, para. 34, above) points each side of the mouth of the river to be retained in view of tracing the equidistance line. We have seen in Chapter II, para. 31 that in the 38 years that elapsed since the taking of the aerial photographs of the mouth of the Coco river in 1962 to the taking of the satellite photograph of the year 2000, the mouth of the river travelled more than 1 nautical mile in a north easterly direction. A delimitation based on this highly unstable feature is not compatible with the general purpose of a delimitation be it maritime or land-based.

D. The line resulting from the application of the provisions of Article 15

24. The characteristics of the coastline at the boundary at the mouth of the Coco River provide a classic example of the type of geographical configuration that made it necessary to add the proviso on special circumstances to the determination of the method to be used in the delimitation of the territorial sea in the 1958 and 1982 Conventions. The land boundary where it meets the sea is located on a very pointed cape that protrudes even further into the sea along the margins of the river. Chapter II demonstrated in several charts going back to the middle of the

XIXth Century that the extension of land into the sea at Cape Gracias a Dios has traditionally been further east on the Nicaraguan margin of the River Coco. Nicaragua has recalled that the Report of the inspection of the mouth of the Coco River made by the Mixed Boundary Commission in 1962 noted that at what was determined to be the Nicaraguan margin of the River Coco there was "a narrow strip of land that extends to the sea, or in geographic terms, a cape" (see Chapter II of this *Memorial).* This can also be appreciated in the latest satellite picture that is included in Figure VII.

25. If in the present case, a delimitation of the territorial sea were to be made following a median line every point of which was equidistant from the nearest points on the baselines from which the breadth of the territorial sea is measured, and were not to take into consideration the special circumstances in the area, the result would of necessity be that the basepoints would be located one on each margin of the river and the median line would be equidistant only from these to points until reaching the end point selected for the delimitation, however distant this point was located from the coasts of both Parties. Based solely on equidistance the more easterly location of the Nicaraguan margin would naturally push the direction of the delimitation line further north than the direction of the line generated by the use of the bisector to the general direction of all the coastlines that has been requested for the other maritime areas in Chapter VIII.

26. Since the United Nations Convention on the Law of the Sea provides that this strict result of the equidistance line be mitigated by special circumstances, at this point, the discussion would then entail the effect to be given to this Nicaraguan feature *vis à vis* Honduras. The position of Nicaragua is that this would be a fruitless and expensive exercise of time for the Court and the Parties to dedicate what would amount to a great disproportion of efforts on a very minor part of the delimitation that has been requested. A delimitation giving full effect to the Nicaraguan Cape would involve a gain of a few square nautical miles for Nicaragua whilst a delimitation giving less than full effect to this feature, would result in a line with a direction not unlike that produced by the bisector method.

E. The maritime boundary in the territorial sea

27. In order to comply with the provisions of Article 15, Nicaragua has requested the construction of the median line shown in Figure XIX This represents an approximate median line based on recent satellite imagery of the mouth of the Coco River with a reduced effect given to transient features in the area. The sector produced by this method is in fact coincident with the alignment resulting from the application of the bisector method described above in Chapter VIII, Section C.

28. The consequence is that the equitable character of this sector of the delimitation requested of the Court, extending to the outer limit of the territorial sea, is confirmed by the bisector method.

29. Nicaragua thus proposes that the delimitation line in the territorial sea should commence at the point indicated in Chapter VII, that is, a point located in the geographical coordinates 15° 01' 53'' N 83° 05' 36'.' From this point the delimitation line in the territorial sea should follow an approximate median line that, in fact, corresponds to the course of the line generated by applying the bisector method explained in Chapter VIII, until reaching the limit of the territorial sea at the 12 nautical miles seaward limit located at 15° 06' 16'' N 082° 58' 08'' W. The result of this exercise can be appreciated in Figure XIX in this Volume and in the inset of Figure A in Volume III.

30. In the seminal case on maritime delimitation, the *North Sea Continental Shelf Cases*, the Court emphasized that the important thing was not to "seek one method of delimitation but one goal" (*I.C.J. Reports 1969*, p. 3. at para. 92). Nicaragua has striven towards this goal in all the maritime areas: that is, to achieve an equitable solution based on the rules and principles of International Law.

XI : CONCLUSIONS

1. Before presenting the formal Submissions, the Government of Nicaragua will set out the conclusions on the issues of law and fact.

The Maritime Areas in Dispute

2. The maritime areas in dispute consist of the Nicaraguan Rise, together with adjacent areas of the continental shelf attributable to Nicaragua and Honduras respectively.

The Interests Involved

3. The dispute has, since 1982, constituted a threat to the security of Nicaraguan fishermen and has given rise to the real danger of incidents involving the armed forces of the two states. It is the purpose of Nicaragua to achieve stability in the region, and this must be based upon an authoritative determination of the maritime boundary.

4. The geographical area in dispute is the most extensive maritime zone in the Caribbean with depths of no more than 200 meters. In the geomorphological context it is one of the most promising new areas in the Caribbean region for oil and gas and has been an area traditionally used by fishermen from Nicaragua.

The Applicable Law

5. The applicable law in respect of the delimitation as a whole is constituted by the Law of the Sea Convention of 1982, together with the pertinent principles of general international law.

The Method of Delimitation Beyond the Territorial Sea

6. The principal sector of the delimitation requested by Nicaragua has been established by means of the bisector of the

angle produced by constructing lines based upon the respective coastal frontages and producing extensions of these lines.

7. This method provides an effective reflection of the coastal geography, and, in particular, the configuration of the coasts abutting upon the maritime areas to be divided.

8. The bisector method has the support of a substantial jurisprudence, both in the Court and in other tribunals, and the doctrine has for long recognised the aptitude of the method for the achievement of an equitable result in certain political and geographical circumstances.

9. State practice provides clear evidence of the significant role of the bisector method, and its associated techniques, in producing an equitable result.

10. As the Government of Nicaragua has explained in detail in Chapter II above, the equidistance method, at least in its classical form, is not appropriate for a delimitation in the political and geographical circumstances of this case.

11. The equitable character of the bisector method in the circumstances of the present case is dictated by the following elements.

12. (a) The method produces an effective reflection of coastal relationships.

13. (b) The method produces a result which satisfies the equitable principle that the aim is to achieve an equal division of areas where the maritime projections of the coasts of the States between which delimitation is to be effected converge and overlap. As the *Gulf of Maine* case indicates, the equal division of the overlapping areas can be obtained not only by employing the method of equidistance, but by means of the bisector method.

14. (c) The bisector method conspicuously satisfies the principle of non-encroachment by one party on the natural prolongation of the other. It is well established that the principle is applic-

able to the delimitation of a single maritime boundary and not exclusively to the delimitation of continental shelf areas.

15. (d) The bisector method also satisfies the principle of preventing, as far as possible, any cut-off of the seaward projection of the coast of either of the states concerned. As in the case of the principle of non-encroachment, this principle is applicable to the delimitation of a single maritime boundary and not exclusively to the delimitation of continental shelf areas.

16. (e) The bisector method is, in the circumstances of the present case, consistent with the concepts underlying the attribution of title to the maritime areas concerned.

The Equitable Criteria Confirming the Equitable Character of the Solution Produced by the Bisector Method

17. There are additional criteria, which are generally recognised as relevant circumstances in the process of delimitation and which provide confirmation of the equitable character of the solution produced by the bisector method. There are five such additional criteria, which are as follows.

18. (a) The incidence of natural resources in the disputed area.

19. (b) The principle of equitable access to the natural resources of the disputed area confirmed by the Court in the *Jan Mayen* case.

20. (c) The geology and geomorphology of the Nicaraguan Rise, which is a unitary feature with a symmetrical relationship with the coasts of the parties. This unitary feature clearly invites the application of the principle of equal division, which is achieved by the bisector method.

21. (d) The criterion according to which the process of delimitation should avoid compromising the security of the parties.

22. (e) In particular, the result should ensure that each state controls the maritime areas situated opposite its coasts and in its vicinity.

23. The equitable character of the application of the bisector method is also confirmed by the general equivalence of result with the equidistance method. The preference for the bisector method is dictated by somewhat specialised considerations, namely, the problematical aspects of the terminus of the land boundary and the connected requirement of avoiding according undue influence to unstable coastal features.

24. Lastly, the use of the bisector method treats islets and rocks on their merits and avoids giving effect to very minor geographical features.

25. The position of Nicaragua is that this claim line has no legal validity and is not opposable to Nicaragua.

The Delimitation of the Territorial Sea

26. For the purpose of the delimitation of the adjacent areas of territorial sea, the appropriate method of delimitation depends upon Article 15 of the Law of the Sea Convention and most, therefore, in principle, follow the "equidistance/special circumstances system".

27. Nicaragua has proposed a delimitation based upon the principles prescribed in Article 15 of the Convention on the Law of the Sea, together with the pertinent principles of general international law. Given the very substantial hydrographic difficulties attending the use of a strict median line, it has been necessary to employ the methodology of the approximate median line. The sector produced by this method is in fact coincident with the alignment resulting from the application of the bisector method described above in Chapter VIII, Section C.

28. The consequence is that the equitable character of this sector of the delimitation requested of the Court, extending to the outer limit of the territorial sea, is confirmed by the bisector method.

Islets and Rocks Claimed by Nicaragua

In these proceedings Nicaragua has, in respect of the delimitation of the disputed areas of the continental shelf and exclusive economic zone, proposed an equitable solution based upon the bisector method.

In the absence of the adoption of a bisector delimitation by the Court, Nicaragua reserves the sovereign rights appurtenant to all the islets and rocks claimed by Nicaragua in the disputed area. The islets and rocks concerned include but are not confined to the following:

> Hall Rock, South Cay, Arrrecife Alargado, Bobel Cay, Port Royal Cay, Porpoise Cay, Savanna Cay, Savanna Reefs, Cayo Media Luna, Burn Cay, Logwood Cay, Cock Rock, Arrecifes de la Media Luna, and Cayo Serranilla.

SUBMISSIONS

Having regard to the considerations set forth in this Memorial and, in particular, the evidence relating to the relations of the Parties.

May it please the Court to adjudge and declare that:

The bisector of the lines representing the coastal fronts of the two parties, as applied and described in paragraphs 22 and 29, Chapter VIII above, and illustrated on the graphic, constitutes the boundary for the purposes of the delimitation of the disputed areas of the continental shelf and exclusive economic zone in the region of the Nicaraguan Rise.

