4 MAI 2011

ARRÊT

DIFFÉREND TERRITORIAL ET MARITIME

(NICARAGUA c. COLOMBIE)

REQUÊTE DU HONDURAS À FIN D'INTERVENTION

TERRITORIAL AND MARITIME DISPUTE

(NICARAGUA *v.* COLOMBIA)

APPLICATION BY HONDURAS FOR PERMISSION TO INTERVENE

4 MAY 2011

JUDGMENT

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INTERNATIONAL COURT OF JUSTICE

YEAR 2011

2011
4 May
General List
No. 124

4 May 2011

TERRITORIAL AND MARITIME DISPUTE

(NICARAGUA *v.* COLOMBIA)

APPLICATION BY HONDURAS FOR PERMISSION TO INTERVENE

Legal framework — Conditions for intervention under Article 62 of the Statute and Article 81 of the Rules of Court.

The capacities in which Honduras is seeking to intervene, as a party or, alternatively, as a non-party — The status of intervener as a party requires the existence of a basis of jurisdiction as between the States concerned, but such a basis of jurisdiction is not a condition for intervention as a non-party — If it is permitted by the Court to become a party to the proceedings, the intervening State may ask for rights of its own to be recognized by the Court in its future decision, which would be binding for that State in respect of those aspects for which intervention was granted, pursuant to Article 59 of the Statute — Whatever the capacity in which a State is seeking to intervene, it is required to establish the existence of an interest of a legal nature which may be affected by the decision in the main proceedings, and the precise object of its intervention.

Article 81, paragraph 2 (a)*, of the Rules of Court — Interest of a legal nature which may be affected by the decision of the Court in the main proceedings — In contrast to Article 63 of the Statute, a third State does not have a right to intervene under Article 62 of the Statute — Difference between right and interest of a legal nature in the context of Article 62 of the Statute — Interest of a legal nature to be shown is not limited to the* dispositif *alone of a Judgment but may also relate to the reasons which constitute the necessary steps to the* dispositif.

Article 81, paragraph 2 (b)*, of the Rules of Court — Precise object of intervention certainly consists in informing the Court of the interest of a legal nature which may be affected by the decision of the Court in the main proceedings, but also in protecting that interest — Proceedings on intervention are not an occasion for the State seeking to intervene or for the Parties to discuss questions of substance relating to the main proceedings — A State requesting permission to intervene may not, under the cover of intervention, seek to introduce a new case alongside the main proceedings — While it is true that a State which has been permitted to intervene as a party may submit claims of its own to the Court for decision, these have to be linked to the subject of the main dispute.*

Examination of Honduras's Application for permission to intervene.

Whether Honduras has set out an interest of a legal nature in the context of Article 62 of the Statute — Honduras has indicated the maritime area in which it considers that it has an interest of a legal nature which may be affected by the decision of the Court in the main proceedings — Honduras has stated that it can assert rights relating to oil concessions, naval patrols and fishing activities in that area — With regard to the area north of the bisector line established by the Court in its 8 October 2007 Judgment in the case concerning the Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua *v.* Honduras)*, Honduras may have no interest of a legal nature which may be affected by the decision in the present proceedings because the rights of Honduras over that area have not been contested by Nicaragua or by Colombia — By virtue of the principle of* res judicata*, as applied to the Court's 8 October 2007 Judgment, Honduras cannot have an interest of a legal nature in the area south of the bisector line established by the Court in that Judgment.*

Whereas Honduras has claimed that it has an interest of a legal nature in determining if and how the Court's 8 October 2007 Judgment has affected the status and application of the 1986 Maritime Delimitation Treaty between Honduras and Colombia, the Court in that Judgment did not rely on that treaty, in conformity with the principle of res inter alios acta.

Whereas Honduras has requested that the Court grant it permission to intervene as a party to fix the tripoint between Honduras, Nicaragua and Colombia, the Court, having clarified matters pertaining to the 8 October 2007 Judgment and the 1986 Treaty, does not see any link between the issue of the tripoint raised by Honduras and the current case.

Honduras has thus failed to satisfy the Court that it has an interest of a legal nature that may be affected by the decision of the Court in the main proceedings — There is consequently no need for the Court to consider any further questions that have been put before it in the present proceedings.

JUDGMENT

Present: *President* OWADA; *Vice-President* TOMKA; *Judges* KOROMA, AL-KHASAWNEH, SIMMA, ABRAHAM, KEITH, SEPÚLVEDA-AMOR, BENNOUNA, CANÇADO TRINDADE, YUSUF, XUE, DONOGHUE; *Judges* ad hoc COT, GAJA; *Registrar* COUVREUR.

In the case concerning the territorial and maritime dispute,

between

the Republic of Nicaragua,

represented by

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

as Agent and Counsel;

H.E. Mr. Samuel Santos, Minister for Foreign Affairs,

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

Mr. Alain Pellet, Professor at the Université de Paris Ouest, Nanterre-La Défense, member and former Chairman of the International Law Commission, associate member of the Institut de droit international,

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

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

as Counsel and Advocates;

Mr. Robin Cleverly, M.A., D.Phil, C.Geol, F.G.S., Law of the Sea Consultant, Admiralty Consultancy Services,

Mr. John Brown, Law of the Sea Consultant, Admiralty Consultancy Services,

as Scientific and Technical Advisers;

Mr. César Vega Masís, Director of Juridical Affairs, Sovereignty and Territory, Ministry of Foreign Affairs,

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

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

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

as Counsel;

Ms Clara E. Brillembourg, Foley Hoag LLP, member of the Bars of the District of Columbia and New York,

Ms Carmen Martinez Capdevila, Doctor of Public International Law, Universidad Autónoma, Madrid,

Ms Alina Miron, Researcher, Centre for International Law (CEDIN), Université de Paris Ouest, Nanterre-La Défense,

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

as Assistant Counsel,

and

the Republic of Colombia,

represented by

H.E. Mr. Julio Londoño Paredes, Professor of International Relations, Universidad del Rosario, Bogotá,

as Agent;

H.E. Mr. Guillermo Fernández de Soto, Chair of the Inter-American Juridical Committee, member of the Permanent Court of Arbitration and former Minister for Foreign Affairs,

as Co-Agent;

Mr. James Crawford, S.C., F.B.A., Whewell Professor of International Law, University of Cambridge, member of the Institut de droit international, Barrister,

Mr. Rodman R. Bundy, avocat à la Cour d'appel de Paris, member of the New York Bar, Eversheds LLP, Paris,

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

as Counsel and Advocates;

H.E. Mr. Francisco José Lloreda Mera, formerly Ambassador of the Republic of Colombia to the Kingdom of the Netherlands and Permanent Representative of Colombia to the OPCW, former Minister of State,

Mr. Eduardo Valencia-Ospina, member of the International Law Commission,

H.E. Ms Sonia Pereira Portilla, Ambassador of the Republic of Colombia to the Republic of Honduras,

Mr. Andelfo García González, Professor of International Law, former Deputy Minister for Foreign Affairs,

