Non Corrigé
Uncorrected

CR 2010/13

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2010

Public sitting

held on Wednesday 13 October 2010, at 9.30 a.m., at the Peace Palace,

President Owada presiding,

***in the case concerning the* Territorial and Maritime Dispute (Nicaragua *v.* Colombia)**

Application by Costa Rica for permission to intervene

VERBATIM RECORD

ANNÉE 2010

Audience publique

tenue le mercredi 13 octobre 2010, à 9 h 30, au Palais de la Paix,

sous la présidence de M. Owada, président,

***en l'affaire du* Différend territorial et maritime (Nicaragua c. Colombie)**

Requête du Costa Rica à fin d'intervention

COMPTE RENDU

Present:	President	Owada
	Vice-President	Tomka
	Judges	Koroma
		Al-Khasawneh
		Simma
		Abraham
		Keith
		Sepúlveda-Amor
		Bennouna
		Skotnikov
		Cançado Trindade
		Yusuf
		Xue
		Donoghue
	Judges *ad hoc*	Cot
		Gaja
	Registrar	Couvreur

Présents : M. Owada, président
M. Tomka, vice-président
MM. Koroma
Al-Khasawneh
Simma
Abraham
Keith
Sepúlveda-Amor
Bennouna
Skotnikov
Cançado Trindade
Yusuf
Mmes Xue
Donoghue, juges
MM. Cot
Gaja, juges *ad hoc*

M. Couvreur, greffier

The Government of Nicaragua is represented by:

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

as Agent and Counsel;

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

Mr. Alain Pellet, Professor at the University 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., DPhil, CGeol, 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), University Paris Ouest, Nanterre-La Défense,

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

as Assistant Counsel.

Le Gouvernement du Nicaragua est représenté par :

S. Exc. M. Carlos José Argüello Gómez, ambassadeur du Nicaragua auprès du Royaume des Pays-Bas,

comme agent et conseil ;

M. Alex Oude Elferink, directeur adjoint de l'Institut néerlandais du droit de la mer de l'Université d'Utrecht,

M. Alain Pellet, professeur à l'Université de Paris Ouest, Nanterre-La Défense, membre et ancien président de la Commission du droit international, membre associé de l'Institut de droit international,

M. Paul Reichler, avocat au cabinet Foley Hoag LLP, Washington D.C., membre des barreaux de la Cour suprême des Etats-Unis d'Amérique et du district de Columbia,

M. Antonio Remiro Brotóns, professeur de droit international à l'Universidad Autónoma de Madrid, membre de l'Institut de droit international,

comme conseils et avocats ;

M. Robin Cleverly, M.A., D.Phil, C.Geol, F.G.S., consultant en droit de la mer, Admiralty Consultancy Services,

M. John Brown, consultant en droit de la mer, Admiralty Consultancy Services,

comme conseillers scientifiques et techniques ;

M. César Vega Masís, directeur, direction des affaires juridiques, de la souveraineté et du territoire, ministère des affaires étrangères,

M. Julio César Saborio, conseiller juridique au ministère des affaires étrangères,

M. Walner Molina Pérez, conseiller juridique au ministère des affaires étrangères,

Mme Tania Elena Pacheco Blandino, conseiller juridique au ministère des affaires étrangères,

comme conseils ;

Mme Clara E. Brillembourg, cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et de New York,

Mme Carmen Martinez Capdevila, docteur en droit international public à l'Universidad Autónoma de Madrid,

Mme Alina Miron, chercheur au Centre de droit international de Nanterre (CEDIN), Université de Paris Ouest, Nanterre-La Défense,

M. Edgardo Sobrenes Obregon, premier secrétaire à l'ambassade du Nicaragua au Royaume des Pays-Bas,

comme conseils adjoints.

The Government of Colombia is 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 of 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, Ambassador of the Republic of Colombia to the Kingdom of the Netherlands, 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 of Foreign Affairs,

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

Mr. Julián Guerrero Orozco, Minister-Counsellor, Embassy of the Republic 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.

Le Gouvernement de la Colombie est représenté par :

S. Exc. M. Julio Londoño Paredes, professeur de relations internationales à l'Université del Rosario de Bogotá,

comme agent ;

S. Exc. M. Guillermo Fernández de Soto, président du comité juridique interaméricain, membre de la Cour permanente d'arbitrage et ancien ministre des affaires étrangères,

comme coagent ;

M. James Crawford, S.C., F.B.A., professeur de droit international à l'Université de Cambridge, titulaire de la chaire Whewell, membre de l'Institut de droit international, avocat,

M. Rodman R. Bundy, avocat à la Cour d'appel de Paris, membre du barreau de New York, cabinet Eversheds LLP à Paris,

M. Marcelo Kohen, professeur de droit international à l'Institut de hautes études internationales et du développement de Genève, membre associé de l'Institut de droit international,

comme conseils et avocats ;

S. Exc. M. Francisco José Lloreda Mera, ambassadeur de la République de Colombie auprès du Royaume des Pays-Bas, représentant permanent de la Colombie auprès de l'OIAC, ancien ministre d'Etat,

M. Eduardo Valencia-Ospina, membre de la Commission du droit international,

S. Exc. Mme Sonia Pereira Portilla, ambassadeur de la République de Colombie auprès de la République du Honduras,

M. Andelfo García González, professeur de droit international, ancien ministre adjoint des affaires étrangères,

Mme Victoria E. Pauwels T., ministre-conseiller au ministère des affaires étrangères,

M. Julián Guerrero Orozco, ministre-conseiller à l'ambassade de la République de la Colombie aux Pays-Bas,

Mme Andrea Jiménez Herrera, conseiller au ministère des affaires étrangères,

comme conseillers juridiques ;

M. Thomas Fogh, cartographe, International Mapping,

comme conseiller technique.

The Government of Costa Rica is represented by:

H.E. Mr. Edgar Ugalde Álvarez, Ambassador of Costa Rica to the Republic of Colombia,

as Agent;

Mr. Coalter G. Lathrop, *Lecturing Fellow* at Duke University School of Law, member of the North Carolina State Bar, Special Adviser to the Ministry of Foreign Affairs,

Mr. Sergio Ugalde, Member of the Permanent Court of Arbitration, Senior Adviser to the Ministry of Foreign Affairs, Member of the Costa Rican Bar,

Mr. Arnoldo Brenes, Senior Adviser to the Ministry of Foreign Affairs, Member of the Costa Rican Bar,

Mr. Carlos Vargas, Director of the Legal Department, Ministry of Foreign Affairs,

as Counsel and Advocates;

H.E. Mr. Jorge Urbina, Ambassador of Costa Rica to the Kingdom of the Netherlands,

Mr. Michael Gilles, Special Adviser to the Ministry of Foreign Affairs,

Mr. Ricardo Otarola, Minister and Consul General of Costa Rica to the Republic of Colombia,

Mr. Christian Guillermet, Ambassador, Deputy Permanent Representative of Costa Rica to the United Nations Office at Geneva,

Mr. Gustavo Campos, Consul General of Costa Rica to the Kingdom of the Netherlands,

Ms Shara Duncan, Counsellor at the Embassy of Costa Rica in the Kingdom of the Netherlands,

Mr. Leonardo Salazar, National Geographic Institute of Costa Rica,

as Advisers.

Le Gouvernement du Costa Rica est représenté par :

S. Exc. M. Edgar Ugalde Álvarez, ambassadeur de la République du Costa Rica auprès de la République de Colombie,

comme agent ;

M. Coalter G. Lathrop, *Lecturing Fellow* à la faculté de droit de Duke University, membre du barreau de l'Etat de Caroline du Nord, conseiller spécial auprès du ministère des affaires étrangères,

M. Sergio Ugalde, membre de la Cour permanente d'arbitrage, conseiller principal auprès du ministère des affaires étrangères, membre du barreau du Costa Rica,

M. Arnoldo Brenes, conseiller principal auprès du ministère des affaires étrangères, membre du barreau du Costa Rica,

M. Carlos Vargas, directeur du département juridique du ministère des affaires étrangères,

comme conseils et avocats ;

S. Exc. M. Jorge Urbina, ambassadeur du Costa Rica auprès du Royaume des Pays-Bas,

M. Michael Gilles, conseiller spécial auprès du ministère des affaires étrangères,

M. Ricardo Otarola, ministre et consul général du Costa Rica en République de Colombie,

M. Christian Guillermet, ambassadeur, représentant permanent adjoint du Costa Rica auprès de l'Office des Nations Unies à Genève,

M. Gustavo Campos, consul général du Costa Rica au Royaume des Pays-Bas,

Mme Shara Duncan, conseiller à l'ambassade du Costa Rica aux Pays-Bas,

M. Leonardo Salazar, Institut géographique national du Costa Rica,

comme conseillers.

The PRESIDENT: Please be seated. The sitting is now open. This morning the Court will hear the first round of oral argument of Nicaragua. Later this morning it will hear Colombia's first round of oral argument. It is going to be one sitting in the whole morning which will be unfortunately longer than usual. It will take about four hours. So in between, after the presentation by Nicaragua, the President proposes to have a very short coffee break for about ten minutes and then come back and hear the presentation by Colombia's first round of oral argument. I first give the floor to His Excellency Dr. Carlos José Argüello Gómez, Agent of the Republic of Nicaragua.

Mr. ARGUELLO GOMEZ:

1. Mr. President, Members of the Court, good morning. It is always with a sense of great honour that I appear before you but on this occasion I do so with a sad heart. This is the first time in the 26 years in which I have pleaded before you in seven main cases without having the benefit of the late Sir Ian Brownlie being beside me. In the practice of international law, no one of his generation was involved as counsel and advocate in so many cases before this Court. His contributions to public international law have been prodigious. His absence is a loss to all of us.

2. Before beginning my short presentation I would also like to welcome and pay tribute to the two new Members of the Court and wish them a most successful and fruitful exercise of their new functions.

3. Mr. President, it is not the first time that Nicaragua is before this Court pleading in a case involving an application for permission to intervene under Article 62 of the Statute.

4. When Nicaragua came before this Court in 1989 applying to intervene under Article 62 of the Statute in a case between El Salvador and Honduras, the two previous applications by States to intervene had not prospered. The reference naturally is to the requests for intervention of Malta in the *Tunisia/Libya* case and that of Italy in the *Malta/Libya* case.

5. After studying these precedents and the geographical circumstances and claims of the Parties, Nicaragua decided to apply to intervene. It is well to recall the circumstances of this case since it was the first time that a State was allowed to intervene under Article 62. The situation was that one of the States party to the case was requesting delimitation inside and outside the waters of the Gulf of Fonseca. The other Party opposed any delimitation, and claimed that there was no

delimitation possible in the waters inside the Gulf since they were in condominium by the three States. The Gulf of Fonseca is a relatively small gulf that, at its opening to the sea, separates the coasts of Nicaragua and El Salvador by less than 20 miles. As we can appreciate in the graphics (N-CR CAG1), Honduras was requesting the Court to draw the delimitation line between its claimed areas and those of El Salvador without Nicaragua being a party to the case. The question was whether this delimitation could take place absent Nicaragua. In the event, Nicaragua was allowed to intervene, but only on the question of the juridical status of the waters of the Gulf, that is, whether they were subject to the special régime of condominium or some other special status. But what is most relevant for the present circumstances is that the Court denied Nicaragua's Application to intervene in the question of the delimitation of the areas inside the Gulf and out to the sea.

