Non Corrigé
Uncorrected

Traduction
Translation

CR 2010/22 (traduction)

CR 2010/22 (translation)

Vendredi 22 octobre 2010 à 15 heures

Friday 22 October 2010 at 3 p.m.

10 Le PRESIDENT : Veuillez vous asseoir. L'audience est ouverte. La Cour se réunit aujourd'hui pour entendre le Nicaragua et la Colombie en leur second tour de plaidoiries. Je donne tout d'abord la parole à S. Exc. M. Carlo Argüello Gómez, agent du Nicaragua.

M. ARGUELLO GOMEZ : Monsieur le président, Mesdames et Messieurs de la Cour, bonjour.

1. La semaine que nous venons de passer a été des plus inhabituelles. Pour ma part, je ne puis que louer la Cour pour la patience avec laquelle elle a écouté des arguments qui remettaient en cause le sens, qu'elle avait pris pourtant soin de rendre très clair, de son arrêt d'octobre 2007.

2. Le conseil du Honduras balaie du revers de la main l'importance que le Nicaragua accorde au caractère définitif de cet arrêt en ce qui concerne la question de la délimitation maritime entre le Nicaragua et le Honduras dans la mer des Caraïbes, en le qualifiant de «leitmotiv de la chose jugée»[1]. Et c'en est bien un. C'est même le leitmotiv de toute cette procédure. Le conseil du Honduras a également indiqué que, dans le cas où il ne serait pas autorisé à intervenir, il lui demeurerait loisible d'engager «de nouvelles procédures contre le Nicaragua et la Colombie», et de «demander que ces procédures soient jointes à la présente affaire»[2]. S'il le faisait, il ne me resterait plus qu'à lui opposer une fois encore notre sempiternel «leitmotiv de la chose jugée».

3. La question de la chose jugée entache à tel point la requête à fin d'intervention du Honduras que, comme l'expliquera le professeur Pellet, elle rejaillit également sur toute affirmation de compétence que le Honduras pourrait avancer au titre du pacte de Bogotá. L'article VI du pacte exclut tout recours dans le cas de questions déjà tranchées par une instance internationale. La requête à fin d'intervention ne devrait donc pas avoir été soumise à la Cour, et celle-ci devrait l'écarter sans autre forme de procès.

4. Monsieur le président, la Colombie a cette semaine encore — comme elle l'avait fait la semaine passée, dans le cadre des audiences consacrées à la requête à fin d'intervention du Costa Rica — plaidé sur le fond de la présente affaire. Aussi n'avons-nous guère été surpris de lire dans la presse régionale que certains de ses hauts représentants avaient publiquement remercié le

---

[1] CR 2010/21, p. 12, par. 16 (Wood).

[2] *Ibid*, p. 18, par. 38.

Costa Rica et le Honduras de l'aide apportée à la Colombie dans le cadre de l'affaire pendante devant la Cour[3].

11 5. Pour ne pas faire perdre davantage de temps à la Cour, je résisterai à la tentation de réfuter les affirmations d'ordre factuel et juridique avancées au fond par la Colombie — ainsi que par le Honduras —, et me contenterai de réserver de manière générale la position du Nicaragua sur l'ensemble de ces points.

6. Mercredi dernier, la Colombie a versé au dossier des juges — à l'onglet 2 — un graphique intitulé «zone dans laquelle le Honduras prétend avoir des intérêts juridiques» (CAG 1). Ce graphique montre bien pourquoi le Nicaragua a dû solliciter l'assistance de la Cour pour contrer la tentative d'amputer son espace maritime. Sur le graphique, nous pouvons voir les frontières instituées par différents traités et en vigueur actuellement entre les parties à ces instruments : Costa Rica/Panama, Panama/Colombie et Jamaïque/Colombie. Ces frontières ne sont pas en cause en la présente instance. Ce qui, en revanche, est assurément en cause, au nord, c'est le rectangle que revendique à présent le Honduras, et dont la base, au sud, est constituée par le parallèle de 14° 59' 08" de latitude nord, comme si l'arrêt de 2007 n'avait jamais existé. La souveraineté sur les formations que nous voyons au centre du graphique — trois petites îles inhabitées : San Andrés, Providencia et l'îlot de Santa Catalina, ainsi que quelques cayes — est en litige en la présente affaire. Toutes ces formations qui représentent en tout une masse terrestre d'une superficie de 44 kilomètres carrés seulement, sont reproduites sur le graphique dans des proportions qui n'ont rien à voir avec leurs dimensions réelles, et se taillent clairement la part du lion dans les espaces maritimes de la région. La longue côte continentale du Nicaragua se retrouve ainsi avec moins de 80 milles de mer territoriale et de plateau continental. Pour mieux faire comprendre la situation, nous avons ajouté la ligne d'équidistance que le Costa Rica a revendiquée en tant que frontière maritime avec le Nicaragua lors des audiences de la semaine dernière. Sur le graphique (CAG 1), nous pouvons voir que, rien que dans la zone représentée, les îles et cayes revendiquées par la Colombie se voient attribuer des zones maritimes d'une superficie de plus de 166 000 kilomètres carrés, tandis que le littoral nicaraguayen n'en engendre qu'un peu moins de 58 000 kilomètres

[3] *El Nuevo Diario*, 21 octobre 2010, «Colombia valora postura de Honduras y Costa Rica en litigio con Nicaragua».

carrés. C'est la raison pour laquelle nous avons saisi la Cour, et introduit une instance contre le Honduras, et une instance contre la Colombie.

7. L'affaire *Nicaragua c. Honduras* a été tranchée par l'arrêt de la Cour en date du 8 octobre 2007. Telle est l'affaire que le Honduras — et la Colombie — s'emploient à rouvrir.