The approximate median line, as described in paragraphs 27 and 29, Chapter X above, and illustrated on the graphic, constitutes the boundary for the purpose of the delimitation of the disputed areas of the territorial sea, extending to the outer limit of the territorial sea, but in the absence of a sector coterminous with the mouth of the River Coco and with the terminus of the land boundary.

Respectfully submitted,

Carlos J. Argüello-Gómez
Agent
Republic of Nicaragua

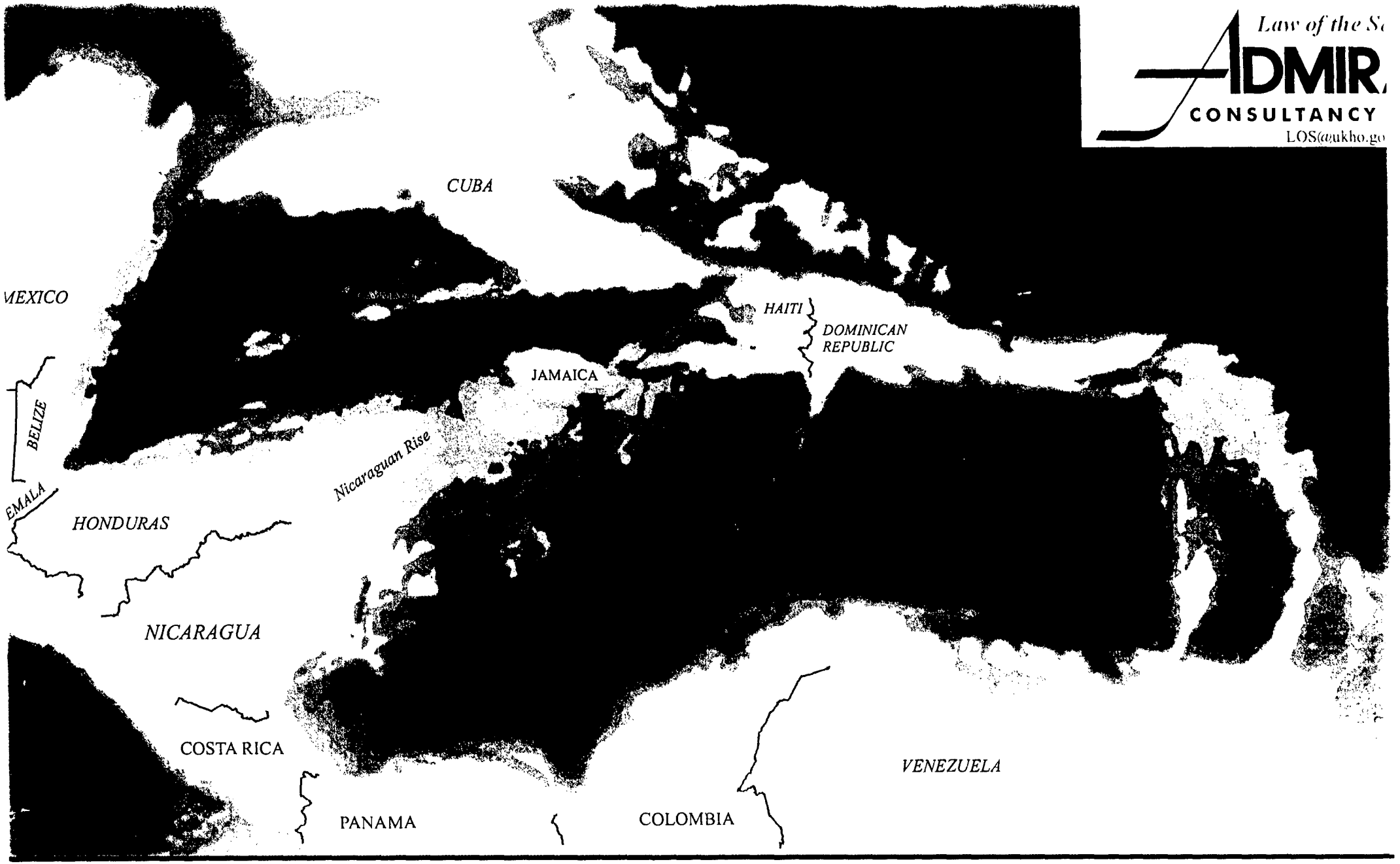
21 March 2001

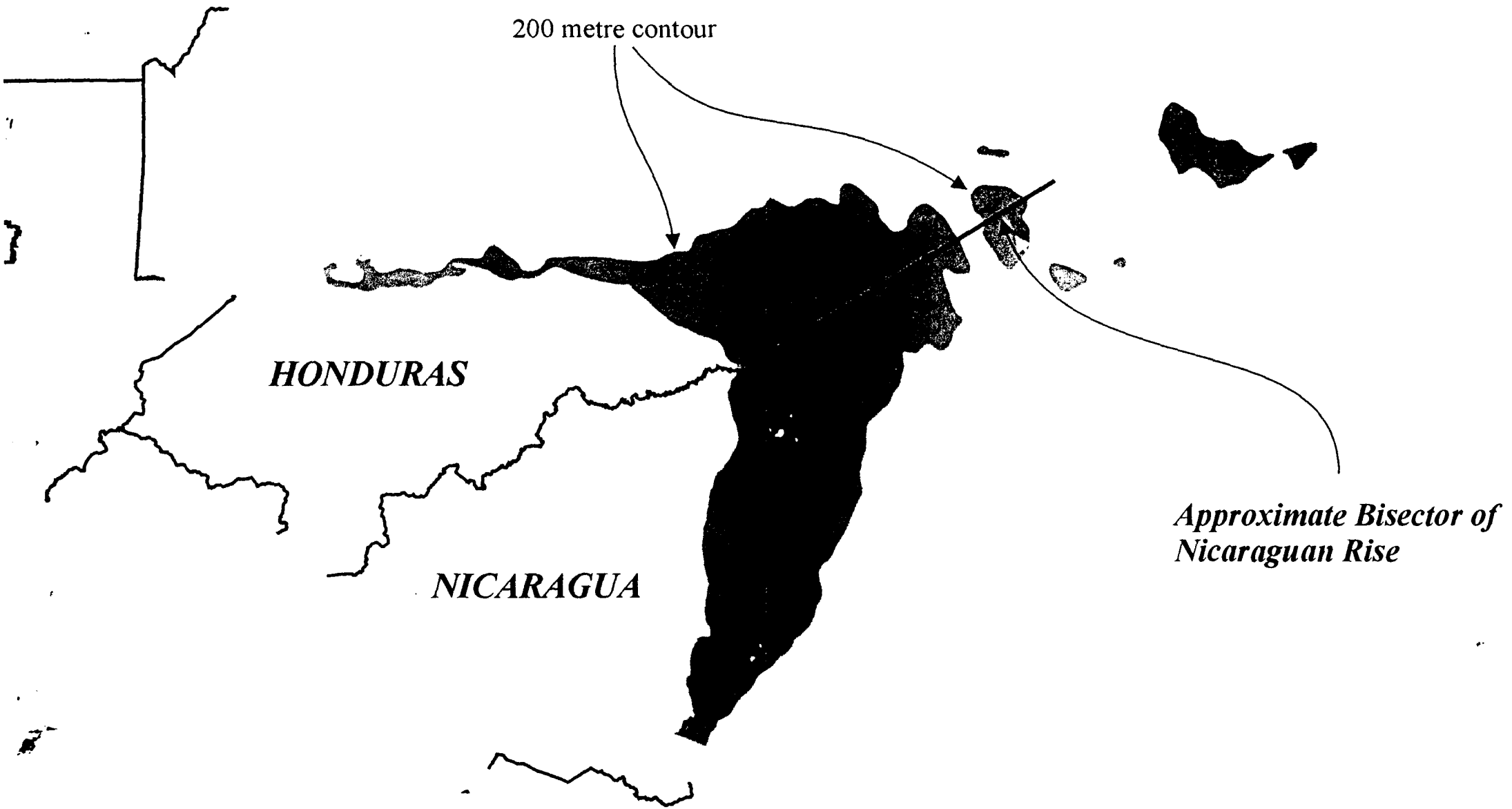
LIST OF MAPS AND FIGURES

SKETCH MAPS AND FIGURES ATTACHED
TO VOLUME I

MAPS IN VOLUME III

LIST OF ANNEXES, VOLUME II





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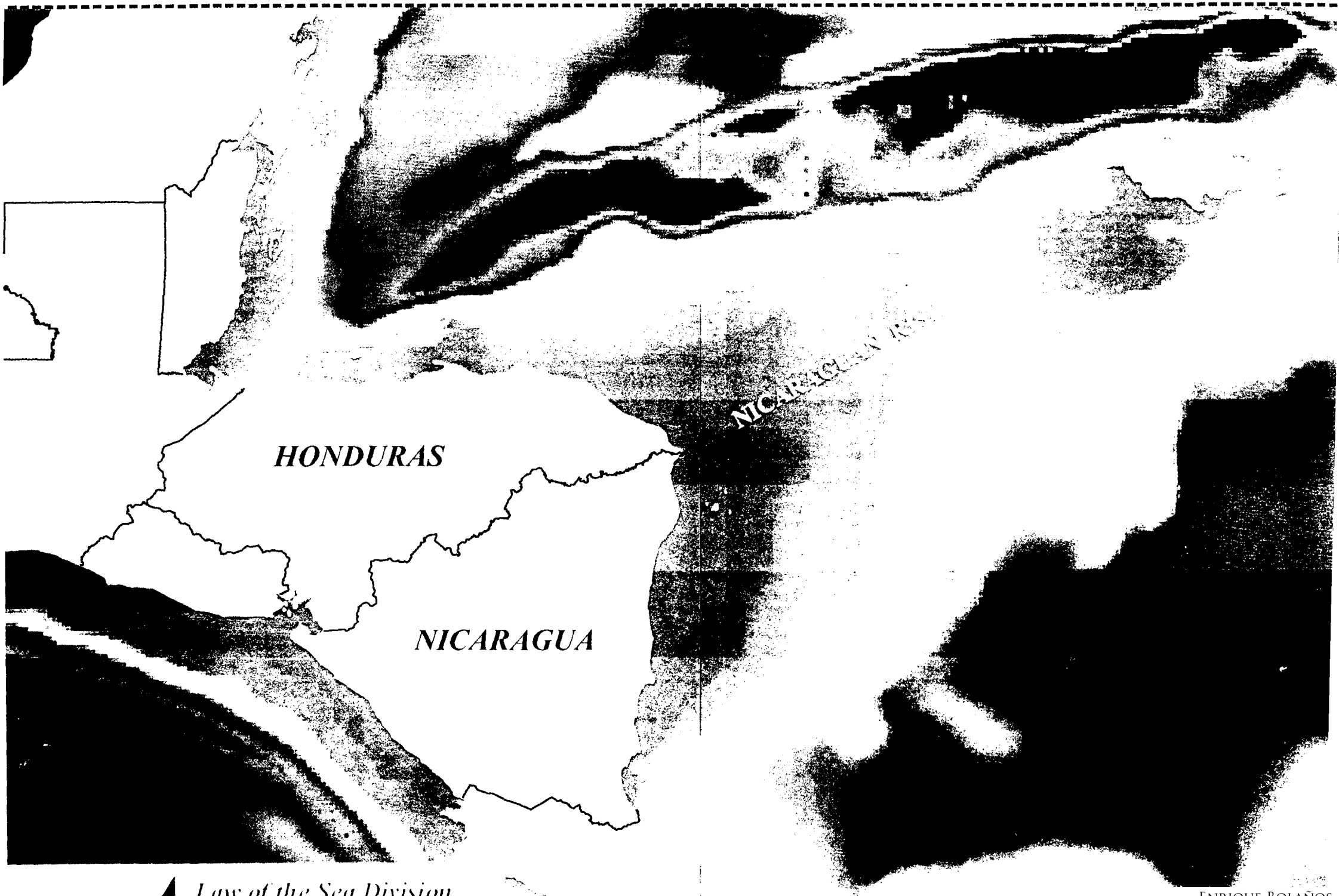