6. The Gulf of Fonseca is a minute area in comparison to the area under delimitation between Nicaragua and Colombia. The delimitation involved in the Gulf of Fonseca was a lateral delimitation in which three parties had claims to part of the 19 miles of the closing line of the Gulf, out of which would also be traced the delimitation lines seawards. The effects on Nicaragua of any such delimitation can easily be appreciated, and yet Nicaragua was not allowed to intervene. If the geographic circumstances of that case did not warrant, in the Court's view, intervention by Nicaragua on the issue of delimitation, the same result must even more so appertain in this new case.

7. The present case is about a frontal delimitation involving the extensive continental coasts and shelves of Nicaragua and Colombia. There is no question of a lateral delimitation that could result in the attribution of any areas alleged to possibly appertain to Costa Rica. As will be clear from the explanation provided later by Mr. Reichler, there is no possibility that the Judgment of the Court in this case will affect the legal interests of Costa Rica.

8. It is very difficult for anyone in Nicaragua to conceive that if its Application to intervene was denied in the very restricted area involved in the Gulf of Fonseca, any consideration could be given to that of Costa Rica in the greatly more extensive waters of the Caribbean Sea. If Costa Rica by simply alleging that it is near the delimitation area involved in the case of *Nicaragua* v. *Colombia* is allowed to intervene, the right of intervention under Article 62 would from now on be

available to all States located in the same general area of any delimitation case. In fact, it would be difficult to imagine a maritime delimitation in which an application for intervention could be denied.

9. Nicaragua considers that the door for universal interventions should not be left wide open or even left ajar. The present case gives a good example. There are enormous costs involved for Nicaragua not only because of the delays it causes on the continuation of the merits of the principal case but also in the level of attention and resources that it must employ on these hearings since its interests are at stake, whilst those for Costa Rica — that does not want the consequences of being a party to the case — are minimal. Furthermore, the State applying to intervene is allowed to address what amounts to the merits of the main case from whatever partial angle best serves its interests.

10. Thus, during the present hearings Costa Rica has made certain assertions and presented certain documents that are contrary to the facts and prejudice the position of Nicaragua in the main case. For example, the document put on the public screen and included in the judges' folders as sketch map No. 8 purports to show the "maritime boundary between Honduras and Nicaragua on the Caribbean". (N-CR CAG3) It is a reproduction of a sketch-map by the Court that only shows an enlarged partial section of the delimitation. The complete sketch-map is shown on the screen (N-CR CAG4). Costa Rica chose to present the Court's direction line as stopping short of the 82nd meridian when the Court's own line did not.

11. Another graphic included in the judges' folders as sketch-map No. 5 also misrepresents the facts. It refers to "Nicaragua's proposed Colombian enclaves", which includes an enclave on Quitasueño Bank. Nicaragua has not proposed such an enclave in a Bank that is part of its continental shelf (N-CR CAG5).

12. Mr. President, in your opening remarks last Monday, you summarized the history of these proceedings and recalled that between 2003 and 2006 the Governments of Honduras, Jamaica, Chile, Peru, Ecuador and Venezuela asked to be furnished, and were furnished, with copies of the pleadings and documents annexed produced in this case. You further recalled that it was until 22 September 2008 that Costa Rica also asked to be furnished with such copies. What first impresses in this recount is that for a State to now be before the Court claiming dire consequences for its legal interests if not allowed to intervene, it is surprising that it waited more

than six years after this case started to even worry about requesting copies of the pleadings in the case. Even much more distant States such as Chile, Peru and Ecuador showed a more active interest.

13. My esteemed colleague the Agent of Costa Rica referred on Monday to the "délai octroyé pour la présentation de la requête à fin d'intervention" and went on to explain that this delay was due to the fact that there had been an electoral process in Costa Rica that finalized in February of this year. He pointed out that in any case the Application had been filed within the limits fixed by Article 81 of the Rules of Court. In the Written Observations of Nicaragua there was no claim that the Application was extemporaneous. It was simply pointed out that after waiting for six years to make this application, Costa Rica had failed to clearly identify in its Application any interest it may have of a legal nature that might be affected by the decision in this case. A simple and telling detail is that no map or sketch or graphic was included in the Application with an indication of the areas it considered might be affected until it was done in the pleadings of last Monday.

14. The reason for this is very simple. It is very difficult to show, and much less so on a map, how a frontal delimitation between Nicaragua and Colombia that does not involve the fixing of lateral limits could possibly affect a State situated laterally. Whatever claim Costa Rica might have to a lateral delimitation with Nicaragua, the decision of the Court on this case could not possibly have any effect on it. Of course, with all the time in the world to prepare a data show, its visual effects have at least a better chance of causing a satisfactory first impression. Although hard-pressed for time, it will be Mr. Reichler's task to, in a figurative sense, turn on their heads these sketches and graphics contained in the data show to which Nicaragua only had access last Monday.

15. The Application of Costa Rica in paragraph 13 claimed that the Treaty of maritime delimitation it signed with Colombia in 1977 arose from two basic assumptions: first, that Colombia had an agreed boundary with Nicaragua running along the 82nd°meridian W longitude and, second, that the Colombian insular territory in the south-western Caribbean was entitled to full weight in a delimitation. This was again reiterated by Mr. Lathrop during the pleadings on

Monday[1]. The point is of no relevance to the legal interests of Costa Rica that allegedly may be affected by a decision on this case and its purpose only seems to indirectly support some of the Colombian arguments in the main case.

16. For this reason, Nicaragua's Written Observations analyse these so-called assumptions in order to show that they lacked any merit. Thus, it was pointed out that in 1977 Costa Rica was aware that Nicaragua did not accept the 82nd meridian as a line of delimitation and that it did not accept that Colombia had sovereignty over all the banks, reefs and islands it claimed in the south-western Caribbean. On the screen (N-CR CAG6) is the text of a diplomatic Note sent by the Minister of Foreign Affairs of Costa Rica dated 18 October 1972 — that is, five years before the 1977 Treaty was signed — in which he states, with instructions from the President of the Republic of Costa Rica, that his Government "considers that the cays and islets called Quitasueño, Roncador and Serrana are located in the continental shelf of the Republic of Nicaragua". Please note on the screen that these features are located on the continental shelf of Nicaragua considerably to the east of the 82nd meridian (N-CR CAG7). Naturally, there cannot be any so-called assumption that the 82nd meridian was a line of delimitation when the continental shelf of Nicaragua is recognized as extending at least up to where these features are situated around the 80th meridian. There can even be less of an assumption that these features had to be accorded full weight to Colombia's benefit.

17. Another fact pointed out in the Written Observations is that the 1977 Treaty itself does not follow the 82nd meridian but is located further west of the same (N-CR CAG7). Where does that leave Costa Rica's alleged assumption that Nicaragua had accepted the 82nd meridian at the moment Costa Rica signed this Treaty?

18. Counsel for Costa Rica, Mr. Brenes[2], asserted that "in consideration of Nicaragua's requests that Costa Rica not ratify the Treaty until the dispute with Colombia has been resolved, Costa Rica, acting out of good neighbourliness, has abstained from doing so". This is disingenuous and ironic in view of the evident intention of these proceedings. Quite to the contrary to this assertion, it is well known that Costa Rica has not ratified this Treaty precisely because it gives equal weight to the island of San Andrés and to the continental coast of Costa Rica.

---

[1]CR 2010/12, pp. 35-36, paras. 13-15 (Lathrop).

[2]*Ibid.*, p. 22, para. 8 (Brenes).

19. In the well-known publication *International Maritime Boundaries* edited by Charney and Alexander, we find the following observation on the reasons why Costa Rica had not ratified the 1977 Treaty several years after its signature in 1983: "Costa Rica's Assembly faced a strong lobby against the agreement. Some of its opponents argued that the San Andres Archipelago should only be granted a 12 n.m. mile territorial sea in the light of the Channel Islands Award."[3]

20. In this respect it might be recalled that there were well-known negotiations going on between France and the United Kingdom on the question of the effect of the Channel Islands on a delimitation that dated back from 1964. Also, that a treaty submitting this question to arbitration was signed in 1975 and an award was rendered in 1977 giving these very important islands limited effects. Costa Rica was naturally well aware of this. The reason it agreed to give full effects to San Andrés was due to the fact that a small uninhabited island of Costa Rica located in the Pacific Ocean was recognized as producing full effects in another delimitation agreement with Colombia. Thus in the same Charney and Alexander publication we read that "while Costa Rica did not benefit economically from the Caribbean delimitation, the areas accorded to Isla del Coco on the Pacific side were considered rich in migratory species; a sort of a compensatory action, resource-wise"[4].

21. Counsel for Costa Rica, Mr. Brenes, spent some time explaining why Nicaragua could not rely or even cite the "Agreements that Costa Rica has ratified with Panama and signed with Colombia"[5], since these are *res inter alios acta* for Nicaragua. Then later during the hearings counsel for Costa Rica, Mr. Ugalde, spent a good part of the noon hour explaining why even if Article 59 of the Statute protected third States from the effects of judgments to which they were not parties, nonetheless there were circumstances in which this judgment might not be equivalent to a *res inter alios acta*.

22. The quick way of covering this subject is fairly simple without submitting the Court to a scholarly dissertation. An agreement between third States is a *res inter alios acta* for a State not

---

[3] J. Charney, and L. Alexander (eds), *International Maritime Boundaries*, 1993, Vol. I, pp. 465-466.

[4] *Ibid*; p. 467.

[5] CR 2010/12, pp. 25-26, paras. 19-22 (Brenes).

Party to the agreement in the sense that that agreement cannot be imposed on that third State. But good faith and the conduct subsequent to that treaty can have definite effects *erga omnes*.

23. Similarly, a judgment by the Court is a *res inter alios acta* for States not parties to the case in accordance with Article 59, but it nonetheless may have legal consequences for third parties, and that is why Article 62 was put in place. But in order to effectively invoke Article 62 and be accepted to intervene, a State must establish that the decision by the Court will affect its legal interests. Costa Rica has as of now only made clear that it considers that it has a legal interest — and that has been sufficient to open the door to these hearings — but it has yet to start to prove that its legal interests will be affected by the Court's decision.

24. The assertion made by Nicaragua in its Written Observations that Costa Rica has an independent means of invoking the jurisdiction of the Court was not aimed at stating that this precludes it from invoking Article 62, as was claimed by counsel of Costa Rica. In fact, Article 81 of the Rules of Court provides that the party applying to intervene should indicate any basis of jurisdiction that might exist as between the applicant State and the parties to the case. This provision of Article 81 is not pure surplusage. It was added because the extent of the jurisdictional links existing between the claimant third State and the parties to the main case help determine the extent of the intervention to be granted. If Costa Rica wants to intervene, it could come in as a party, if it can prove that the issues *sub judice* affect its interests. But this it could only do if the case between Nicaragua and Colombia required the fixing of a tripoint with Costa Rica and this is not so. If the Judgment of the Court is favourable to the Nicaraguan claims, the only effect of this is that Costa Rica could attempt to claim a delimitation vis-à-vis Nicaragua that would extend beyond the limits it accepted with Colombia. If Colombia is favoured, well, Costa Rica already has a clear understanding with that State.

