

CR 2007/2

**International Court
of Justice**

THE HAGUE

**Cour internationale
de Justice**

LA HAYE

YEAR 2007

Public sitting

held on Tuesday 6 March 2007, at 10 a.m., at the Peace Palace,

President Higgins presiding,

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

VERBATIM RECORD

ANNÉE 2007

Audience publique

tenue le mardi 6 mars 2007, à 10 heures, au Palais de la Paix,

sous la présidence de Mme Higgins, président,

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

COMPTE RENDU

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

Registrar Couvreur

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

M. Couvreur, greffier

The Government of the Republic of Nicaragua is represented by:

H.E. Mr. Carlos José Argüello Gómez, Ambassador of the Republic of Nicaragua to the Kingdom of the Netherlands,

as Agent, Counsel and Advocate;

H.E. Mr. Samuel Santos, Minister for Foreign Affairs of the Republic of Nicaragua,

Mr. Ian Brownlie, C.B.E., Q.C., F.B.A., member of the English Bar, Member of the International Law Commission, Emeritus Chichele Professor of Public International Law, University of Oxford, member of the Institut de droit international, Distinguished Fellow, All Souls College, Oxford,

Mr. Alex Oude Elferink, Research Associate, Netherlands Institute for the Law of the Sea, Utrecht University,

Mr. Alain Pellet, Professor at the University of Paris X-Nanterre, Member and former Chairman of the International Law Commission,

Mr. Antonio Remiro Brotóns, Professor of International Law, Universidad Autónoma, Madrid,

as Counsel and Advocates;

Mr. Robin Cleverly, M.A., DPhil, CGeol, F.G.S., Law of the Sea Consultant, Admiralty Consultancy Services,

Mr. Dick Gent, Law of the Sea Consultant, Admiralty Consultancy Services,

as Scientific and Technical Advisers;

Ms Tania Elena Pacheco Blandino, First Secretary, Embassy of the Republic of Nicaragua in the Kingdom of the Netherlands,

Ms Nadine Susani, Doctor of Public Law, Centre de droit international de Nanterre (CEDIN), University of Paris X-Nanterre,

as Assistant Advisers;

Ms Gina Hodgson, Ministry of Foreign Affairs,

Ms Ana Mogorrón Huerta,

as Assistants.

The Government of the Republic of Honduras is represented by:

H.E. Mr. Max Velásquez Díaz, Ambassador of the Republic of Honduras to the French Republic,

H.E. Mr. Roberto Flores Bermúdez, Ambassador of the Republic of Honduras to the United States of America,

as Agents;

Le Gouvernement de la République du Nicaragua est représenté par :

S. Exc. M. Carlos José Arguëllo Gómez, ambassadeur de la République du Nicaragua auprès du Royaume des Pays-Bas,

comme agent, conseil et avocat ;

S. Exc. M. Samuel Santos, ministre des affaires étrangères de la République du Nicaragua,

M. Ian Brownlie, C.B.E., Q.C., F.B.A., membre du barreau d'Angleterre, membre de la Commission du droit international, professeur émérite de droit international public (chaire Chichele) à l'Université d'Oxford, membre de l'Institut de droit international, *Distinguished fellow* au All Souls College d'Oxford,

M. Alex Oude Elferink, *research associate* à l'Institut néerlandais du droit de la mer de l'Université d'Utrecht,

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

M. Antonio Remiro Brotons, professeur de droit international à l'Universidad autónoma de Madrid,

comme conseils et avocats ;

M. Robin Cleverly, M.A., DPhil, CGeol, F.G.S., consultant en droit de la mer, Admiralty Consultancy Services,

M. Dick Gent, consultant en droit de la mer, Admiralty Consultancy Services,

comme conseillers scientifiques et techniques ;

Mme Tania Elena Pacheco Blandino, premier secrétaire de l'ambassade de la République du Nicaragua au Royaume des Pays-Bas,

Mme Nadine Susani, docteur en droit public, Centre de droit international de Nanterre (CEDIN), Université de Paris X-Nanterre,

comme conseillers adjoints ;

Mme Gina Hodgson, ministère des affaires étrangères,

Mme Ana Mogorrón Huerta,

comme assistantes.

Le Gouvernement de la République du Honduras est représenté par :

S. Exc. M. Max Velásquez Díaz, ambassadeur de la République du Honduras auprès de la République française,

S. Exc. M. Roberto Flores Bermúdez, ambassadeur de la République du Honduras auprès des Etats-Unis d'Amérique,

comme agents ;

H.E. Mr. Julio Rendón Barnica, Ambassador of the Republic of Honduras to the Kingdom of the Netherlands,

as Co-Agent;

Mr. Pierre-Marie Dupuy, Professor of Public International Law, University of Paris (Panthéon-Assas), and the European University Institute in Florence,

Mr. Luis Ignacio Sánchez Rodríguez, Professor of International Law, Universidad Complutense de Madrid,

Mr. Christopher Greenwood, C.M.G., Q.C., Professor of International Law, London School of Economics and Political Science,

Mr. Philippe Sands, Q.C., Professor of Law, University College London,

Mr. Jean-Pierre Quéneudec, professeur émérite de droit international à l'Université de Paris I Panthéon-Sorbonne,

Mr. David A. Colson, LeBoeuf, Lamb, Green & MacRae, LL.P., Washington, D.C., member of the California State Bar and District of Columbia Bar,

Mr. Carlos Jiménez Piernas, Professor of International Law, Universidad de Alcalá, Madrid,

Mr. Richard Meese, avocat à la Cour d'appel de Paris,

as Counsel and Advocates;

H.E. Mr. Milton Jiménez Puerto, Minister for Foreign Affairs of the Republic of Honduras,

H.E. Mr. Eduardo Enrique Reina García, Deputy Minister for Foreign Affairs of the Republic of Honduras,

H.E. Mr. Carlos López Contreras, Ambassador, National Counsellor, Ministry of Foreign Affairs,

H.E. Mr. Roberto Arita Quiñónez, Ambassador, Director of the Special Bureau on Sovereignty Affairs, Ministry of Foreign Affairs,

H.E. Mr. José Eduardo Martell Mejía, Ambassador of the Republic of Honduras to the Kingdom of Spain,

H.E. Mr. Miguel Tosta Appel, Ambassador, Chairman of the Honduran Demarcation Commission, Ministry of Foreign Affairs,

H.E. Ms Patricia Licon Cubero, Ambassador, Adviser for Central American Integration Affairs, Ministry of Foreign Affairs,

as Advisers;

Ms Anjolie Singh, Assistant, University College London, member of the Indian Bar,

Ms Adriana Fabra, Associate Professor of International Law, Universitat Autònoma de Barcelona,

S. Exc. M. Julio Rendón Barnica, ambassadeur de la République du Honduras auprès du Royaume des Pays-Bas,

comme coagent ;

M. Pierre-Marie Dupuy, professeur de droit international public à l'Université de Paris (Panthéon-Assas) et à l'Institut universitaire européen de Florence,

M. Luis Ignacio Sánchez Rodríguez, professeur de droit international à l'Université Complutense de Madrid,

M. Christopher Greenwood, C.M.G., Q.C., professeur de droit international à la London School of Economics and Political Sciences,

M. Philippe Sands, Q.C., professeur de droit au University College de Londres,

M. Jean-Pierre Quéneudec, professeur émérite de droit international à l'Université Paris I (Panthéon-Sorbonne),

M. David A. Colson, LeBoeuf, Lamb, Greene & MacRae, L.L.P., Washington, D.C., membre du barreau de l'Etat de Californie et du barreau du district de Columbia,

M. Carlos Jiménez Piernas, professeur de droit international à l'Université de Alcalá (Madrid),

M. Richard Meese, avocat à la cour d'appel de Paris,

comme conseils et avocats ;

S. Exc. M. Milton Jiménez Puerto, ministre des affaires étrangères de la République du Honduras,

S. Exc. M. Eduardo Enrique Reina García, vice-ministre des affaires étrangères de la République du Honduras,

S. Exc. M. Carlos López Contreras, ambassadeur, conseiller national au ministère des affaires étrangères,

S. Exc. M. Roberto Arita Quiñónez, ambassadeur, directeur du bureau spécial pour les affaires de souveraineté du ministère des affaires étrangères,

S. Exc. M. José Eduardo Martell Mejía, ambassadeur de la République du Honduras auprès du Royaume d'Espagne,

S. Exc. M. Miguel Tosta Appel, ambassadeur, président de la commission hondurienne de démarcation du ministère des affaires étrangères,

S. Exc. Mme Patricia Licon Cubero, ambassadeur, conseiller pour les affaires d'intégration d'Amérique Centrale du ministère des affaires étrangères,

comme conseillers ;

Mme Anjolie Singh, assistante au University College de Londres, membre du barreau indien,

Mme Adriana Fabra, professeur associé de droit international à l'Université autonome de Barcelone,

Mr. Javier Quel López, Professor of International Law, Universidad del País Vasco,

Ms Gabriela Membreño, Assistant Adviser to the Minister for Foreign Affairs,

Mr. Sergio Acosta, Minister Counsellor, Embassy of the Republic of Honduras in the Kingdom of the Netherlands,

as Assistant Advisers;

Mr. Scott Edmonds, Cartographer, International Mapping,

Mr. Thomas D. Frogh, Cartographer, International Mapping,

as Technical Advisers.

M. Javier Quel López, professeur de droit international à l'Université du Pays basque,

Mme Gabriela Membreño, conseiller adjoint du ministre des affaires étrangères,

M. Sergio Acosta, ministre conseiller à l'ambassade de la République du Honduras au Royaume des Pays-Bas,

comme conseillers adjoints ;

M. Scott Edmonds, cartographe, International Mapping,

M. Thomas D. Frogh, cartographe, International Mapping,

comme conseillers techniques.

The PRESIDENT: Please be seated. The session is open. The Court meets today to hear the continuation of the first round of the oral argument of Nicaragua. Mr. Brownlie, we shall have the pleasure of a long pleading from you this morning and I now give you the floor.

Mr. BROWNLIE: Thank you. Madam President, distinguished Members of the Court,

**Drawing the line:
the method which achieves an equitable result**

1. It is my task today to explain the method of delimitation which Nicaragua considers to be legally appropriate in the circumstances of the present case for the purposes of the delimitation of the disputed areas of the continental shelf and exclusive economic zone.

The issues on which the Parties agree

2. By way of introduction, I can deal briefly with certain questions on which the Parties more or less agree. The leading elements of the agreement are these.

3. In the first place, there is the agreement of the Parties in requesting the Court to establish a single maritime boundary. This agreement is evident in the Application of Nicaragua and in the submissions of both Parties. It is true that in her submission in the Counter-Memorial Honduras refers to “the line” or “a line”. But in the submissions in the Rejoinder she refers explicitly to “the single maritime boundary”. Honduras also states in her Counter-Memorial, “that the Court should determine the location of a single maritime boundary . . .” (CMN, Vol. 1, para. 1.2).

4. Secondly, it is clear that in principle there is no disagreement of the Parties in respect of the applicable law. I emphasize “in principle”. Thus it is agreed that the 1982 Convention is applicable and that the Convention reflects customary international law in relation to the legal principles relevant in the present case.

5. However, as Nicaragua has had occasion to point out, the practical treatment of the applicable law on the part of Honduras is anomalous (RN, Vol. 1, paras. 8.10-8.27). In particular, the Honduran argument adopts a cavalier approach to the identification of relevant circumstances.