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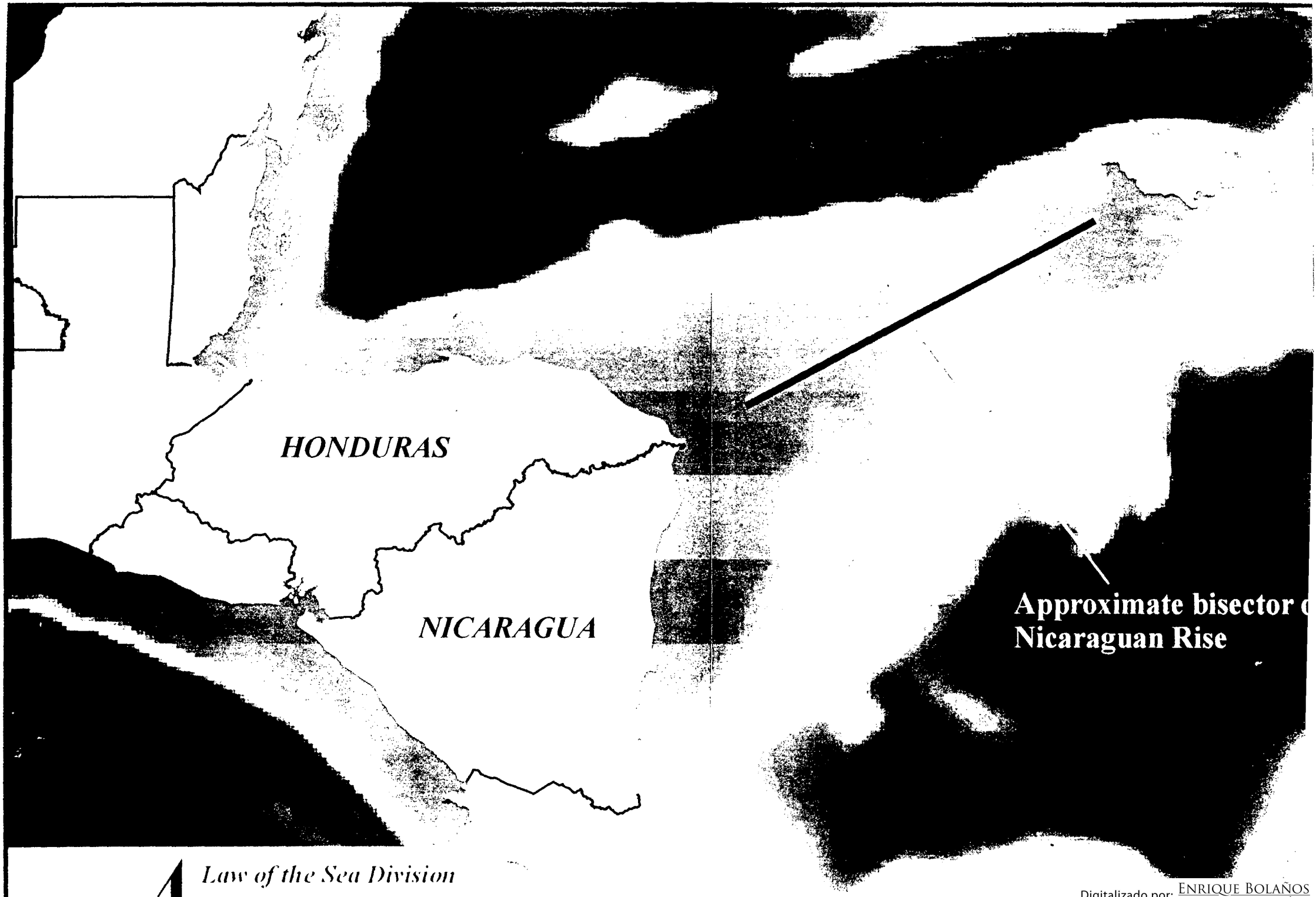