25. Counsel of Costa Rica, Mr. Brenes, presented a chronicle of the meetings[6] of the bilateral (Nicaragua-Costa Rica) Sub-Commission on Limits and Cartography which began sessions in September 2002. The mandate of this Commission was technical and did not involve political level negotiations regarding delimitation in the Caribbean Sea. In this respect the

[6]CR 2010/12, pp. 23-24, paras. 11-18 (Brenes).

chronicle is largely irrelevant to these proceedings and Nicaragua will simply generally reserve its position on the subject and limit its comments to a few points. Mr. Brenes indicates that in the first of the meetings of this Sub-Commission it was decided to postpone any question of delimitation in the Caribbean until after the present case between Colombia and Nicaragua was over. If there is any pertinence in this information it would only be to ask why Costa Rica did not point out to Nicaragua in 2002 that this case could affect its interests. Why did it wait six years to even ask for a copy of the pleadings?

26. Mr. Brenes further indicated that these meetings of the Sub-Commission were discontinued by Nicaragua after August 2005. It is well to recall the circumstances. Costa Rica had been claiming extensive rights in the San Juan river, including policing rights and other jurisdictional rights on the river. After Costa Rica filed an Application against Nicaragua before this Court on 29 September 2005 there was very little incentive to continue with these obviously futile meetings.

27. One final clarification on another statement made by Mr. Brenes. It is not correct to assert that Nicaragua accepted an equidistance line of delimitation with Costa Rica in the Pacific coast. There has not been any agreement in that regard, and the purpose of making this statement, without any obvious relevance to the matter before these hearings, throws further light on the real intention of Costa Rica in these proceedings.

28. Mr. President, Costa Rica has so far failed to establish that it has an interest of a legal nature which may be affected by the decision of the Court in this case. Therefore, up to the present stage of the pleadings Nicaragua sees no reason to change the conclusions it submitted to the Court in its Written Statement.

29. Mr. President, the rest of the pleadings will be divided in two sections. Professor Antonio Remiro will address “Le prétendu intérêt juridique du Costa Rica dans la délimitation maritime entre le Nicaragua et la Colombie : aspects généraux” and Mr. Paul Reichler will conclude with “Costa Rica has no legal interest that would be affected by the Court’s decision in this case”.

Mr. President, Members of the Court, thank you for your kind attention.

Mr. President, may it please you to call Professor Antonio Remiro.

The PRESIDENT: I thank His Excellency Dr. Carlos José Argüello Gómez, the Agent of the Republic of Nicaragua for his presentation.

I now call Professor Antonio Remiro Brótons.

M. REMIRO :

LE PRÉTENDU INTÉRÊT JURIDIQUE DU COSTA RICA DANS LA DÉLIMITATION MARITIME ENTRE LE NICARAGUA ET LA COLOMBIE : ASPECTS GÉNÉRAUX

Monsieur le président, Mesdames et Messieurs les juges, permettez-moi de dire pour commencer que je suis très honoré de m'adresser aujourd'hui à vous. En même temps, avec la même sincérité, je dois vous confier mon inquiétude parce que, exception faite de quelques esprits privilégiés, encore qu'un peu extravagants, réclamer l'attention sur des questions afférentes aux incidents de la procédure peut provoquer des accès de mélancolie, même de la part de professionnels expérimentés, si on exagère le traitement. Avec cette précaution, j'en viens à évoquer les principes fondamentaux applicables à l'intervention.

Le «noyau dur» de l'intervention

1. Conformément à l'article 62, paragraphe 1, du Statut de la Cour : «Lorsqu'un Etat estime que, dans un différend, un intérêt d'ordre juridique est pour lui en cause, il peut adresser à la Cour une requête à fin d'intervention»[7]. La Cour, ajoute le paragraphe 2, «décide».

2. Le Règlement de la Cour énonce dans son article 81 les conditions qu'une requête à fin d'intervention doit remplir. Spécifier l'intérêt d'ordre juridique qui, selon l'Etat demandant à intervenir, est pour lui en cause est la première de ces conditions[8].

3. Comme on vient de le dire, le Statut requiert l'existence d'un intérêt d'ordre juridique, ce qui exclut les intérêts de tout autre ordre, qu'ils soient politiques, économiques, géostratégiques ou tout simplement matériels, sauf s'ils sont liés à un intérêt juridique.

4. Exprimer une prétention juridique ne suffit pas pour accéder à une requête à fin d'intervention. Il est nécessaire, absolument nécessaire, que cette prétention, propre, réelle et actuelle, puisse être mise en cause par la décision que la Cour rendra un jour pour trancher le

[7] «An interest of a legal nature which may be affected by the decision in the case». La version anglaise fut rédigée à partir du texte français.

[8] Article 81.2 *a)*, du Règlement de la Cour.

différend porté devant elle. Ceci est le «noyau dur», comme le disait le professeur Prosper Weil, de l'institution de l'intervention[9]. L'Etat qui demande à entrer dans le procès doit démontrer que ses droits peuvent être affectés, au vu des éléments de l'affaire en cours et du *petitum* des Parties à l'instance. Il s'agit dans une certaine mesure d'une spéculation, mais construite sur la base d'arguments plausibles soumis à l'avis de la Cour.

5. Mais il y a une autre condition qui, étant évidente, passe inaperçue : l'objet de la requête doit être l'«intervention» et rien d'autre. C'est justement pour cela que le Règlement de la Cour impose que la requête indique «l'objet précis de l'intervention» et, en plus, «toute autre base de compétence» qui existerait entre lui et les Parties à l'instance[10].

6. Il y a soixante ans, dans l'affaire *Haya de la Torre*, la Cour a déclaré : «[T]oute intervention est un incident de procédure ; par conséquent, une déclaration déposée à fin d'intervention ne revêt, en droit, ce caractère que si elle a réellement trait à ce qui est l'objet de l'instance en cours» (*Haya de la Torre (Colombie/Pérou), arrêt, C.I.J. Recueil 1951*, p. 76) ; de cette manière la Cour a précisé le domaine de ce que l'on devait entendre comme une intervention *véritable* conformément au Statut. Cependant, ce critère semble avoir été perdu de vue après. Dans la décennie des années quatre-vingt du dernier siècle, les arrêts de la Cour concernant les requêtes à fin d'intervention soumises, d'abord, par Malte[11], et après, par l'Italie[12], ont reflété un certain degré de confusion et d'hésitation sur le chemin à suivre par rapport à l'objet de l'intervention, l'exigence ou pas d'un lien juridictionnel particulier et la condition ou pas de partie au procès de l'Etat demandant à intervenir une fois accepté l'intervention. Toutefois, on peut dire que, à partir de l'interprétation de l'article 62 du Statut faite par la Chambre de la Cour dans son arrêt du 13 septembre 1990[13], que la Cour a confirmé dans l'ordonnance du 21 octobre 1999[14] et

---

[9] D*ifférend frontalier terrestre, insulaire et maritime (El Salvador/Honduras), requête à fin d'intervention,* C 4/CR 90/3 du 6 juin 1990, p. 15.

[10] Article 81.2 *b)* et *c)*, du Règlement de la Cour.

[11] Voir *Plateau continental (Tunisie/Jamahiriya arabe libyenne), requête à fin d'intervention, arrêt, C.I.J. Recueil 1981*, p. 3.

[12] *Plateau continental (Jamahiriya arabe libyenne/Malte), requête à fin d'intervention, arrêt, C.I.J. Recueil 1984,* p. 3.

[13] *Différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras), requête à fin d'intervention, arrêt, C.I.J. Recueil 1990,* p. 92.

[14] *Frontière terrestre et maritime entre le Cameroun et le Nigéria (Cameroun c. Nigéria), requête à fin d'intervention, ordonnance du 21 octobre 1999, C.I.J. Recueil 1999 (II),* p. 1029.

dans l'arrêt du 23 octobre 2001[15], l'intervention a acquis des traits plus nets : l'intervention *véritable*, statutaire, ne permet pas de greffer une nouvelle affaire à l'affaire en cours, ni de transformer cette affaire en une affaire différente, ni d'y ajouter de nouvelles questions ; elle ne permet pas non plus à l'Etat demandant à intervenir de réclamer la reconnaissance de ses prétentions comme des droits.

7. L'intervention est liée à l'affaire principale. Elle ne peut pas survivre sans elle, encore moins aller à son encontre. Le différend, tel qu'il a été défini par les Parties, est le moule dans lequel l'intervention doit se fonder. L'objet statutaire de l'intervention basée sur l'article 62 du Statut est la protection des intérêts juridiques de l'Etat demandant à intervenir susceptibles d'être affectés par la décision que rendra la Cour dans l'affaire pendante. Il s'agit d'un moyen d'autoprotection de nature préventive. A une telle fin, l'Etat qui utilise cette procédure demande qu'il lui soit permis de porter ses intérêts — ses intérêts *juridiques* — à la connaissance de la Cour pour que celle-ci en tienne compte; ainsi, dans le cas où la Cour les considère pertinents, elle évitera que l'arrêt les mette en cause. Ceci implique aussi la précision des points ou aspects du différend qui ont à voir avec lesdits intérêts.

8. On ne demande certes pas à l'Etat requérant, le Costa Rica dans notre cas, de démontrer que ses prétendus intérêts juridiques seront affectés par la décision de la Cour, mais on lui demande de démontrer de façon concluante qu'ils pourraient l'être. A cette fin, le requérant doit présenter lesdits intérêts d'une façon précise. Au stade de la procédure incidente où nous en sommes il ne s'agit pas d'anticiper l'intervention proprement dite, mais on ne peut pas non plus se contenter de formulations vagues ou génériques. On n'est pas dans la course, mais on est quand même dans les séries de qualification. L'Etat qui souhaite intervenir ne doit pas être exhaustif ni épuiser l'argumentation au fond, mais il faut établir les intérêts concrets et particuliers qu'il invoque de manière à ce que la Cour ait les éléments nécessaires pour admettre ou rejeter la requête d'intervention, en raison du caractère plausible tant de l'intérêt juridique invoqué que des chances — ou des risques — de sa mise en cause par l'arrêt[16].

---

[15] *Souveraineté sur Pulau Ligitan et Pulau Sipadan (Indonésie/Malaisie), requête à fin d'intervention, arrêt, C.I.J. Recueil 2001,* p. 575.

[16] Voir *Différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras), requête à fin d'intervention, arrêt, C.I.J. Recueil 1990*, p. 117, par. 61.