The boundary proposed by Nicaragua

6. I shall now move to the course of the boundary beyond the territorial sea which, in the submission of Nicaragua, reflects the geography of the area and the applicable legal principles. And now on the screen, this is graphic IB1 in your folders.

The graphic on screen is the large paper graphic at figure A of the Memorial, Volume III. It does not project particularly well and throughout this speech I will use a digital replica of this graphic, seen here as graphic IB2, which is both clearer on screen and more useful as a small format printout.

7. The delimitation consists of the bisector of the lines representing the coastal directions of the Parties. The Nicaraguan claim has been revised to reflect the new low-water line at the river mouth, shown here as graphic IB3 of the Spot Satellite image scene dated November 2006.

8. The bisector is calculated from the general direction of the coast for Honduras, shown here on graphic IB4 (bearing $098^{\circ} 10' 48''$) and the general direction of the Nicaraguan coast (bearing $007^{\circ} 19' 54''$). These directions generate a bisector of bearing $052^{\circ} 45' 21''$ which runs from the mouth of the Coco River at $15^{\circ} 00' 11''$ N, $83^{\circ} 07' 54''$ W as a line of constant bearing until intersecting with the boundary of a third State in the vicinity of Rosalind Bank.

9. The claim line crosses the 3-mile limit in position $15^{\circ} 02' 00''$ N, $83^{\circ} 05' 26''$ W. All positions and directions are referred to the Well Geoditic System, No. 84, and are rounded to the nearest second.

10. The line forms the boundary for the purposes of the delimitation of the disputed areas of the continental shelf and exclusive economic zone. The starting-point of this sector of the delimitation is located at the outer limit of the territorial sea. The line continues up to the area of sea-bed in which the claims of third States come into play, as shown.

11. The point of departure and the terminus of the maritime boundary will be examined in detail on Friday by my friend and colleague, Professor Pellet, together with the delimitation of the territorial sea.

The legal basis of the bisector method

12. I shall start with an examination of the legal provenance of the bisector method. As Nicaragua has pointed out in the written pleadings, the method of producing an alignment has no

legitimacy per se. The legal status of an alignment depends upon the equitable principles endowed with judicial authority, and it is generally accepted that these principles give primacy to the configuration of the coasts abutting upon the maritime areas to be divided. It follows that the relevance and legal status of the equidistance method of constructing a line, is related to the actual geographical situation and any other relevant factors, such as the location of a land boundary.

13. The bisector method has particular virtues in the geographical and political circumstances present in this case. Moreover, for technical reasons relating to the problematic status of the terminus of the land boundary, the equidistance approach to delimitation is impossible to apply in its appropriate form.

14. At this juncture, it is necessary to recall that in her Rejoinder Honduras proposes two alternatives to the primary claim based upon the alleged conduct of the Parties. The first alternative is resort to a provisional equidistance line and the second alternative is the construction of a so-called perpendicular to the general direction of the coast. I refer to the Rejoinder at pages 130 to 132, where Honduras invokes an equidistance line, this for the first time, which is presented in a footnote (p. 131, footnote 17).

15. These proposals advanced on behalf of Honduras will be revisited in due course, and at this stage I shall focus upon the bisector method.

16. The virtues of the bisector method are accorded ample recognition in the doctrine. The basic analysis was given by Gidel in 1934. In his words — and first there is a rubric:

“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. La solution de la perpendiculaire sur la côte n'est donc qu'une modalité spéciale de la ligne médiane entendue au sens large . . .” (*Le droit international public de la mer*, t. III, Paris, 1934, pp. 768-770 ; footnotes omitted.)

17. In these passages Gidel recognizes that the drawing of a perpendicular to the general direction of the coast from the terminus of the land boundary is a logical extension of the median line solution. The perpendicular is, of course, in the form of a bisector of an angle of 180°.

18. The same analysis is elaborated upon by Professor Weil in his authoritative work on maritime delimitation. In the English edition the relevant passage is 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 . . .

Weil continues:

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 direction 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’.” (*The Law of Maritime Delimitation — Reflections*, Cambridge, 1989, pp. 58-59; footnotes omitted.)

19. In the same context the Canadian experts Hankey and Legault recognize the bisector method as a modification of the equidistance method, and introduce the subject with the heading “Bisection of Angle Representing Coastal Fronts”. Their commentary then reads:

“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.7-1-0), the parties constructed lines between the terminal points of adjacent land frontiers and then bisected the angle formed by the two construction lines.” (Charney and Alexander (eds.), *International Maritime Boundaries*, Vol. 1, Dordrecht, 1993, p. 210.)

The relevant State practice

20. The use of geometrical methods of delimitation is evidenced by the practice of States, and there are nine examples of such delimitation. For present purposes it will suffice to refer to the key feature in each case. The solutions adopted will appear on the screen in sequence.

21. The first case is the delimitation between France and Portugal in 1960, shown here on graphic IB5 (MN, p. 111). The 240° azimuth bisects the angle formed by lines approximating to the general direction of the coasts of Senegal and Guinea-Bissau respectively.

22. Secondly, on graphic IB6, there is the Seabed Boundary Agreement between Sharjah and Umm al Qaywayn in 1964 (MN, pp. 111-12). The boundary was delimited using the bisector of the angle formed by drawing straight lines between the terminal points of the land boundaries.

23. Thirdly, on graphic IB7, there is the Offshore Boundary Agreement concluded between Abu Dhabi and Dubai in 1968. The resulting continental shelf boundary is perpendicular to the general direction of the coast. The two States share a relatively straight coast in the vicinity of their land boundary (see Charney and Alexander, Vol. II, pp. 1475-1480).

24. Fourthly, on graphic IB8, the delimitations agreed between the United States and Mexico on 24 November 1976 and 4 May 1978 produce an alignment in the Gulf of Mexico which, in substantial part, is similar to a perpendicular to the general direction of the coast (see Charney and Alexander, Vol. I, 427-445, p. 22).

25. On graphic IB9 the next example is the Agreement between Brazil and Uruguay concluded in 1972, which entered into force in 1975. The delimitation was constituted by a line nearly perpendicular to the general direction of the coast (see Charney and Alexander, Vol. I, pp. 785-792).

26. Here on graphic IB10 is the sixth example of State practice, 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, pp. 757-776). 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.

27. Graphic IB11 shows the seventh episode of the State practice and 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, pp. 537-549). The Geographer of the US 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 is also 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. Charney and Alexander adopt the same characterization: *op. cit.*, p. 544.)

28. The eighth episode of State practice, shown here on graphic IB12 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, pp. 777-783 (Report Number 3-3); *ILM*, Vol. 25 (1986), p. 367). The boundary established is perpendicular to the general direction of the coasts of Brazil and French Guiana and the Agreement entered into force on 19 October 1983 (see figure XVII).

29. The final example, here on graphic IB13, consists of the Agreement between Estonia and Latvia on the Maritime Delimitation in the Gulf of Riga, the Strait of Irbe and the Baltic Sea, which entered into force on 10 October 1996 (see Charney and Alexander, *op. cit.*, Vol. IV, pp. 2995-3017, p. 3016). In the Agreement the outermost section of the delimitation is a perpendicular to the closing line across the Bay of Riga (see, in particular, Article 3).

30. Honduras offers no convincing criticism of the State practice recorded by Nicaragua in her Memorial beyond the statement that: “A Review of Nicaragua’s discussion discloses that most [of the agreements cited] are boundaries that are perpendicular to the general direction of the coast.” (RH, pp. 122-123, para. 7.13.) But, Madam President, this can hardly affect the force of the argument of Nicaragua.

In completing my examination of the State practice I would point out that there is no pertinent difference between the use of a perpendicular and the use of a bisector. These methods are similar both in legal and in geometrical terms. The choice between the two methods depends upon the geographical circumstances. A perpendicular is a specific instance where the simplified coasts are represented by a single straight line, more normally the relevant coasts have different directions and a bisector is therefore used.

The advantages of the bisector method

31. It is now convenient to lay out the advantages of adopting the bisector method in the process of maritime delimitation.

(a) *The method reflects coastal relationships*

32. In the first place, the method reflects coastal relationships. The preference for a particular method of delimitation is governed by legal criteria and, in this setting, primacy is given to geography and to coastal relationships. In certain geographical circumstances, resort to the bisector method (or a perpendicular to the general direction of the coast) is the only appropriate means of reflecting coastal relationships.

33. In the geographical circumstances of the present case, the equidistance method is more or less impossible to apply. This is partly dictated by the technical problems of constructing an equidistance line. The geographical features of the coast in the vicinity of the river Coco have the result that the base points would be located in a very limited space on each side of the river Coco. The problem is illustrated here on graphic IB14 and further explained in Chapter X of the Memorial:

“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 base points would be located one on each margin of the river and the median line would be equidistant only from these two points until reaching the end point selected for the delimitation, however distant this point was located from the coasts of both Parties . . .” (MN, p. 159, para. 25.)

34. The instability of this river mouth also gives rise to confusion. Shown here on graphic IB15 is a wide variety of median line solutions that have been supported at one time or

another by the shape of the river mouth since 1979. And there is a further outcome which must be avoided. Resort to the equidistance method in those circumstances would push the delimitation further north than the direction of the line produced by the bisector-based alignment, and this would produce an inequitable result, to the detriment of Honduras.

35. In simple terms, in the particular geographical situation, the coastal relationship is more appropriately reflected in the bisector approach.

(b) *The principle of equal division of areas of convergence*

36. Secondly, the bisector method is compatible with the principle of equal division of areas of convergence. In complicated geographical situations, the equidistance method may produce markedly inequitable results. Thus, in the *Gulf of Maine* case, illustrated here at graphic IB16, the Chamber avoided the equidistance method and adopted the principle of equal division as the starting-point. In the words of the Chamber:

“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. 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.” (*Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984, p. 327, para. 195.*)

37. In the circumstances of the present case, the bisector method produces a result which satisfies the criterion to which the Chamber refers.

(c) *The bisector method avoids giving undue influence to very minor coastal features*

38. Thirdly, a number of authorities recommend the bisector method precisely because it avoids giving undue influence to incidental coastal features. This element is highlighted by the Canadian experts Legault and Hankey in their essay in the study edited by Charney and Alexander, *International Maritime Boundaries* (Vol. I, p. 210).

39. Moreover, the Chamber of the Court placed particular emphasis on the inadequacies of the equidistance method in the geographical circumstances within the Gulf of Maine. In relation to the first sector of the delimitation the Chamber observed:

“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 interpreting and applying the method here considered . . . ; *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.*” (*Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984, p. 332, para. 210; emphasis added.)

40. The evidence thus produces confirmation of the substantial advantages which attach to the use of the bisector method. And there are other advantages.

(d) *The problematic status of the candidate for the starting-point of the delimitation*

41. A prominent aspect of the cases in which resort is had to the bisector method is the existence of problems of legal status attaching to the putative starting-point of the delimitation. This issue assumed central importance in the *Gulf of Maine* case in relation to the line claimed by Canada. In the part of the Judgment devoted to the first sector of the line drawn by the Chamber, the reasons for avoiding the method of equidistance were set out in very clear terms:

“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 . . .

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.” (*Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, *Judgment, I.C.J. Reports 1984*, p. 332, paras. 211-212; emphasis added.)

42. In the result the Chamber applied the principle of equal division to the first area to be delimited, preferring the bisector method to that of equidistance. And thus the Chamber concluded:

“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 one 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.” (*Ibid.*, pp. 332-333, para. 213).