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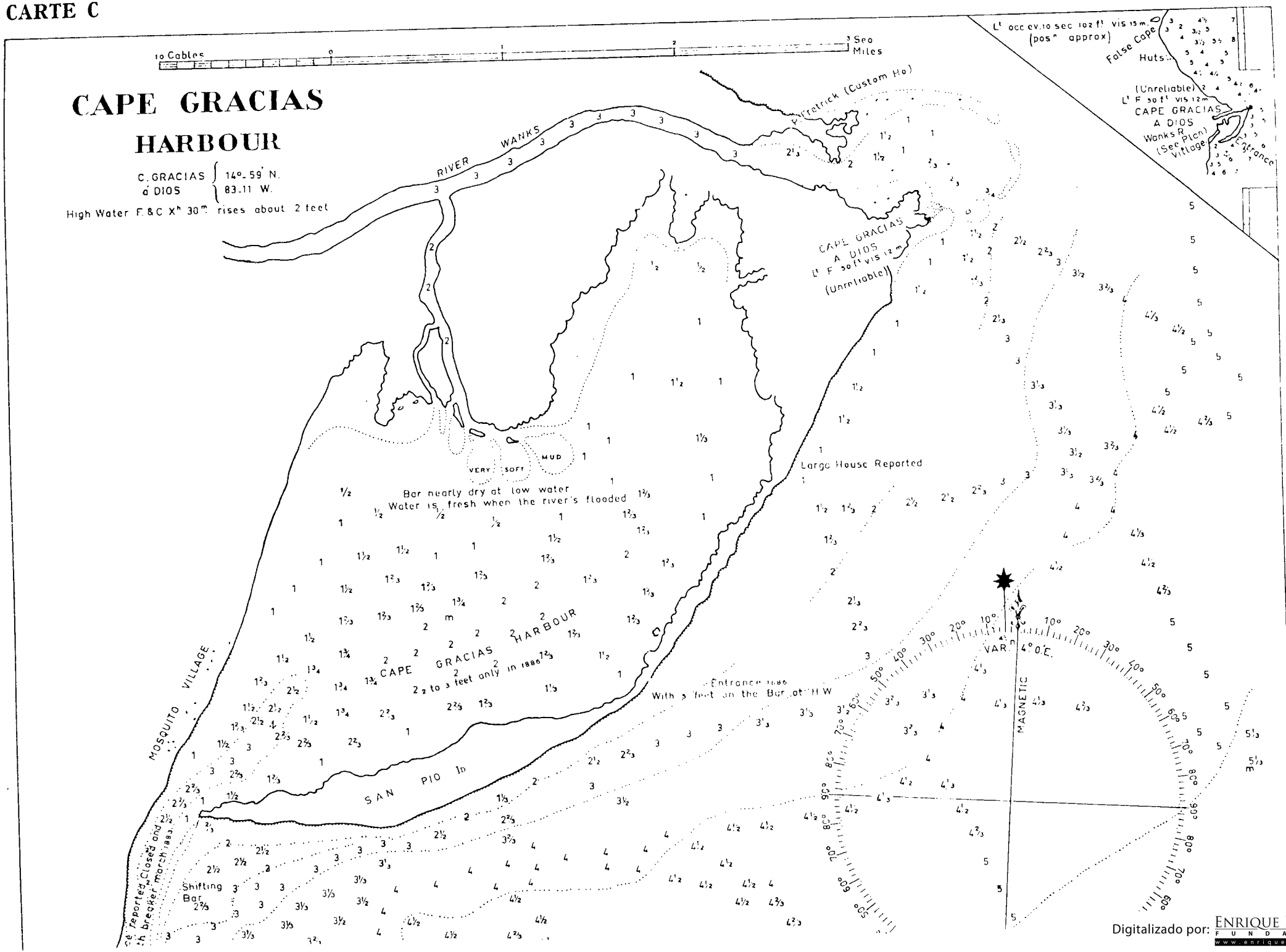
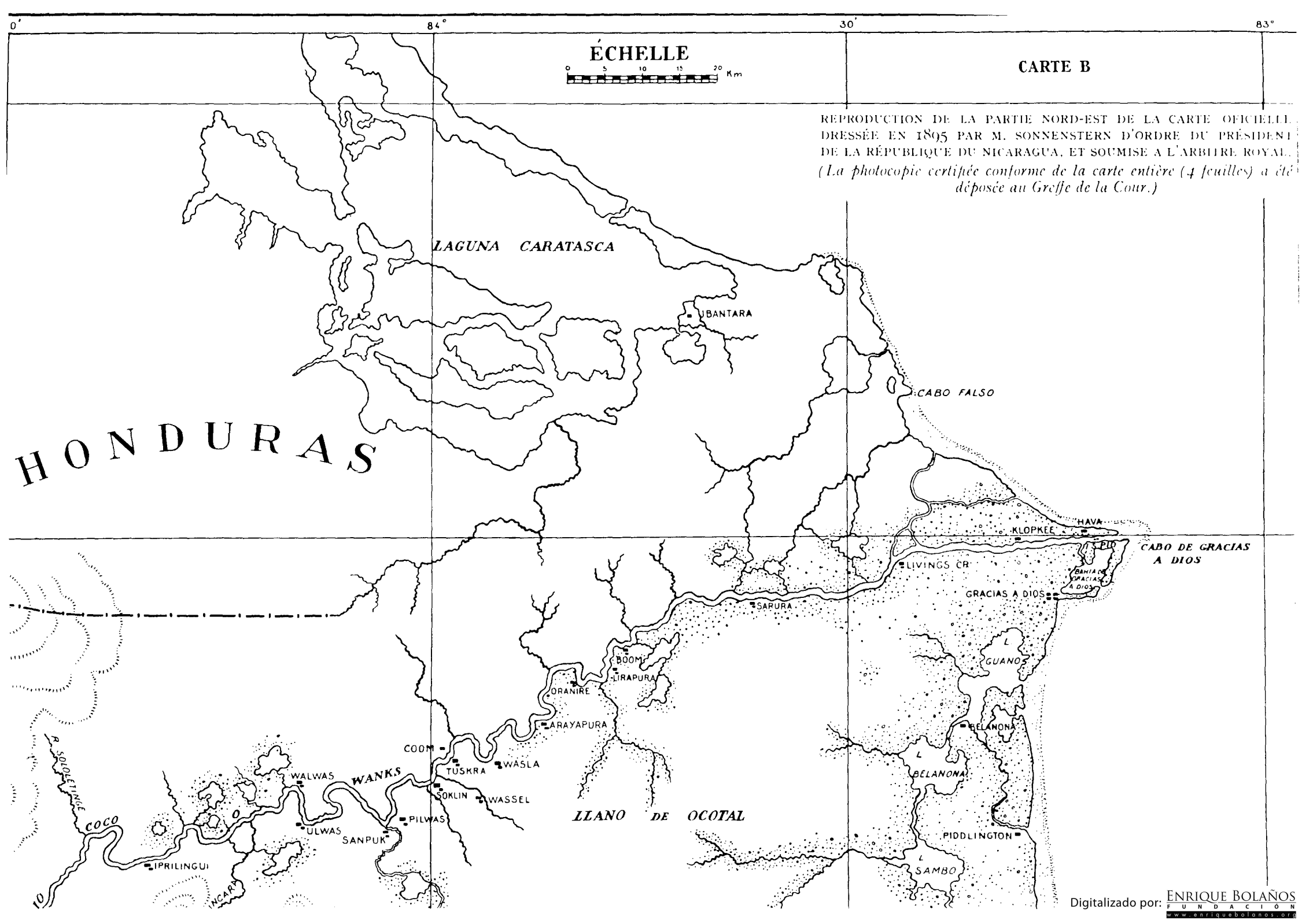
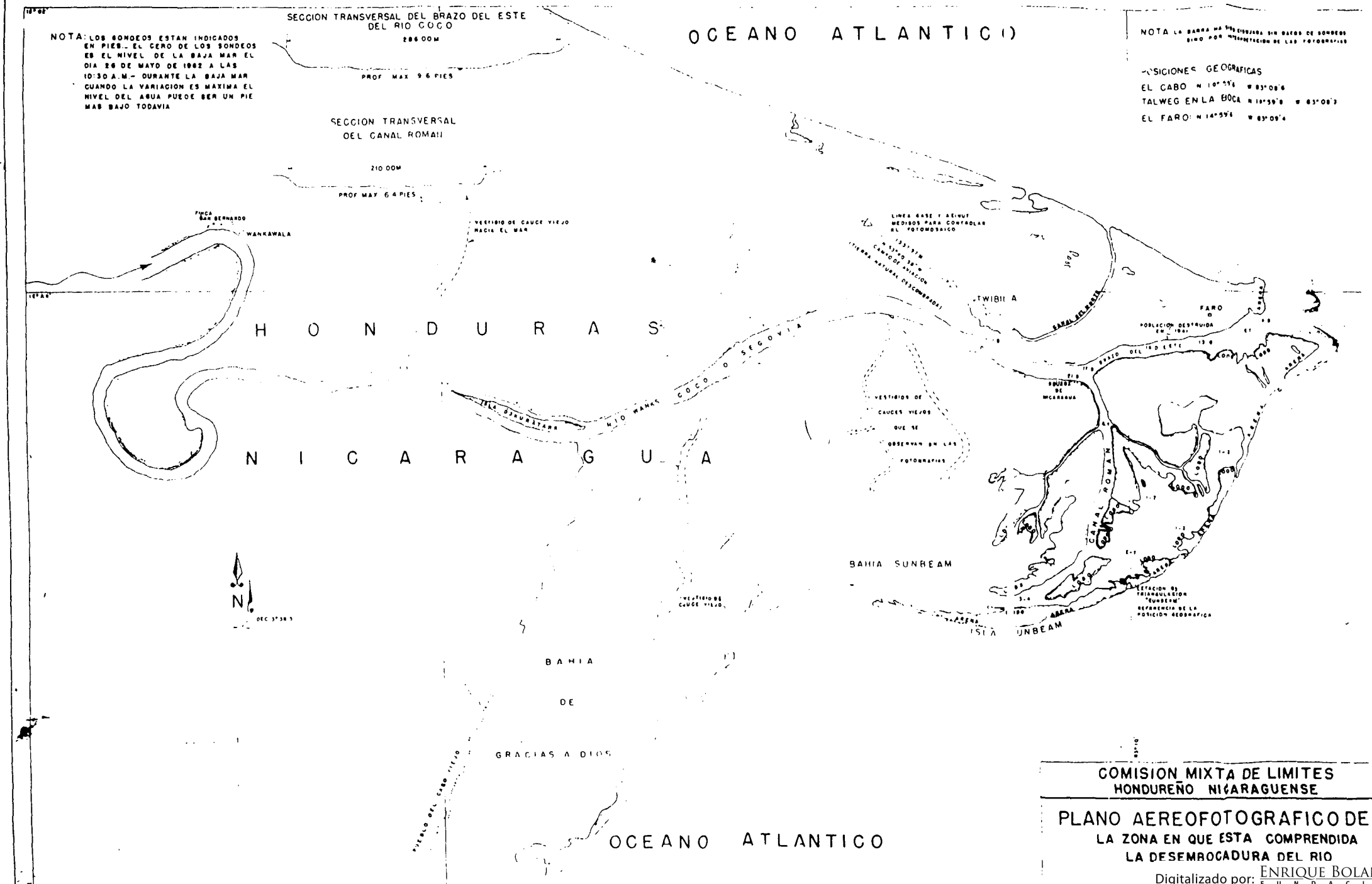
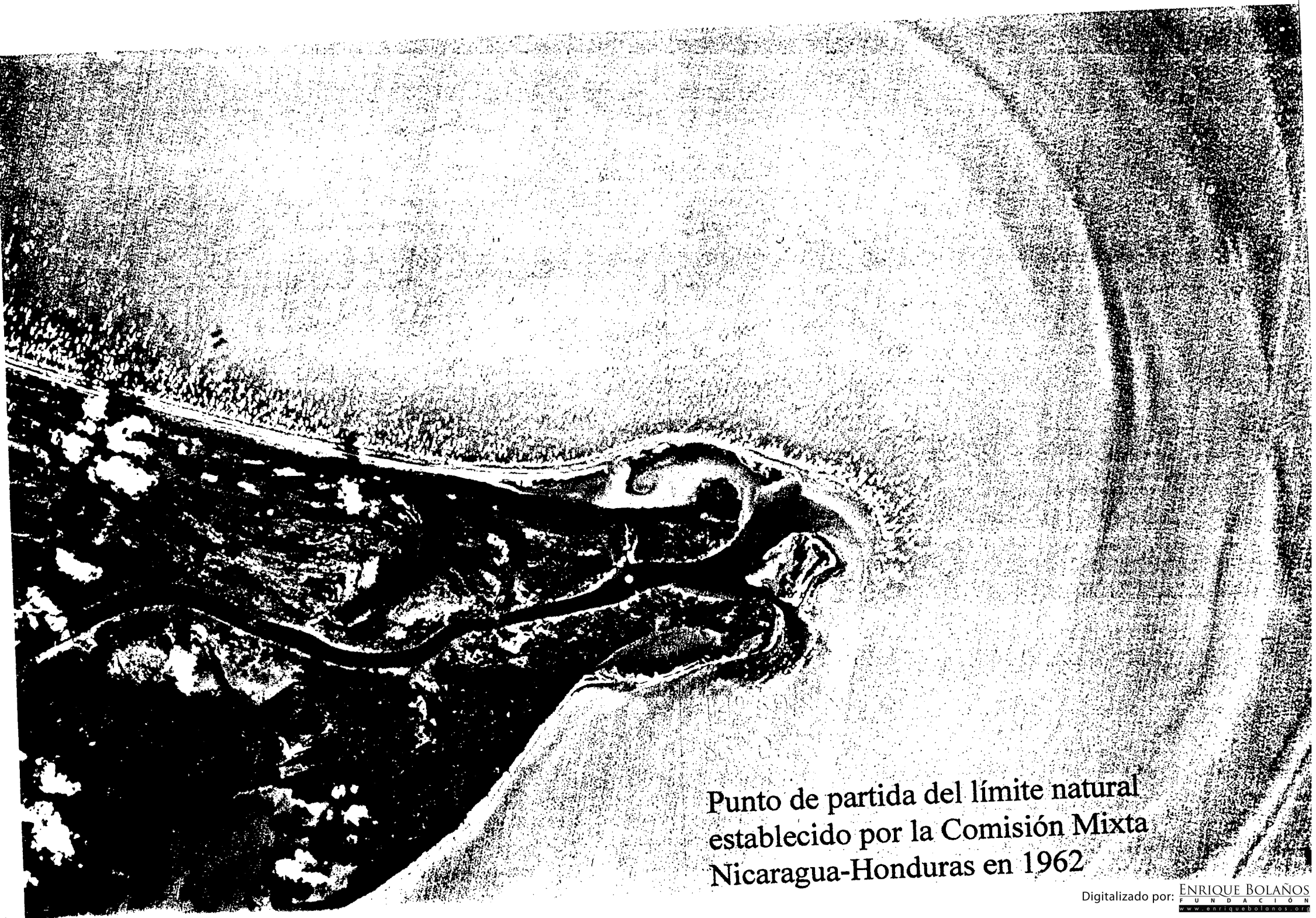