9. L'Etat intervenant *participe* à la procédure mais, par définition, n'est pas *partie* à l'instance et, pour cette même raison, l'article 81 du Règlement, qui définit la compétence de la Cour pour se prononcer sur sa requête, est inclus dans la partie du Statut consacrée aux procédures incidentes par rapport à l'affaire principale s'entend. Celle-ci constitue une base de compétence suffisante. Naturellement, la situation change si l'intervention n'est pas une intervention au sens propre, une «véritable intervention»[17], une intervention *prévue* dans le Statut de la Cour, mais un prétexte pour traiter d'extorquer à la Cour la reconnaissance de certains droits ou une décision sur un différend autre que celui porté devant la Cour par les Parties ou, encore, si on cherche à travers cette procédure à devenir une nouvelle Partie plutôt qu'un Etat intervenant [18].

Le Costa Rica n'a pas démontré l'existence d'un intérêt d'ordre juridique, propre, direct, concret et actuel…

10. Le Costa Rica est justement dans cette situation : il n'a pas pu démontrer l'existence d'un intérêt d'ordre juridique susceptible d'être mis en cause par la décision que la Cour devra prendre dans le différend entre le Nicaragua et la Colombie comme mon collègue Paul Reichler le démontrera dans quelques minutes. Le Costa Rica n'a même pas réussi à démontrer l'existence d'un intérêt d'ordre juridique propre, direct, concret et actuel, ce qui est une prémisse nécessaire à toute intervention. Il n'a pas réussi à démontrer cette existence dans le cadre du différend entre le Nicaragua et la Colombie.

11. Evidement le Costa Rica a des intérêts juridiques dans la délimitation avec le voisin Nicaragua. Ses plaidoiries de lundi ont confirmé qu'il se présente comme une partie — non pas au différend qui oppose le Nicaragua à la Colombie — mais à un différend entre lui-même et le Nicaragua concernant la délimitation maritime entre les deux pays. Mais celui-ci est un autre différend que le Costa Rica ne peut pas «glisser» subrepticement dans le rôle de la Cour par le biais de l'intervention. Bien souvent, lors de la plaidoirie du Costa Rica lundi dernier on a eu l'impression que le Costa Rica plaidait au sujet de la délimitation latérale de ses espaces maritimes

---

[17] *Plateau continental (Jamahiriya arabe libyenne/Malte), requête à fin d'intervention, arrêt, C.I.J. Recueil 1984,* p. 13, par. 18, p. 23, par. 37. Voir aussi affaire *Haya de la Torre (Colombie/Pérou), arrêt, C.I.J. Recueil 1951,* p. 77.

[18] *Différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras), requête à fin d'intervention, arrêt, C.I.J. Recueil 1990,* p. 133-135, par. 97-101 ; *Souveraineté sur Pulau Ligitan et Pulau Sipadan (Indonésie/Malaisie), requête à fin d'intervention, arrêt, C.I.J. Recueil 2001,* p. 588-589, par. 35-36.

avec ceux du Nicaragua et non pas de la menace prétendue que ferait peser sur ces intérêts l'issue du procès opposant le Nicaragua et la Colombie[19].

12. En ce qui concerne l'affaire pendante devant la Cour, le simple voisinage entre le Costa Rica et le Nicaragua et l'absence d'une ligne de délimitation maritime latérale ne suffisent pas à justifier un intérêt pertinent pour intervenir dans la délimitation entre les côtes opposées du Nicaragua et de la Colombie. Y-a-t-il autre chose?

13. Selon le Costa Rica, l'intérêt d'ordre juridique qui pourrait être mis en cause par la décision de la Cour est «l'intérêt du Costa Rica à exercer ses droits souverains et sa juridiction dans la région maritime dans la mer des Caraïbes que le droit international lui reconnaît en vertu de sa côte dans cette mer»[20]. Cet intérêt ne peut pas, toutefois, être défini indépendamment des traités signés par le Costa Rica pour délimiter les espaces maritimes soumis à sa souveraineté et à sa juridiction dans la mer des Caraïbes.

14. Le Costa Rica prétend avoir un intérêt juridique à ce que soient respectées les limites acceptées par son gouvernement, dans un traité signé, mais non ratifié, comme celui de 1977 avec la Colombie ; mais, en même temps, il situe ces intérêts au-delà de cette limite conventionnelle. Bref, on dirait que son désir est de tuer ce traité sans tirer un seul coup, ce qui serait d'ailleurs conforme à sa tradition pacifiste.

15. L'article 62 du Statut fait référence aux intérêts d'ordre juridique, non aux illusions même si elles prétendent s'insérer dans cet ordre. En tout cas, la Cour n'est pas le magicien qui doit transformer les rêves du Costa Rica en réalité. Toute considération que le Costa Rica souhaite faire sur les principes et les règles de droit international applicables à une délimitation maritime dans une mer présentant les caractéristiques de la mer des Caraïbes est étrangère à l'intervention, si elle n'est pas rattachée à des intérêts juridiques propres, directs, concrets et actuels[21].

---

[19] Voir CR 2010/12, p. 23-24, par. 11-18 (Brenes) ; *ibid.*, p. 36-40, par. 17-29 (Lathrop).

[20] «Costa Rica's interest in the exercise of its sovereign rights and jurisdiction in the maritime area in the Caribbean Sea to which it is entitled under international law by virtue of its coast facing that sea» (*Application for Permission to Intervene*, par. 11). Voir aussi CR 2010/12, p. 17, par. 10 (Ugalde).

[21] Voir *Plateau continental* (*Tunisie-Jamahiriya arabe libyenne), requête à fin d'intervention, arrêt, C.I.J. Recueil 1981*, p. 12, par. 19 ; *Plateau continental (Jamahiriya arabe libyenne/Malte), requête à fin d'intervention, arrêt*, opinion individuelle du juge Mbaye, *C.I.J. Recueil 1984*, p. 35.

… susceptible d'être mis en cause

16. En tout cas, même si, aux seules fins de la discussion, on fait abstraction de l'effet limitatif des traités conclus ou signés par le Costa Rica et on pense à lui comme à un pays sans obligations juridiques particulières, qui essaie de projeter sur les eaux, les fonds marins et le sous-sol des Caraïbes, toute la potentialité de sa souveraineté sur la côte, on ne rencontre pas dans la requête du Costa Rica d'éléments qui permettent d'identifier où, jusqu'à quel point et de quelle façon, ses intérêts d'ordre juridique pourraient être affectés par les prétentions du Nicaragua dans des zones qui, comme mon collègue Paul Reichler va le démontrer, semblent étrangères à de tels intérêts et ont peu ou rien à voir avec l'établissement de la ligne qui devra être tracée, d'une façon négociée, entre le Nicaragua et le Costa Rica à partir du point final de leur frontière terrestre, en tenant compte de la décision que rendra la Cour dans l'affaire qui oppose le Nicaragua et la Colombie.

17. Dans cet ordre d'idées, on doit noter que la Cour, d'ailleurs avec le consentement des Parties, a donné au Costa Rica toutes facilités pour faire valoir ses prétentions dans le différend entre le Nicaragua et la Colombie, en mettant à sa disposition tous les documents de la procédure écrite. Sa situation n'est donc pas comparable à celles de Malte, en 1981, de l'Italie, en 1984, ou des Philippines, en 2001, Etats dont les demandes dans ce sens avaient été rejetées par la Cour du fait de l'objection élevée par l'une ou les deux Parties et qui se sont trouvés obligés de «plaider à l'aveuglette», sans pouvoir se fonder sur cette précieuse information[22]. Le Costa Rica a qualifié, lui-même, sa situation comme étant *privilégiée*[23].

18. L'une des caractéristiques les plus remarquables de la jurisprudence de la Cour sur les procédures incidentes concernant l'autorisation d'intervenir a été le caractère strict et rigoureux de ses exigences concernant la preuve de l'intérêt en cause. Comme il a été rappelé par l'agent, quand le Nicaragua a demandé à intervenir dans le volet maritime du différend territorial entre la République d'El Salvador et la République du Honduras, la Chambre de la Cour a rejeté l'intervention en ce qui concernait une éventuelle décision sur la délimitation des espaces

---

[22] Voir *Plateau continental* (*Tunisie-Jamahiriya arabe libyenne), requête à fin d'intervention, arrêt,* opinion individuelle du juge Schwebel, *C.I.J. Recueil 1981*, p. 35 ; *Plateau continental (Jamahiriya arabe libyenne/Malte), requête à fin d'intervention, arrêt,* opinion individuelle du juge Nagendra Singh, *C.I.J. Recueil 1984,* p. 33 ; *Souveraineté sur Pulau Ligitan et Pulau Sipadan (Indonésie/Malaisie), requête à fin d'intervention, arrêt,* opinion dissidente du juge Oda, *C.I.J. Recueil 2001*, p. 619, par. 15.

[23] Voir la requête à fin d'intervention du Costa Rica, par. 4.

maritimes dans le golfe de Fonseca et au-delà de sa ligne de fermeture. Le Nicaragua a allégué qu'on n'avait qu'à jeter un coup d'œil sur une carte pour se rendre compte que toute délimitation faite dans une aire aussi réduite que celle du golfe, à ses points extrêmes terrestres sous la souveraineté respective d'El Salvador et du Nicaragua, non seulement pouvait affecter, mais affecterait inévitablement ces intérêts.

19. Mais ce qui était évident aux yeux du Nicaragua, ne l'a pas été aux yeux de la Chambre, qui a considéré que ce pays avait failli à démontrer l'existence d'un intérêt juridique susceptible d'être mis en cause par un arrêt établissant la ligne de délimitation entre les Parties, soit à l'intérieur soit à l'extérieur du golfe, même si cela entraînait la fin du voisinage maritime entre El Salvador et le Nicaragua[24] ; d'où, au fait, il en résulte que, malgré ce que l'agent du Costa Rica a fait valoir, «la modification ou l'élimination de la relation de voisinage existant entre la Colombie et le Costa Rica dans la mer des Caraïbes» ne constitue pas un intérêt d'ordre juridique au sens de l'article 62 du Statut[25]. «Il arrive souvent en pratique», a déclaré la Chambre de la Cour dans l'arrêt du 13 septembre 1990,

> «qu'on doit tenir compte, pour procéder à une délimitation entre deux Etats, de la côte d'un Etat tiers, mais le fait de tenir compte … ne signifie aucunement que l'intérêt d'un troisième Etat … soit susceptible d'être affecté en raison même de cette délimitation… De toute façon, c'est à l'Etat demandant à intervenir ... qu'il incombe d'établir de manière satisfaisante … que tel serait effectivement le cas en l'espèce.» (*Différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras), requête à fin d'intervention, arrêt, C.I.J. Recueil 1990*, p. 92, p. 124-125, par. 77.)

20. En conséquence, on ne peut pas donner pour acquis un intérêt d'ordre juridique du Costa Rica susceptible d'être mis en cause par une décision de la Cour dans le différend entre le Nicaragua et la Colombie, du seul fait que le Costa Rica soit riverain d'une mer semi-fermée où il n'y a pas d'espaces maritimes échappant à la projection des riverains et qu'il prétende à une ligne de partage tracée conformément au principe d'équidistance[26]. Ceci explique peut-être un intérêt, un intérêt de fait, mais pas un intérêt d'ordre juridique et, encore moins, son éventuelle mise en cause par une délimitation faite par la Cour. Il faut démontrer que, au cas où la Cour accède aux

---

[24] *Différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras), requête à fin d'intervention, arrêt, C.I.J. Recueil 1990*, p. 127-128, par. 84.