43. A broadly similar *modus operandi* was adopted by the Court of Arbitration in the *Guinea-Guinea (Bissau) Maritime Delimitation* case (MN, pp. 102-105). As the Award reveals, in this case also, the status of the putative starting-point was problematical (see the Award, *ILR*, Vol. 77, pp. 682-683, paras. 105-107).

The roles of the bisector method: conclusion

44. I shall now summarize the roles of the bisector method. In essence, two situations are concerned. In the first place the method is a *sine qua non* in the cases in which the terminus of the land boundary is not ascertained and/or is outside the jurisdictional ambit of the pertinent tribunal. In such cases the key political data are not available and any potential base points are excluded from consideration. Alternatively, as in the present case, the unstable character of the coastal geography at the mouth of the Coco River creates an issue of propriety.

45. In consequence Nicaragua has made the following submission in Chapter VII of the Memorial, shown here on graphic IB2:

“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 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.” (MN, Vol. 1, p. 75.)

46. As I have already indicated, it was the uncertainty relating to the political geography which was “the main reason” for the Chamber’s opposition to an equidistance line in the *Gulf of Maine* case.

47. The more usual role of the bisector method is as a convenient and practical procedure for reflecting complicated geographical situations. And in this respect the method is a congener of both equidistance and the use of a perpendicular to the general direction of the coast.

48. If may ask you to look at graphic IB17. These methods, and the choice between them, must reflect the coastal configurations of the Parties and any other geographical features which are pertinent. In this context the bisector method combines two conjoint functions:

First: it depends upon and therefore represents the coastal fronts of the Parties within the region. The incidence of the line of bisection is the direct result of the location of the two lines representing the entire coastal front of both States in the areas to be delimited.

Secondly: because the bisector is the product of the two lines representing the coastal fronts of the Parties, it becomes a function of the coastal configurations of the Parties within the areas to be divided.

The application of the bisector method: practical steps in the process of delimitation

49. My task now is to analyse the practical steps in the process of delimitation. I have indicated the virtues of the bisector method and now it must be implemented. The first practical steps involve identifying the disputed area and the location of the coasts relevant for the purposes of delimitation.

A. The disputed area and the role of distance

50. There appears to be general agreement between the Parties on the geographical scope of the dispute. The submissions of Nicaragua in her Memorial include the following:

“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.” (Emphasis added.)

These submissions are confirmed in the Reply.

51. In her pleadings and submissions Honduras does not seek to qualify this position of Nicaragua, apart of course from advancing her own claim line at the parallel. In her Rejoinder Honduras does not seek to reduce the scope of the dispute in general apart from a proviso relating to certain islands, rocks and cays (RH, pp. 1-4, paras. 1.03-1.10).

52. However, the formulation of the claims of the Parties is secondary to the identification of the geographical and legal framework of the delimitation.

53. The framework involves the identification of the coastal fronts abutting upon the disputed area. Entitlement to an exclusive economic zone or a continental shelf is anterior to the issue of delimitation and the existence of coasts abutting upon the disputed area is the best evidence of entitlement. The decisions of this and other courts have recognized the significance of identifying abutting coasts.

54. In the *Anglo-French* continental shelf arbitration, illustrated here at graphic IB18, the Decision of the Arbitral Tribunal includes the following useful passages relating to the geographical and legal framework of the delimitation in the Atlantic region:

“The chief of these distinguishing characteristics [that is of the Atlantic region] consists in the fact that the continental shelf of the Atlantic region is not one confined within the arms of a comparatively narrow channel but one extending seawards from the coasts of the two countries into the open spaces of the Atlantic Ocean. *In consequence, the areas of continental shelf to be delimited, in the phrase used by the United Kingdom, lie off, rather than between, the coasts of the two countries. A further consequence is that the continental shelf across which the Court has to decide the course of the boundary extends to seawards of the coasts of the two countries . . .* Other distinguishing characteristics are that the actual coastlines of the two countries abutting on the continental shelf to be delimited are comparatively short; and that, although separated by some 100 miles of sea, their geographical relation to each other vis-à-vis the continental shelf to be delimited is one of lateral rather than opposite coasts.” (*ILR*, Vol. 54, p. 117, para. 233; emphasis added.)

55. And later in the Decision it is stated that:

“The Court considers that the method of delimitation which it adopts for the Atlantic region must be one that has relation to the coasts of the Parties actually abutting on the continental shelf of that region.” (*Ibid.*, p. 123, para. 248.)

56. It is necessary to point to certain implications of the detailed reasoning of the Court of Arbitration. First of all, the court adopted a broad view of the disputed area, that is to say, the

Atlantic region. And, as a corollary of this view, the court did not seek to compartmentalize the Atlantic region in any way. And finally, the court makes clear (para. 233) that even a small frontage may be significant in terms of the delimitation of areas of continental shelf which lie off the coasts of the two States rather than between them.

57. In examining the role of coastal frontages, it is necessary to emphasize the complementarity between the legal concept of entitlement and the delimitation of areas of continental shelf and exclusive economic zone. The basis of entitlement is the possession of coastal frontages abutting upon the areas in dispute.

58. Since the *Libya/Malta* case, shown here as graphic IB19, it has been accepted that distance from the coast rather than natural prolongation is the foundation of the process of delimitation. The equidistance method of delimitation is itself a function of the principle of distance and this is equally true of the other geometrical methods of constituting maritime boundaries.

59. In this context it is the coast and the principle of distance which fuel the process of entitlement and, as a logical necessity in the case of opposite or adjacent States, the process of delimitation. The role of the coast as a point of departure was emphasized by this Court in several passages in the Judgment in the *Tunisia/Libya* continental shelf case, shown here as graphic IB20.

The key passages are first:

“The principle that the natural prolongation of the coastal State is a basis of its legal title to continental shelf rights does not in the present case . . . necessarily provide criteria applicable to the delimitation of the areas appertaining to adjacent States. In so far as Article 76, paragraph 1, of the draft convention repeats this principle, it introduces no new element and does not therefore call for further consideration. In so far however as the paragraph provides that in certain circumstances the distance from the baseline, measured on the surface of the sea, is the basis for the title of the coastal State, it departs from the principle that natural prolongation is the sole basis of the title. The question therefore arises whether the concept of the continental shelf as contained in the second part of the definition is relevant to the decision of the present case. *It is only the legal basis of the title to continental shelf rights —the mere distance from the coast —which can be taken into account as possibly having consequences for the claims of the Parties.* (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 48, para. 48; emphasis added.)

And secondly, the Court says:

“As has been explained in connection with the concept of natural prolongation, the coast of the territory of the State is the decisive factor for title to submarine areas

adjacent to it. Adjacency of the sea-bed to the territory of the coastal State has been the paramount criterion for determining the legal status of the submerged areas, as distinct from their delimitation, without regard to the various elements which have become significant for the extension of these areas in the process of the legal evolution of the rules of international law.”

And the Court continues:

“The coast of each of the Parties, therefore, 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. 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.” (Ibid., p. 61, paras. 73 and 74; emphasis added.)

60. The complementarity of entitlement and delimitation is spelled out very clearly in certain passages in the *Libya/Malta* Judgment [IB19].

Thus in paragraph 61 of the Judgment:

“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 the 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 geographical 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.” (Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985, pp. 46-47, para. 61.)

61. The general approach to the role of distance evident in the Judgment in the *Libya/Malta* case has not been the object of criticism in the subsequent jurisprudence either of this Court or courts of arbitration. And the jurisprudence shows evidence of continuity and consistency in the context of maritime delimitation: and in this respect reference may be made to the Judgments in the *Qatar v. Bahrain* case (*I.C.J. Reports 2001*, pp. 110-115, paras. 224-49), the *Cameroon v. Nigeria* case (*I.C.J. Reports 2002*, pp. 431-448, paras. 269-307); and I refer also to the Award in the *Barbados and Trinidad and Tobago* arbitration of 11 April last year (paras. 219-245).

62. And it is to be emphasized that the principle of distance is applicable equally to the continental shelf and to the exclusive economic zone. Accordingly, the principle of distance must apply to cases involving a single maritime boundary. The application of the distance criterion to

both the continental shelf and the exclusive economic zone was confirmed by this Court in the *Libya/Malta* case (*I.C.J. Reports 1985*, pp. 33-34, para. 34) and in the *Qatar v. Bahrain* case (*I.C.J. Reports 2001*, pp. 110-111, paras. 226-231).

63. The legal implication of the distance criterion in the present case is that the title generated by the coasts of the Parties respectively extends in principle to the limit of the exclusive economic zone. This is illustrated in graphic IB21 now on the screen.

64. The jurisprudence uses the concept of overlapping claims and this is, of course, more or less question begging. As I shall demonstrate, the focus of overlapping areas, that is to say, the axis of the delimitation, depends upon the nature of the coastal relationships in the region as broadly conceived.

B. The method of delimitation should be appropriate to the disputed area

65. The next step in this progression is the analysis of the coastal relationships. However, as a preliminary, it is necessary to examine the extent to which the method of delimitation is conditioned by the properties, the general characteristics, of the disputed area.

66. In the first place, the continuity of the continental shelf in the disputed area is legally significant. In the *Guinea-Guinea (Bissau)* case, the Court of Arbitration observed:

“The continental shelf opposite the two Guineas is one and the same. It must therefore be delimited as such. The characteristics of a continental shelf may serve to demonstrate the existence of a break in the continuity of the shelf or in the prolongation of territories of the States which are parties to a delimitation. However, if the continental shelf is assumed to be continuous, in the present state of international law no characteristic could validly be invoked to support an argument based on the rule of natural prolongation and designed to justify a delimitation establishing a natural separation.” (*ILR*, Vol. 77, p. 687, para. 117.)

67. In the present case the geomorphology of the Nicaraguan Rise which is to be seen here as graphic IB22, presents a continental shelf which is continuous and does not involve any feature which could be regarded as a natural separation.

68. Looking back to IB16, another aspect of the question relating the method to the disputed areas was dealt with by the Chamber in the *Gulf of Maine* case as follows:

“The equitable nature of the criteria adopted in the light of the circumstances of the case will emerge the more convincingly — one might almost say tangibly — after the transition from the preliminary phase of choosing equitable criteria to the next

phase, in which these criteria are to be reflected in the drawing of a particular delimitation line with the aid of appropriate practical methods.

As regards these practical methods, it can be said at the outset that, given the equitable criteria which the Chamber feels bound to apply in the case referred to it for judgment, the choice to be made is predetermined. Methods must be chosen which are instruments suitable for giving effect to those criteria and not other criteria of a fundamentally different kind. Just as the criteria to which they must give effect are basically founded upon geography, the practical methods in question can likewise only be methods appropriate for use against a background of geography. Moreover, like the underlying criteria, the methods employed to give them effect must, in this particular case, be just as suitable for the delimitation of the sea-bed and its subsoil as for the delimitation of the superjacent waters and their fishery resources. In the outcome, therefore, only geometrical methods will serve.” (*Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, pp. 328-329, paras. 198-199.).

69. And therefore Nicaragua submits that the bisector method is especially suitable as a basis for delimitation when the delimitation is multipurpose, and the continental shelf — and other areas concerned — is continuous in form.