Ms Victoria E. Pauwels T., Minister-Counsellor, Ministry of Foreign Affairs,

Mr. Julián Guerrero Orozco, Minister-Counsellor, Embassy of Colombia in the Kingdom of the Netherlands,

Ms Andrea Jiménez Herrera, Counsellor, Ministry of Foreign Affairs,

as Legal Advisers;

Mr. Thomas Fogh, Cartographer, International Mapping,

as Technical Adviser;

on the Application for permission to intervene filed by the Republic of Honduras,

represented by

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

as Agent;

Sir Michael Wood, K.C.M.G., member of the English Bar, member of the International Law Commission,

Ms Laurence Boisson de Chazournes, Professor of International Law at the University of Geneva,

as Counsel and Advocates;

H.E. Mr. Julio Rendón Barnica, Ambassador, Ministry of Foreign Affairs,

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

Mr. Sergio Acosta, Chargé d'affaires a.i. at the Embassy of Honduras, in the Kingdom of the Netherlands,

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

Mr. Makane Moïse Mbengue, Doctor of Law, Senior Lecturer at the University of Geneva,

Miss Laurie Dimitrov, pupil barrister at the Paris Bar, Cabinet Meese,

Mr. Eran Sthoeger, Faculty of Law, New York University,

as Counsel;

Mr. Mario Licona, Ministry of Foreign Affairs,

as Technical Adviser,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 6 December 2001, the Republic of Nicaragua (hereinafter "Nicaragua") filed in the Registry of the Court an Application instituting proceedings against the Republic of Colombia (hereinafter "Colombia") in respect of a dispute consisting of a "group of related legal issues subsisting" between the two States "concerning title to territory and maritime delimitation" in the western Caribbean.

As a basis for the jurisdiction of the Court, the Application invoked the provisions of Article XXXI of the American Treaty on Pacific Settlement signed on 30 April 1948, officially designated, according to Article LX thereof, as the "Pact of Bogotá" (hereinafter referred to as such), as well as the declarations made by the Parties under Article 36 of the Statute of the Permanent Court of International Justice, which are deemed, for the period which they still have to run, to be acceptances of the compulsory jurisdiction of the present Court pursuant to Article 36, paragraph 5, of its Statute.

2. Pursuant to Article 40, paragraph 2, of the Statute, the Registrar immediately communicated the Application to the Government of Colombia; and, pursuant to paragraph 3 of that Article, all other States entitled to appear before the Court were notified of the Application.

3. Pursuant to the instructions of the Court under Article 43 of the Rules of Court, the Registrar addressed to all States parties to the Pact of Bogotá the notifications provided for in Article 63, paragraph 1, of the Statute. In accordance with the provisions of Article 69, paragraph 3, of the Rules of Court, the Registrar moreover addressed to the Organization of American States (hereinafter the "OAS") the notification provided for in Article 34, paragraph 3, of

the Statute. The Registrar subsequently transmitted to that organization copies of the pleadings filed in the case and asked its Secretary-General to inform him whether or not it intended to present observations in writing within the meaning of Article 69, paragraph 3, of the Rules of Court. The OAS indicated that it did not intend to submit any such observations.

4. Since the Court included upon the Bench no judge of the nationality of either of the Parties, each Party proceeded to exercise its right conferred by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case. Nicaragua first chose Mr. Mohammed Bedjaoui, who resigned on 2 May 2006, and subsequently Mr. Giorgio Gaja. Colombia first chose Mr. Yves Fortier, who resigned on 7 September 2010, and subsequently Mr. Jean-Pierre Cot.

5. By an Order of 26 February 2002, the Court fixed 28 April 2003 as the time-limit for the filing of the Memorial of Nicaragua and 28 June 2004 as the time-limit for the filing of the Counter-Memorial of Colombia. Nicaragua filed its Memorial within the time-limit thus prescribed.

6. On 15 May 2003, referring to Article 53, paragraph 1, of the Rules of Court, the Government of the Republic of Honduras (hereinafter "Honduras") asked to be furnished with copies of the pleadings and documents annexed in the case. Having ascertained the views of the Parties pursuant to that same provision, the Court decided to grant this request. The Registrar duly communicated this decision to the Honduran Government and to the Parties.

7. On 21 July 2003, within the time-limit set by Article 79, paragraph 1, of the Rules of Court, Colombia raised preliminary objections to the jurisdiction of the Court. Consequently, by an Order of 24 September 2003, the Court, noting that by virtue of Article 79, paragraph 5, of the Rules of Court, the proceedings on the merits were suspended, fixed 26 January 2004 as the time-limit for the presentation by Nicaragua of a written statement of its observations and submissions on the preliminary objections made by Colombia. Nicaragua filed such a statement within the time-limit thus prescribed, and the case thus became ready for hearing in respect of the preliminary objections.

8. Between 2005 and 2008, referring to Article 53, paragraph 1, of the Rules of Court, the Governments of Jamaica, Chile, Peru, Ecuador, Venezuela and Costa Rica asked to be furnished with copies of the pleadings and documents annexed in the case. Having ascertained the views of the Parties pursuant to that same provision, the Court decided to grant each of these requests. The Registrar duly communicated these decisions to the said Governments and to the Parties.

9. The Court held public hearings on the preliminary objections raised by Colombia from 4 to 8 June 2007. In its Judgment of 13 December 2007, the Court concluded that it had jurisdiction, under Article XXXI of the Pact of Bogotá, to adjudicate upon the dispute concerning sovereignty over the maritime features claimed by the Parties, other than the islands of San Andrés, Providencia and Santa Catalina, and upon the dispute concerning the maritime delimitation between the Parties.

10. By an Order of 11 February 2008, the President of the Court fixed 11 November 2008 as the new time-limit for the filing of Colombia's Counter-Memorial. That pleading was duly filed within the time-limit thus prescribed.

11. By an Order of 18 December 2008, the Court directed Nicaragua to submit a Reply and Colombia to submit a Rejoinder and fixed 18 September 2009 and 18 June 2010 as the respective time-limits for the filing of those pleadings. The Reply and the Rejoinder were duly filed within the time-limits thus prescribed.

12. On 10 June 2010, Honduras filed an Application for permission to intervene in the case pursuant to Article 62 of the Statute. It stated therein that the object of this Application was:

> "*Firstly*, in general terms, to protect the rights of the Republic of Honduras in the Caribbean Sea by all the legal means available and, consequently, to make use for that purpose of the procedure provided for in Article 62 of the Statute of the Court.
>
> *Secondly*, to inform the Court of the nature of the legal rights and interests of Honduras which could be affected by the decision of the Court, taking account of the maritime boundaries claimed by the parties in the case brought before the Court . . .
>
> *Thirdly*, to request the Court to be permitted to intervene in the current proceedings as a State party. In such circumstances, Honduras would recognize the binding force of the decision that would be rendered. Should the Court not accede to this request, Honduras requests the Court, in the alternative, for permission to intervene as a non-party."

In accordance with Article 83, paragraph 1, of the Rules of Court, certified copies of Honduras's Application were communicated forthwith to Nicaragua and Colombia, which were invited to furnish written observations on that Application.