[25] CR 2010/12, p. 19, par. 18 (Ugalde).

[26] Requête à fin d'intervention, par. 9, 14-19 et 22.

prétentions des Parties, telles qu'elles ont été exprimées, cela pourrait impliquer la négation des prétentions plausibles du tiers qui demande à intervenir justement pour protéger ses prétentions vis-à-vis de toute décision. Il ne s'agit pas de porter à l'extrême l'exigence de la preuve du titre ou du fondement de telles prétentions, mais celles-ci doivent être quand même raisonnables au regard des prétentions des Parties à l'affaire principale.

Ce que révèle l'expérience : à propos de l'article 59 du Statut

21. La plupart des requêtes à fin d'intervention soumises jusqu'à présent ont concerné des différends sur la délimitation d´espaces maritimes dans des mers fermées ou semi-fermées ou dans des golfes où se trouvaient des côtes et des îles de plus de deux Etats dont la projection maritime pouvait se superposer[27]. A une exception près, celle de la Guinée équatoriale, aucune de ces requêtes n'a prospéré.

22. Celui de la Guinée équatoriale était un cas très spécial. Tandis qu'une des Parties, le Cameroun, prétendait établir une ligne d'équidistance, ligne qui à partir d'un certain point pénétrait dans des espaces que la Guinée équatoriale pouvait revendiquer en raison de la localisation de l'île de Bioko, l'autre Partie, le Nigéria, a essayé de se servir de la doctrine du «tiers indispensable» comme base d'une exception préliminaire à la compétence[28]. La Cour a décidé de statuer sur cette exception dans l'arrêt sur le fond et en même temps a invité pratiquement les Etats voisins insulaires, notamment la Guinée équatoriale, à intervenir dans ce volet de l'affaire[29]. La Guinée a profité de l'invitation ; les parties ne s'y sont pas opposées. Il n'y a donc pas eu d'audiences orales sur la requête et la Cour a accepté l'intervention à l'unanimité. La singularité du cas a été soulignée par le fait que la décision de la Cour s'est traduite par une ordonnance et non par un

---

[27] Voir *Plateau continental* (*Tunisie-Jamahiriya arabe libyenne), requête à fin d'intervention, arrêt, C.I.J. Recueil 1981,* p. 3 ; *Plateau continental (Jamahiriya arabe libyenne/Malte), requête à fin d'intervention, arrêt, C.I.J. Recueil 1984,* p. 3 ; *Différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras), requête à fin d'intervention, arrêt, C.I.J. Recueil 1990,* p. 92 ; *Frontière terrestre et maritime entre le Cameroun et le Nigéria, requête à fin d'intervention, ordonnance du 21 octobre 1999, C.I.J. Recueil 1999,* p. 1029.

[28] *Frontière terrestre et maritime entre le Cameroun et le Nigéria (Cameroun c. Nigéria), exceptions préliminaires, arrêt, C.I.J. Recueil 1998,* p. 275.

[29] *Ibid.*

arrêt[30]. Finalement, la Cour a rejeté l'exception préliminaire du Nigéria et elle a protégé en même temps les intérêts guinéens qu'elle a considérés justifiés[31].

23. Tous les Etats qui invoquent l'article 62 du Statut pour demander à intervenir dans une affaire pendante devant la Cour s'efforcent de mettre en relief les limitations de l'article 59 du Statut pour protéger efficacement les intérêts juridiques des tiers au cas où la Cour n'accepterait pas leurs requêtes, et le Costa Rica ne fait pas exception[32]. Souligner les vertus de l'article 59 pour protéger ces droits est aussi un lieu commun des parties qui s'opposent aux requêtes. La Cour semble avoir évolué de la foi aveugle dans ces vertus[33] à l'acceptation de l'idée, motivée par les opinions critiques de certains juges[34], selon laquelle l'article 59 peut être insuffisant dans certains cas[35]. Cependant, cette observation ne change en rien les paramètres d'exigence que l'article 62 du Statut impose pour apprécier les conditions d'acceptation par la Cour d'une requête à fin d'intervention. La Cour ne doit pas accepter l'intervention au rabais. Le test de l'intervention, comme la Cour l'a dit lorsqu'elle s'est prononcée sur la requête de l'Italie, «n'est pas de savoir si la participation de l'Italie peut être utile ou même nécessaire à la Cour; elle est de savoir, à supposer que l'Italie ne participe pas à l'instance, si l'intérêt juridique de l'Italie est en cause ou s'il est susceptible d'être affecté par la décision» (*Plateau continental (Jamahiriya arabe libyenne/Malte), requête à fin d'intervention, arrêt, C.I.J. Recueil 1984*, p. 25, par. 40). L'Etat demandant à intervenir n'a rien à redouter de l'arrêt de la Cour dès lors que celle-ci a estimé que celui-ci ne portera pas atteinte à ses soi-disant intérêts juridiques. Et, par définition, sans un intérêt juridique en jeu on n'a rien du tout sur lequel informer la Cour.

---

[30] *Frontière terrestre et maritime entre le Cameroun et le Nigéria (Cameroun c. Nigéria), requête à fin d'intervention, ordonnance du 21 octobre 1999, C.I.J. Recueil 1999*, p. 1029.

[31] *Frontière terrestre et maritime entre le Cameroun et le Nigéria (Cameroun c. Nigéria ; Guinée équatoriale (intervenant)), arrêt, C.I.J. Recueil 2002*, p. 303.

[32] CR 2010/12, p. 49-56, par. 2-27 (Ugalde).

[33] *Plateau continental (Jamahiriya arabe libyenne/Malte), requête à fin d'intervention, arrêt, C.I.J. Recueil 1984*, p. 26, par. 42.

[34] *Plateau continental (Jamahiriya arabe libyenne/Malte), requête à fin d'intervention, arrêt, C.I.J. Recueil 1984*, opinion dissidente du juge Oda, p. 109, par. 37, opinion dissidente du juge Jennings, p. 157, par. 27.

[35] *Différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras), requête à fin d'intervention, arrêt, C.I.J. Recueil 1990*, p. 122, par. 73 ; *Différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras ; Nicaragua (intervenant)), arrêt, C.I.J. Recueil 1992*, p. 609-610, par. 421-424 ; *Frontière terrestre et maritime entre le Cameroun et le Nigéria (Cameroun c. Nigéria ; Guinée équatoriale (intervenant)), arrêt, C.I.J. Recueil 2002*, p. 421, par. 238.

24. Sur cette base, on peut faire plusieurs remarques. La première est que l'on demande à intervenir ou pas, que la requête soit acceptée ou pas, la Cour est tenue statutairement à ne pas se prononcer si elle considère que sa décision peut remettre en cause les droits d'un tiers, ce qui la conduirait à restreindre sa portée[36].

25. Deuxième remarque : on peut penser que si la Cour s'est montrée rigoureuse face aux requêtes à fin d'intervention c'est, au moins en partie, parce qu'elle considérait que le déroulement de la procédure incidente, lorsque l'objection d´une ou des deux Parties rendait nécessaire la tenue de ces audiences, satisfaisait l'objectif d'attirer l'attention de la Cour sur les intérêts juridiques invoqués par l'Etat tiers, évitant ainsi que, par mégarde ou manque d'information, la Cour ne prenne une décision susceptible de les mettre en cause. Comme le disait le juge Nagendra Singh en 1984 :

> «Si le but ainsi recherché était de signaler les zones intéressant l'Italie à la Cour, en donnant à celle-ci les informations préalables nécessaires pour que son arrêt n'empiète pas sur les droits souverains et les prétentions de l'Italie, il semble que ce but ait été effectivement atteint par la procédure qui a suivi la décision de la Cour, prise conformément à l'article 62 du Statut, d'entendre non seulement l'Italie, mais aussi les Parties au différend. Il est hors de doute que la Cour a maintenant pleine connaissance de l'existence des intérêts italiens et de leur étendue, et qu'il est donc impossible qu'elle empiète par sa décision sur les prétentions et les intérêts de l'Italie ou qu'elle les compromette, fût-ce par mégarde.» (*Plateau continental (Jamahiriya arabe libyenne/Malte), requête à fin d'intervention, arrêt, C.I.J. Recueil 1984*, opinion individuelle du juge Nagendra Singh, p. 31.)

26. Le plus extraordinaire est — et c'est la troisième remarque — que les Etats dont les requêtes d´intervention ont échoué ont, eux-aussi, reçu une protection similaire à celle de la Guinée équatoriale. Le cas de l'Italie a été retentissant. L'Italie a régné une fois morte. La Cour a rejeté sa requête d´intervention, car à son avis, l'Italie ne visait pas la protection de ses intérêts juridiques, mais la reconnaissance de ses droits, ce qui dépassait les limites de l'intervention envisagée à l'article 62 du Statut[37]; cependant la Cour a averti qu'elle allait sauvegarder dans l'arrêt sur le fond les intérêts juridiques des Etats tiers[38] ; ainsi, un an plus tard, lorsqu'elle a statué sur le fond, la Cour a bien tenu compte des intérêts juridiques invoqués par l'Italie au cours de la

---

[36] L'Italie dans l'affaire du *Plateau continental (Jamahiriya arabe libyenne/Malte), requête à fin d'intervention, arrêt, C.I.J. Recueil 1984*, p. 26, par. 42-43 ; *Plateau continental (Jamahiriya arabe libyenne/Malte), arrêt, C.I.J. Recueil 1985*, p. 25-26, par. 21.

[37] *Plateau continental (Jamahiriya arabe libyenne/Malte), requête à fin d'intervention, arrêt, C.I.J. Recueil 1984*, p. 3.

[38] *Ibid.*, p. 26-27, par. 42-43.

procédure incidente, comme d'un fait qui obligeait à soustraire à la délimitation entre la Libye et Malte les zones où l'Italie avait invoqué des intérêts juridiques plausibles[39]. La Cour s'est d'abord vue poussée à immoler la requête sur l'autel du consentement des Parties, pour essayer ensuite de satisfaire à la prétention raisonnable du requérant déçu en réduisant de manière draconienne l'objet du litige. Pour l'Italie, échouer à l´intervention a été une bonne affaire.

27. A la limite, et c'est la quatrième remarque, l'effet relatif de la décision de la Cour qui, d'après l'article 59 du Statut, «n'est obligatoire que pour les parties en litige et dans le cas qui a été décidé», contribue à protéger les intérêts de tout ordre des Etats tiers.

28. Finalement, et c'est ma dernière remarque, le Costa Rica figure parmi les Etats qui ont la chance d'initier une action à titre principal contre l'une ou l'autre des Parties dans cette affaire, car il a les bases de compétence nécessaires. Le Costa Rica est partie au pacte de Bogotá, au même titre que la Colombie et le Nicaragua. Le Costa Rica interprète de manière étonnante la portée de cette constatation factuelle faite par le Nicaragua[40]. Il ne s'agit pas du tout de priver les Etats qui ont une base autonome de juridiction de leur faculté de demander à la Cour l'intervention en conformité avec l'article 62 du Statut. Ce que le Nicaragua a voulu noter est que le Costa Rica ne se trouve pas dans une situation identique à celle des Etats qui n'ont pas d´alternative à la requête d'intervention (tel qu'était le cas de Malte, de l'Italie, du Nicaragua lui-même, de la Guinée équatoriale, des Philippines). Saisir la Cour à titre principal permet de passer de la protection à la reconnaissance des intérêts juridiques et, en même temps, évite la nécessité d'une analyse immédiate et rigoureuse de la nature de ces intérêts et de son éventuelle mise en cause par l'arrêt futur que requiert la procédure incidente d'intervention, test exigeant que la demande du Costa Rica ne passe pas[41].