C. Analysis of the relationship of the coasts of the Parties

70. In the decisions relating to maritime delimitation, a particular question has created difficulties. This was the question whether the relationship of the coasts of the Parties abutting upon the disputed area was one of oppositeness or adjacency. This issue was prominent in the *Anglo-French* continental shelf case, shown here as graphic IB18. The response of the Court of Arbitration was to characterize the relationship of the respective coasts in the Atlantic Region as “one of lateral rather than opposite coasts” (see *ILR*, Vol. 54, p. 177, para. 233). The key passages in the Decision in the *Anglo-French* case are as follows:

“Clearly, there is considerable force in the contention, put forward by both Parties that, owing to the separation of the coasts by a wide expanse of sea, the situation in the Atlantic region cannot be categorised as, legally, a case of ‘adjacent’ States governed by paragraph 2 of Article 6. If that view is accepted, it follows that the situation is to be considered as, legally, a case of ‘opposite’ coasts and therefore one governed by paragraph 1 of that Article. *It is, on the other hand, certain that in the Atlantic region the situation geographically is one of two laterally related coasts, abutting on the same continental shelf which extends from them a great distance seawards into the Atlantic Ocean.* Indeed, the Court notes that so evident is this lateral relation of the two coasts, geographically, that both Parties in their pleadings saw some analogy between the situation in the Atlantic region and the situation of ‘adjacent’ States. Accordingly, whether the Atlantic region is considered, legally, to be a case of ‘opposite’ States governed by paragraph 1 or a case of ‘adjacent’ States governed by paragraph 2 of Article 6, *appreciation of the effects of any special geographical features on the equidistance line has to take account of those two*

geographical facts: the lateral relation of the two coasts and the great distance which the continental shelf extends seawards from those coasts.

What is important is that, in appreciating the appropriateness of the equidistance method as a method of effecting a ‘just’ or ‘equitable’ delimitation in the Atlantic region, the Court must have regard both to the lateral relation of the two coasts as they abut upon the continental shelf of the region and to the great distance seawards that this shelf extends from those coasts.” (*ILR*, Vol. 54, p. 120, paras. 241 and 242; emphasis added.)

71. And thus in my submission the coastal relationships in the Atlantic region are in important respects analogous to those of Honduras and Nicaragua in the present case. The relationship of the relevant coasts is lateral and the disputed areas extend seawards for a great distance.

72. The Court of Arbitration in the *Anglo-French* case, in delimiting in the Atlantic region, was dealing with the relatively new problem of “long distance” delimitation. The question was examined further by the Chamber in the *Gulf of Maine* case, referring back to graphic IB16. As the Chamber explained in relation to the practical methods of delimitation:

“On the general level all that can be done is to comment on the possible consequences of the rapid changes that have taken place in what is the very subject-matter of a maritime delimitation. The methods taken into consideration in a still relatively recent past — in this particular field ideas age very quickly — were few in number and of very similar inspiration. This limited choice was justifiable when these methods had to be applied over small distances, e.g., along boundaries between the territorial seas of adjacent States; but the same choice may seem less justifiable when boundaries have to be established which cover hundreds of nautical miles and are intended, not to delimit jurisdiction over the waters immediately abutting on the coast, but in fact to share out the potential mineral wealth of continental shelves extending to the continental margin, or the biological resources of maritime and ocean areas of hitherto unimagined proportions. Obviously the preference given to a particular method for drawing a boundary over a very short distance from the coasts may no longer be justifiable where the delimitation has to extend a great distance from its starting-point and where different factors have to be taken into account.

It is true that, until the emergence of the present dispute, the problem of ‘long distance’ delimitation, so to speak, had only come before an international judicial or arbitral body in relation to the continental shelf.” (*I.C.J. Reports 1984*, p. 314, paras. 160 and 161.)

73. The geographical circumstances presented in the *Gulf of Maine* case cannot be described as generally similar to those obtaining in the present case. However, some similarities arise in the context of the third segment of the boundary outside the waters of the Gulf of Maine. In any event the passages of the Judgment to which I have referred are significant in indicating the special characteristics of long distance and multipurpose delimitation.

D. The need for simplicity in the process of delimitation

74. In the *Gulf of Maine* case the Chamber emphasized the elements of simplicity and clarity among the advantages of resort to a geometrical method of delimiting the second segment of the delimitation line (*I.C.J. Reports 1984*, p. 333, para. 213).

75. The Chamber also made a significant point concerning the delimitation of zones containing fisheries and the drawing of a single maritime boundary. In the words of the Chamber:

“Furthermore, a line which, on account of the refinements in the technical method used to determine its course, follows a complicated or even a zigzag path, made up of a succession of segments on different bearings, might, if need be, seem acceptable as a boundary dividing the sea-bed alone, i.e., a boundary to be observed in the exploration and exploitation of the resources located in given areas of the subsoil. *But there would seem to be far less justification for adopting such a line as a limit appropriate to maritime fishery zones*, i.e., areas whose exploitable resources are not, for the most part, resources attached to the soil. Exploitation of the sea’s fishery resources calls for the existence of clear boundaries of a constant course, that do not compel those engaging in such activity to keep checking their position in relation to the complicated path of the line to be respected.

In sum, [the Chamber said,] just like the criteria to be applied to the delimitation, the methods to be used for the purpose of putting those criteria into practice cannot fail to be influenced by the special characteristics and requirements pertaining to the delimitation by a single boundary of both the continental shelf and the superjacent water column which, far from being a genuine column of definite shape, is in reality a volume of liquid in movement, forming the habitat of mobile fauna. *Undeniably, a degree of simplification is an elementary requisite to the drawing of any delimitation line in such an environment.*” (*I.C.J. Reports 1984*, p. 330, paras. 202 and 203; emphasis added.)

E. The use of simplified coastal fronts in the practice of States

76. In this milieu it is not surprising to find that it is a normal procedure in the practice of States to use simplified versions of coastal fronts in the course of delimitation by negotiated agreements.

77. Examples in the practice of States include the following:

- (i) on graphic IB6, the Seabed Boundary Agreement between Sharjah and Umm Al Qaywayn, in force in 1964 (see Charney and Alexander (eds.), Vol. II, pp. 1549-1555);
- (ii) on graphic IB7, the Offshore Boundary Agreement between Abu Dhabi and Dubai, in force 18 February 1968 (see Charney and Alexander, Vol. II, pp. 1475-1480);

(iii) on graphic IB23, the Convention between the French Republic and the Spanish State on the delimitation of the continental shelves of the two States in the Bay of Biscay, in force 5 April 1975 (see Charney and Alexander, Vol. II, pp. 1719-1734);

(iv) graphic IB9 shows the Agreement between Brazil and Uruguay Relating to Maritime Delimitation, in force 12 June 1975 (see Charney and Alexander (eds., Vol. I, pp. 785-792).

78. This State practice reinforces the evidence of the preference of courts for simplicity in the process of delimitation.

79. The next step in the process of drawing a line is to identify the point of departure.

F. The necessary point of departure is the land boundary

80. The point of departure of the delimitation in the present case is the location of the land boundary where it reaches the coast. The land boundary forms a necessary part of the legal and geographical framework of the delimitation. In the *Gulf of Maine* case the starting-point was point A, this being established in the Special Agreement of 29 March 1979. Nonetheless, the land boundary remained a necessary part of the legal framework of the delimitation and obviously its location governed certain important issues, including the determination of the relevant coasts and the assessment of the disparity in the lengths of coasts.

81. In effect the location of the land boundary constitutes the starting-point of the delimitation, as it were, by operation of law. Examples include the *Tunisia/Libya* continental shelf case (*I.C.J. Reports 1982*, p. 18). In the *Qatar/Bahrain* case there was no land boundary directly involved but the land boundary between Qatar and Saudi Arabia played an indirect role in the mode of establishing the inclination of the southernmost sector of the boundary (*I.C.J. Reports 2001*, p. 109, paras. 221-222).

82. As the Court will appreciate, the difficulty of identifying a stable basis for an equidistance line, which is the main reason for resorting to the bisector method, does not diminish the operational significance of the land boundary in the general process of delimitation. The problems relating to the point of departure will be examined later this week by my friend Alain Pellet.

G. Long distance delimitation and the absence of a point of reference

83. In the present case the line of delimitation seawards to the outer limit of the exclusive economic zones of the Parties, shown here on graphic IB21, will not be associated with any point of reference in the vicinity of its final segment. This was the geographical situation in the *Anglo-French* arbitration, where the relevant coastal frontages were small but related to large expanses of sea-bed. In the context of equidistance, the Court of Arbitration emphasized that the chief distinguishing characteristic of the Atlantic region

“consists in the fact that the continental shelf of the Atlantic region is not one confined within the arms of a comparatively narrow channel but one extending seawards from the coasts of the two countries into the open spaces of the Atlantic Ocean. In consequence, the areas of continental shelf to be delimited, in the phrase used by the United Kingdom, lie off, rather than between, the coasts of the two countries. A further consequence is that the continental shelf across which the Court has to decide the course of the boundary extends to seawards of the coasts of the two countries for great distances.” (*ILR*, Vol. 54, p. 117, para. 233.)

84. This emphasis on the fact that the continental shelf extended for a “great distance seawards” is repeated in several other passages of the Decision in the *Anglo-French* case (see *ibid.*, p. 120, paras. 241-242).

85. In the *Gulf of Maine* case the Chamber described the process of determining the course of the third segment of the delimitation line. The Chamber gave emphasis to the absence of a point of reference outside the shores of the Gulf.

86. In the words of the Chamber:

“There now remains to be determined the course of the third segment of the delimitation line, i.e., the longest portion of its entire course. This is the segment concerning that part of the delimitation area which lies outside and over against the Gulf of Maine . . . *In fact, the portion of the line now to be determined will inevitably, throughout its length, be situated in the open ocean. From the geographical point of view, there is no point of reference, outside the actual shores of the Gulf, that can serve as a basis for carrying out the final operation required.* That being so, it appears obvious that the only kind of practical method which can be considered for this purpose is, once again, a geometrical method. Within the range of such methods, the most appropriate is that recommended above all by its simplicity, namely in this instance the drawing of a perpendicular to the closing line of the Gulf.” (*I.C.J. Reports 1984*, pp. 337-338, para. 224; emphasis added.)

H. Interim conclusions on the geographical framework of the delimitation in the present case

87. Madam President, at this juncture it is necessary to make a reconnaissance and to consult the compass. The jurisprudence has insisted upon the legal significance of coasts actually abutting

on the areas in dispute. This formulation is not to be ignored but there are certain questions which are left unanswered. We are dealing here with the problem of “long distance” delimitation. The significance of the long distance delimitation was pointed out by the Chamber in the *Gulf of Maine*.

I have already cited the most important passage which will remain here in the transcript:

“The methods taken into consideration in a still relatively recent past — in this particular field ideas age very quickly — were few in number and of very similar inspiration. This limited choice was justifiable when these methods had to be applied over small distances, e.g., along boundaries between the territorial seas of adjacent States; but the same choice may seem less justifiable when boundaries have to be established which cover hundreds of nautical miles and are intended, not to delimit jurisdiction over the waters immediately abutting on the coast, but in fact to share out the potential mineral wealth of continental shelves extending to the continental margin, or the biological resources of maritime and ocean areas of hitherto unimagined proportions.” (*I.C.J. Reports 1984*, p. 314, para. 160.)

88. So in the present case we are dealing with a long distance delimitation and a situation in which there is no point of reference to assist in the determination of a line which extends seawards of the coasts of the two countries for great distances. In such geographical situations the judicial approach has been to seek for relevant coasts: and the jurisprudence includes two examples of the genre.