8. Mais il y a un autre arrêt de la Cour qui n'a pas été mentionné. En la présente espèce, la Colombie a en effet soulevé des exceptions préliminaires et affirmé, entre autres, que le traité de 1928 conclu par elle avec le Nicaragua avait fixé une frontière maritime suivant le 82e méridien, et que, de ce fait, la Cour n'avait pas compétence, cette question ayant déjà été réglée par les Parties aux termes de ce traité. Or, dans son arrêt du 13 décembre 2007, la Cour a conclu que «le

12

traité de 1928 et le protocole de 1930 n'[avaient] pas opéré de délimitation générale des espaces maritimes entre la Colombie et le Nicaragua»[4] et a unanimement décidé de rejeter «l'exception d'incompétence en ce qu'elle a[vait] trait à la délimitation maritime entre les Parties»[5].

9. Tant la Colombie que le Honduras ont fait valoir que le traité de 1986 n'avait pu être affecté par l'arrêt d'octobre 2007, et le Nicaragua en convient pour autant qu'il s'agisse de la Colombie, laquelle n'était pas partie à l'affaire. Mais un aspect important a été omis. Le traité entre la Colombie et le Honduras prenait pour point de départ le point de coordonnées 14° 59' 08" de latitude nord et 82° 00' 00" de longitude ouest ; autrement dit, la ligne de délimitation commençait à l'intersection du 82e méridien — revendiqué par la Colombie comme constituant sa frontière maritime avec le Nicaragua — et du «15e parallèle», revendiqué par le Honduras en tant que frontière avec le Nicaragua.

10. Or, l'arrêt du 8 octobre 2007 en l'affaire *Nicaragua c. Honduras* a établi que le 15e parallèle (le parallèle de 14° 59' 08" de latitude nord, en réalité) ne constituait pas la frontière maritime entre le Nicaragua et le Honduras, laquelle suivait une ligne bissectrice orientée plus au nord. *Exit*, donc, la première coordonnée de latitude sur laquelle reposait le traité de 1986. L'arrêt de décembre 2007 a établi que le 82e méridien ne constituait pas la frontière maritime entre le

---

[4] *Différend territorial et maritime (Nicaragua c. Colombie), exceptions préliminaires, arrêt, C.I.J. Recueil 2007 (II)*, p. 869, par. 120.

[5] *Ibid.*, p. 875, par. 142, sect. 1 *c)*.

Nicaragua et la Colombie. *Exit* donc, cette fois, la première coordonnée de longitude du traité de 1986.

11. L'une des affaires est revêtue de l'autorité de la chose jugée vis-à-vis du Honduras, l'autre l'est vis-à-vis de la Colombie. Le résultat, en tout état de cause, est que le traité de 1986 a été amputé de ses deux jambes. Ce traité n'a pas de point de départ valable ; il ne repose sur rien.

12. Et néanmoins, le Honduras s'est présenté devant la Cour en affirmant que ses intérêts juridiques susceptibles d'être affectés par la décision de celle-ci en la présente affaire étaient précisément — et exclusivement — des intérêts découlant du traité de 1986. C'est bien cela qu'ont plaidé les conseils du Honduras et de la Colombie cette semaine : que les intérêts juridiques sur lesquels le Honduras fonde sa requête à fin d'intervention sont ceux, situés au nord du 15e parallèle, qui découlent du traité de 1986[6]. Or, il s'agit là de la zone qui a, sans la moindre ambiguïté, été

13 attribuée au Nicaragua par l'arrêt de 2007. Le traité de 1986 ne saurait primer l'arrêt de 2007, en ce qui concerne les droits du Honduras et du Nicaragua. L'argument du Honduras fait long feu.

13. Le Honduras a abondamment plaidé, dans l'affaire *Nicaragua c. Honduras*, que la Cour ne pouvait rendre un arrêt susceptible d'affecter le traité de 1986 conclu entre lui et la Colombie, qui n'était pas partie à l'affaire. En note de bas de page, dans le compte rendu de la présente plaidoirie, nous avons indiqué les passages des pièces de procédure écrite et des exposés oraux que, dans le cadre de cette affaire, le Honduras a directement consacrés à la question du traité de 1986. On me dit que cela représente 3121 mots[7]. Et ce sont à présent 1000 mots de plus, ainsi qu'une semaine de votre temps précieux, qui auront été dédiés à ces arguments sur les limites que ce traité imposerait au pouvoir de décision de la Cour.

14. Mais, Monsieur le président, l'ironie du sort — sans doute — veut que l'article II de ce traité — le traité de 1986 — contienne justement la disposition suivante :

> «La délimitation énoncée dans l'article précédent ne préjugera pas sur le tracé des frontières maritimes déjà établies ou qui seraient établies à l'avenir entre l'une

---

[6] CR 2010/18, p. 14-15, par. 7 (López) ; *ibid.*, p. 42-43, par. 38 (Wood) ; CR 2010/20, p. 19, par. 18 (Bundy) ; *ibid.*, p. 25, par. 38 (Bundy) ; CR 2010/18, p. 44, par. 43 (Wood) ; CR 2010/20, p. 28, par. 4 (Kohen) ; CR 2010/20, p. 31, par. 11 (Kohen).

[7] CMH, p. 22, par. 2.16-2.19, p. 27, par. 2.28, p. 65, par. 4.22, p. 66, par. 4.25, p. 77, par. 5.18, p. 85, par. 5.36 ; p. 133, par. 7.2, p. 142-143, par. 7.31-7.37, p. 144-146, par. 7.41-7.43, p. 149, par. 8.10, p. 150, par. 8.13, p. 151, conclusions (2) ; RH, p. 95-96, par. 5.42 et CR 2007/8, p. 22, par. 22, p. 23, par. 26, p. 46-47, par. 35-36, (Quéneudec) ; CR 2007/10, p. 32, p. 153 (Colson).

> quelconque des parties contractantes et des Etats tiers, pourvu que ce tracé n'affecte pas la juridiction reconnue à l'autre partie contractante par le présent instrument.»