Monsieur le président, Mesdames et Messieurs les juges, je vous remercie de votre attention et ayant achevé mon exposé je vous prie, Monsieur le président, de bien vouloir appeler à cette barre M. Paul Reichler.

---

[39] *Plateau continental (Jamahiriya arabe libyenne/Malte), arrêt, C.I.J. Recueil 1985*, p. 26, par. 21.

[40] CR 2010/12, p. 56-58, par. 28-41 (Ugalde).

[41] *Plateau continental (Jamahiriya arabe libyenne/Malte), requête à fin d'intervention, arrêt, C.I.J. Recueil 1984*, p. 23, par. 37.

Le PRESIDENT : Je vous remercie, Monsieur le professeur Antonio Remiro Brotóns, pour votre intervention. I now invite Mr. Paul Reichler to take the floor.

Mr. REICHLER

COSTA RICA HAS NO LEGAL INTERESTS THAT WOULD BE AFFECTED BY THE COURT'S DECISION IN THIS CASE

1. Mr. President, distinguished Members of the Court, good morning.

2. Some things are so blindingly obvious that they go undetected by even the most astute observers. Ironically, they go unobserved precisely because they are so obvious.

3. This is illustrated by the exchange between the great English detective, Sherlock Holmes, and Dr. Watson. While investigating a crime late into the night on an isolated Scottish heath, they decided to set up a tent to shelter them while they slept.

4. After a couple of hours, it rained very hard and they both awoke drenched to the bone. Holmes leaned over, nudged his companion. "Watson", he said, "look directly above us and tell me what you see". Watson put on his eyeglasses, looked up, and said: "I see a very dark sky, with thick and ominous clouds, and lots of rain pouring down on top of us." "And what do you conclude from that?" asked Holmes. Watson pondered for a minute, then said: "Meteorologically, there is an abnormally low pressure system, with a major storm front and unseasonably strong winds threatening record amounts of precipitation." "What do you conclude, Holmes?"

5. The great detective, soaking wet, looked straight up into the night at the rain pouring down on top of him, and said: "I conclude that someone has stolen our tent!"

6. Mr. President, Members of the Court, the conclusion in this matter is as obvious as that. It needs no abstruse, technical or scientific explanation, or magical manipulation of maritime maps. The conclusion to be drawn is as plain as day. But, like Dr. Watson, Costa Rica's counsel have looked right past it, even though it was staring them in the face.

7. On Monday, they gave us a visually impressive display of maps and charts, as well as a complex analysis of theoretical entitlements, disputed maritime areas and delimitation claims. But it is perfectly obvious — from their own maps and charts no less — that the delimitation to be carried out by the Court in this case cannot and will not affect Costa Rica's legal interests.

8. This conclusion is unavoidable for three reasons:

First, in a maritime delimitation case the Court cannot delimit an area in which a third State may have a claim. This is patently obvious, and in any event the Court has said so many times, and has always — always — avoided extending a delimitation line into areas claimed by third States[42].

Second, neither of the Parties has asked the Court to delimit any areas claimed by third States, including areas claimed by Costa Rica; neither the boundary lines claimed by Nicaragua nor those claimed by Colombia require, or even invite, the Court to delimit in areas claimed by Costa Rica. So the Court is not even called upon to delimit in the areas in which Costa Rica claims a legal interest.

Third, the Court is perfectly capable of deciding this case, and delimiting the boundaries between Nicaragua and Colombia, without extending the delimitation lines into areas claimed by Costa Rica. There is neither necessity nor reason for it to do so. The delimitation can and inevitably will be effected without including the areas claimed by Costa Rica. If, as is obviously the case, the decision will not affect Costa Rica's legal interests, then Costa Rica has failed to satisfy the main requirement for intervention under Article 62.

THE COURT HAS BEEN DULY INFORMED OF THE LEGAL INTERESTS COSTA RICA CLAIMS TO HAVE

9. Costa Rica has very helpfully informed the Court as to what it presently considers to be its interests of a legal nature in the Caribbean Sea. According to its counsel, its interests are bounded in the north by a putative equidistance line with Nicaragua, and in the east by a line that is 200 nautical miles from Costa Rica's coast[43]. Costa Rica claims, repeatedly, that the purpose of its intervention is to *inform* the Court of these legal interests, so that the delimitation in this case will not extend into that area. The Application to intervene states: "It is the purpose of Costa Rica's intervention *to inform the Court* of Costa Rica's legal interests and rights so that these may remain

---

[42]See e.g., case concerning the *Continental Shelf (Tunisia/Libya), Judgment, I.C.J. Reports 1982*, p. 18, para. 75, p. 91, para. 130, p. 93, para. 133 (B) (1); *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 129, paras. 208-209, p. 67, para. 219; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007*, p. 756, para. 312 and p. 759, para. 319; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Judgment, I.C.J. Reports 2001*, p. 109, para. 221; *Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, p. 27; *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, pp. 26-28, paras. 21-23.

[43]See Costa Rica's judges' folder, tab 10; CR 2010/12, pp. 33-39, paras. 4-29 (Lathrop).

unaffected as the Court delimits the maritime boundary between Nicaragua and Colombia, the parties to the case before it."[44] This was repeated several times in the first round by Costa Rica's Agent and counsel[45].

10. After the hearings on Monday, there can be no doubt that Costa Rica has accomplished its purpose. It has made perfectly clear what it now considers its legal interests to be. The Court and the Parties are aware of them, and as a result it has become even more obvious that those interests cannot and will not be affected by the judgment to be given. In the *Tunisia/Libya* case, where Malta's Application to intervene under Article 62 was denied by the Court, it was argued that: "the avowed object of Malta has in fact already been achieved by the hearings on the question of intervention, in view of the explanations Malta has there been able to give of its preoccupations" (*Continental Shelf (Tunisia/ Libyan Arab Jamahiriya), Application to Intervene, Judgment, I.C.J. Reports 1981*, p. 11, para. 16). Like Malta, Costa Rica has made the Court aware of its preoccupations. There is no further contribution it need be called upon to make to these proceedings.

11. In this case, neither Party has asked the Court to delimit any part of the maritime area in which Costa Rica now claims to have legal interests. Nicaragua certainly has made no such request. To leave no doubt about its position, Nicaragua reiterates that it does not seek from the Court any delimitation in the area in which Costa Rica now considers itself to have legal interests. Nicaragua does not read Colombia's written pleadings as calling for delimitation of, or within, the areas in which Costa Rica has expressed an interest, either.

12. And since the Court itself is guided by its own Rules and precedents against delimiting in areas claimed by third States, it is a given that the decision in this case will not affect Costa Rica's legal interests. The Court having now been duly informed of Costa Rica's precise interests, it can only note that they are insufficient to justify intervention in this case, and that no purpose would be served by allowing Costa Rica to intervene. Costa Rica itself offers none. As it has repeatedly emphasized, its purpose in bringing this Application was to inform the Court of its legal interests.

---

[44]Application for permission to intervene by the Republic of Costa Rica, 25 Feb. 2010, p. 2.

[45]See, e.g., CR 2010/12, p. 43, para. 40 (Lathrop); *ibid.*, p. 45, paras. 45 and 46 (Lathrop).

It has now done so. Mission accomplished. On that happy note, Costa Rica, like the Cheshire cat in *Alice in Wonderland*, can slowly fade away, leaving only its smile behind.

13. These points are confirmed by the maps and charts, including those displayed by Costa Rica on Monday.

COSTA RICA'S CLAIMED LEGAL INTERESTS WILL NOT BE AFFECTED BY THE DECISION IN THIS CASE

[Slide 1: PSR1]

14. Here is how Costa Rica, at these hearings, describes its legal interests[46]. Nicaragua believes that Costa Rica's true legal interests in the Caribbean are not this extensive, as I will come to later in my speech. But this makes no difference for purposes of determining whether Costa Rica's interests can be affected by the decision in this case. Even as broadly defined as they are now, on this map, they cannot be affected by the Court's decision. Here is why.

15. First, Nicaragua asks the Court to effect the delimitation with Colombia by enclaving San Andrés, Providencia and any other islands or maritime features the Court awards to Colombia [Slide 1: PSR1]. It cannot be argued — and Costa Rica does not argue — that its interests are affected by these red delimitation lines. Nicaragua also asks the Court to delimit the continental shelf boundary with Colombia [Slide 1: PSR1]. This line does not enter or encroach on any areas in which Costa Rica has legal interests. Costa Rica does not claim that it does. In fact, Costa Rica expressly claims that its legal interests extend no farther east than 200 nautical miles from its coast[47]. The continental shelf boundary with Colombia lies more than 118 nautical miles further east of that limit. In its Application to intervene, Costa Rica admits that Nicaragua's proposed continental shelf boundary with Colombia is "beyond any area to which Costa Rica claims an entitlement"[48].

16. To be absolutely clear, Nicaragua's claim is merely that the line dividing the continental shelf of Nicaragua from the continental shelf of Colombia lies where Nicaragua has placed it. It expresses no opinion as to the location of any lateral delimitation lines with Costa Rica or any other

[46]Costa Rica's judges' folder, tab 8.

[47]CR 2010/12, p. 26, para. 23 (Brenes).

[48]Application for permission to intervene by the Republic of Costa Rica, 25 Feb. 2010, p. 4.

State west of that boundary line. It makes no claim in these proceedings, vis-à-vis Costa Rica or any other third State, of entitlement to the waters west of this proposed boundary line.

17. So, it is plain that Nicaragua's boundary claims do not encroach upon Costa Rica's legal interests, or require the Court to delimit areas claimed by Costa Rica.

18. To make it appear otherwise, Costa Rica resorts to two false arguments. First, Costa Rica says that Nicaragua claims entitlement to all of the maritime area lying west of its proposed continental shelf boundary with Colombia[49]. "[W]hat it seeks from the Court" Costa Rica's counsel say about Nicaragua "is not merely the drawing of a boundary line with Colombia, but also the recognition of the maritime areas bounded by that line as belonging to Nicaragua"[50]. This is simply not true. They say it anyway because it is the only way they can pretend to show how a potential delimitation by the Court might affect their legal interests. But nowhere in its written pleadings has Nicaragua made such a claim. And the Agent of Nicaragua has confirmed today that Nicaragua does not claim in these proceedings, and does not ask the Court for delimitation in, maritime areas west of the continental shelf boundary, except for the enclaves it seeks around Colombia's insular possessions close to Nicaragua's coast.