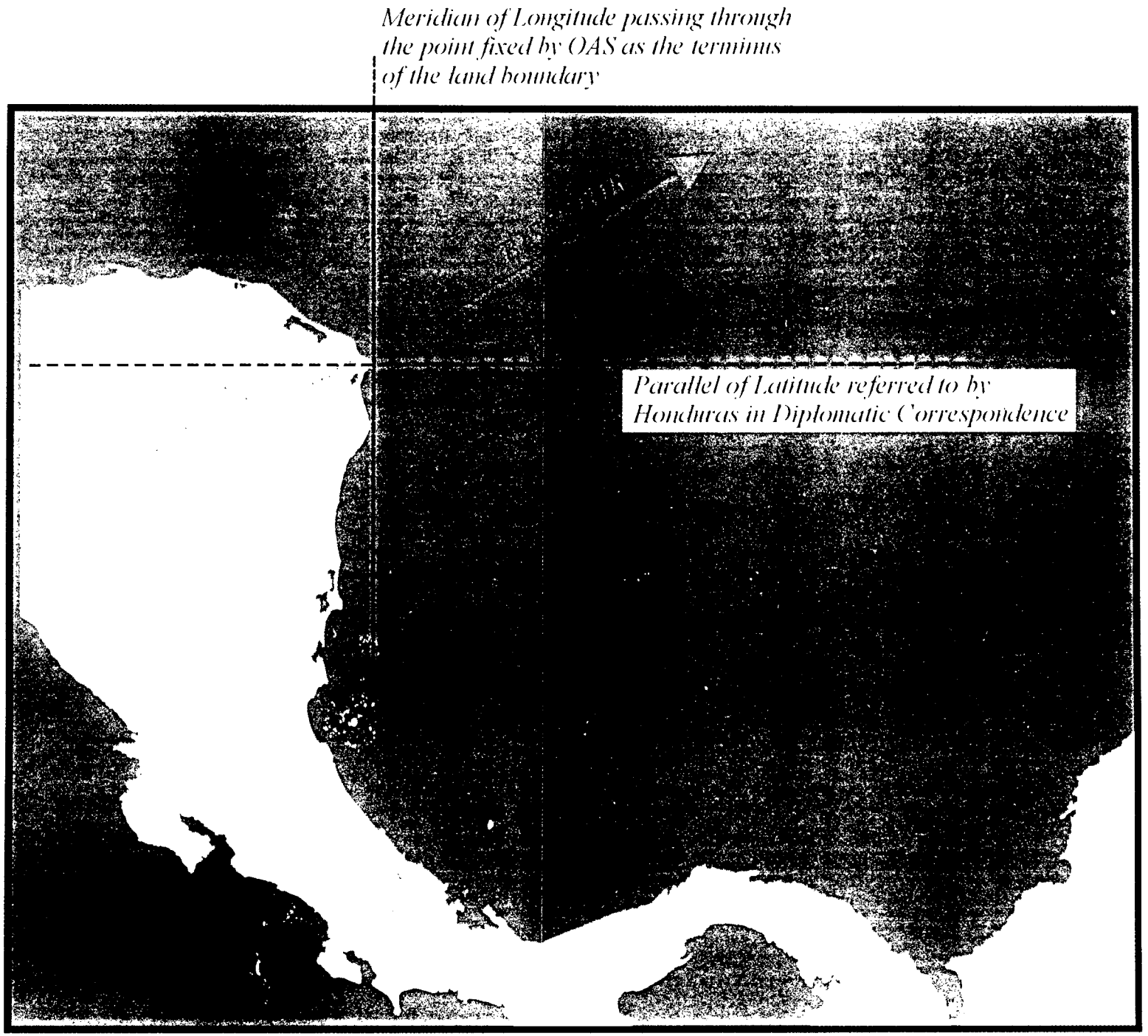


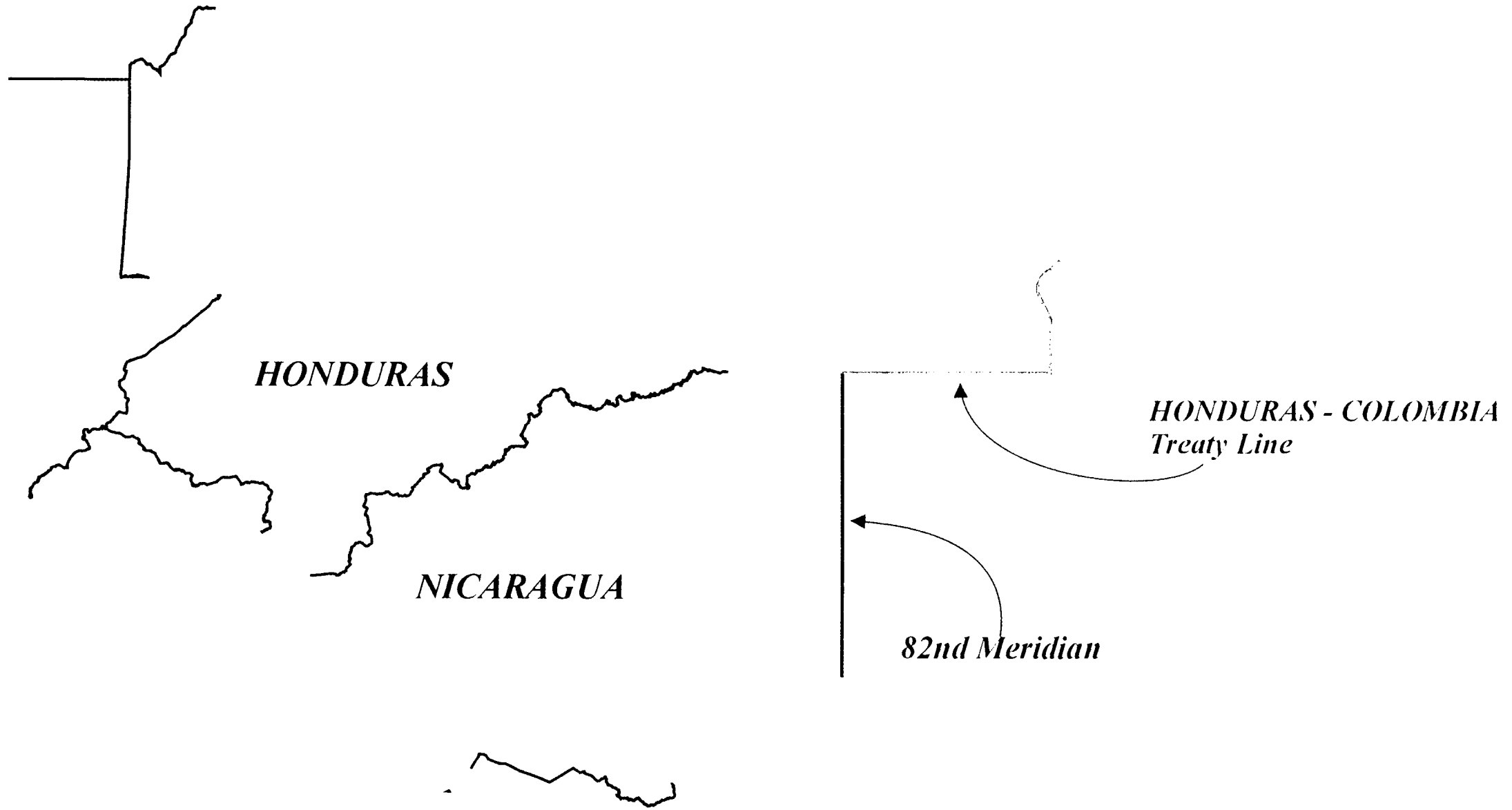
COMISION MIXTA DE LIMITES
HONDUREÑO NICARAGUENSE

PLANO AEREOFOTOGRAFICO DE
LA ZONA EN QUE ESTA COMPRENDIDA
LA DESEMBOCADURA DEL RIO



Punto de partida del límite natural establecido por la Comisión Mixta Nicaragua-Honduras en 1962





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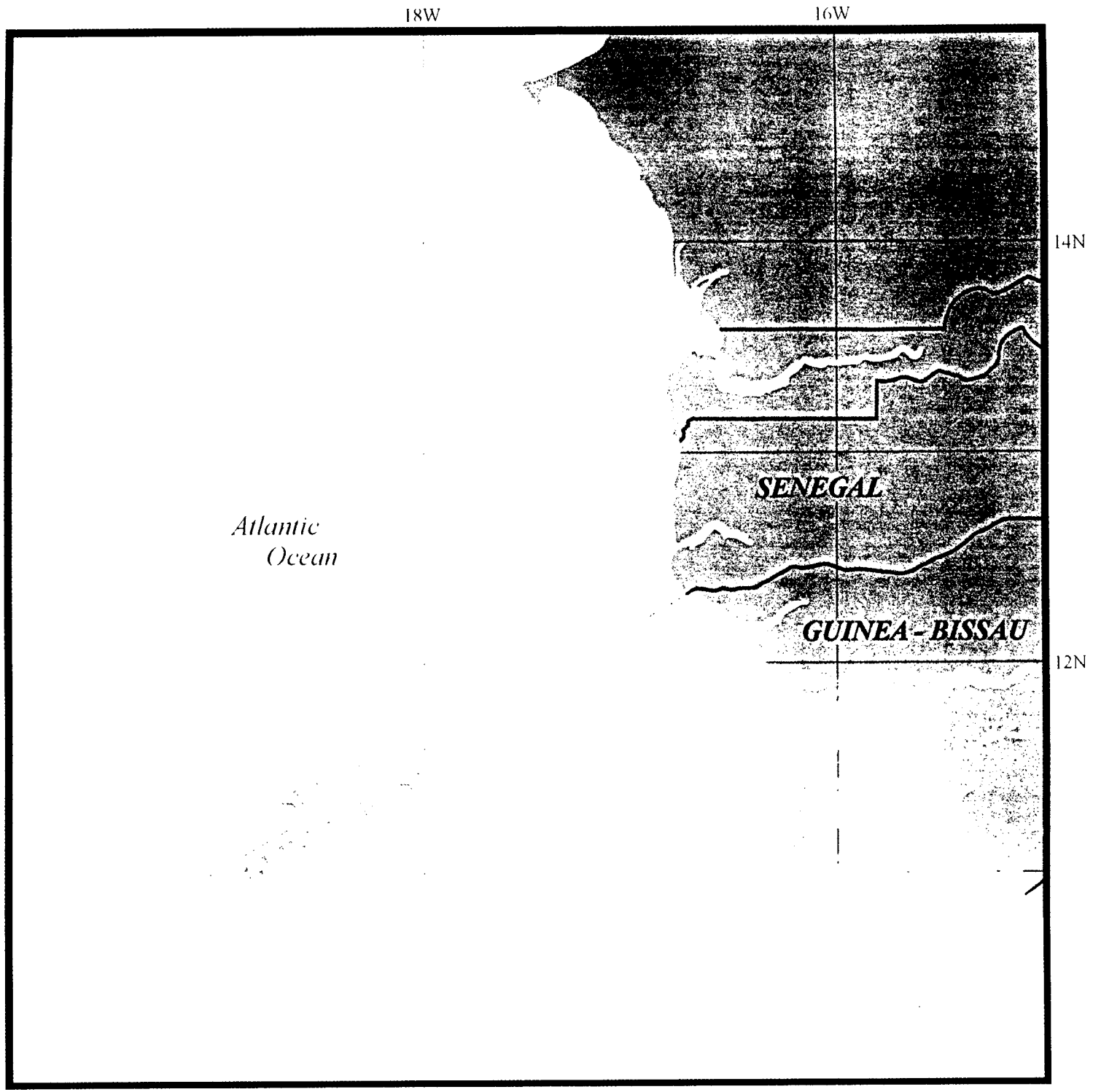