15. Ainsi, le traité de 1986 autorise les parties à «tracer» à l'avenir des frontières maritimes avec des Etats tiers, mais il n'autoriserait pas la Cour à déterminer les espaces maritimes respectifs du Nicaragua et de la Colombie en l'absence du Honduras !

16. Monsieur le président, dans sa plaidoirie d'hier, le Honduras a versé au dossier des juges ce qu'il a appelé une «carte représentant la zone des intérêts honduriens». La voici maintenant projetée à l'écran (CAG : MW6). Il en ressort que la frontière maritime que le Honduras revendique est la même que celle à laquelle il prétendait dans le cadre de l'affaire que la Cour a tranchée en octobre 2007. Le Honduras représente encore comme siennes les zones situées au nord du 15e parallèle dont la Cour a conclu qu'elles ne faisaient pas partie de son espace maritime. L'image parle d'elle-même.

17. Monsieur le président, je ne voudrais pas faire perdre à la Cour davantage de temps sur cette question. J'ai demandé à M. Pellet de répondre aussi succinctement que possible aux trois heures de plaidoiries présentées par le Honduras et la Colombie.

14 18. Je vous serais donc reconnaissant, Monsieur le président, d'appeler M. Pellet à la barre. Je vous remercie.

Le PRESIDENT : Je remercie M. Carlos Argüello Gómez, agent de la République du Nicaragua, de sa plaidoirie. I now invite Professor Alain Pellet to take the floor.

Mr. PELLET:

1. Thank you very much, Mr. President. Mr. President, Members of the Court, *Back to the Future* seems to be the preferred scenario of our Colombian friends. And I understand that Counsel for Honduras — also friends of ours — enthusiastically endorse that scenario.

2. The purpose of these hearings is (or at least should be) — as you recalled in your opening speech on Monday, Mr. President,

> "pursuant to Article 84, paragraph 2, of the Rules of Court[,] to hear the oral argument of the Republic of Honduras and the Parties on the question whether the Application for permission to intervene in the case concerning the *Territorial and Maritime*

> *Dispute (Nicaragua* v. *Colombia)*, filed on 10 June 2010 by Honduras under Article 62 of the Statute, should be granted"[8].

The hearings are supposed to be devoted to this, and not to the maritime delimitation or the question of ownership of the insular features in the zone disputed by Colombia and Nicaragua. And I acknowledge that, generally speaking, Honduras's representatives occasionally took this into account yesterday afternoon, unlike our colleagues speaking on behalf of Colombia, who mistake both the stage and the proceedings.

3. I do not know when the Court intends to schedule the hearings in the case which Nicaragua submitted to it with a view to resolving its dispute with Colombia — soon, I hope, in spite of the applications for permission to intervene, which, in the unlikely event they are granted, would further and unduly delay consideration of the case. I must say, however, that listening to our opponents, I had the impression that I had been propelled into the future and was hearing the oral arguments they will make when the merits of the case can finally be considered. But we are not at that stage, and Nicaragua's Agent has just said what was necessary in order to safeguard our

15 position. Albeit less poetically, I am going to bring us back to the present, that is, to the question (the *only question* which should concern us) regarding the merit of Honduras's incidental request to intervene in the case between Nicaragua and Colombia. This boils down to determining (and determining *this alone*) whether Honduras has asserted an interest of a legal nature which may be affected by the decision in the dispute before the Court in the main proceedings; or, in other words, whether the "condition of Article 62"[9] has been met — it being understood, of course, that the State wishing to intervene has the discretionary power to exercise or not to exercise its right — not "to intervene"[10], but to submit an application for permission to intervene to the Court.

4. In so doing, Mr. President, I will of course respond to the arguments of both Colombia and Honduras together since — they make no real mystery about it — they make common cause but for one small difference, and I will begin with this, concerning the possibility for Honduras to intervene as a party. I will then address three points in turn:

---

[8]CR 2010/18, pp. 10-11 (Owada).

[9]CR 2010/19, p. 14, para. 5 (Pellet).

[10]CR 2010/21, p. 22, para. 9 (Boisson de Chazournes).

— the matter of the confusion cultivated by these two cronies on their respective roles; once this has been clarified, I will consider:

— first, the scope of the 2007 *res judicata* in respect of each of them; and,

— second, the effect which the treaties concluded between Colombia and Honduras in 1986 and between Colombia and Jamaica in 1993 might — or rather cannot — have.

1. Honduras's intervention as a party

5. Mr. President, I am jealous! Jealous of Professor Crawford and the freedom afforded him by his Agent to give a lecture — a fascinating one, by the way — on the possibility for a State to intervene as a party in a case before the Court. I too would very much have liked to share my thoughts with you on this interesting subject. Unfortunately, Ambassador Argüello did not demonstrate a great deal of sympathy when I told him that I in turn wished to showcase my professorial talents to the Court: he instructed me to keep to the only two aspects of practical significance in the present case — and, in all honesty, as Counsel, I cannot say that he was all wrong.

16

6. The first of those practical aspects concerns the first condition which, my opponent contends, must be met in order for a State to be able to intervene as a party in a case in which it considers that it has an interest of a legal nature at stake: it must have a jurisdictional link to both of the original parties[11]. In the abstract, this is not a problem: if the possibility for such an intervention exists, the condition is automatically met. The learned professor's assertion is, on the other hand, highly suspect when he ventures to apply it to this case: "First, as to jurisdiction, that problem does not arise here, since all three States are parties to the Pact of Bogotá."[12] But, contrary to that opinion, which Honduras shares[13], this is not sufficient, Mr. President! From that jurisdictional basis, the Court's jurisdiction in the present case must be effectively derived.

7. What do the relevant articles of the Pact of Bogotá say? While Article XXXI does of course provide for the Court's jurisdiction in the circumstances set forth in Article 36, paragraph 2,

---

[11]CR 2010/20, p. 41, para. 12 (Crawford); see also CR 2010/21, p. 27, para. 6 (López Contreras) and p. 18, para. 37 (Wood).