19. In support of its attribution to Nicaragua of an argument it never made, and now has expressly abjured, Costa Rica's counsel insist that, despite what Nicaragua says, its boundary claim is actually reflected in its graphics showing its "potential EEZ entitlement"[51]. This is no more credible than claiming that Costa Rica's legal interests extend to what its counsel called its "Caribbean Maritime Entitlements in the Absence of Neighboring States Entitlements" [52] [slide 2: PSR2]. This is a Costa Rican chart displayed on Monday. As counsel made clear, this is not the area actually claimed by Costa Rica or the area in which it says it has legal interests. It is, in his words, nothing more than "the hypothetical extent of Costa Rica's maritime zones" presented "in the abstract"[53]. It is a starting point for an analytical process, consistent with the methodology

---

[49]CR 2010/12, p. 41, para. 34 (Lathrop); p. 48, para. 13 (Ugalde).

[50]*Ibid.*

[51]Application for permission to intervene by the Republic of Costa Rica, 25 Feb. 2010, para. 17; CR 2010/12, p. 48, para. 13 (Ugalde); *ibid.*, p. 42, para. 36 (Lathrop). Referring to RN, figures 4-5, 6-5, 6-9, 6-10, and 6-11.

[52]Application for permission to intervene by the Republic of Costa Rica, Oral Proceedings, judges' folder, 11 Oct. 2010, tab 3.

[53]CR 2010/12, p. 33, para. 5 (Lathrop).

cited by the Court in numerous maritime delimitations, for ultimately arriving at justifiable, and more limited, legal claims. This chart no more depicts the area in which Costa Rica claims a legal interest, than Nicaragua's chart of its "potential EEZ entitlement" depicts its actual boundary claims. As stated in Nicaragua's Written Observations, all of the charts held up by Costa Rica in its Application and again on Monday[54]: "refer to the general area of the 'potential EEZ entitlement', and do not imply, under any possible reading, a claim to the entirety of the areas thus roughly sketched"[55]. It is disappointing that Costa Rica's counsel would seek to confuse these Nicaraguan charts — the equivalent of those depicting Costa Rica's expansive "hypothetical" claims "in the abstract" — with the much more limited charts showing Nicaragua's actual claims. They have deliberately compared apples to oranges in an attempt to sell the Court the wrong fruit — and a rotten one at that.

20. The second false argument advanced by Costa Rica, to show a purported encroachment by Nicaragua's boundary claim, is the one depicted on Costa Rica's chart No. 10 in its judges' folder. Here Costa Rica shows the claim line originally proffered in Nicaragua's Memorial as extending slightly into the area in which Costa Rica claims to have a legal interest [slide 3: PSR3]. May we have that line please? Thank you. The argument fails for two reasons. First, as made clear in the Reply, this line no longer represents Nicaragua's boundary claim; it therefore has no relevance to Costa Rica's Application to intervene. Second, the arrow at the southern tip of the line is a standard indicator that the line is not intended to extend into areas claimed by third States; to the contrary, the arrow indicates only the direction that the line follows up to, but not beyond, areas claimed by another State. It proves the opposite of what Costa Rica contends: that Nicaragua is seeking to avoid a delimitation affecting Costa Rica's interests, or those of any other State.

21. Costa Rica is just as unsuccessful in its attempt to depict Colombia's boundary claim as encroaching on its legal interests [slide 3: PSR3]. On Monday, Costa Rica described its agreed boundary with Colombia as consisting of two straight line segments forming a right angle at

---

[54]Application for permission to intervene by the Republic of Costa Rica, 25 Feb. 2010, para. 17; CR 2010/12, p. 41, para. 36 (Lathrop).

[55]Written Observations of the Republic of Nicaragua on the Application for permission to intervene filed by the Republic of Costa Rica, 26 May 2010, p. 12, para. 31.

point B[56]. These are shown in red. In the words of Costa Rica's counsel, the line extending north from point B has an arrow at the end to indicate that it "extends north to an unspecified point where it would intersect with Nicaragua"[57]. So here Costa Rica uses an arrow to indicate that its delimitation line extends to, but not beyond, the areas claimed by a neighbouring State. Yet Costa Rica chooses to ignore the arrow placed by Nicaragua at the end of its former delimitation line for the same purpose.

22. Costa Rica contends that Colombia's claimed boundary line with Nicaragua extends south into its maritime area[58] [slide 3: PSR3]. But here again, we see the well-recognized symbol, the arrow, indicating the direction of Colombia's putative boundary line until it meets the area claimed by a third State, in this case Costa Rica. It is plain from that arrow that Colombia does not intend this line to extend into Costa Rica's waters. Colombia even says this in its Counter-Memorial, in a passage cited in Costa Rica's Application: "There is a question how far the median line should be prolonged to the south given the potential interests of third States in the region. To avoid any possible prejudice to such rights, Colombia has placed an arrow at the end of the line . . ."[59]

23. In this regard, it is worth commenting on the exegesis of the Court's four most recent decisions in maritime delimitation cases that was so eruditely presented on Monday by Costa Rica's counsel [slide 4: PSR4]. He very helpfully pointed out and showed graphically that in *Romania* v. *Ukraine*, the Court terminated the delimitation line with a directional arrow, short of the areas of the Black Sea where third States might have interests[60]. Likewise, [slide 5: PSR5] he cited *Honduras* v. *Nicaragua*, in which the Court used a dashed line to indicate the direction of the delimitation line extending up to, but not beyond, areas claimed by third States[61]. And, as counsel also pointed out, in *Cameroon* v. *Nigeria* and *Qatar* v. *Bahrain*, the Court took pains to assure that

---

[56]CR 2010/12, p. 22, para. 7 (Brenes).

[57]*Ibid.*

[58]Application for permission to intervene by the Republic of Costa Rica, 25 Feb. 2010, para. 20; Costa Rica's judges' folder, tab 10.

[59]Application for permission to intervene by the Republic of Costa Rica, 25 Feb. 2010, para. 20 (citing CMC, para. 9.34).

[60]CR 2010/12, p. 44, para. 42 (Lathrop). See, also, Costa Rica's judges' folder, tab 6.

[61]*Ibid.* See, also, Costa Rica's judges' folder, tab 7.

the delimitation lines in those cases did not encroach on areas claimed by Equatorial Guinea or Sao Tomé in the former case, or Iran or Saudi Arabia in the latter[62].

24. As Costa Rica's counsel concluded on Monday:

> "The question of endpoints in the vicinity of third States . . . arises in the majority of bilateral delimitations. State practice and the practice of international courts and tribunals indicate a strong concern to avoid entering areas in which third States . . . might reasonably maintain an interest."[63]

25. We not only agree with counsel for Costa Rica about the holdings and import of these cases; we submit that he has made our argument for us. He has provided cogent and convincing reasons why Costa Rica's Application to intervene should be disallowed. Simply put, consistent with its past practice, the Court cannot and will not delimit in areas claimed by third States. The Court has very studiously and very successfully avoided doing so in every prior case in which this has been an issue — including as far back as *Libya/Malta* (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, pp. 26-28, paras. 21-23). There is no risk that, in this case, the Court will delimit in the areas in which Costa Rica has expressed its legal interests. The Court simply cannot do so, and neither of the Parties has asked it to do so.

26. Since there is no risk that the Court's decision will affect Costa Rica's maritime claims, the Application very obviously fails to satisfy the requirements of Article 62, and must be denied. No other interests of a legal nature have been proffered by Costa Rica in support of its Application. In its decision rejecting Nicaragua's Application to intervene in the *Land, Island and Maritime Frontier Dispute*, the Chamber said that Article 62 requires the applicant to "*demonstrate convincingly* . . . the interest of a legal nature which it considers may be affected by the decision in the case" (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, pp. 117-118, para. 61; emphasis added.) It is very obvious that Costa Rica has failed to meet this test.

THE LEGAL INTERESTS OF COSTA RICA, PROPERLY DEFINED

27. As I indicated earlier, Nicaragua does not agree that Costa Rica has legal interests in the entire area described in its Application, or by its counsel on Monday. To the contrary, Nicaragua

---

[62]CR 2010/12, p. 44, para. 42 (Lathrop).

[63]*Ibid.*, p. 43, para. 41 (Lathrop).

believes that Costa Rica's legal interests are confined to a smaller area, an issue I will now address. Of course, if the delimitation effected by the Court will not encroach on or affect the broader area now claimed by Costa Rica, it must also be true that it will not impact the smaller area to which Costa Rica's interests are more appropriately confined.

28. Costa Rica defined its legal interests in the Caribbean Sea — as perceived by itself — in its 1977 Treaty establishing a maritime boundary with Colombia, and its 1980 Treaty establishing a maritime boundary with Panama. Under the terms of those treaties, the maritime boundaries of Costa Rica are defined by the lines you see depicted on this sketch map. [Slide 6: PSR6.] For the reasons I will now discuss, we say that Costa Rica's legal interests in the Caribbean Sea remain as described in its boundary treaties with Colombia of Panama, and that, these interests cannot be affected by the decision of the Court in this case.

29. It is not uncommon for international tribunals to define a State's maritime interests by reference to its existing treaties. In the 2006 Award in the arbitration between Barbados and Trinidad and Tobago, for example, the distinguished arbitral tribunal determined the scope of what it characterized as the "maritime claims of Trinidad and Tobago"[64] by reference to that State's treaty with Venezuela. As the tribunal stated:

> "The maritime areas which Trinidad and Tobago has, in the 1990 Trinidad Venezuela Agreement, given up in favour of Venezuela do not any longer appertain to Trinidad and Tobago and thus the Tribunal could not draw a delimitation line the effect of which is to attribute to Trinidad and Tobago areas it no longer claims."[65]

The same could be said, *mutatis mutandis*, with respect to Costa Rica here. Both by signing the 1977 Treaty with Colombia, and by its subsequent practice over a 33-year period, Costa Rica has shown that it did not consider the areas beyond the 1977 Treaty line as appertaining to itself, and therefore any decision by the Court in regard to those areas could not affect its legal interests.

---

[64] Arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the exclusive economic zone and the continental shelf between them, decision of 11 Apr. 2006, United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. XXVII, para. 347.

[65] *Ibid*.

30. Costa Rica attempts to distinguish its situation on the ground that it has not yet ratified its 1977 Treaty with Colombia. On this basis, Costa Rica in effect asks the Court to ignore that treaty, and to recognize interests of a legal nature now claimed by Costa Rica in areas that extend beyond the limits fixed by that treaty.

31. This is a difficult position for Costa Rica to sustain in view of its own consistent course of conduct following the execution of the 1977 Treaty. Costa Rica has always manifested its intention to comply with the provisions of that treaty, and the limits of its maritime jurisdiction set forth therein. In its Application to intervene it states that it "has, in good faith, refrained from acts which would defeat the object and purpose of this agreement"[66], echoing of course the requirement of Article 18 of the Vienna Convention on the Law of Treaties in regard to unratified treaties to which States intend to be bound.