89. Looking back to graphic IB18, the first example is taken from the *Anglo-French* case, with reference to the delimitation in the Atlantic region. As the court pointed out, the actual coastlines of the two countries abutting upon the areas to be delimited were “comparatively short” (see the Decision, *ILR*, Vol. 54, p. 117, para. 233). In that case the French Government contended that the delimitation in the Atlantic region should be by means of a bisector line based upon the general directions of the coasts of the two countries within the English Channel. The response of the court to the French contention was negative. In the words of the court:

“The ‘equitable’ method of delimitation which is advocated by the French Republic, and which invokes a median line delimited by reference to prolongation of the general directions of the Channel coasts of the two countries, does not appear to the Court to be one that is compatible with the legal regime of the continental shelf. It detaches the delimitation almost completely from the coasts which actually abut on the continental shelf of the Atlantic region, and is thus not easily reconciled with the fundamental principle that the continental shelf constitutes the natural prolongation of a State’s territory under the sea. In so far as that method may have relation to the respective land masses of the Parties, it is not apparent why the general directions of their Channel coasts alone should be considered to represent either the totality or any particular part of their land masses . . . *It is not, therefore, obvious how or why the*

coasts within the Channel should, on the contrary, acquire an absolute relevance in determining the course of the boundary itself in the Atlantic region.

The Court, for the above reasons, finds itself unable to accept the prolongations of the general direction of the Channel coasts of the two countries as a relevant basis for determining the course of the boundary in the Atlantic region.” (*ILR*, Vol. 54, pp. 122-23, paras. 246 and 247; emphasis added.)

90. In the result the Court of Arbitration rejected the idea of relying upon proxy or substitute relevant coasts. The court confirmed that the Channel coasts of the two Parties did not provide “a relevant basis” for determining the boundary in the Atlantic region.

91. The Chamber of the Court encountered similar problems in the *Gulf of Maine* case, shown here again on graphic IB16, in relation to the third segment of the line proposed by the Chamber. The Chamber resolved the problem in two stages. The first stage involved the drawing of a perpendicular to the closing line of the Gulf.

92. The Chamber uses a geometrical method but, at the same time, points out that the course of the third segment depended upon the course of the previous two segments of the line — that is, within the Gulf. As the Chamber explains:

“There now remains to be determined the course of the third segment of the delimitation line, i.e., the longest portion of its entire course. This is the segment concerning that part of the delimitation area which lies outside and over against the Gulf of Maine. Nevertheless, it appears beyond question that, in principle, the determination of the path of this segment must depend upon that of the two previous segments of the line, those segments within the Gulf which have just been described *and whose path so obviously depended on the orientation of those coasts of the Parties that abut upon the waters of the Gulf.* In fact, the portion of the line now to be determined will inevitably, throughout its length, be situated in the open ocean. From the geographical point of view, there is no point of reference, outside the actual shores of the Gulf, that can serve as a basis for carrying out the final operation required. That being so, it appears obvious that the only kind of practical method which can be considered for this purpose is, once again, a geometrical method.” (*I.C.J. Reports 1984*, p. 337, para. 224; emphasis added.)

93. The Chamber having chosen the method of drawing a perpendicular to the closing line of the Gulf, the second stage of the operation involved fixing the location of the perpendicular on the closing line of the Gulf — the location of the perpendicular. The Chamber explained this exercise in the following terms:

“Such being the Chamber’s choice, the essential question remains to be resolved, namely that of determining the precise point on the closing line of the Gulf from which the perpendicular to that line should be drawn seawards. However, if it is considered necessary to remain guided by geography, all the considerations already set forth in regard to the determination of the final segment of the line militate in favour

of having this new choice coincide with the very point where the corrected median line encounters the closing line of the Gulf. Indeed the Chamber has borne constantly in mind the problem of determining the final segment of the delimitation line when applying itself so meticulously to the task of establishing the previous segments. It would be unthinkable that, in that part of the delimitation area which lies outside and over against the Gulf, the dividing line should not follow or continue the line drawn within the Gulf by reference to the particular characteristics of its coasts. If one were to seek for a typical illustration of what is meant by the adage 'the land dominates the sea', it is here that it would found." (*Ibid.*, p. 338, para. 226.)

94. Madam President, in the *Gulf of Maine* case, the Chamber thus relied upon coasts which abutted upon the waters within the Gulf, and not the coasts "outside the actual shores of the Gulf". And it is clear that the third segment is thus based vicariously, so to speak, upon coasts which were not directly relevant to the delimitation of the third segment of the line drawn by the Chamber.

95. And so, at this stage, Nicaragua would respectfully suggest that, while each case is different, the *Anglo-French* and the *Gulf of Maine* cases provide useful analogies to the present exercise in delimitation. The present case involves a long distance delimitation of a line which extends seawards of the coasts of the two countries for great distances. Away from the coasts and the starting-point of the line, there is no point of reference to assist in the delimitation process. It is in these conditions that the methodology of a bisector finds its justification.

Madam President, it is not quite the coffee break, but it would be helpful if I could break there and start a new passage.

The PRESIDENT: Yes, by all means, Mr. Brownlie. The Court will now shortly rise.

The Court adjourned from 11.25 to 11.45 a.m.

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

Mr. BROWNLIE: Thank you, Madam President.

96. The foregoing examination of the cases highlights certain data:

- first, the problem of finding abutting and relevant coasts in cases involving long distance delimitation;
- second, that the land boundary in the present type of case is the necessary point of departure;

- third, the abutting coasts, in cases such as the present must, so to speak, do all the work of delimitation, in the absence of any point of reference to influence the more seawards aspects of the line;
- fourth, it is common practice to use simplified versions of coastal fronts; and
- fifth, in the absence of a stable basis for the use of base points at the mouth of the river Coco, the equidistance method is not viable.

97. The boundary proposed by Nicaragua in the areas beyond the territorial sea is illustrated here with graphic IB24 and can be described as follows: the bisector is calculated from the general direction of the coast for Honduras (bearing $098^{\circ} 10' 48''$) and the general direction of the Nicaraguan coast (bearing $007^{\circ} 19' 54''$). These directions generate a bisector of bearing $052^{\circ} 45' 21''$. This bearing is projected from the centre of the main channel at the mouth of the River Coco at $15^{\circ} 00' 11''$ N, $83^{\circ} 07' 54''$ W out to a position on Rosalind Bank. The line between these two points is defined as a geodesic of Azimuth $52^{\circ} 26' 25''$.

98. This originating point constitutes the intersection of the two lines A and B indicated on figure A in Volume III of the Memorial. Line A reflects the coastal direction of Honduras abutting on the areas to be divided. Line B reflects the coastal direction of Nicaragua in the areas to be divided. 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 which is projected from the river mouth as a geodesic.

99. The bisector is used as a provisional line because, as demonstrated with graphic IB15, the geometry of the coastlines of Nicaragua and Honduras does not allow the calculation of a median or equidistant line that is robust. The elbow formation of the coast indicates that on a mathematical basis, it is only base points selected on either bank of the river mouth that can contribute to the calculation of a median line. The line is calculated as that line that is always equidistant from the nearest base point on either side and no other mainland base point will ever come closer to the line than those at the river entrance.

100. To allow the entire coast of both Nicaragua and Honduras to play a part in the construction of a provisional line, it is necessary to use a bisector. If I may divert your attention to graphic IB25 on the screen at this point, I will demonstrate how the bisector is constructed. In the

construction of a bisector, vectors representing the Honduran coast can be averaged to generate a single line representing the general direction of the coast, and a similar exercise produces an average direction for the Nicaraguan coast.

101. These average vectors are only intended to indicate the general direction of the coast, not any special notion of coastal projection or relevant coast in terms of a proportional calculation. The average coastal direction gives equal effect to every point on the coastline of both States.

102. At the point of intersection of these general coastal directions, a bisector is constructed halving the angle between the lines as shown here on graphic IB26.

103. And the construction is then transposed to make the bisector pass through the mouth of the river Coco — on graphic IB27. The bisector ought to be translated to the thalweg point at the river mouth, but in the absence of a current accurate survey of the thalweg line, a point at the centre of the entrance to the river is chosen.

104. No adjustment for the relative lengths of the coast of each State is made in construction of the bisector to ensure that the resultant direction is a direct function of the average direction of the entire coast of each State.

105. In Nicaragua's Memorial this direction has been used to describe the line of delimitation shown here on graphic IB2, between the States with a start-point about 3 miles offshore, an intermediate point at the intersection with the 12-mile limit and a direction stated as a geodetic azimuth that will drive the line outwards until it intersects with other boundaries with other States in the approximate vicinity of Rosalind Bank. At the time the Memorial was written, the bisector start-point and intermediate point were calculated on the best available information for the river mouth. Clearly in the intervening five years, the river mouth has moved and these figures are no longer accurate. However, in relation to the total coasts of Nicaragua and Honduras, these local changes at the river mouth make little difference to the calculation of the direction of the bisector and this remains the best direction for a delimitation line based on the mainland coasts of each State.

106. The approach of the decision-maker is to take the benefit of the geometrical mode of delimitation which is to be preferred. To make the system work, it is necessary to assess the

general direction of the coasts either side of the terminus of the land boundary. For this purpose, it is convenient to construct coastal front vectors.

107. With the assistance of the two vectors, an appropriate bisector line can be constructed as shown in graphic IB4. The vectors reflect the normal practice of converting complicated coastal geography into an artificial straight line which reflects the general direction of the coast.

108. The need for simplicity has been recognized in the jurisprudence. As the Chamber observed in its Judgment in the *Gulf of Maine* case:

“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.” (*I.C.J. Reports 1984*, p. 333, para. 213.)

J. The bisector line produces an equitable result

109. Madam President, the various legal elements must now be positioned as a synthesis. Each element, for example, the use of simplified coastal fronts, or the use of the bisector method, has a function which is necessary for the process of delimitation but not sufficient for the final stage, the stage which confirms the sufficiency of the synthesis of elements, which is to check whether the delimitation is equitable in result. The provisions of the Law of the Sea Convention relating to the delimitation of the exclusive economic zone and the continental shelf provide that the purpose of delimitation is “to achieve an equitable solution”.

110. Nicaragua submits that the boundary she proposes is equitable. In the first place the direction of the line is a direct function of the average direction of the entire coast of each State. Moreover, in the absence of any points of reference seawards, the use of the coastal fronts of the Parties is the appropriate, and indeed the only appropriate, basis of delimitation.

111. And in this general context, it can be pointed out that the present case involves a long distance delimitation in which, in contrast to other examples, the identification of relevant coasts is straightforward. This situation is thus to be distinguished from the *Anglo-French* and *Gulf of Maine* cases in which the judicial quest for relevant coasts was beset by substantial problems.

112. The bisector method also satisfies the principle of equal division. In several passages the Chamber in the *Gulf of Maine* case affirmed the criterion of equal division. Thus, in paragraph 195 the application of the criterion is adopted as a general policy. Referring to the geography of coasts, the Chamber observed:

“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.)

113. Again, in paragraph 197 the Chamber came to the conclusion:

“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.” (*Ibid.*, p. 328.)

114. The principle of equal division has its origin in the *North Sea Continental Shelf* cases, where the Court observed:

““The continental shelf area off, and dividing, opposite States [consists of] prolongations [which] meet and overlap, and can therefore only be delimited by means of a median line; and, ignoring the presence of islets, rocks and minor coastal projections, the disproportionately distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved.”” (*I.C.J. Reports 1969*, p. 36, para. 57.)

And this passage is set forth by the Court in the *Libya/Malta* case, (*I.C.J. Reports 1985*, p. 47, para. 62).