[12]CR 2010/20, p. 46, para. 31.

[13]Application for permission to intervene of the Government of Honduras, p. 5, para. 21 and CR 2010/18, p. 46, para. 49 (Wood); and see also CR 2010/21, footnote 11.

of its Statute, Article VI of the same instrument excludes from the Court's jurisdiction "matters already settled. . . by decision of an international court". Colombia is fully aware of this: it vehemently invoked the application of Article VI in the context of the dispute in which Honduras is seeking to intervene and succeeded in profiting from it when the Court declared itself without jurisdiction to entertain a part — an important part — of the case which Nicaragua had initiated against Colombia[14]. However, as I demonstrated on Wednesday[15] (and I will revisit it briefly),

17 Honduras's entire argument in support of its application for permission to intervene consists of reopening the questions concerning delimitation already decided by the 8 October 2007 Judgment; the Court does not have jurisdiction to pronounce on those claims, which form the very subject of the Honduran application to intervene, and that application must be rejected — also rejected — on the basis of Article VI of the Pact of Bogotá.

8. I must say that I cannot help but wonder whether Honduras, well aware that it cannot intervene as a party — if only through lack of a jurisdictional link to Nicaragua (for the reasons I have stated) — has therefore fabricated this request, which it insists on presenting as the "principal"[16] request, merely in the hope that the Court, which can but reject it, will grant its request "in the alternative" as a sort of "consolation prize". Members of the Court, such reasoning is of course legally unacceptable and you cannot be taken in by it, but counsel will on occasion entertain vain hopes of this nature. And, in this instance, the hope is all the more groundless because another condition, which is applicable to both situations, has clearly not been met and demands that the Honduran requests be rejected, whether "principal" or "in the alternative". Honduras does not in fact assert a legal interest in intervening, which is a requirement in both hypotheses.

9. Although the State seeking to intervene clearly seems to acknowledge that this is a general requirement[17], Professor Crawford wished to cast doubt over this: conceding that Article 62 makes

---

[14]*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 861, para. 90.

[15]CR 2010/19, pp. 15-27, paras. 8-33 (Pellet).

[16]Application for permission to intervene of the Government of Honduras, p. 5, para. 23; pp. 5-6, para. 24; p. 7, paras. 29-31; see also CR 2010/18, p. 27, para. 17; pp. 28-29, paras. 21-22; pp. 30-31, paras. 28-29 (Boisson de Chazournes) and p. 31, para. 2; p. 35, para. 17; p. 36, paras. 18-20 (Wood); and CR 2010/21, p. 18, paras. 34-36 (Wood) and p. 27, para. 7 (López Contreras).

[17]CR 2010/21, p. 11, para. 13 (Wood).

no distinction between intervention as a party and intervention as a non-party, he asserts that it is "less clear" in the first case, because the idea of intervening as a party "is a creation of your case law"[18]. I do not want to get into a scholarly, academic discussion on this point; to me, however, it seems very clear that, even if a creation of the jurisprudence, it must still be anchored in the Statute, and that anchorage could only be Article 62 of the Statute. However — and I cannot say it enough — that provision requires that for *any* intervention the State seeking to intervene *must have an interest of a legal nature which may be affected by the decision in the main case*.

18 10. Unlike Colombia, therefore, we are already in a position to give a firm answer to Judge Donoghue, whose question James Crawford seems to have anticipated by telepathy. Nicaragua resolutely believes that the capacity in which Honduras seeks to intervene is of absolutely no importance: it cannot do so either as a party or as a non-party, and it opposes that intervention.

2. The confusion of the roles

11. Members of the Court, listening to our opponents since the start of the week, I have asked myself whether their real argument was not in fact a subliminal message which they are trying to transmit to you, over and above the arguments they feign to expound. That unsaid argument could be expressed in these terms: "things are so complicated, the legal relations between the Parties [— the Parties and the non-parties, moreover —] so confused"[19], the facts are so complex[20], that it is vital that you permit Honduras to intervene so that it can help you untangle the "uncertain confusion" of the labyrinth in which the two States are trying to make you lose your way[21]. But this labyrinth is entirely of their own making; things are much simpler than they claim if we put them back into perspective and give each of the actors his proper role.

12. Without proceeding in chronological order, the most convenient way is undoubtedly to start with the 13 December 2007 Judgment, in which the Court considered that it did not have

---

[18]CR 2010/20, p. 43, para. 18 (Crawford).

[19]CR 2010/18, p. 32, para. 6 and p. 46, para. 50 (Wood) and CR 2010/20, pp. 24-25, paras. 38-39 (Bundy).

[20]*Ibid.*, p. 20, para. 4; p. 52, para. 13 (Boisson de Chazournes).

[21]See Jean Racine, *Phèdre*, Act II, scene 5, "L'aveu de Phèdre" ("The confession of Phèdre") *[translation by the Registry]*.

jurisdiction to pronounce on the question of "sovereignty over the islands of San Andrés, Providencia and Santa Catalina", settled by the 1928 Barcenas-Esguerra Treaty (a treaty whose validity is contested by Nicaragua). The Court did however find jurisdiction "to adjudicate upon the dispute concerning sovereignty over the maritime features claimed by the Parties other than"

19 those three islands and "upon the dispute concerning the maritime delimitation between the Parties"[22]. Accordingly, those are the only questions that may be at issue in the dispute in which Honduras seeks to intervene.

[Slide No. 1: geographical context]

13. The "geographical context" of this dispute is defined by the sketch-map at the beginning of the Judgment on the preliminary objections, which is reproduced at tab No. 3 of the judges' folder.