32. Costa Rica's intention to comply with the 1977 Treaty was made even more explicit in its formal, bilateral communications with Colombia. In 1996, the Costa Rican Foreign Minister sent his Colombian counterpart a diplomatic Note stating:

> "[I] inform Your Excellency that . . . the Government of Costa Rica's view, in full harmony with international norms as embodied in the Vienna Convention on the Law of Treaties, the Treaty on Maritime Delimitation between Colombia and Costa Rica has been complied with, is being complied with and will continue to be complied with, as a show of good faith of the Parties."[67]

33. It is also of some significance that the 1977 Treaty is not a stand-alone instrument. Some of its provisions have been incorporated into two other maritime boundary treaties that *have* been ratified by Costa Rica. The first treaty is Costa Rica's 1980 Treaty with Panama, which was ratified by Costa Rica the following year[68]. In Article 1, paragraph 1, of the 1980 Treaty, Costa Rica's maritime boundary with Panama is defined by a straight line drawn from the land boundary

---

[66]Application for permission to intervene by the Republic of Costa Rica, 25 Feb. 2010, para. 12.

[67]CMC, Ann. 69: Diplomatic Note No. DVM 103 from the Costa Rican Foreign Vice-Minister to the Colombian Ambassador in Costa Rica, 23 Mar. 1997. See, also, Ann. 69: Diplomatic Note No. DVM 103 from the Costa Rican Foreign Vice-Minister to the Colombian Ambassador in Costa Rica, 23 Mar. 1997; Ann. 217: Statement given by Mr. Gonzalo J. Facio, Costa Rican signatory of the 1977 Treaty and former Foreign Minister, at the Costa Rican Foreign Ministry, 27 Aug. 1998; *Memoria del Ministerio de Relaciones Exteriores y Culto* (2000-2001), p. 14, http://www.rree.go.cr/ministerio/files/Memoria%202000-2001.pdf.

[68]See American Society of International Law, *International Maritime Boundaries*, Vol. I, J. I. Charney & L. M. Alexander (eds.), 1996, p. 537; Costa Rica of Foreign Affairs, http://www.rree.go.cr/servicios/index.php?Tipo=&stp=60&langtype=&SID=&Id=733&IdFicha=pan007&Country=&Tipo=Bilateral&Embajada=&UserName=&str_table=tbl_pe_tratado_bilateral_esp.

terminus to a point at sea located at 10º 49' N by 81º 26' 08.2" W "where the boundaries of Costa Rica, Colombia and Panama intersect"[69]. This tripoint — where the boundaries of Costa Rica, Colombia and Panama intersect — could only be such if there were pre-existing boundaries recognized between Colombia and Costa Rica and between Colombia and Panama.

34. [Slide71: PSR7] On this slide, the Costa Rica/Colombia boundary from the 1977 Treaty is shown in green. The Colombia/Panama boundary, agreed in 1976, is shown in blue. The boundary between Costa Rica and Panama is shown in red. The tripoint referred to in the latter treaty is circled in black. This tripoint between Costa Rica, Colombia and Panama is formed in part by, and could not exist without, the agreed green boundary line between Costa Rica and Colombia. What is plain from this tripoint is that the boundary line from the 1977 Costa Rica/Colombia Treaty was taken as an agreed boundary, and then incorporated into the boundary established by the 1980 Costa Rica/Panama Treaty, which was ratified by Costa Rica in 1981.

35. The 1977 boundary line between Costa Rica and Colombia was acknowledged again in the 1984 Treaty between Costa Rica and Colombia defining the maritime boundary in the Pacific Ocean. This latter treaty was ratified by both States and entered into force in 2001. Paragraph 1 of the Preamble to the 1984 Treaty states: "That the 'Treaty on the Delimitation of Marine and Submarine Areas and Maritime Cooperation', signed on 17 March 1977, established — *establació* in Spanish — the maritime boundary between the two States in the Caribbean Sea."[70]

36. This point is further reflected in the graphics Costa Rica displayed on Monday. Figure 4 in Costa Rica's judge's folder bears the following caption: [slide 8: PSR8] "Costa Rica's Maritime Entitlements Are Limited by Agreements with Treaty Partners Panama and Colombia." We agree.

37. It is undisputed that Costa Rica has complied with the 1977 Treaty ever since it was executed, including to this day. Costa Rica says as much, and there is no reason to disbelieve it on this point. There is no evidence that the 1977 Treaty leaves Costa Rica short-changed in terms of

[69]Available at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/CRI.htm.

[70]Available at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/CRI.htm.

its maritime interests. As Ambassador Argüello pointed out, citing Charney and Alexander, Costa Rica achieved significant benefits from this agreement[71]. According to Prosper Weil:

> "It cannot be denied that a delimitation on which two States agree reflects their view of the equity of both the method of delimitation and the result, since governments are hardly likely to subscribe to a solution which they would consider inequitable."[72]

38. Nicaragua recognizes that, absent ratification, Costa Rica may not be formally bound by the 1977 Treaty. Our point is a different one. It is that the Treaty and Costa Rica's consistent conduct thereunder demonstrate what Costa Rica's perception of its own legal interests truly are. Costa Rica cannot simply invent new legal interests to suit its present purposes, and particularly in order to intervene in these proceedings under Article 62. After 33 years of maintaining a consistent and public view of its legal interests, and conducting itself in strict accordance with that view in all respects, the Court should treat with some caution Costa Rica's sudden effort to throw the entire historical and geographical record out the window in order to claim a new, expanded set of interests in regard to Nicaragua alone.

39. Costa Rica cannot escape the force of this argument by its repeated incantation of the phrase *res inter alios acta* or its reliance on Article 34 of the Vienna Convention on the Law of Treaties. Of course, Nicaragua derives no rights or obligations from the bilateral Treaty between Costa Rica and Colombia per se. But the point is that, since the 1977 Treaty, Costa Rica has consistently and openly defined its maritime boundary, and the limits of its maritime jurisdiction, in a certain manner, and has publicly disclaimed entitlement to areas lying beyond that boundary. Nicaragua submits that Costa Rica should be held to this disclaimer. At the very least, the Court is entitled to take it into account in ascertaining, for the purpose of these proceedings, the true nature of Costa Rica's legal interests.

40. Costa Rica's new definition of its legal interests is also problematical because it is discriminatory. As its counsel made clear on Monday, Costa Rica's view is, on the one hand, if the maritime area immediately beyond the limits accepted by Costa Rica in the 1977 Treaty belongs to Colombia, Costa Rica has no legal interests in that area. But, on the other hand, if the area beyond

---

[71]American Society of International Law, *International Maritime Boundaries,* Vol. I, J. I. Charney & L. M. Alexander (eds.), 1996, Vol. I, pp. 465-466.

[72]Prosper Weil, *The Law of Maritime Delimitation: Reflections,* 1989, p. 154.

Costa Rica's agreed limits belongs to Nicaragua, then Costa Rica claims legal interests in the area[73]. No further explanation is given. So much for good neighbourliness, at least in regard to Nicaragua.

41. Costa Rica's counsel said on Monday that the reason Costa Rica did not ratify the 1977 Treaty was out of deference to Nicaragua[74]. In other words, Nicaragua brought Costa Rica's newly-expanded maritime claim upon itself by protesting the treaty with Colombia which contains a more modest claim. Costa Rica refrained from ratifying the Treaty with Colombia in deference to Nicaragua's protest? That is news to Nicaragua, as the Agent of Nicaragua pointed out. It will also be news to Costa Rica's Parliament, which has given a number of reasons for demurring on the Costa Rican Government's request for ratification of the Treaty — none of which included Nicaragua's protest[75]. In 1998, Costa Rica's Foreign Minister issued a public statement that the Costa Rican Parliament should ratify the 1977 Treaty regardless of Nicaragua's objection[76]. So much for deference to Nicaragua.

CONCLUSIONS

42. [For the benefit of the worthy interpreters, I have moved to paragraph 45 in the interests of saving time.] There is no mystery to Costa Rica's strategy here. In 1977, Costa Rica knowingly and intentionally made a deal with Colombia. In return for Colombia's blessing of its maritime claims, it entered an agreement in which it recognized Colombia's jurisdiction over maritime areas also claimed by Nicaragua[77]. It has enjoyed the benefits of that bargain for 33 years, never complaining about it. Now, all of a sudden, it senses an opportunity to lay claim to a larger maritime area, at Nicaragua's expense. Now, all of a sudden, the deal it made with Colombia 33 years ago is not good enough. Now, all of a sudden, that agreement was based on mistaken assumptions that Costa Rica has suddenly discovered 33 years down the road — late, but as far as

---

[73]CR 2010/12, p. 36, para. 16 (Lathrop).

[74]*Ibid*., p. 22, para. 8 (Brenes).

[75]American Society of International Law, *International Maritime Boundaries*, Vol. I, J. I.. Charney & L. M. Alexander (eds.), 1996, pp. 465-466.

[76]Ann. 217: statement given by Mr. Gonzalo J. Facio, Costa Rican signatory of the 1977 Treaty and former Foreign Minister, at the Costa Rican Foreign Ministry, 27 Aug. 1998.

[77]See American Society of International Law, *International Maritime Boundaries*, Vol. I, J. I. Charney & L. M. Alexander (eds.), 1996, pp. 465-466.

Costa Rica is concerned, not too late to attempt to abandon its long-held understanding of its legal interests in the Caribbean, and invent new ones for the purpose of asserting them against Nicaragua, and only against Nicaragua.

43. In Nicaragua's view, this is an unsustainable position, not least because the bases on which Costa Rica attempts to break out of its long-accepted maritime limits — its alleged mistaken assumptions — are insufficient both as an evidentiary and a legal matter to accomplish that objective. The 1977 Treaty and Costa Rica's consistent conduct for more than 30 years evidence its legal interests in the Caribbean Sea, and limit them to the maritime area defined by that Treaty and subsequent practice. That area, shown on the screen behind me [slide 10: PSR10], cannot be affected by the Court's decision in this case. Not even Costa Rica argues that it could be affected by the decision. If this area defines Costa Rica's interests, then even Costa Rica concedes its Application to intervene fails to satisfy Article 62.

44. But even if the Court were to take Costa Rica's new definition of its legal interests into consideration, the result would be the same, as I explained in some detail in the first part of my speech. Even the expanded area now claimed by Costa Rica as its area of legal interest cannot be affected by the decision of the Court in this case, under any circumstances, because the Court cannot and does not delimit in any area claimed by a third State. The Court has been duly informed precisely of what Costa Rica now considers to be its legal interests in the Caribbean Sea. The Parties do not seek delimitation in that expanded area described by Costa Rica on Monday — in fact, they expressly abjure it. It can therefore be concluded ineluctably that Costa Rica's interests will not — cannot — be affected by the decision in this case. As a result, the Application to intervene cannot be justified under Article 62. It must be disallowed by the Court.

45. Mr. President, distinguished Members of the Court, this concludes my presentation. It is now time for me to fade away, leaving behind Nicaragua's first round presentation. Thank you for your patience and your courteous attention.

The PRESIDENT: I thank Mr. Paul Reichler for his presentation. This statement, as Mr. Paul Reichler himself stated, brings to an end the first round of oral argument of Nicaragua.

As I announced earlier, the Court proposes that we have a short coffee break of 10 minutes until 11.20 and then we come back to the first round of oral argument of Colombia.

The Court rose at 11.05 a.m.

_____