13. On 2 September 2010, within the time-limit fixed for that purpose by the Court, the Governments of Nicaragua and Colombia submitted written observations on Honduras's Application for permission to intervene. In its observations, Nicaragua stated that the request to intervene failed to comply with the Statute and the Rules of Court and that it therefore "opposes the granting of such permission, and . . . requests that the Court dismiss the Application for permission to intervene filed by Honduras". For its part, Colombia indicated *inter alia* in its observations that it had "no objection" to Honduras's request "to be permitted to intervene as a non-party", and added that it "considers that [Honduras's request to be permitted to intervene as a party] falls to the Court to decide". Nicaragua having objected to the Application, the Parties and the Government of Honduras were notified by letters from the Registrar dated 15 September 2010 that the Court would hold hearings, in accordance with Article 84, paragraph 2, of the Rules of Court, to hear the observations of Honduras, the State applying to intervene, and those of the Parties to the case.

14. After ascertaining the views of the Parties, the Court decided that copies of the written observations which they had furnished on Honduras's Application for permission to intervene would be made accessible to the public on the opening of the oral proceedings.

15. At the public hearings held on 18, 20, 21 and 22 October 2010 on whether to grant Honduras's Application for permission to intervene, the Court heard the oral arguments and replies of the following representatives:

For Honduras: H.E. Mr. Carlos López Contreras, Agent,
Sir Michael Wood,
Ms Laurence Boisson de Chazournes.

For Nicaragua: H.E. Mr. Carlos José Argüello Gómez, Agent,
Mr. Alain Pellet.

For Colombia: H.E. Mr. Julio Londoño Paredes, Agent,
Mr. James Crawford,
Mr. Rodman R. Bundy,
Mr. Marcelo Kohen.

*

16. In its Application for permission to intervene, the Honduran Government stated in conclusion that it

> "seeks the Court's permission to intervene as a party in the current proceedings in order to settle conclusively, on the one hand, the dispute over the delimitation line between the endpoint of the boundary fixed by the Judgment of 8 October 2007 [in the case concerning the *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*] and the tripoint on the boundary line in the 1986 Maritime Delimitation Treaty, and, on the other hand, the determination of the tripoint on the boundary line in the 1986 Maritime Delimitation Treaty between Colombia and Honduras. *In the alternative*, Honduras seeks the Court's permission to intervene as a non-party in order to protect its rights and to inform the Court of the nature of the legal rights and interests of the Republic of Honduras in the Caribbean Sea which could be affected by the decision of the Court in the pending case." (Para. 36.)

In its Written Observations on Honduras's Application for permission to intervene, Nicaragua submitted

> "that the Application for permission to intervene filed by Honduras does not comply with the Statute and Rules of Court and therefore [it]: (1) opposes the granting of such permission, and (2) requests that the Court dismiss the Application for permission to intervene filed by Honduras" (para. 39).

In its Written Observations on Honduras's Application for permission to intervene, Colombia submitted as follows:

> "With respect to the request to be permitted to intervene as a non-party, Colombia has no objection. Colombia has acknowledged that vis-à-vis Honduras it is bound by the delimitation agreed in the 1986 Treaty between Colombia and Honduras. However, this is not the case vis-à-vis Nicaragua and Colombia has consequently reserved its rights in this area.
>
> With respect to the Honduran request to be permitted to intervene as a party, Colombia understands that this request raises issues relating to the Court's 2007 Judgment in the *Nicaragua* v. *Honduras* case to which Colombia was not a party. Consequently, Colombia considers that this request falls to the Court to decide under Article 62 of the Statute, taking into account whether the object and purpose of the request relates to intervention under Article 62 in the main case between Nicaragua and Colombia or to another dispute not directly at issue in the pending case."

17. At the oral proceedings, the following submissions were presented:

On behalf of the Government of Honduras,

at the hearing of 21 October 2010:

> "Having regard to the Application and the oral pleadings,
>
> May it please the Court to permit Honduras:
>
> (1) to intervene as a party in respect of its interests of a legal nature in the area of concern in the Caribbean Sea (paragraph 17 of the Application) which may be affected by the decision of the Court; or
>
> (2) in the alternative, to intervene as a non-party with respect to those interests."

On behalf of the Government of Nicaragua,

at the hearing of 22 October 2010:

> "In accordance with Article 60 of the Rules of the Court and having regard to the Application for permission to intervene filed by the Republic of Honduras and its oral pleadings, the Republic of Nicaragua respectfully submits that:
>
> The Application filed by the Republic of Honduras is a manifest challenge to the authority of the *res judicata* of your 8th of October 2007 Judgment. Moreover, Honduras has failed to comply with the requirements established by the Statute and the Rules of the Court, namely, Article 62, and paragraph 2, *(a)* and *(b)*, of Article 81 respectively, and therefore Nicaragua (1) opposes the granting of such permission, and (2) requests that the Court dismiss the Application for permission to intervene filed by Honduras."

On behalf of the Government of Colombia,

at the hearing of 22 October 2010:

> "In light of the considerations stated during these proceedings, [the] Government [of Colombia] wishes to reiterate what it stated in the Written Observations it submitted to the Court, to the effect that, in Colombia's view, Honduras has satisfied the requirements of Article 62 of the Statute and, consequently, that Colombia does not object to Honduras's request for permission to intervene in the present case as a non-party. As concerns Honduras's request to be permitted to intervene as a Party, Colombia likewise reiterates that it is a matter for the Court to decide in conformity with Article 62 of the Statute."

*

*   *

18. In its Application for permission to intervene dated 10 June 2010 (see paragraph 12 above), Honduras made clear that it primarily sought to be permitted to intervene in the pending case as a party, and that if the Court did not accede to that request, it wished, in the alternative, to be permitted to intervene as a non-party.

Honduras defined the object of its intervention according to whether its primary or alternative request to intervene were granted: if the former, to settle the maritime boundary between itself and the two States parties to the case; if the latter, to protect its rights and legal interests and to inform the Court of the nature of these, so that they are not affected by the future maritime delimitation between Nicaragua and Colombia.

19. Referring to Article 81 of the Rules of Court, Honduras set out in its Application what it considers to be the interest of a legal nature which may be affected by the Court's decision on the delimitation between Nicaragua and Colombia, the precise object of the intervention, and the basis of jurisdiction which is claimed to exist as between itself and the Parties to the main proceedings.

I. THE LEGAL FRAMEWORK

20. The legal framework of Honduras's request to intervene is set out in Article 62 of the Statute and Article 81 of the Rules of Court.

Under Article 62 of the Statute:

> "1. Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

2. It shall be for the Court to decide upon this request."

Under Article 81 of the Rules of Court:

"1. An application for permission to intervene under the terms of Article 62 of the Statute, signed in the manner provided for in Article 38, paragraph 3, of these Rules, shall be filed as soon as possible, and not later than the closure of the written proceedings. In exceptional circumstances, an application submitted at a later stage may however be admitted.