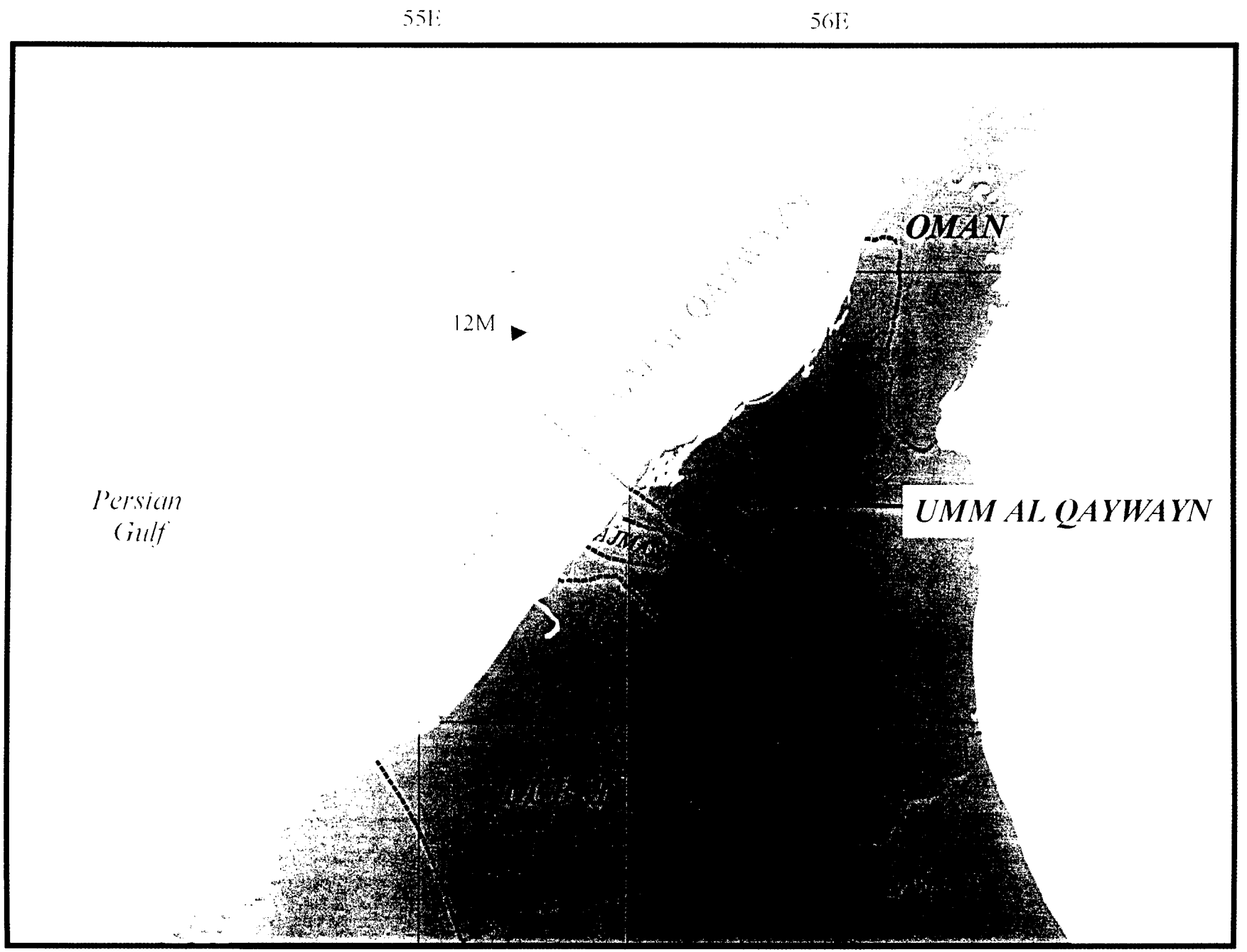

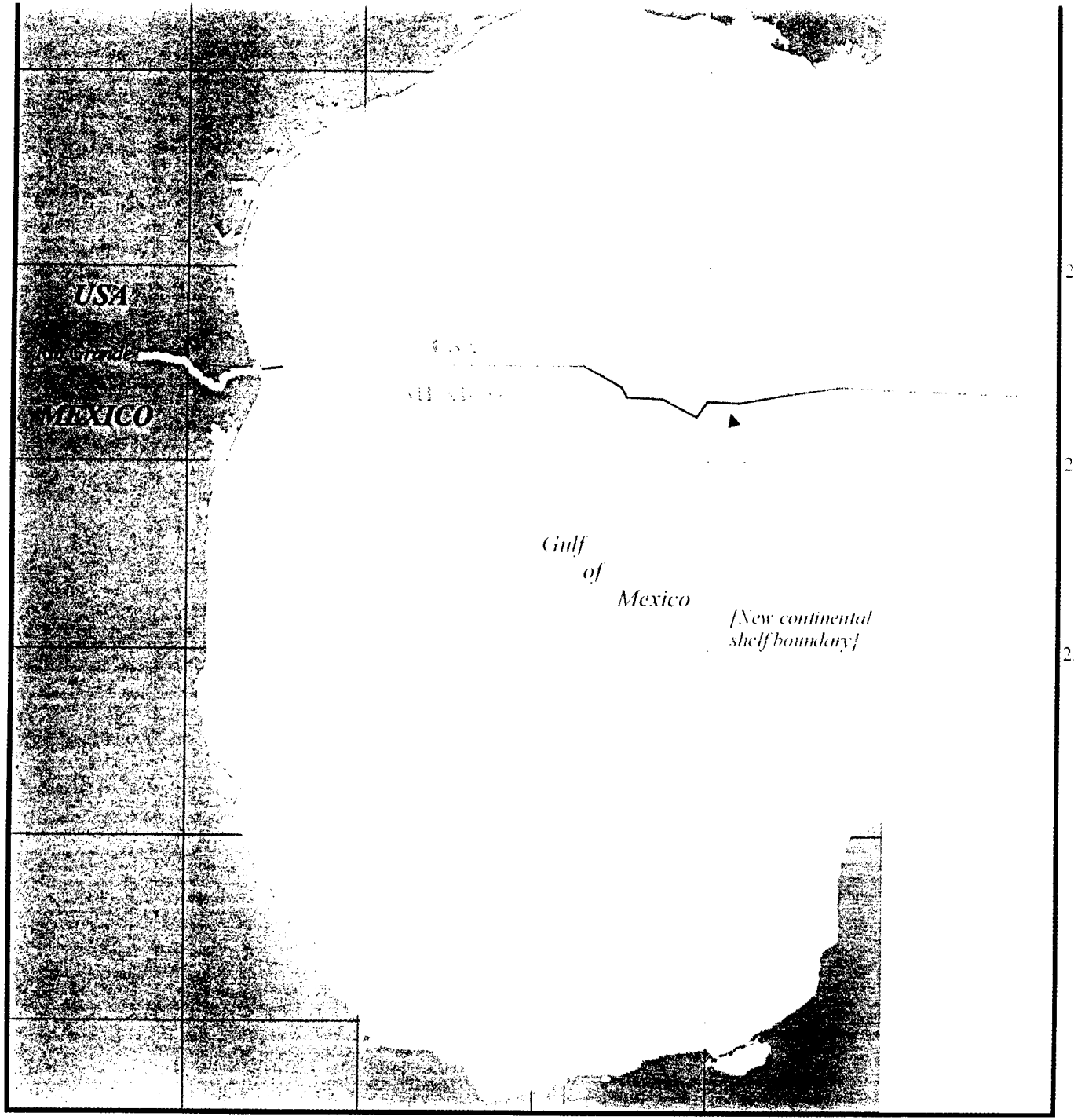

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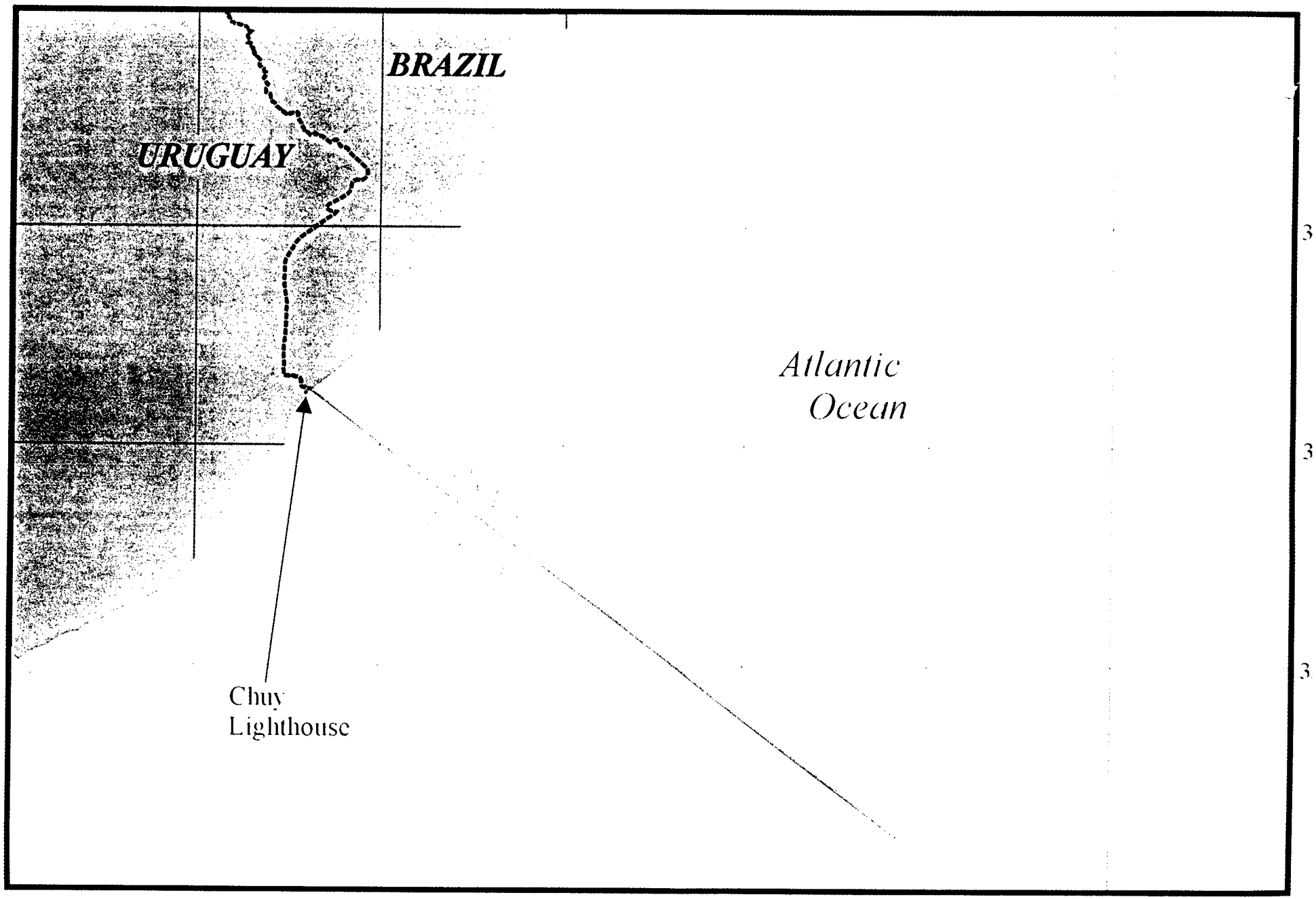