115. A further equitable aspect of the bisector line is the quality which it possesses of avoiding a disproportionate outcome, illustrated here as graphic IB28. Nicaragua considers that the appropriate test should take the form of the question: is there an evident disproportion in the areas attributed to each of the Parties respectively? As this Court observed in the *Libya/Malta* case:

“The Court does not consider that an endeavour to achieve a predetermined arithmetical ratio in the relationship between the relevant coasts and the continental shelf areas generated by them would be in harmony with the principles governing the delimitation operation. The relationship between the lengths of the relevant coasts of the Parties has of course already been taken into account in the determination of the delimitation line; if the Court turns its attention to the extent of the areas of shelf lying on each side of the line, it is possible for it to make a broad assessment of the equitableness of the result, without seeking to define the equities in arithmetical terms.

The conclusion to which the Court comes in this respect is that there is certainly no evident disproportion in the areas of shelf attributed to each of the Parties respectively such that it could be said that the requirements of the test of proportionality as an aspect of equity were not satisfied.” (*I.C.J. Reports 1985*, p. 55, para. 75.)

116. In the circumstances Nicaragua submits that there is “no evident disproportion” in the maritime areas attributed to each of the Parties respectively as a consequence of the use of the bisector method. In any case, Honduras has not asserted that the line proposed by Nicaragua is inconsistent with the test of proportionality, either in the Counter-Memorial or the Rejoinder.

The bisector method: the response of Honduras

117. In her Counter-Memorial and again in the Rejoinder Honduras produces no single reason, either of principle or of practicality, which would rule out resort to the bisector method (CMH, pp. 6-7, para. 1.20, and pp. 62-63, para. 4.14; RH, pp. 122-124, paras. 7.11-7.17).

118. Moreover, in her Rejoinder Honduras does accept that resort to a geometrical method of delimitation is supported by judicial authority and State practice. Thus, “Honduras does not deny that in certain situations judicial authority and State practice have adopted a geometrical method of delimitation such as angle bisectors and perpendiculars to the general direction of the coast.” (RH, p. 123, para. 7.14.)

119. When Honduras, with some reluctance, does get to grips with the bisector method in the context of this case, her response is to contest the application of the bisector method on the facts.

The relevant passage in the Rejoinder is as follows:

“Chapter 6 above addresses the fact that the land boundary between Honduras and Nicaragua meets the Central American coast where that coast faces east. As discussed in Chapter 6, Nicaragua’s Puerto Cabezas, which is at approximately 14° N latitude, and Honduras’s Cape Falso, at approximately 15° 15' N latitude, are on virtually the same longitude. This is so in spite of the eastern bulge in the Nicaraguan coast at Punta Gordo, and the shared eastern protrusion in the eastward facing Central American coast at Cabo Gracias a Dios. Both of these coastal sinuosities at Punta Gordo and Cabo Gracias a Dios, reach eastward to about the same distance in longitude. Thus, between Puerto Cabezas in Nicaragua and Cape Falso in Honduras the coast of Central America runs essentially from south to north in spite of the coastal sinuosities. Since these two places, which are some 75 minutes apart in latitude (or 75 nautical miles), are on the same longitude, the general direction of the coast of Central America which runs between them, and in the midst of which lies the land boundary terminus, can hardly be said to have changed.” (RH, p. 122, para. 7.11.)

120. The thesis of Honduras in this respect is illustrated by plate 42 of Chapter 6, which is now on the screen here as graphic IB29.

121. Nicaragua considers that the analysis offered is unacceptable for several reasons. As a background, I invite the Court to look once again at figure A and lines A and B, shown here on graphic IB2.

122. First of all, the sector from Cape Falso in Honduras to Puerto Cabezas in Nicaragua, now on the screen as graphic IB30, is presented as the critical sector for determination of the general direction of the coast. Secondly, the focus is upon “the coast of Central America” and not upon the coasts of the Parties. Thirdly, the conclusion is to the effect that “the coast of Central America between these points faces east”. Fourthly, the further conclusion is that the parallel (claimed by Honduras as a maritime boundary) “runs due east from this eastward facing coast”. This is shown on their plate 42, reproduced here as graphic IB31; however, the coastal direction is poorly drawn, if points that are actually on the coast are picked, the graphic at IB32 shows that it does not even face east. It is also interesting to note that this small section of coast is described (RH, paras. 6-17) as “roughly linear” — the coasts approaching the river mouth meet more or less at right angles.

123. With respect to our colleagues on the other side of the Court, this course of reasoning is unconvincing and legally unacceptable. It can at once be seen that the thinking of Honduras bears no relation, either to the actual configuration of the coasts of the areas in dispute, or to the appropriate legal significance of the coasts of the Parties. In the first place, the selection of the Cape Falso-Puerto Cabezas sectors as the dominant element in the coastal geography is arbitrary in the extreme. If the Court would look again at the screen at graphic IB30, it can be seen that the Cape Falso-Puerto Cabezas sector constitutes an artificial fragment of the coastal geography.

124. And there are other substantial difficulties. There is no reason or principle to support the assertion that only a sector of east-facing coast constitutes the relevant coastal front for purposes of delimitation. There is, in any event, no true *east-facing* coast. And again, there is no reason or principle to justify the selection of a sector which, it is alleged, runs from north to south.

125. In fact, the need to invent an eastward facing coast is linked to the “traditional line” claimed by Honduras “that runs due east from the eastward facing coast” (RH, p. 122, para. 7.12). This is very extravagant. The traditional line is based upon a parallel which does not reflect *any*

coastal feature and which merely starts from a point on the coast. The parallel is not a formation related to the coastal configuration in the area but is an extraneous feature.

126. In any event in this context Honduras simply ignores the appropriate elements of maritime delimitation, namely:

First: The determination of the relevant area: shown here in graphic IB33.

Second: On the basis of this determination the identification of the coastal fronts abutting upon the disputed area: shown here on graphic IB34.

Third: The formation of lines representing the relevant coastal fronts of the two States.

127. The Cape Falso to Puerto Cabezas sector is simply not based upon these legal elements. It clearly ignores significant segments of abutting coasts both to the north and the south of this sector.

128. Having reviewed the Honduran approach to these matters, it is time to move on to the position of Nicaragua concerning some other issues.

The equitable character of the bisector method is confirmed by the independent criteria of an equitable result

129. It is now my purpose to review the elements which dictate that the character of the bisector method is such as to achieve an equitable result in the present case; and there are four such elements.

130. (a) The first, which has been stressed already this morning, is the fact that the method produces an effective reflection of the coastal relationships.

131. (b) The second element is the fact that the bisector produces a result which constitutes an expression of the principle of equal division. As the decision in the *Gulf of Maine* case demonstrates, the equal division of the areas in dispute can be achieved not only by using the method of equidistance, but by other methods, including the use of the bisector of the angle formed by the lines perpendicular to the two basic coastal lines to be considered. In the present case, the bisector method is used in a much simpler version.

132. (c) In the geographical circumstances of the present case, the bisector method has the virtue of compliance with the principle of non-encroachment, a principle which has been consistently upheld in the jurisprudence. It is to be recalled that in the *Gulf of Maine* case the

Chamber affirmed that the principle applied in relation to the delimitation of a single maritime boundary and not exclusively to the delimitation of continental shelf areas.

133. In the present case the parallel line of delimitation claimed by Honduras, shown here as graphic IB35, is unrelated to any geographical considerations and by its very nature involves an encroachment on the normal entitlement to be derived from Nicaragua's coastal front. In sharp contrast to this claim the bisector reflects the actual geography of the region and does not involve a truncation of the coastal projections of the Parties.

134. (d) The line-up of equitable principles includes the principle of preventing, as far as possible, any cut-off of the seaward projection of the coast of either of the States concerned. This principle is obviously the *alter ego* of non-encroachment. As a separate legal entity the concept of avoiding any cut-off of the seaward projections of the Parties has been affirmed in the Award of the Tribunal in the *Guinea-Guinea (Bissau)* maritime delimitation case in 1985 (*ILR*, Vol. 77, p. 681, para. 103) and again in the Award of the Tribunal in the *Newfoundland and Labrador/Nova Scotia* arbitration concerning offshore areas (Second Phase, 2002, Award, pp. 33-34, para. 5.15).

135. In any event, the formulation of the Court in the *Libya/Malta* case is generally accepted:

“The normative character of equitable principles applied as a part of general international law is important because these principles govern not only delimitation by adjudication or arbitration, but also, and indeed primarily, the duty of Parties to seek first a delimitation by agreement, which is also to seek an equitable result. That equitable principles are expressed in terms of general application, is immediately apparent from a glance at well-known examples: the principle that there is to be no question of refashioning geography, or compensating for the inequalities of nature; the related principle of non-encroachment by one party on the natural prolongation of the other, which is no more than the negative expression of the positive rule that the coastal State enjoys sovereign rights over the continental shelf off its coasts to the full extent authorized by international law in the relevant circumstances . . .” (*I.C.J. Reports 1985*, p. 39, para. 46.)

136. In her Rejoinder Honduras asserts that the bisector “cuts off” the projection of the eastward facing coastal front of Honduras to the south of Cape Falso (RH, p. 124). The complaint is accompanied by plate 45, shown here as graphic IB36, which fails to depict the vectors or construction lines employed by Nicaragua in applying the bisector method to the disputed area as a whole. And conveniently uses a chart that makes the entire northward projection of Nicaragua disappear, a wider view, shown here, in graphic IB28, this puts the supposed cut-off into perspective.

137. This argument based upon an alleged cut-off is based on the fallacious assumption that the coastal front of a State only generates rights to areas which are directly opposite the coast in question. This ignores the general character of long distance delimitation when the disputed areas lie off the coast in question and do not lie between opposite coasts.

The methodology of Honduras

138. The next stage in the process of establishing that the delimitation proposed by Nicaragua has an equitable result is the examination of relevant circumstances to be taken into account. It is generally recognized in the jurisprudence that the delimitation is to be effected in accordance with equitable principles and taking account of all relevant circumstances: see, for example, the Judgment in the *Libya/Malta* case (*I.C.J. Reports 1985*)— in the Judgment itself (pp. 38-39, para. 45) and in the *dispositif* (pp. 56-57, para. 79).

139. However, before embarking upon this task, it is necessary to point out the eccentricities of the Honduran methodology in general. The fact is that Honduras has assumed a very ambiguous position in relation to the applicable law and the connected question of geographical configuration. The methodology of Honduras has been examined at some length in the Reply and it will suffice to point to the main forms of eccentricity.

140. In the first place Honduras in her pleadings sets aside the coastal geography and the principal coastal relationships (see RN, paras. 2.3-2.7).

141. Secondly, the legal argument presented by Honduras is based exclusively upon the alleged conduct of the Parties in relation to the 15th parallel (see RN, paras. 2.8-2.12). This argument bears no relation whatsoever to the geographical context. The complete divorce between the claim based upon the parallel of latitude and maritime delimitation is affirmed by a series of passages in the Counter-Memorial. Paragraph 7.25 is typical in this respect.

“Based on this evidence, and on the review of the long-established common practice in Chapter 6, a maritime frontier running eastwards along approximately the 15th parallel was well-established by 1979. No rule of law required that the Parties should embody their agreement in formal, written Treaty form, however desirable that may be. *It would be quite wrong to allow the new Government of one Party to reassess the ‘equities’ of the situation and demand a revision of the agreement, as of right, or to argue, as Nicaragua now does, that no agreement exists and an equitable delimitation must be established de novo*”. (Emphasis added.)

142. Thirdly, the concept of relevant circumstances adopted by Honduras is permeated by legal error. This latter issue is a question to which I shall return in due course.