[Slide No. 1.1: the geographical context of the relevant zone for the purposes of the delimitation]

14. Onto this we have superimposed the relevant zone for the purposes of the delimitation as it appeared in figure 3.1 of Nicaragua's Reply and on which Colombia and Honduras have been trying to capitalize. It does not appear to me that there is much cause for derision: this zone corresponds very closely, in my view, to that which the Court itself considers to be the geographical context — a context which obviously must be taken into consideration for the purposes of the delimitation to be made between the Parties to the main case — who are, and I should not have to repeat it, Nicaragua, as Applicant, and Colombia, as Respondent.

[End of slide No. 1]

15. I *should* not have to repeat these self-evident facts, Mr. President, but unfortunately it is absolutely necessary, because we were dumbfounded by the force with which those pleading on Colombia's behalf undertook to demonstrate on Wednesday that Colombia — Colombia! — had a legal interest in the case against it submitted to the Court by Nicaragua. Thus, through its Agent, it asserted that: "Colombia is not precluded from upholding its rights vis-à-vis Nicaragua and claim[s] its rights north of the 15th parallel and west of meridian 79° 56' 00" and west of the rest of

---

[22] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 876, para. 142.

the line fixed in that Treaty"[23]; Messrs. Bundy and Kohen voiced their agreement[24] — as did Honduras, whose Agent elected himself defender of Colombia's rights[25] and whose Advocate during yesterday afternoon's hearings heartily endorsed the statements in this vein by the Agent of Colombia[26].

20

16. But Colombia is playing at scaring itself. No-one — not Nicaragua, in any case — is saying that: as the Respondent in this case, Colombia can assert the rights which it believes it has (just as Nicaragua can clearly contest them — and it does contest them most vigorously, especially the claim which I have just mentioned). As a third party to the 8 October 2007 Judgment — which settled the *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea* — Colombia is not bound by it and is at liberty to reject both the reasoning and the operative clause in it — even if that is undoubtedly somewhat foolhardy — given that by concluding the 1986 Treaty with Honduras, it demonstrated that it did not have any claim to assert north of the 15th parallel, judgment or no judgment.

17. However, with respect to the Judgment on the preliminary objections in this case — no longer the 8 October Judgment, but the 13 December 2007 Judgment (a very "productive" year for the Court) — the situation is reversed: in that instance, Honduras is the third party and Colombia the Party. Nevertheless, in terms of its reasoning, that second Judgment does help to clarify things — and I will come back to it in a moment.

[Slide No. 2: course of the maritime boundary]

18. It is the exact opposite for Honduras. It is a third party to the case between Nicaragua and Colombia in which it wishes to intervene, and it must establish that it has a legal interest which may be affected by the future decision of the Court. On the other hand, it was a Party to the case which led to the October 2007 Judgment — by which it is bound. Vis-à-vis that Judgment, it is clearly in a very different position to Colombia: as far as *Honduras* is concerned, that Judgment

---

[23]CR 2010/20, p. 13, para. 19 (Londoño).

[24]See, among numerous examples, CR 2010/20, p. 27, para. 46 (Bundy) and p. 38, para. 35 (Kohen).

[25]CR 2010/18, p. 14, paras. 7-8 (López Contreras).

[26]CR 2010/21, p. 13, para. 19 (Wood).

has the force of *res judicata* and it cannot assert any legal interest which would go counter to the operative clause of that decision or the reasoning behind it.

21 19. Mr. President, it is in the light of these considerations and, I hope, clarifications, that it must be asked whether Honduras — Honduras, and *not* Colombia — can, with a semblance of credibility, claim the essential *legal* interest.

[Slide No. 3: the scope of the 2007 *res judicata*]

3. The scope of the 2007 *res judicata*

20. In this regard the scenario is no longer *Back to the Future* but *In Search of Lost Time [A la recherche du temps perdu]*, because our Honduran and Colombian friends employ a time machine to the past in an attempt to wipe away the Judgment of 8 October 2007.

21. They do so through reasoning which, while not always easy to follow, may no doubt be summarized fairly easily as follows: because Colombia is not bound by this decision — from 2007 —, neither is Honduras in its relations with Colombia and Honduras can therefore claim an interest in the present case, since Colombia has acknowledged, and continues to acknowledge, that Honduras has rights in the area where it claims to have them. You will observe in passing, Members of the Court, that Laurence Boisson de Chazournes's odd principle (an interest of a legal nature exists because Honduras "considers" such to be the case[27]), that this odd principle is partially reviewed and corrected by Colombia: Honduras has a legal interest because I, Colombia, believe so[28].

22. This, Mr. President, is very poor framing of the issue; true, the effect of *res judicata* is relative, but it is binding on *each* of the parties in *absolute* terms. Agreed, Colombia is not bound by the 2007 Judgment. But Honduras is and must comply with it.

23. Allow me to quote: "Maritime areas situated within the rectangle and lying north of the bisector are not at issue in the present case. As between Nicaragua and Honduras, the Court has ruled that those areas appertain to Honduras." Were this not phrased in such polished English

[27]CR 2010/18, p. 21, para. 5 (Boisson de Chazournes); see also CR 2010/21, p. 22, para. 9 (Boisson de Chazournes).

[28]See, e.g., CR 2010/20, p. 25, para. 39 or p. 27, para. 47 (Bundy); see also p. 37, para. 34 (Kohen).

(American, actually), I could have said it myself, word for word[29]. But it was Mr. Bundy who made the statement on Wednesday. I am however willing to join in it: the Court has decided that

22 the northern part of the area in which Honduras claims to have a "legal interest" allowing it to intervene belongs to Honduras — and that is *res judicata*. It also decided, in the same Judgment, that the areas south of that same line appertained to Nicaragua; that is equally *res judicata*. And, unless what the Court has decided is to be called into question, Honduras cannot invoke any interest which might be affected by the future judgment.