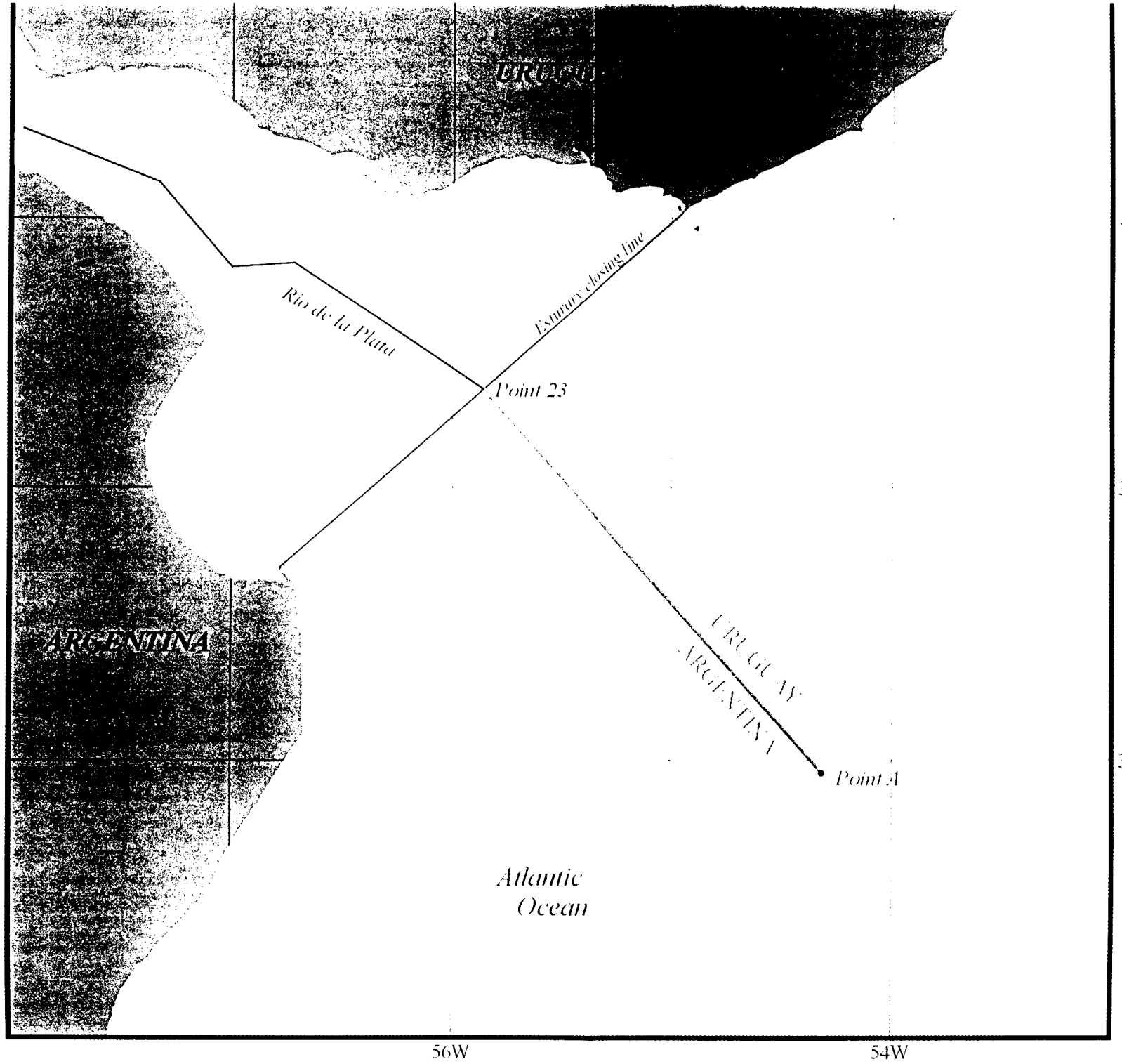

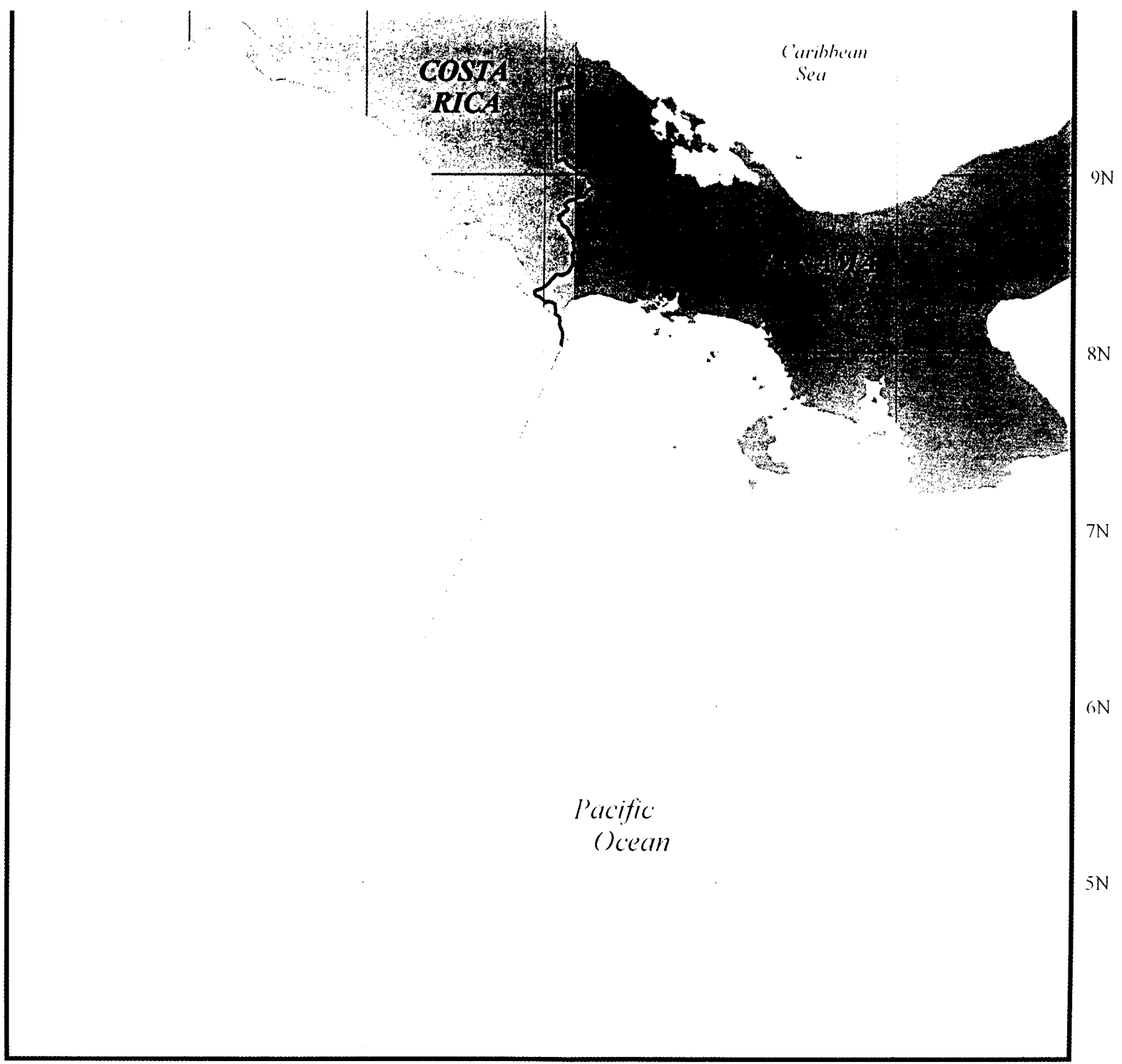

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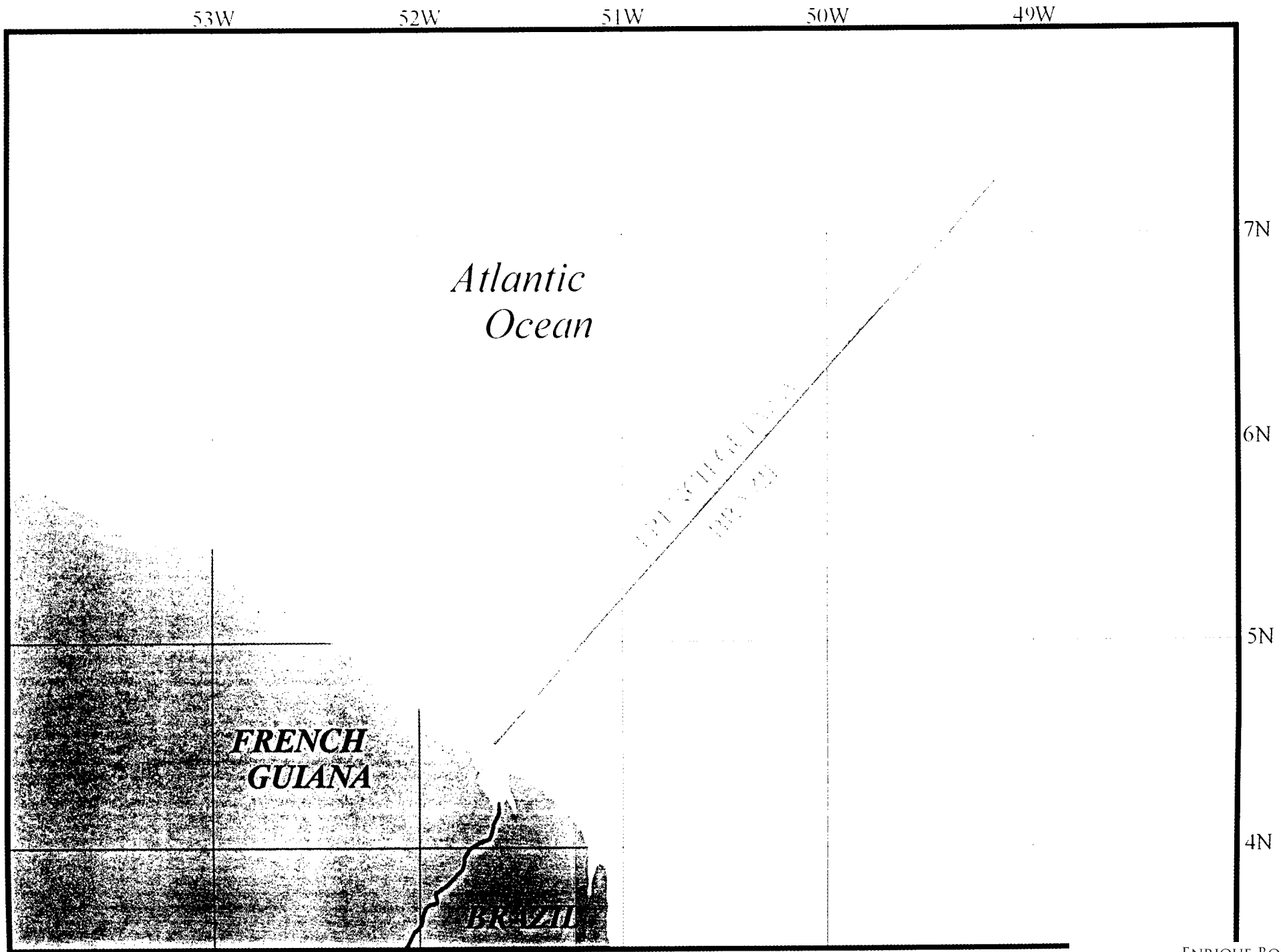
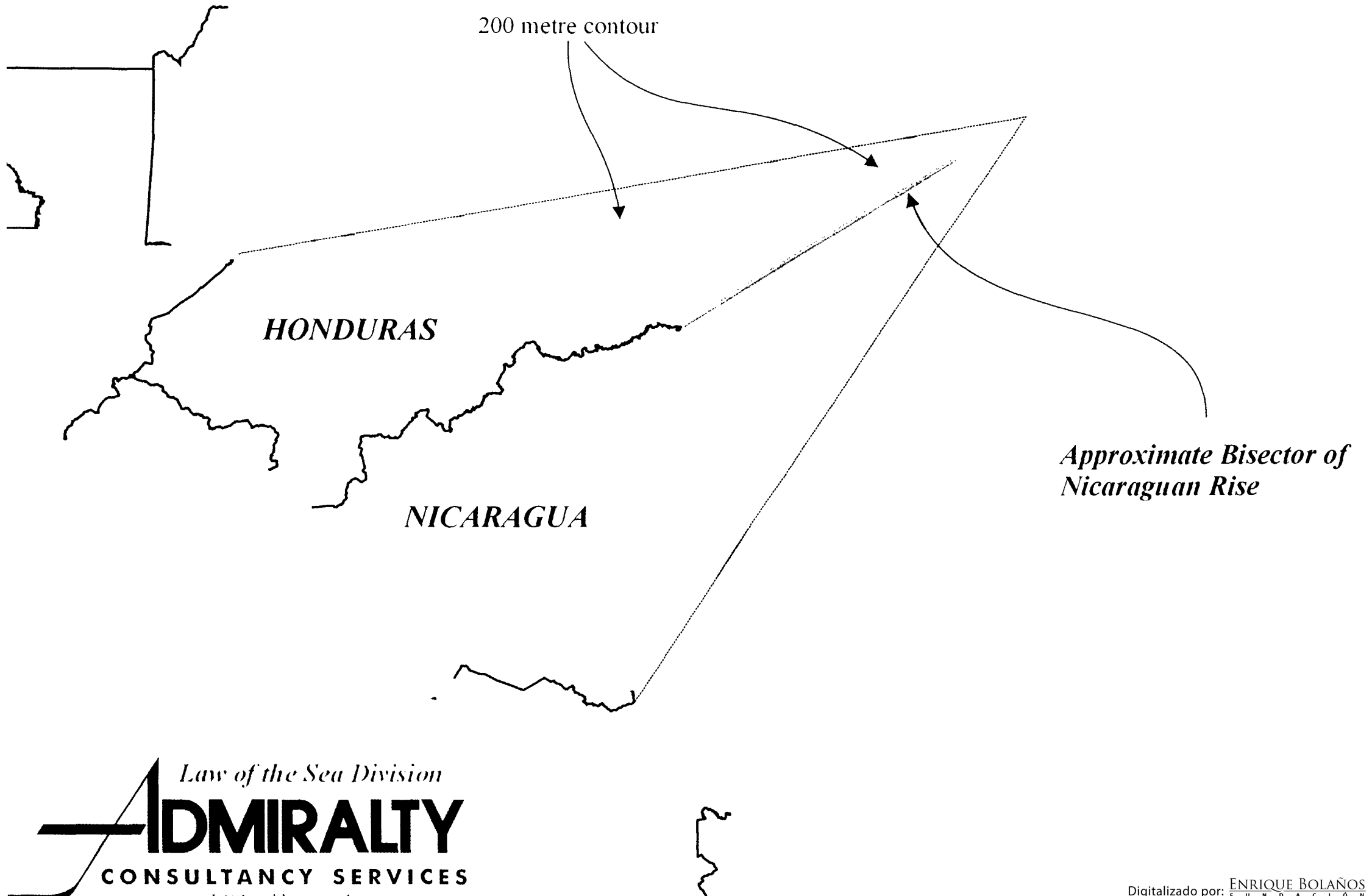