2. The application shall state the name of an agent. It shall specify the case to which it relates, and shall set out:

(a) the interest of a legal nature which the State applying to intervene considers may be affected by the decision in that case;

(b) the precise object of the intervention;

(c) any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties to the case.

3. The application shall contain a list of the documents in support, which documents shall be attached."

21. Intervention being a proceeding incidental to the main proceedings before the Court, it is, according to the Statute and the Rules of Court, for the State seeking to intervene to set out the interest of a legal nature which it considers may be affected by the decision in that dispute, the precise object it is pursuing by means of the request, as well as any basis of jurisdiction which is claimed to exist as between it and the parties. The Court will first examine the capacities in which Honduras is seeking to intervene, before turning to the other constituent elements of the request for permission to intervene.

* *

1. The capacities in which Honduras is seeking to intervene

22. Honduras is seeking permission to intervene as a party in the case before the Court in order to achieve a final settlement of the dispute between itself and Nicaragua, including the determination of the tripoint with Colombia, and, in the alternative, as a non-party, in order to inform the Court of its interests of a legal nature which may be affected by the decision the Court is to render in the case between Nicaragua and Colombia, and to protect those interests.

23. Referring to the jurisprudence of the Court, Honduras considers that Article 62 of the Statute allows a State to intervene either as a party or a non-party. In the former case, a basis of jurisdiction as between the State seeking to intervene and the parties to the main proceedings is

required, and the intervening State is bound by the Court's judgment, whereas in the latter, that judgment has effect only between the parties to the main proceedings, pursuant to Article 59 of the Statute. Honduras maintains that in the present proceedings, Article XXXI of the Pact of Bogotá founds the Court's jurisdiction as between itself, Nicaragua and Colombia. For a State seeking to intervene as a party, according to Honduras, intervention consists in "asserting a right of its own with respect to the object of the dispute", so as to obtain a ruling from the Court on such a right.

24. Honduras points out that, unlike intervention as a non-party, intervention as a party, in view of its object, results in making the Court's decision on the specific point or points on which the intervention was permitted binding on the intervener, and thus in making Articles 59 of the Statute and 94 of the Charter applicable to the intervener.

25. For Nicaragua, whatever the two alternative capacities in which Honduras is seeking to intervene, both would continue to be governed by Article 62 of the Statute and would have to meet the *sine qua non* condition or conditions laid down by that provision, namely that the State must be able to show an interest of a legal nature which may be affected by the decision in a dispute submitted to the Court. It points out that Honduras, in any event, may not intervene as a party, if for no other reason than the absence of a basis of jurisdiction, since Article VI of the Pact of Bogotá excludes from the Court's jurisdiction "matters already settled . . . by decision of an international court". In Nicaragua's view, Honduras's argument consists in reopening delimitation issues already decided by the Judgment of the Court of 8 October 2007 (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 659).

26. Colombia notes that intervention is an incidental procedure and may not be used to tack on a new case, distinct from the case that exists between the original parties. It accepts that both forms of intervention, as a party and as a non-party, require proof of the existence of an interest of a legal nature, although it questions whether the same criterion applies to this interest in both cases.

*

27. The Court observes that neither Article 62 of the Statute nor Article 81 of the Rules of Court specifies the capacity in which a State may seek to intervene. However, in its Judgment of 13 September 1990 on Nicaragua's Application for permission to intervene in the case concerning *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, the Chamber of the Court considered the status of a State seeking to intervene and accepted that a State may be permitted to intervene under Article 62 of the Statute either as a non-party or as a party:

> "It is therefore clear that a State which is allowed to intervene in a case, does not, by reason only of being an intervener, become also a party to the case. It is true, conversely, that, provided that there be the necessary consent by the parties to the case, the intervener is not prevented by reason of that status from itself becoming a party to the case." (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, pp. 134-135, para. 99.)

28. In the opinion of the Court, the status of intervener as a party requires, in any event, the existence of a basis of jurisdiction as between the States concerned, the validity of which is established by the Court at the time when it permits intervention. However, even though Article 81 of the Rules of Court provides that the application must specify any basis of jurisdiction claimed to exist as between the State seeking to intervene and the parties to the main case, such a basis of jurisdiction is not a condition for intervention as a non-party.

29. If it is permitted by the Court to become a party to the proceedings, the intervening State may ask for rights of its own to be recognized by the Court in its future decision, which would be binding for that State in respect of those aspects for which intervention was granted, pursuant to Article 59 of the Statute. *A contrario*, as the Chamber of the Court formed to deal with the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)* has pointed out, a State permitted to intervene in the proceedings as a non-party "does not acquire the rights, or become subject to the obligations, which attach to the status of a party, under the Statute and Rules of Court, or the general principles of procedural law" (*Application to Intervene, Judgment, I.C.J. Reports 1990*, p. 136, para. 102).

30. The fact remains that, whatever the capacity in which a State is seeking to intervene, it must fulfil the condition laid down by Article 62 of the Statute and demonstrate that it has an interest of a legal nature which may be affected by the future decision of the Court. Since Article 62 of the Statute and Article 81 of the Rules of Court provide the legal framework for a request to intervene and define its constituent elements, those elements are essential, whatever the capacity in which a State is seeking to intervene; that State is required in all cases to establish its interest of a legal nature which may be affected by the decision in the main case, and the precise object of the requested intervention.

*   *

2. The interest of a legal nature which may be affected

31. Honduras takes the view that there are two principles underpinning Article 62 of the Statute. Under the first of these, it is for the State wishing to intervene to "consider" whether one or more of its interests of a legal nature may be affected by the decision in the case, and it alone is able to appreciate the extent of the interests in question. According to the second principle, it is for that State to decide whether it is appropriate to exercise a right of intervention before the Court.

For Honduras, therefore, Article 62, like Article 63, lays down a right to intervene for the States parties to the Statute, whereby it is sufficient for one of them to "consider" that its interests of a legal nature may be affected in order for the Court to be bound to permit intervention. According to Honduras, if that interest is genuine, the Court does not have the discretion not to authorize the intervention.

32. Nicaragua, for its part, sees it as incorrect to contend that a right to intervene exists under Article 62 of the Statute, this being, rather, a right to apply to intervene, since it is for the Court to determine objectively whether the legal interest relied upon is real and whether it really may be affected in the case in relation to which it is raised in incidental proceedings. For Nicaragua, the claims of the State seeking to intervene must be credible enough to be seen as a genuine legal interest at stake.

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33. The Court observes that, as provided for in the Statute and the Rules of Court, the State seeking to intervene shall set out its own interest of a legal nature in the main proceedings, and a link between that interest and the decision that might be taken by the Court at the end of those proceedings. In the words of the Statute, this is "an interest of a legal nature which may be affected by the decision in the case" (expressed more explicitly in the English text than in the French "un intérêt d'ordre juridique . . . pour lui en cause"; see Article 62 of the Statute).

34. It is up to the State concerned to apply to intervene, even though the Court may, in the course of a particular case, draw the attention of third States to the possible impact that its future judgment on the merits may have on their interests, as it did in its Judgment of 11 June 1998 on preliminary objections in the case concerning *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria)* (*I.C.J. Reports 1998*, p. 324, para. 116).