The relevant circumstances supporting the equitable result reached in accordance with the bisector principle

143. The jurisprudence of this Court has affirmed the applicability of relevant circumstances in determining whether the method of delimitation in question achieves an equitable result. In this context reference can be made to the Judgments in *Libya/Malta* (*I.C.J. Reports 1985*, p. 39, para. 46), *Jan Mayen* (*I.C.J. Reports 1993*, p. 64, para. 59), and *Cameroon v. Nigeria* (*I.C.J. Reports 2002*, pp. 441-442, paras. 288-290).

144. However, the membership of the category of relevant circumstances is a legal question and has been carefully circumscribed in the jurisprudence. A relevant circumstance can only affect the provisional alignment if it has a clear factual basis and if certain conditions are fulfilled.

145. The first condition arises from the fact that there is a legal connection between the title of the coastal State, based upon its coastal frontage, and the concept of relevant circumstances. Thus, to qualify as a relevant circumstance a factor should be related to the institution of the continental shelf. The position was stated by the Court in the Judgment in the *Libya/Malta* case:

“The application of equitable principles thus still leaves the Court with the task of appreciation of the weight to be accorded to the relevant circumstances in a particular case of delimitation. There is a much-quoted *dictum* of the Court in its 1969 Judgment to this effect:

‘In fact, there is no legal limit to the considerations which States may take account of for the purpose of making sure that they apply equitable procedures, and more often than not it is the balancing-up of all such considerations that will produce this result rather than reliance on one to the exclusion of all others. The problem of the relative weight to be accorded to different considerations naturally varies with the circumstances of the case.’ (*I.C.J. Reports 1969*, p. 50, para. 93.)”

And the Judgment in the *Libya/Malta* case goes on to say:

“Yet although there may be no legal limit to the considerations which States may take account of, this can hardly be true for a court applying equitable procedures. For a court, although there is assuredly no closed list of considerations, it is evident that only those that are pertinent to the institution of the continental shelf as it has developed within the law, and to the application of equitable principles to its delimitation, will qualify for inclusion. Otherwise, the legal concept of continental shelf could itself be fundamentally changed by the introduction of considerations strange to its nature.” (*I.C.J. Reports 1985*, p. 40, para. 48.)

146. Thus, the landmass of a State cannot qualify as it does not provide a basis of entitlement either to continental shelf rights or to areas of exclusive economic zone.

147. A related condition is the requirement that the relevant circumstance be related to the objective envisaged by States when claims are made to sea-bed areas. Thus, in the same Judgment the Court observed in response to an argument on behalf of Malta:

“The Court does not however consider that a delimitation should be influenced by the relative economic position of the two States in question, in such a way that the area of continental shelf regarded as appertaining to the less rich of the two States would be somewhat increased in order to compensate for its inferiority in economic resources. Such considerations are totally unrelated to the underlying intention of the applicable rules of international law . . . While the concept of the exclusive economic zone has, from the outset, included certain special provisions for the benefit of developing States, those provisions have not related to the extent of such areas nor to their delimitation between neighbouring States, but merely to the exploitation of their resources. 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. In the present case, however, the Court has not been furnished by the Parties with any indications on this point.*” (*I.C.J. Reports 1985*, p. 41, para. 50; emphasis added.)

The relevant circumstances invoked on behalf of Nicaragua

148. I now move to the relevant circumstances invoked by Nicaragua in the present case. They are as follows:

(a) *First: the incidence of natural resources in the disputed area*

149. Since the *North Sea Continental Shelf* cases it has been recognized 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 Continental Shelf* 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*, pp. 53-54, para. 101).

In its Judgment in the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* case, 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*, pp. 77-78, para. 107.)

150. Further judicial statements are set forth in the Memorial (pp. 123-127). To these materials more recent authority must be added. Thus, in the *Cameroon v. Nigeria* case the Court addressed the question raised by Nigeria whether the oil practice of the Parties provided helpful indications for purposes of delimitation. The Court found that:

“Overall, it follows from the jurisprudence that, although the existence of an express or tacit agreement between the parties on the siting of their respective oil concessions may indicate a consensus on the maritime areas to which they are entitled, oil concessions and oil wells are not in themselves to be considered as relevant circumstances justifying the adjustment or shifting of the provisional delimitation line. Only if they are based on express or tacit agreement between the parties may they be taken into account. In the present case there is no agreement between the Parties regarding oil concessions.

The Court is therefore of the opinion that the oil practice of the Parties is not a factor to be taken into account in the maritime delimitation in the present case.” (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J Reports 2002, pp. 447-448, para. 304.*)

151. It will be appreciated by the Court that in the *Cameroon v. Nigeria* case the Court was not addressing the general question of the incidence of natural resources but the significance of oil concessions and oil wells in themselves. The evidence relating to the oil concessions will be reviewed in due course by Professor Remiro Brotóns.

152. This form of relevant circumstance is not the subject of any comment by Honduras in the Counter-Memorial.

The second type of relevant circumstance derives from:

(b) *The principle of equitable access to the natural resources of the disputed area*

153. The principle of equitable access to natural resources is obviously a relative of the factor involving the incidence of natural resources. In any case the first formulation of the principle of equitable access as such appears in the Court’s Judgment in the *Jan Mayen* case, and the relevant passages are set forth in the Memorial at pages 128-130. This appearance of the principle was in the significant context of a case in which, as the Court noted, the Parties were essentially in conflict over access to fishery resources.

154. The question of access to resources was given careful consideration in the arbitration between Newfoundland and Labrador, and Nova Scotia, and in particular in the Award of the Tribunal in the Second Phase. After a summary of the arguments, the Tribunal concluded:

“It is now well settled that a court engaged in maritime delimitation may not take account of the relative wealth or natural resources of the States concerned or their peoples; these are wholly extraneous matters. Nor, in the end, did either Party suggest otherwise. As to access to the specific resources of the zone in question, the Tribunal does not think that this factor is irrelevant. Indeed, in accordance with earlier jurisprudence it seems that access to resources in the zone to be delimited may be relevant in two different ways. One concerns the hypothesis that a particular delimitation may entail ‘catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned’; but this can clearly be excluded in the present case. More relevant is the possibility, already recognised in the *North Sea Continental Shelf* cases, of having regard in any delimitation to the natural resources of the area in question ‘so far as known or readily ascertainable’. This was decisive in *Jan Mayen* in producing an eventual adjusted equidistance line. True, to have regard to the location of potential resources stands in some tension with the often-repeated statement that a court engaged in maritime delimitation is not sharing out an undivided whole. For the reasons explained already, this Tribunal is in no different position in delimiting the undivided continental shelf of Canada as between the two Parties for the purposes of the *Accord Acts*. Thus it is not the Tribunal’s function to share out equitably any offshore resource, actual or hypothetical, irrespective of its location. On the other hand, the effect of any proposed line on the allocation of resources is, in the Tribunal’s view, a matter it can properly take into account among other factors.” (Para. 3.21.)

And the Tribunal continues:

“As will be seen from figure 4, [reproduced here as graphic IB37] each Party’s claim line allocated to it the greater part of the Laurentian sub-basin. (The St. Pierre and Miquelon corridor also cuts across this sub-basin, although no mention is made of the fact in the Award of the Court of Arbitration, which rather emphasized fisheries resources.) [That’s a cross-reference to St. Pierre and Miquelon.] In a situation where officials of both sides have referred to an area of potential resources as being at stake, the Tribunal does not believe that the North Sea formula (‘known or readily ascertainable’) should be restrictively applied. Accordingly, the impact of any delimitation on access to that resource is a potentially relevant factor in the present case.” (Para. 3.22; footnotes omitted.)

155. This determination provides an affirmation of the principle of equitable access in respect of the exploration and exploitation of hydrocarbons (see the Award, paras. 3.19-3.20).

156. In her Counter-Memorial, Honduras makes no response to the treatment of equitable access in the Memorial. And this silence is maintained in the Rejoinder.

157. My final submission on this subject is that 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 the Nicaraguan Rise, shown here in graphic IB22.

158. I move now to the third relevant circumstance invoked by Nicaragua in her Memorial, namely:

(c) *The Nicaraguan Rise as a single geological and geomorphological feature shared by Nicaragua is another relevant circumstance*

159. This feature is characterized by an absence of any natural dividing lines. There is no need to repeat the analysis offered in the Memorial at pages 131 to 133. The significance in legal terms of the unitary character of the sea-bed has been recognized in the jurisprudence.

160. Thus, in the award in the *St. Pierre et Miquelon* case 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.” (*ILR*, Vol. 95, p. 665, para. 46.)

161. In conclusion, the role of the Nicaraguan Rise can be described as follows:

“The Nicaraguan Rise, as reflected in its geomorphological alignment, can be considered to constitute . . . a boundary zone. As such, its alignment does not mandate a boundary, but it does concern 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 Nicaragua and Honduras facing the submerged parts of the Nicaraguan Rise, such an equal division is inherently equitable.” (MN, p. 133, para. 21.)

162. In response to the Nicaraguan position relating to the Nicaraguan Rise, Honduras in the Counter-Memorial (paras. 4.33-4.33) relies exclusively on the judicial response in the *Libya/Malta* case, in which the Libyan arguments were of a totally different character. In that case Libya argued that the “Rift Zone”, so-called, south of Malta constituted a geological and, therefore, a legal boundary. Libya was proposing a division of the sea-bed — a division of the sea-bed — on a geological basis. In the present case Nicaragua is proposing that the geology is relevant in the absence of natural dividing lines.

(d) Security considerations as a relevant circumstance

163. I shall now move on to examine the status of security considerations as a relevant circumstance. The jurisprudence of international tribunals has accepted the legal relevance of considerations of security in the determination of the equitable character of a delimitation.

164. The authorities in chronological order are as follows. In the Award in the *Guinea-Guinea (Bissau)* maritime delimitation case, the court states:

“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 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 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.” (*ILR*, Vol. 77, p. 689, para. 124.)

165. In the Judgment in the *Libya/Malta* case this Court clearly recognized that security considerations fell within the legal category of relevant circumstances (see *I.C.J. Reports 1985*, p. 42, para. 51).

166. The status of security considerations as applicable to all maritime delimitations, and as not restricted to continental shelf areas, was confirmed by the Court in the *Jan Mayen* case. In the words of the Court:

“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.” (*I.C.J. Reports 1993*, pp.74-75, para. 81.)

167. As Nicaragua has pointed out in the Memorial, the alignment proposed by Honduras is conspicuously incompatible with the principle of security. In the Counter-Memorial, Honduras agrees that the Court has accepted the relevance of an argument based on security (CMH, p. 134, para. 7.5). However, Honduras contends that there is no threat to Nicaraguan security because the parallel “remains well away from the Nicaraguan coast”. With respect, this shows an attitude which verges upon the disingenuous.

168. It is generally recognized that the development of the continental shelf, as a legal concept based upon the equality of States, has reflected the general inclination of States to avoid

claims-hopping by extra-regional interests and the unstable concept of exploitability. What emerged was the inherent right of the coastal State as such. Thus from early on the trend was against relying upon the modes of acquisition of territory as a basis for establishing rights in respect of submarine areas. The problems were analysed by Hersch Lauterpacht in an article published in the *British Year Book* in 1950 (Vol. 27, pp. 376-433).

169. The position has been analysed in terms of the interpretation of the principle of non-encroachment. In his separate opinion in the *Tunisia/Libya* case Judge Jiménez de Aréchaga rejected the view that the principle of non-encroachment was linked with a geological meaning. Thus non-encroachment was the expression of the continuation seaward of the coastal front of a State.