24. Yet it does just that: the "rectangle" appearing on the sketch-map now being projected shows its claims in this respect. We have already said a great deal about this, but it warrants a few more quick words:

— let me repeat[30] — according to Honduras itself, this rectangle defines (and circumscribes) its potential interest;

— it is bounded in the east by the 82nd meridian, the starting point of the line defined by the 1986 Treaty, on which the Court refrained from taking a position in its 2007 Judgment so as to avoid any risk of prejudicing the rights of Colombia, not a participant in the proceedings[31]; but, three months later, in its Judgment of 13 December 2007, on the preliminary objections in our case, the Court considered "that, contrary to Colombia's claims, the terms of the [1930] Protocol [to the 1928 Treaty], in their plain and ordinary meaning, cannot be interpreted as effecting a delimitation of the maritime boundary between Colombia and Nicaragua" (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 867, para. 115), thus rendering the arbitrarily set boundary of the 82nd meridian meaningless;

— the southern side of the rectangle is not justified either: it follows from the Judgment of 8 October 2007 that Honduras has no rights south of the 2007 line;

---

[29]CR 2010/20, p. 23, para. 33 (Bundy).

[30]CR 2010/19, pp. 28-29, paras. 38-41 (Pellet).

[31]*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 758, paras. 315-316.

— as for the eastern side, it is to be observed that it cannot in and of itself have any particular significance and, more importantly, that the dashed line on the illustrative sketch map included in that Judgment extends eastwards of the 80th meridian.

[Slide No. 4: enlargement of sketch-map No. 7 (course of the maritime boundary line)]

23 25. According to both Honduras and Colombia, the continuation of the line not only beyond the 82nd meridian but even beyond the 80th is of no significance. As evidence of this, Messrs. Bundy and Wood cite the arrow in sketch-map No. 8 in the 7 October 2007 Judgment, on which they try to focus our attention: both claim in effect that this is the only illustration representing the delimitation effected by the Court[32]. Even if we stick to this sketch-map, which is merely the *enlargement of sketch-map No. 7*, which is entitled "Course of the maritime boundary line", it is clear that the arrow in the east, with its tip at the 82nd meridian, shows that the boundary extends beyond this meridian.

[Slide No. 5: Honduras's judges' folder — tab 8 (map showing the area of Honduras's interests together with Nicaragua's "delimitation area")]

26. Sir Michael hoped to "please"[33] me by producing sketch-map MW6 yesterday. While I am touched by his intention, the announced aim has not been met: there is still the arrow in sketch-map No. 8 and my opponent, to my great displeasure, carefully avoided showing the line from sketch-map No. 7 (illustrating the "course of the maritime boundary line") — which you now see before you.

27. This — dashed — line continues beyond the 80th meridian — until some 185 nautical miles from the mouth of the River Coco, the starting point for the maritime boundary between Honduras and Nicaragua. If the Court had been in the slightest doubt in regard to the fact that "the area where the rights of third States may be affected" could result in fixing the endpoint of that boundary on or near the 82nd parallel, it would undoubtedly not have drawn the line out so far. In keeping with this, it is telling that the Court was careful to state that "in no case may the line be interpreted as extending more than 200 nautical miles from the baselines from which the breadth of the territorial sea is measured". And, as the Court did this, the obvious reason was that it had in

---

[32]See, in particular, CR 2010/20, p. 21, para. 25 (Bundy); see also CR 2010/21, p. 14, para. 23.

[33]CR 2010/21, p. 14, para. 23.

mind a distant tripoint, one less than 200 miles away but still distant, and that it firmly believed that the third State in question was not Colombia but Jamaica; I am going to return to this.

[Return to slide No. 3]

24 28. On this point Colombia insists vehemently: "I", it says, "am the third State". Last Wednesday I showed why this was not the case: the third State is Jamaica[34]. The Judgment of 8 October 2007 admits of no doubt on this subject.

29. True to its determination to preserve the rights of third States, the Court enters into a lengthy analysis in the Judgment of those States which would potentially be affected by the maritime boundary between Nicaragua and Honduras as decided by the Court[35]. It proceeds by process of elimination in doing so:

— in paragraph 315 of the Judgment it concludes that Colombia's rights under the 1928 Treaty could not be affected;

— in paragraph 316 it arrives at the same conclusion in respect of Colombia's rights under the 1986 Treaty;

— but the Court's conclusion in respect of Jamaica's rights, which it considers in paragraph 317, is altogether different:

> "Another possible source of third-State interests, is the joint jurisdictional régime established by Jamaica and Colombia in an area south of Rosalind Bank near the 80th meridian pursuant to their 1993 bilateral Treaty on maritime delimitation. The Court will not draw a delimitation line that would intersect with this line because of the possible prejudice to the rights of both parties to that Treaty." (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 759, para. 317.)

It is at that stage in the reasoning, and not until that stage, that the Court states that it must refrain in those proceedings from fixing an endpoint which would require consideration to be given to the rights of Jamaica, not a party to the case.

30. But let us assume Colombia to be the third State (even though the direction of the line drawn by the Court is enough to rule out this possibility categorically); let us assume so, that cannot make any difference in the matter:

---

[34]CR 2010/19, p. 30, paras. 43-44 (Pellet).

[35]*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 759, para. 318.

25 — between Nicaragua and Honduras, the boundary is completely and definitively determined[36];

— and this is confirmed by — among other things — the length of the line showing the "course of the maritime boundary line" on sketch-map No. 7;

— furthermore, if the endpoint was to be situated in the vicinity of the 82nd meridian, then it was absurd for the Court to take account of the 1993 agreement between Colombia and Jamaica, which concerns a maritime area far removed from this one;

— as we know, a very common way to preserve the rights of third parties is to refrain from fixing an endpoint[37], but in no way does this mean that the maritime delimitation putting the dispute to rest is not complete as between the Parties;

— it was particularly appropriate to refrain from doing so in the October 2007 Judgment since that was what the Parties were expecting: "As for the endpoint, neither Nicaragua nor Honduras in each of their submissions specifies a precise seaward end to the boundary between them." (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 756, para. 312.);

— thus, regardless of the endpoint and the third State in question — whether Jamaica, Colombia, Liechtenstein or Nepal — it is impossible to see what legal interest Honduras could claim: Honduras's maritime boundary with Nicaragua is fixed —along its entire length — and you can't choose your neighbour.