35. In contrast to Article 63 of the Statute, a third State does not have a right to intervene under Article 62. It is not sufficient for that State to consider that it has an interest of a legal nature which may be affected by the Court's decision in the main proceedings in order to have, *ipso facto*, a right to intervene in those proceedings. Indeed, Article 62, paragraph 2, clearly recognizes the Court's prerogative to decide on a request for permission to intervene, on the basis of the elements which are submitted to it.

36. It is true that, as it has already indicated, the Court "does not consider paragraph 2 [of Article 62] to confer upon it any general discretion to accept or reject a request for permission to intervene for reasons simply of policy" (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Application for Permission to Intervene, Judgment, I.C.J. Reports 1981*, p. 12, para. 17). It is for the Court, responsible for safeguarding the proper administration of justice, to decide whether the condition laid down by Article 62, paragraph 1, has been fulfilled. Consequently, Article 62, paragraph 2, according to which "[it] shall be for the Court to decide upon this request", is markedly different from Article 63, paragraph 2, which clearly gives certain States "the right to intervene in the proceedings" in respect of the interpretation of a convention to which they are parties.

37. The Court observes that, whereas the parties to the main proceedings are asking it to recognize certain of their rights in the case at hand, a State seeking to intervene is, by contrast, contending, on the basis of Article 62 of the Statute, that the decision on the merits could affect its interests of a legal nature. The State seeking to intervene as a non-party therefore does not have to establish that one of its rights may be affected; it is sufficient for that State to establish that its interest of a legal nature may be affected. Article 62 requires the interest relied upon by the State seeking to intervene to be of a legal nature, in the sense that it has to be the object of a real and concrete claim of that State, based on law, as opposed to a claim of a purely political, economic or strategic nature. But this is not just any kind of interest of a legal nature; it must in addition be possible for it to be affected, in its content and scope, by the Court's future decision in the main proceedings.

Accordingly, an interest of a legal nature within the meaning of Article 62 does not benefit from the same protection as an established right and is not subject to the same requirements in terms of proof.

38. The decision of the Court granting permission to intervene can be understood as a preventive one, since it is aimed at allowing the intervening State to take part in the main proceedings in order to protect an interest of a legal nature which risks being affected in those proceedings. As to the link between the incidental proceedings and the main proceedings, the Court has previously stated that "the interest of a legal nature to be shown by a State seeking to intervene under Article 62 is not limited to the *dispositif* alone of a judgment. It may also relate to the reasons which constitute the necessary steps to the *dispositif*." (*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2001*, p. 596, para. 47.)

39. It is for the Court to assess the interest of a legal nature which may be affected that is invoked by the State that wishes to intervene, on the basis of the facts specific to each case, and it can only do so "*in concreto* and in relation to all the circumstances of a particular case" (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application for Permission to Intervene, Judgment, I.C.J. Reports 1990*, p. 118, para. 61).

3. The precise object of the intervention

40. Under Article 81, paragraph 2 *(b)*, of the Rules of Court, an application for permission to intervene must set out "the precise object of the intervention".

41. Honduras is requesting the Court, in the context of its Application for permission to intervene as a party, to determine the course of the maritime boundary between itself, Nicaragua and Colombia in the maritime zone in question, and to fix the tripoint on the boundary line under the 1986 Treaty. In the alternative, the object of Honduras's intervention as a non-party is "to protect its rights and to inform the Court of the nature of the legal rights and interests of the Republic of Honduras in the Caribbean Sea which could be affected by the decision of the Court in the pending case".

42. Nicaragua, for its part, takes the view that Honduras is endeavouring to convince the Court to rule, in fact, on the course of its own boundary with the Parties, and that "the only purpose of Honduras's hoped-for intervention is to call into question the 2007 Judgment determining its maritime boundary with Nicaragua along its entire length".

43. As for Colombia, it points out that intervention may not be used to tack on a new case, distinct from the case that exists between the original parties, but considers that Honduras qualifies to intervene as a non-party under Article 62 of the Statute, and that it is for the Court to go further, if it so decides, by allowing that State to intervene as a party.

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44. The Court recalls that Honduras's request for permission to intervene is an incidental procedure and that, whatever the form of the requested intervention, as a party or as a non-party, the State seeking to intervene is required by the Statute to demonstrate the existence of a legal interest which may be affected by the decision of the Court in the main proceedings. It follows that the precise object of the intervention must be connected with the subject of the main dispute between Nicaragua and Colombia.

45. The Court points out, moreover, that the written and oral proceedings concerning the application for permission to intervene must focus on demonstrating the interest of a legal nature which may be affected; these proceedings are not an occasion for the State seeking to intervene or for the Parties to discuss questions of substance relating to the main proceedings, which the Court cannot take into consideration during its examination of whether to grant a request for permission to intervene.

46. As the Court has previously stated, the *raison d'être* of intervention is to enable a third State, whose legal interest might be affected by a possible decision of the Court, to participate in the main case in order to protect that interest (see paragraph 38 above).

47. The Court notes that a State requesting permission to intervene may not, under the cover of intervention, seek to introduce a new case alongside the main proceedings. While it is true that a State which has been permitted to intervene as a party may submit claims of its own to the Court for decision, these have to be linked to the subject of the main dispute. The fact that a State is permitted to intervene does not mean that it can alter the nature of the main proceedings, since intervention "cannot be [a proceeding] which transforms [a] case into a different case with different parties" (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, p. 134, para. 98; see also *Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, p. 20, para. 31).

48. Therefore, the purpose of assessing the connection between the precise object of the intervention and the subject of the dispute is to enable the Court to ensure that a third State is actually seeking to protect its legal interests which may be affected by the future judgment.