170. Jiménez de Aréchaga saw that the essence of the matter was the development of an appropriate public order régime. In his words:

“This interpretation is confirmed by the very *raison d’être* of the institution of the continental shelf as it appeared and developed in the middle of the present century. The reason which explains the wide and immediate acceptance of the doctrine was not so much the possibility it offered of exploiting the natural resources of the shelf, but rather the fact that it authorized every coastal State to object to the exploitation of the sea-bed and subsoil in front of its coasts being undertaken by another State. At that time, only a handful of industrialized States possessed the technology required for such exploitation. Yet, all coastal States accepted the doctrine without hesitation mainly because of its negative consequences, namely, that it prevented a rush and grab for sea-bed resources being undertaken by a few States on the basis of the Grotian dogma of ‘freedom of the seas’. It is for this reason that the 1958 Convention does not subordinate the acquisition *ab initio* of sovereign rights to actual exploitation or occupation, or even to a proclamation of these rights.” (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, pp. 119-120, para. 70.)

171. In the circumstances of the present dispute, the claim based upon a parallel of latitude raises *mutatis mutandis* precisely the ghosts which were laid to rest in the Third United Nations Conference on the Law of the Sea. As the history makes clear, the question of security involved non-encroachment and opposition to the exploitation of natural resources in front of the coasts of another State.

(e) Access to the main navigable channel in the adjacent coastal areas

172. I shall now examine the role of the Main Cape Channel crossing the Miskito Bank. The channel is shown here on the United States chart 28140 using graphic IB38. There is judicial

authority for the view that access to navigable channels in adjacent coastal areas constitutes a relevant circumstance in the context of maritime delimitation. In chronological order the first judicial authority is the Report and Decision of the Court of Arbitration in the *Beagle Channel* arbitration. The relevant passage is as follows:

“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 Cape Gable Island where the habitually used navigable track has been followed.” (*ILR*, Vol. 52, p. 185, para. 110.)

173. In the Decision in the *Anglo-French* case, the Court of Arbitration recognized that navigational interests in the region “may support and strengthen” any conclusions “already indicated by the geographical, political and legal circumstances of the region” (*ILR*, Vol. 54, p. 98, para. 188).

174. It is, of course, the case that the *Beagle Channel* tribunal was delimiting the territorial sea in the narrow part of the Channel, whilst the *Anglo-French* arbitration involved continental shelf delimitation. In the present case, there is no basis for thinking that the factor of navigability would be treated as irrelevant in relation to a single maritime boundary. In his significant treatise Prosper Weil quotes the passage from the *Beagle Channel* case I have just quoted and then gives his reaction. He writes:

“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.” (Weil, *The Law of Maritime Delimitation — Reflections*, 1989, p. 141; also: *Perspectives du droit de la délimitation maritime*, 1988, p. 153.)

175. The Main Cape Channel, forming part of the Miskito Bank, shown here on UK Hydrographic Office chart 1218, and shown as graphic IB39 on the screen, is described in the British official source, the *East Coasts of Central America and Gulf of Mexico Pilot*, as follows:

“Main Cape Channel

3.135

General Information. Main Cape Channel [and bearings are given] (15° 10' N 82° 55' W) is one of the main channels crossing the Miskito Bank, leading from the vicinity of Cabo Gracias a Dios [bearings are given] (15° 00' N 83° 09' W) to deep water NNE. General depths in the fairway, which is at least 5 miles wide, are 18 to over 30 m.”

And that is the recent fourth edition of the *Pilot* (p. 88).

176. The significance of the Main Cape Channel is considerably enhanced by the relation it bears to the only port in the region, which is Cabo Gracias a Dios port at the mouth of the Rio Coco and located in Nicaragua; the Agent yesterday gave details of the situation concerning ports in the area.

177. The examination of the relevant circumstances invoked on behalf of Nicaragua is now concluded, and I shall move on to examine the counterpart arguments presented by Honduras.

Relevant circumstances invoked by Honduras

(a) *The concept of relevant circumstances adopted by Honduras is erroneous*

178. First, it is clear that the concept of relevant circumstances adopted by Honduras is erroneous. The Honduran approach is incompatible with the applicable law and with the associated jurisprudence. As Nicaragua has pointed out in her Reply, there is a pervasive confusion between State practice as evidence of title to islands and relevant circumstances as factors to be taken into account in determining a maritime boundary. This confusion appears in Chapter 6 of the Counter-Memorial, in which the alleged evidence of *effectivités* is applied both to islands and the waters “in the disputed area north of the 15th parallel” (p. 81, para. 6.1). This confusion is maintained and, indeed, increased, in Chapter 7, in the section on “The Relevant Circumstances Ignored by Nicaragua” (pp. 137-140). As the contents of the section and the rubric make clear, the material is presented in the context of maritime delimitation.

179. In Chapters 6 and 7 the Government of Honduras invokes certain types of material in the context of maritime delimitation.

(a) First, the regulation of immigration (paras. 6.51-6.59);

(b) second, military and naval patrols (paras. 6.60-6.62);

(c) third, search and rescue operations (para. 6.62);

(d) fourth, navigational aids (paras. 6.64-6.66);

(e) and, lastly, scientific surveys (para. 6.67).

These five types of activity are inadmissible as forms of relevant circumstances to be taken into account for the purposes of determining a single maritime boundary. They simply do not satisfy the conditions I have already indicated for inclusion within the category of relevant circumstances.

180. The Honduran position flies in the face of the jurisprudence of international tribunals. In fact, the Honduran argument replicates that of the United States in the *Gulf of Maine* case. In that case, the Chamber refers to the United States arguments in paragraph 233 of the Judgment as follows:

“In the eyes of the United States, the main consideration here is the historical presence of man in the disputed areas. It believes the decisive factor here to be the activities pursued by the United States and its nationals since the country’s independence and even before, activities which they claim to have been alone in pursuing over the greater part of that long period. This reasoning is simple and somewhat akin to the invocation of historic rights, though that expression has not been used. This continuous human presence took the form especially of fishing, and of the conservation and management of fisheries, but it also included other maritime activities concerning navigational assistance, rescue, research, defence, etc. All these activities, said greatly to exceed in duration and scale the more recent and limited activities of Canada and its nationals, must, according to the United States, be regarded as a major relevant circumstance for the purpose of reaching an equitable solution to the delimitation problem.” (*I.C.J. Reports 1984*, pp. 340-341, para. 233).

In response the Court observed:

“It is, therefore, in the Chamber’s view, evident that the respective scale of activities connected with fishing — or navigation, defence or, for that matter, petroleum exploration and exploitation — cannot be taken into account as a relevant circumstance or, if the term is preferred, as an equitable criterion to be applied in determining the delimitation line.” (*Ibid.*, p. 342, para. 237.)

181. In general the argument of Honduras confuses the legal significance of *effectivités* as evidence of title to land territory with the question of maritime delimitation and relevant circumstances. And in any event the evidence adduced by Honduras in support of the alleged *effectivités* is unconvincing (RN, Chap. V, pp. 71-89).

(b) *The relevant circumstances said to be ignored by Nicaragua*

182. A section of the Counter-Memorial is devoted to a topic described as “the relevant circumstances ignored by Nicaragua” (pp. 137-143). The preponderant part of this section

concerns the argument of Honduras based upon conduct of the Parties (pp. 137-140). In this case the alleged conduct relied upon is not a recognizable part of the subject of relevant circumstances. No doubt consent or acquiescence can be used to deflect the normal effects of equitable criteria, but in this case they do not constitute a relevant circumstance. The alleged consent, express or tacit, is not derived from equitable considerations.

183. The point was made clearly by the Chamber of the Court in the *Gulf of Maine*, when it observed “that it is impossible to conclude from the conduct of the Parties that there is a binding legal obligation, in their bilateral relations, to make use of a particular method for delimiting their respective maritime jurisdictions” (*I.C.J. Reports 1984*, p. 312, para. 154). The same point appears also in paragraph 148 of the Judgment of the Chamber.

“On the basis of all the foregoing considerations the Chamber finds, therefore, that in the present case the conditions have not been met for an acquiescence on the part of the United States which would, even in the absence of other bases, have the effect, in the bilateral relations between the United States and Canada, of making the application of the median line to the determination of their respective maritime jurisdictions mandatory. The same is true as regards the possibility of an estoppel, without prejudice to the problems that the application of this concept in international law may raise generally.” (*I.C.J. Reports 1984*, p. 310, para. 148.)

184. It is clear from the Counter-Memorial and the Rejoinder that the primary legal position of Honduras is based upon the so-called traditional boundary. It is true that Honduras claims that the parallel line produces an equitable result (RH, para. 2.45), but the primary element is an alleged agreed boundary.

185. Indeed, in several passages in her pleadings, Honduras treats agreement as a special legal form superior to the equitable principles themselves. Thus, in the Counter-Memorial Honduras declares that:

“Based on this evidence, and on the review of a long-established, common practice in Chapter 6, a maritime frontier running eastwards along approximately the 15th parallel was well-established by 1979 . . . It would be quite wrong to allow the new Government of one Party to re-assess the ‘equities’ of the situation and demand a revision of the agreement, as of right, or to argue, as Nicaragua now does, that no agreement exists and an equitable delimitation must be established *de novo*.” (Para. 7.25)

186. In the first place in this assertion Honduras is accepting that the claim line on the parallel is not equitable. In this passage the “equities” are given a very subordinate and contingent status and the message to the Court is simply that the general principles of maritime delimitation

are not applicable. This basic legal approach is confirmed in several passages in the Rejoinder. Examples include the following. First, in paragraph 2.45:

“In other words, reliance by Honduras on the sole traditional line, itself derived from its territorial title (*uti possidetis*) and the long history of an established, accepted boundary is strengthened and consolidated by the fact that it produces an equitable result.” (RH, p. 26, para. 2.45.)

This formulation confirms that the “traditional line” is not, as a matter of legal essence, a maritime delimitation at all.

187. And the second example can be seen in paragraph 2.47:

“Honduras agrees with Nicaragua when it says that ‘the role of relevant circumstances is essentially to confirm the equitable character of a line’. Yet, it is the position of Honduras that the principle of respect for an existing agreed boundary is the most relevant of all circumstances. Even more so when, in a spirit of reasonableness and equity, Honduras asks only for the respect of this line, without seeking to argue for a position of maximum advantage based on the islands over which Honduras nevertheless exercises sovereignty.” (RH, p. 27, para. 2.47.)

188. Finally, Honduras asserts that Nicaragua has ignored, as relevant circumstances, the presence of islands and treaties involving adjacent States in the region (CMH, pp. 140-143). These questions will not be dealt with here. My colleague Dr. Oude Elferink has already examined the treaties, and he will discuss the presence of islands in his second speech this week.

189. I shall turn now to the line proposed by Honduras in her Rejoinder as a provisional equidistance line (RH, pp. 130-131).

Madam President, it would be helpful to me if I could break there. It was always expected, by us anyway, that we would flow over tomorrow by possibly 20 minutes.

The PRESIDENT: That is a matter of your choice. The Court would have been prepared to sit a few minutes more. But if that would be your preference, and I understand it to be so, then the Court will now rise. We will regard this morning’s session as having come to a conclusion and the Court will reconvene again at 10 o’clock in the morning to hear the continuation of Nicaragua’s case.

Mr. BROWNLIE: Thank you very much.

The PRESIDENT: The Court now rises.

The Court rose at 1 p.m.