[End of slide No. 3]

31. And there is something else (on top of what I have just said). Honduras is asking the Court to "to join *[greffer]* to these proceedings" a dispute which it defines as consisting of "determining: a maritime boundary between Honduras and Nicaragua; and a tripoint among Honduras, Nicaragua and Colombia"[38]. However, neither of the two Parties to the main case has asked the Court either, and this is obvious, to determine an allegedly missing segment of the

---

[36]CR 2010/19, p. 20, para. 18 (Pellet).

[37]*Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 91, para. 130; *Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, p. 27, and *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, pp. 26-28, paras. 21-23; or *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, paras. 238, 245 and 307.

[38]Application for permission to intervene, p. 5, para. 22; see also p. 9, para. 36; CR 2010/18, p. 41, para. 34 (Wood) and CR 2010/21, p. 18, para. 34.

26 maritime boundary between Honduras and Nicaragua or to determine a tripoint or generally to effect the lateral or horizontal delimitation of their boundaries with their neighbours[39]. Accordingly, it is clear that Honduras is seeking to add a new dispute to the one between Nicaragua and Colombia (as they concur in defining it). As Professor Crawford said so very well in his masterly statement: "intervention may not be used to tack on a new case, distinct from the case that exists between the original parties"[40]; and this is not limited to interventions as a party — in saying so, by the way, Professor Crawford looked to the Court's Judgments in 1981, 1985 and 1990. And, to my knowledge, none of those States seeking to intervene wished to do so as a party. And, more recently, in its Judgment in 2001 on the Philippines' Application for permission to intervene in the *Indonesia/Malaysia* case, the Court, quoting the words of the Chamber in 1990, pointed out that the purpose of intervention "is not . . . to enable a third State to [indeed] tack on *[greffer]* a new case . . ." — which is exactly what Honduras says it wants to do — "An incidental proceeding cannot be one which transforms [a] case into a different case with different parties." (*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Application to Intervene, Judgment, I.C.J. Reports 2001*, p. 588, para. 35.)

[Return to slide No. 3: scope of the 2007 *res judicata*]

32. To recapitulate in respect of this third point, Mr. President:

— the only purpose of Honduras's hoped-for intervention is to call into question the 2007 Judgment determining its maritime boundary with Nicaragua along its entire length;

— as that Judgment is *res judicata* vis-à-vis Honduras, Honduras cannot assert any interest of a legal nature in the area in which it claims to have one — the rectangle;

— the Court cannot fix a tripoint which would inevitably concern a third State, Jamaica; but

27 — even if this were to involve Colombia *(quod non)*, Honduras has no legal interest in the determination of that point;

— such a determination is not being requested by the Parties in the main proceedings and consequently is not at issue;

---

[39]See Nicaragua's Reply, Submissions, pp. 239-241, and Colombia's Rejoinder, Submissions, p. 337, respectively.

[40]CR 2010/20, p. 41, para. 14.

— in making such a request, Honduras is attempting to "tack on a new case" to the case Nicaragua has referred to the Court; that is not the purpose to be served by intervention as an *incidental* proceeding.

[Slide No. 6: the irrelevance of the 1986 and 1993 Treaties]

4. The irrelevance of the 1986 and 1993 Treaties

33. Mr. President, there remains the 1986 Treaty, which, like Bizet's Arlésienne, is much talked-about without ever being capable of producing the mythical effects that Colombia and Honduras ascribe to it. The same is true of the 1993 Treaty.

34. Members of the Court, you are familiar with the line resulting from the treaty entered into in 1986 by Colombia and Honduras. It has been added to the sketch-map seen a moment ago.

35. According to Professor Kohen, we are saying two things about this treaty:

— first, we are said to claim that the Court ruled in its 2007 Judgment (the one between Nicaragua and Honduras) on the legal effects of the 1986 Treaty[41];

— second, we supposedly contend that the treaty itself creates such rights[42].

In fact, that is not really what we are saying.

36. On the second point, we are not talking about "subjective rights" of Nicaragua; we are merely saying that, in concluding the treaty, Colombia showed that it considered the maritime boundary it had accepted as meeting the requirement of an equitable result. Yet Nicaragua has no intention of invoking the treaty in question *per se*, as our opponents have made so abundantly clear[43]: Nicaragua has always considered this treaty to be invalid. It maintains that, were the treaty valid, it would manifest *erga omnes* the rights which Colombia *claims* were granted to it south of the maritime boundary between Nicaragua and Honduras. But, once again, in this instance these claims, even as so circumscribed, cannot be upheld because, in entering into this agreement, the parties dealt with sovereign rights belonging to Nicaragua. In this connection we are in full

28

[41]CR 2010/20, pp. 29-31, paras. 7-11.

[42]*Ibid.*, p. 18, para. 20 (Bundy); p. 28, para. 5; pp. 31-32, para. 12; pp. 36-37, paras. 29-33 (Kohen); CR 2010/21, p. 14, para. 25; or p. 16, para. 29 (Wood).

[43]CR 2010/20, p. 36, para. 29; p. 37, para. 33 (Kohen).

agreement with the statements made by my opponent[44] and in the references he has cited as authority: it is a matter of determining who (Colombia or Nicaragua) has "better title" to the disputed maritime areas. *But* Honduras, for its part, is not involved: it holds no rights south of the line determined in the 2007 Judgment.