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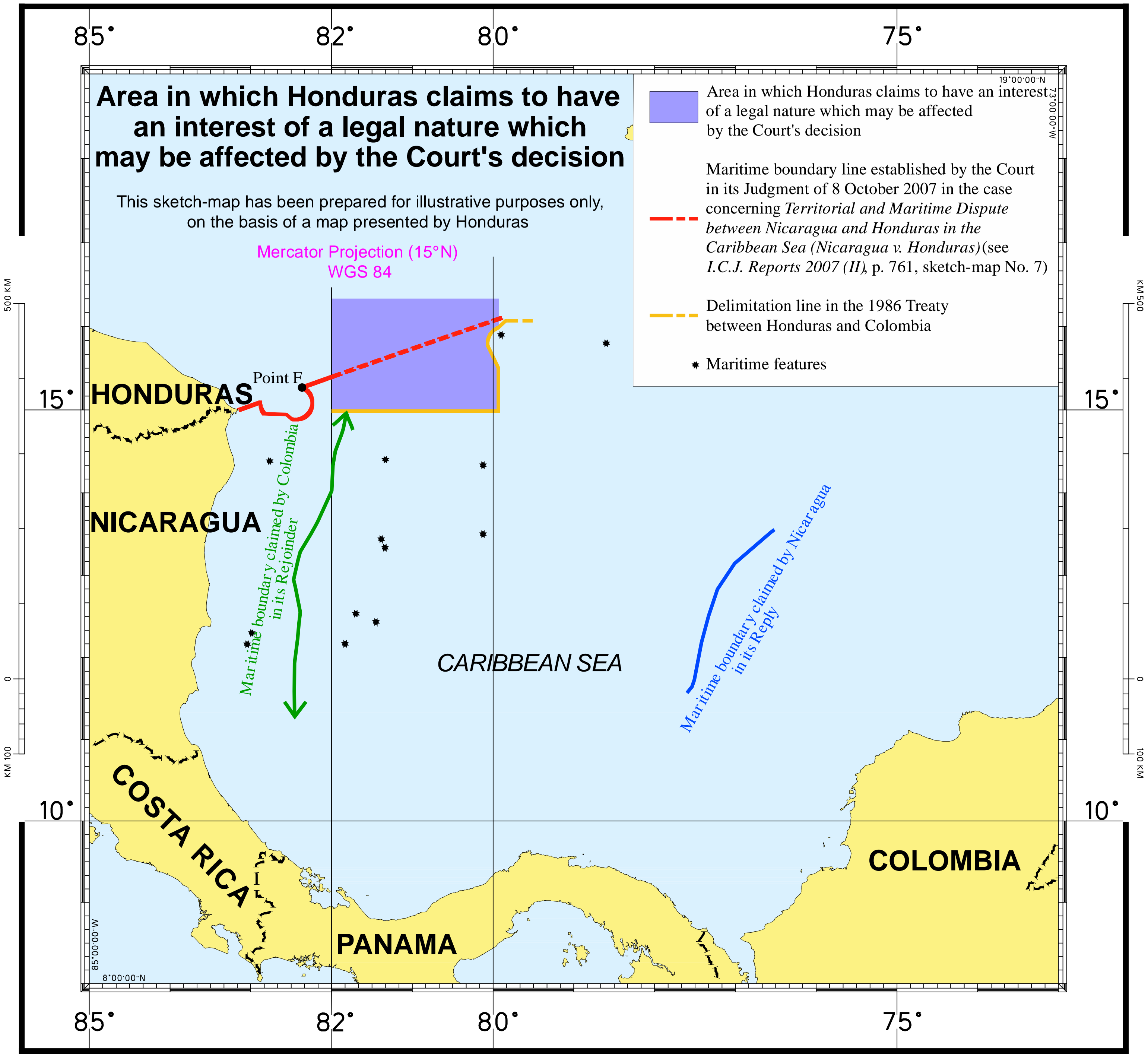
II. EXAMINATION OF HONDURAS'S REQUEST FOR PERMISSION TO INTERVENE

49. In specifying its interests of a legal nature that may be affected by the decision of the Court, Honduras in its Application states that the 1986 Maritime Delimitation Treaty between Honduras and Colombia (hereinafter referred to as "the 1986 Treaty") recognizes that the area north of the 15th parallel and east of the 82nd meridian involves Honduras's legitimate rights and interests of a legal nature (see sketch-map below, p. 19). Honduras argues that the Court should, in its decision in the present case, take full account of such rights and interests in the above-mentioned area, which, it maintains, were not addressed in the 2007 Judgment of the Court in the case concerning *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)* (*Judgment, I.C.J. Reports 2007 (II)*, p. 658) (hereinafter referred to as "the 2007 Judgment"). Since the Court is going to determine the allocation of the "delimitation area" proposed by Nicaragua in the main proceedings, Honduras is of the view that the Court will inevitably have to decide whether the 1986 Treaty is in force and whether it does or does not accord Colombia rights in the area in dispute between Colombia and Nicaragua. Therefore Honduras maintains that the status and substance of the 1986 Treaty are at stake in the present case.

50. Honduras claims that by virtue of the 1986 Treaty, in the area east of the 82nd meridian, it is still entitled to certain sovereign rights and jurisdiction such as oil concessions, naval patrols and fishing activities. Honduras contends that Nicaragua as a third party to the 1986 Treaty cannot rely on the said Treaty to maintain that the maritime area in question appertains to Nicaragua alone. Honduras is convinced that, without its participation as an intervening State, the decision of the Court may irreversibly affect its legal interests if the Court is eventually to uphold certain claims put forward by Nicaragua.

51. Honduras argues that the 2007 Judgment did not settle the entire Caribbean Sea boundary between Nicaragua and Honduras. In its opinion, the fact that the arrow on the bisector boundary appearing on one of the sketch-maps in the 2007 Judgment stops at the 82nd meridian, together with the wording of the *dispositif* of the Judgment, indicates that the Court made no decision about the area lying east of that meridian (see sketch-map below, p. 19). According to Honduras, because the Court in the 2007 Judgment did not rule on the 1986 Treaty, a matter that the Court was not asked to address, there still exists uncertainty to be resolved in regard to the respective sovereign rights and jurisdiction of the three States in the area, namely, Honduras, Colombia and Nicaragua. To be more specific, Honduras takes the view that the Court has not determined the final point of the boundary between Honduras and Nicaragua, nor has it specified that the final endpoint will lie on the azimuth of the bisector boundary line. As the object of its Application, Honduras is requesting the Court, in the event it is granted permission to intervene as a party, to fix the tripoint between Honduras, Nicaragua and Colombia, and thus to reach a final settlement of maritime delimitation in the area.



Area in which Honduras claims to have an interest of a legal nature which may be affected by the Court's decision
This sketch-map has been prepared for illustrative purposes only, on the basis of a map presented by Honduras
Mercator Projection (15°N)
WGS 84
Area in which Honduras claims to have an interest of a legal nature which may be affected by the Court's decision
Maritime boundary line established by the Court in its Judgment of 8 October 2007 in the case concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras) (see I.C.J. Reports 2007 (II), p. 761, sketch-map No. 7)
Delimitation line in the 1986 Treaty between Honduras and Colombia
Maritime features
Point F
HONDURAS
NICARAGUA
Maritime boundary claimed by Colombia in its Rejoinder
CARIBBEAN SEA
Maritime boundary claimed by Nicaragua in its Reply
COSTA RICA
PANAMA
COLOMBIA
85°
82°
80°
75°
15°
10°
19°00'00 N
73°00'00 W
85°00'00 W
8°00'00 N
500 KM
0
100 KM

52. In explaining its understanding of the effect of the 2007 Judgment with respect to the legal reasoning stated in paragraphs 306 to 319 of the Judgment under the heading "Starting-point and endpoint of the maritime boundary", Honduras contends that these paragraphs are not part of *res judicata*, and that, in paragraph 319, the Court was not ruling on a specific matter, but rather indicating to the Parties the methodology it could use without prejudging a final endpoint, and without prejudging which State or States could be considered as the third States. Thus, in its view, paragraph 319 does not rule upon any matter at all and *res judicata* in principle only applies to the *dispositif* of the Judgment.