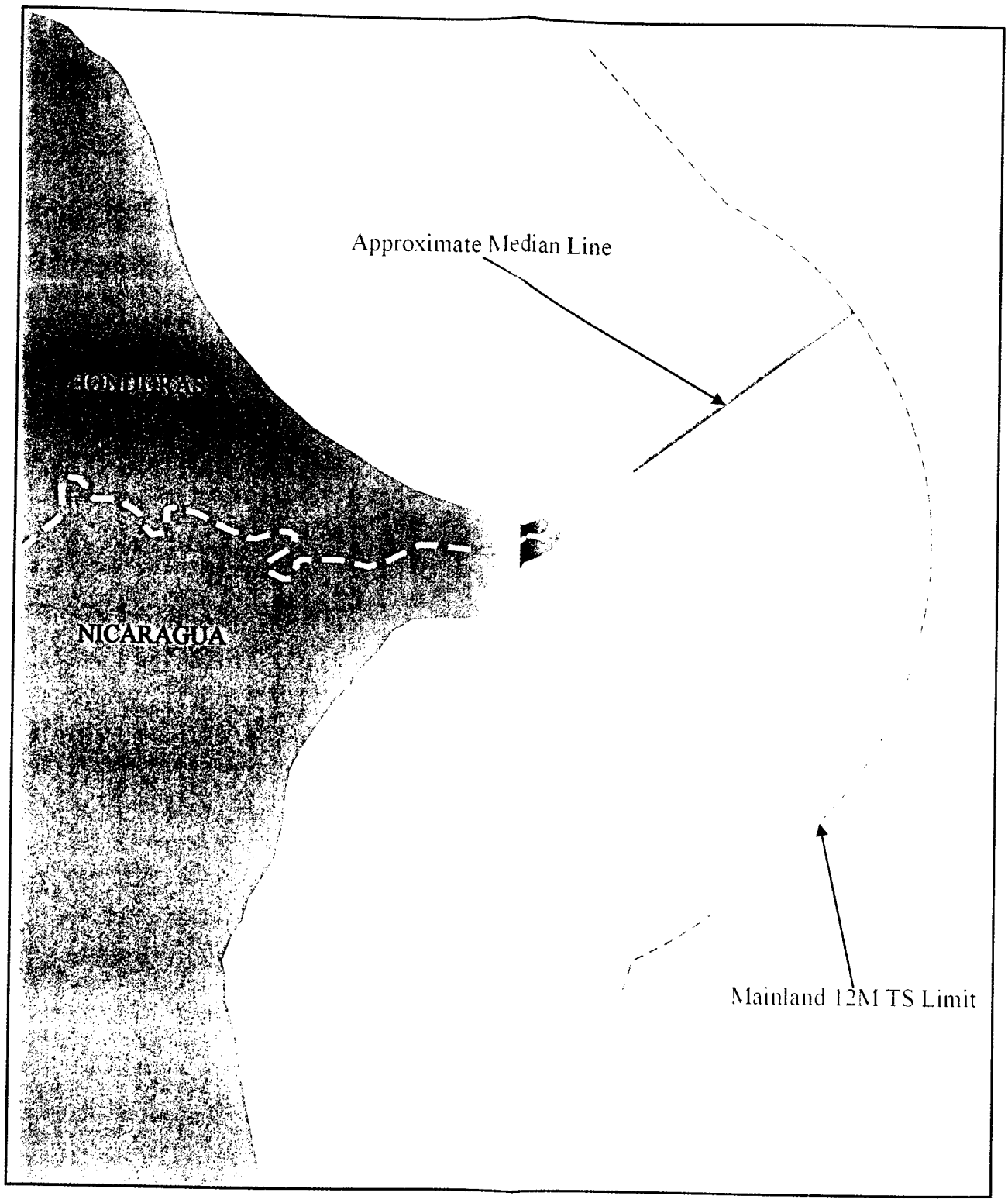




Law of the Sea Division

ADMIRALTY

CONSULTANCY SERVICES



Law of the Sea Division

ADMIRALTY

CONSULTANCY SERVICES

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