37. As for that Judgment's effect vis-à-vis Colombia, it is a fact that it has no binding force on Colombia — and I find that Marcelo Kohen went to a great deal of pointless effort to gather citations in a footnote (No. 11 in his statement[45]) to no fewer than 19 Judgments of the Court to show that the Court "may only exercise its jurisdiction in respect of States which have consented to it"[46]! I shall however point out that, while stating in paragraph 316 of its Judgment that it was placing no reliance on the 1986 Treaty "to establish an appropriate endpoint for the maritime delimitation between Nicaragua and Honduras", the Court nevertheless observed:

> "that any delimitation between Honduras and Nicaragua extending east beyond the 82nd meridian and north of the 15th parallel (as the bisector adopted by the Court would do) would not actually prejudice Colombia's rights because Colombia's rights under this Treaty do not extend north of the 15th parallel" (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, pp. 758-759, para. 316).

With bravado our opponent quoted this passage from your Judgment[47]; however, this is the Court's very clearly stated view of the spatial confines of Colombia's rights, arising from its conclusion of the 1986 Treaty — even if this observation is not *res judicata* for Colombia.

38. Yet, all these considerations are just so many digressions from the issue before us today: once again, Colombia is arguing the existence, or scope, of *its* own rights under the 1986 Treaty.

29

That is not the issue. The only question is to determine what role this instrument could play in establishing the legal interest claimed by Honduras. And the answer is clear: it has none.

39. Sir Michael, knowing that the geographical approach is a dead-end, argues that Honduras's interest is linked to the question of the validity of the 1986 Treaty:

— in the 2007 Judgment, he says, "the Court refrained from passing judgment on [Colombia's] treaty rights and obligations"[48]; we have no problem here;

---

[44]CR 2010/20, pp. 34-36, paras. 22-28 (Kohen).

[45]*Ibid.*, p. 30, footnote 11 (Kohen).

[46]*Ibid.*, para. 9.

[47]*Ibid.*, pp. 29-30, para. 8 (Kohen).

— therefore it is not correct that we were contending that the Judgment *rendered* the treaty invalid ("the 2007 Judgment rendered the 1986 Treaty invalid");

— in fact, the Treaty is invalid *per se*, but the Court could not take a position on this in Colombia's absence; but the point is that

— the Court was able in its 2007 Judgment to define the course of the maritime boundary between Nicaragua and Honduras, which it fixed along the line of the azimuth described in subparagraph 3 in the 2007 Judgment, without ruling on the validity of the 1986 Treaty, at least not in the operative part, and did so in the absence of Colombia, a third State.

[Slide No. 6-1: remove the 1986 line, add the 1993 line]

40. The conclusions I am now drawing from the 1986 Treaty can also be drawn from the 1993 Treaty. But for different — and even simpler — reasons: reasons which, once again, can clearly be seen in a sketch-map, a good sketch-map — to respond to yesterday's invocation of Bonaparte's spirit by Sir Michael, who thus celebrated Trafalgar Day in his fashion. The sketch-map now before you shows that the azimuth decided by the Court in 2007 *does not intersect with* the line established by the 1993 Treaty between Colombia and Jamaica.

41. Nicaragua "has maintained its persistent objections to" this Treaty — contrary to Mr. Bundy's contention[49] but in keeping with the Court's observation in just those words in its Judgment of 8 October 2007[50]. Moreover, even if this treaty were valid and were binding on
30 Nicaragua — *quod non*, I repeat, unfortunately for Honduras, it finds itself on the "wrong side of the line". There is no interest it can claim to barge into a case which, as that Judgment has made clear to all, does not concern it in any way.

[End of slide No. 6]

Members of the Court, I thank you most sincerely for your attention and ask you, Mr. President, to give the floor to the Agent of Nicaragua.

---

[48]CR 2010/21, p. 15, para. 24 (Wood).

[49]CR 2010/20, p. 20, para. 24 (Bundy).

[50]*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 736, para. 255.

The PRESIDENT: Thank you for your statement, Professor Pellet. J'invite maintenant S. Exc. M. Carlos José Argüello Gómez à venir présenter ses conclusions.

M. ARGUELLO GOMEZ : Je vous remercie, Monsieur le président, Mesdames et Messieurs de la Cour. Je vais à présent donner lecture des conclusions finales du Gouvernement de la République du Nicaragua.

CONCLUSION FINALE

En application de l'article 60 du Règlement de la Cour et au vu de la requête à fin d'intervention déposée par la République du Honduras et de ses plaidoiries, la République du Nicaragua déclare respectueusement ce qui suit : par sa requête, la République du Honduras remet manifestement en question l'autorité de la chose jugée dont est revêtu l'arrêt du 8 octobre 2007. La République du Nicaragua considère en outre que le Honduras ne satisfait pas aux prescriptions énoncées à l'article 62 du Statut et aux alinéas *a)* et *b)* du paragraphe 2 de l'article 81 du Règlement de la Cour.

En conséquence, la République du Nicaragua : 1) s'oppose à l'admission de la demande d'intervention et 2) prie respectueusement la Cour de rejeter la requête à fin d'intervention déposée par le Honduras.

Une copie signée du texte écrit de notre conclusion finale a été communiquée à la Cour.

Monsieur le président, pour conclure notre participation à ce stade de la procédure orale, je tiens, au nom de la République du Nicaragua et de notre délégation, à vous exprimer, à vous-même ainsi qu'à chacun des éminents Membres de la Cour, notre profonde gratitude pour toute l'attention que vous avez aimablement prêtée à nos exposés. J'étends également nos remerciements, Monsieur le président, au Greffe de la Cour et à l'équipe des interprètes, aux délégations du

31

Honduras et de la Colombie ainsi qu'à leurs conseils. Enfin, je tiens à remercier personnellement et publiquement l'équipe du Nicaragua. Merci, Monsieur le président.

Le PRESIDENT : Je remercie S. Exc. M. Carlos José Argüello Gómez pour son exposé. Ainsi s'achève le second tour de plaidoiries du Nicaragua.

L'audience est levée à 15 h 55.

_____