53. Nicaragua and Colombia, the Parties to the main proceedings, hold different positions towards Honduras's request. Nicaragua is definitely opposed to the Application by Honduras for permission to intervene, either as a party or a non-party. Nicaragua takes the position that Honduras's request fails to identify any interest of a legal nature that may be affected by the decision of the Court as required by Article 62 of the Statute and challenges the *res judicata* of the 2007 Judgment.

54. Nicaragua contends that Honduras has no interest of a legal nature south of the delimitation line fixed by the Court in the 2007 Judgment, including the area bounded by that line in the north and the 15th parallel in the south. According to Nicaragua, the 1986 Treaty cannot be relied on against it because it encroaches on its sovereign rights. Nicaragua argues that the 2007 Judgment, with full force of *res judicata*, settles the entire Caribbean Sea boundary between Nicaragua and Honduras, and that *res judicata* extends not only to the *dispositif*, but also to the reasoning, in so far as it is inseparable from the operative part. Nicaragua is of the view that the Application instituted by Honduras attempts to reopen matters between Nicaragua and Honduras that have already been decided by the Court and therefore should be barred by the principle of *res judicata*.

55. Colombia, on the other hand, is of the view that Honduras has satisfied the test to intervene as a non-party in the case under Article 62 of the Statute. Moreover, it raises no objection to the request of Honduras to intervene as a party. Colombia focused its arguments on the effect of the 2007 Judgment on the legal rights of Colombia vis-à-vis Nicaragua in the area which the 1986 Treaty covers. Colombia asserted that its bilateral obligations towards Honduras under the 1986 Treaty did not prevent it from claiming in the present proceedings rights and interests in the area north of the 15th parallel and east of the 82nd meridian as against Nicaragua, because what it had committed to Honduras under the 1986 Treaty was only applicable to Honduras.

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56. According to Article 62 of the Statute and Article 81 of the Rules of Court, the State applying to intervene has to satisfy certain conditions in order for intervention to be permitted. Either as a party or a non-party, the State requesting permission to intervene should demonstrate to the Court that it has an interest of a legal nature that may be affected by the decision of the Court in the main proceedings. The Court, in ascertaining whether Honduras has or has not met the criteria in Article 62 of the Statute concerning intervention, will first of all examine the interests as claimed by Honduras in its Application. The Court is mindful, as stated previously, that in analysing such interests, the Court neither has the intention to construe the meaning or scope of the 2007 Judgment in the sense of Article 60 of the Statute, nor to address any subject-matter that should be dealt with at the merits phase of the main proceedings (see paragraph 45 above). The Court must not in any way anticipate its decision on the merits (see *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, p. 118, para. 62).

* *

1. The interest of a legal nature claimed by Honduras

57. The Court will first examine the interest that Honduras has claimed for protection by intervention. Honduras indicates that the zone containing its interest of a legal nature that may be affected by the decision of the Court lies within a roughly rectangular area as illustrated in the sketch-map attached herewith on page 19. It further states that the south line and the east line of the rectangle, that are identical with the boundary in the 1986 Treaty, run as follows:

> "[S]tarting from the 82nd meridian, the boundary goes due east along the 15th parallel until it reaches meridian 79° 56' 00". It then turns due north along that meridian. Some distance to the north, it turns to follow an approximate arc to the west of some cays and Serranilla Bank, until it reaches a point north of the cays . . ."

58. The Court observes that Honduras, in order to demonstrate that it has an interest of a legal nature in the present case, contends that it is entitled to claim sovereign rights and jurisdiction over the maritime area in the rectangle. In concrete terms, Honduras states that it can assert rights relating to oil concessions, naval patrols and fishing activities in that area. In its arguments, Honduras raises a number of issues that directly put into question the 2007 Judgment, in which the maritime boundary between Honduras and Nicaragua was delimited.

59. Honduras's interest of a legal nature relates essentially to two issues: whether the 2007 Judgment has settled the entire maritime boundary between Honduras and Nicaragua in the Caribbean Sea and what effect, if any, the decision of the Court in the pending proceedings will have on the rights that Honduras enjoys under the 1986 Treaty.

60. In its Application, Honduras explains that it and Colombia possess rights in the maritime zone north of the 15th parallel as they are generated by the Honduran coast, on the one hand, and by the Archipelago of San Andrés, Serranilla and the island of Providencia, on the other. Due to their overlapping claims, the 1986 Treaty was concluded. The Court cannot fail to observe that Honduras's position on the status of the 15th parallel as stated in the present case is not raised for the first time as between Honduras and Nicaragua. As a matter of fact, it was duly considered by the Court in the delimitation of their maritime boundary in the 2007 Judgment.

61. In the *Nicaragua* v. *Honduras* case in which the 2007 Judgment was rendered, one of Honduras's principal arguments with respect to the delimitation was that the 15th parallel, either as a traditional line or by tacit agreement of the neighbouring States, should serve as the maritime boundary between Honduras and Nicaragua. The Court in that judgment, however, rejected both of these legal grounds and gave no effect to the 15th parallel as the boundary line. By virtue of the 2007 Judgment, therefore, the 15th parallel plays no role in the consideration of the maritime delimitation between Honduras and Nicaragua. In other words, the matter has rested on *res judicata* for Honduras in the present proceedings.

62. In establishing a single maritime boundary between Nicaragua and Honduras, delimiting their respective territorial seas, continental shelves and exclusive economic zones in the disputed area, the Court in the 2007 Judgment drew up a straight bisector line, with some adjustments taking into account Honduras's islands off the coastline. In the present proceedings, Honduras and Nicaragua hold considerably different positions on the effect of this bisector boundary. They differ as to whether the 2007 Judgment has specified an endpoint on the bisector line, whether the bisector line extends beyond the 82nd meridian and, consequently, whether the 2007 Judgment has definitively delimited the entire maritime boundary between Honduras and Nicaragua in the Caribbean Sea. The Court notes Honduras's assertion that these issues, if not answered, would certainly affect the finality and stability of the legal relations between the two Parties.

63. In the Court's reasoning in paragraphs 306-319 of the 2007 Judgment, there are two aspects that the Court considers as directly bearing on the above issues. The Court recalls, first, that in the 2007 Judgment, it was only after the Court came to the conclusion that there may be potential third-State interests in the area that it decided not to rule on the issue of the endpoint. Logically, if Point F on the bisector line had been determined as the endpoint, as interpreted by Honduras, it would have been unnecessary for the Court to continue considering where third-State interests might possibly lie because Point F would in any event be devoid of potential effect on the rights of any third State. Secondly, it was because of the claim raised by Honduras that a delimitation continuing *beyond* the 82nd meridian would affect Colombia's rights that the Court took full account of the arguments put forward by Honduras in regard to the third-State rights and made sure

> "that any delimitation between Honduras and Nicaragua extending *east beyond the 82nd meridian and north of the 15th parallel (as the bisector adopted by the Court would do)* would not actually prejudice Colombia's rights because Colombia's rights

> under [the 1986 Treaty] do not extend north of the 15th parallel" (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, pp. 758-759, para. 316; emphasis added).

According to the Court's reasoning, the bisector line with a defined azimuth, after Point F, is to continue as a straight line subject to the curve of the Earth and run the whole course of the maritime boundary between Honduras and Nicaragua as long as there are no third-State rights affected. It thus delimits the maritime zones respectively accruing to Honduras and Nicaragua in the Caribbean Sea, which by definition should cover the area in the rectangle.

64. In examining Honduras' argument, the Court finds it difficult to appreciate Honduras's contention that "a boundary that does not have an endpoint, clearly cannot be settled in its entirety", because that was not the first time that the Court left open the endpoint of a maritime boundary to be decided later when the rights of the third State or States were ascertained. As the Court held in the 2007 Judgment, it is "usual in a judicial delimitation for the precise endpoint to be left undefined in order to refrain from prejudicing the rights of third States" (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 756, para. 312; see also *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 91, para. 130; *Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, p. 27; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 116, para. 250; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 421, para. 238, p. 424, para. 245 and p. 448, para. 307; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), I.C.J. Reports 2009*, p. 131, para. 219.) What was decided by the Court with respect to the maritime delimitation between Honduras and Nicaragua in the Caribbean Sea is definitive. Honduras could not be a "third State" in the legal relations in that context for the reason that it was itself a party to the proceedings. So long as there are no third-State claims, the boundary is to run indisputably on the course defined by the Court.

65. The Court observes that the boundary might have conceivably deviated from the straight-line established by the 2007 Judgment only if Honduras had presented further maritime features to be taken into account for the boundary delimitation. Neither in the case concerning the *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)* nor in the present proceedings did Honduras make such a suggestion or produce any evidence to that effect. Of course, even if it had done so in the present proceedings, the matter still would not have fallen under Article 62 of the Statute with respect to intervention, but under Article 61 thereof concerning revision. In other words, Honduras does not suggest that there still exists any unresolved dispute or evidence that would prove that the bisector line is not the complete and final maritime boundary between Honduras and Nicaragua.

2. The application of the principle of *res judicata*

66. Honduras's claims are primarily based on the ground that the reasoning stated in paragraphs 306-319 of the 2007 Judgment does not have the force of *res judicata*. Honduras contends that, therefore, the principle of *res judicata* does not prevent it from raising issues relating to the reasoning of that Judgment.

67. It is a well-established and generally recognized principle of law that a judgment rendered by a judicial body has binding force between the parties to the dispute (*Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1954*, p. 53).

The Court notes that in ascertaining the scope of *res judicata* of the 2007 Judgment, it must consider Honduras's request in the specific context of the case.

68. The rights of Honduras over the area north of the bisector line have not been contested either by Nicaragua or by Colombia. With regard to that area, there thus cannot be an interest of a legal nature of Honduras which may be affected by the decision of the Court in the main proceedings.

In order to assess whether Honduras has an interest of a legal nature in the area south of the bisector line, the essential issue for the Court to ascertain is to what extent the 2007 Judgment has determined the course of the single maritime boundary between the areas of territorial sea, continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Honduras.

69. The Court is of the view that the course of the bisector line as determined in point (3) of the operative clause of its 2007 Judgment (paragraph 321) is clear. In point (3) of its operative clause, which indisputably has the force of *res judicata*, the Court held that "[f]rom point F, [the boundary line] shall continue along the line having the azimuth of 70° 14' 41.25" until it reaches the area where the rights of third States may be affected".

70. The Court observes that the reasoning contained in paragraphs 306-319 of the 2007 Judgment, which was an essential step leading to the *dispositif* of that Judgment, is also unequivocal on this point. The Court made a clear determination in these paragraphs that the bisector line would extend beyond the 82nd meridian until it reached the area where the rights of a third State may be affected. Before the rights of such third State were ascertained, the endpoint of the bisector line would be left open. Without such reasoning, it may be difficult to understand why the Court did not fix an endpoint in its decision. With this reasoning, the decision made by the Court in its 2007 Judgment leaves no room for any alternative interpretation.

3. Honduras's request in relation to the 1986 Treaty

71. With regard to the 1986 Treaty, the Court observes that Honduras and Colombia have different positions. Honduras asserts that given the "conflicting bilateral obligations", stemming from the 1986 Treaty with Colombia and the 2007 Judgment vis-à-vis Nicaragua respectively, Honduras has an interest of a legal nature in determining if and how the 2007 Judgment has affected the status and application of the 1986 Treaty. Colombia, on the other hand, asks the Court to leave the 1986 Treaty aside, because the task of the Court at the merits phase is to delimit the maritime boundary between Colombia and Nicaragua, not to determine the status of the treaty relations between Colombia and Honduras. Thus, in the view of Colombia, the status and substance of the 1986 Treaty are not issues at stake in the main proceedings.

72. In the perceived rectangle now under consideration (see sketch-map, p. 19), there are three States involved: Honduras, Colombia and Nicaragua. These States may conclude maritime delimitation treaties on a bilateral basis. Such bilateral treaties, under the principle *res inter alios acta*, neither confer any rights upon a third State, nor impose any duties on it. Whatever concessions one State party has made to the other shall remain bilateral and bilateral only, and will not affect the entitlements of the third State. In conformity with the principle of *res inter alios acta*, the Court in the 2007 Judgment did not rely on the 1986 Treaty.

73. Between Colombia and Nicaragua, the maritime boundary will be determined pursuant to the coastline and maritime features of the two Parties. In so doing, the Court will place no reliance on the 1986 Treaty in determining the maritime boundary between Nicaragua and Colombia.

74. Finally, the Court does not consider any need to address the remaining issue of the "tripoint" that Honduras claims to be on the boundary line in the 1986 Treaty. Having clarified the above matters pertaining to the 2007 Judgment and the 1986 Treaty, the Court does not see any link between the issue of the "tripoint" raised by Honduras and the current proceedings.

75. In light of the above considerations, the Court concludes that Honduras has failed to satisfy the Court that it has an interest of a legal nature that may be affected by the decision of the Court in the main proceedings. Consequently, there is no need for the Court to consider any further questions that have been put before it in the present proceedings.

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76. For these reasons,

THE COURT,

By thirteen votes to two,

Finds that the Application for permission to intervene in the proceedings, either as a party or as a non-party, filed by the Republic of Honduras under Article 62 of the Statute of the Court cannot be granted.

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Keith, Sepúlveda-Amor, Bennouna, Cançado Trindade, Yusuf, Xue; *Judges* ad hoc Cot, Gaja;

AGAINST: *Judges* Abraham, Donoghue.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this fourth day of May, two thousand and eleven, in four copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Nicaragua, the Government of the Republic of Colombia, and the Government of the Republic of Honduras, respectively.

(Signed) Hisashi OWADA,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge AL-KHASAWNEH appends a declaration to the Judgment of the Court; Judge ABRAHAM appends a dissenting opinion to the Judgment of the Court; Judge KEITH appends a declaration to the Judgment of the Court; Judges CANÇADO TRINDADE and YUSUF append a joint declaration to the Judgment of the Court; Judge DONOGHUE appends a dissenting opinion to the Judgment of the Court.

(Initialled) H. O.

(Initialled) Ph. C.

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