

CR 2007/10

**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2007

Public sitting

held on Friday 16 March 2007, at 10 a.m., at the Peace Palace,

President Higgins presiding,

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

VERBATIM RECORD

ANNÉE 2007

Audience publique

tenue le vendredi 16 mars 2007, à 10 heures, au Palais de la Paix,

sous la présidence de Mme Higgins, président,

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

COMPTE RENDU

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

 Registrar Couvreur

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

M. Couvreur, greffier

The Government of the Republic of Nicaragua is represented by:

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

as Agent, Counsel and Advocate;

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

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

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

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

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

as Counsel and Advocates;

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

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

as Scientific and Technical Advisers;

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

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

as Assistant Advisers;

Ms Gina Hodgson, Ministry of Foreign Affairs,

Ms Ana Mogorrón Huerta,

as Assistants.

The Government of the Republic of Honduras is represented by:

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

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

as Agents;

Le Gouvernement de la République du Nicaragua est représenté par :

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

comme agent, conseil et avocat ;

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

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

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

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

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

comme conseils et avocats ;

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

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

comme conseillers scientifiques et techniques ;

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

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

comme conseillers adjoints ;

Mme Gina Hodgson, ministère des affaires étrangères,

Mme Ana Mogorrón Huerta,

comme assistantes.

Le Gouvernement de la République du Honduras est représenté par :

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

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

comme agents ;

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

as Co-Agent;

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

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

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

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

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

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

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

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

as Counsel and Advocates;

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

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

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

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

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

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

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

as Advisers;

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

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

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

comme coagent ;

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

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

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

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

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

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

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

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

comme conseils et avocats ;

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

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

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

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

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

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

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

comme conseillers ;

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

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

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

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

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

as Assistant Advisers;

Mr. Scott Edmonds, Cartographer, International Mapping,

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

as Technical Advisers.

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

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

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

comme conseillers adjoints ;

M. Scott Edmonds, cartographe, International Mapping,

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

comme conseillers techniques.

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

Mr. COLSON: Thank you, Madam President.

The single maritime boundary

67. Madam President and Members of the Court, yesterday we were speaking of the technical characteristics of the Honduran line and we had just finished the discussion of the starting-point, and now I would like to turn to the law of the sea characteristics of the traditional line as the single maritime boundary. On the screen now is figure 8: this was in the judges' folders yesterday. It may be useful to examine the Honduran line carefully, even though in fact it is a line of latitude.

68. As we discussed yesterday, the maritime boundary that Honduras proposes begins at a point on latitude $14^{\circ} 59.8' N$ that is three nautical miles east of the final point determined by the 1962 Mixed Commission.

69. The Honduran line extends east from this point, being a territorial sea boundary between the territorial seas of Honduras and Nicaragua, until it reaches the 12 nautical-mile limit measured from the mouth of the Rio Coco. Beyond the mainland 12 nautical-mile limit, the Honduran line extends east into a pocket of water — shown here in the darker shade of blue — that is beyond 12 nautical miles from any feature; thus, the Honduran line serves as a maritime boundary between the respective exclusive economic zones of Honduras and Nicaragua in this small area. The Honduran line does so for only about 3.6 nautical miles and then emerges into waters that are within 12 nautical miles of Honduran and Nicaraguan islands, reefs and cays; thus, the Honduran line continues to extend east as a boundary that divides the territorial seas of Honduras and Nicaragua for about 20 nautical miles.

70. Just before the Honduran line reaches $82^{\circ} 30' W$ longitude, its legal character changes. It is no longer within 12 nautical miles of Nicaraguan geographic features — Nicaraguan islands — but it is still within 12 nautical miles of Honduran territory. The waters south of the Honduran line are Nicaraguan exclusive economic zone, while the waters north of it are Honduran territorial sea.

71. In this stretch, which is about 21.6 nautical miles, Honduras has not sought a full territorial sea entitlement for its islands to extend its territorial sea south of the traditional line. Honduras respects the traditional line and has done so over many years.

72. The fact that a maritime boundary serves to divide waters of a different juridical character — the territorial sea on the one hand, from the exclusive economic zone on the other hand — is an often unnoticed consequence of maritime boundaries that are not precise equidistance lines. It is also one reason that States have found it useful to refer to their maritime boundaries as “single maritime boundaries”, rather than as territorial sea or exclusive economic zone boundaries.

73. Simply to illustrate this point, there is now a figure on the screen which shows that when the Court in *Qatar v. Bahrain* — this is figure 9 in yesterday’s judges’ folder — chose to adjust the provisional equidistance line in the outer area because of Fasht al Jarim, the result was that one part of the single maritime boundary in that case in fact became a boundary between Qatar’s territorial sea and Bahrain’s exclusive economic zone.

74. Another interesting example to illustrate the same point is shown in figure 10, which depicts the boundary line established by the arbitration tribunal in the *Eritrea/Yemen* case. In key areas, that single maritime boundary divides Yemen’s territorial sea measured from its islands from Eritrea’s exclusive economic zone. Just as the traditional line does in this case, the boundary in *Eritrea/Yemen* truncates the territorial sea of Yemen’s islands from extending a full 12 nautical-mile breadth, even when there was room to do so without affecting the 12 nautical-mile zone of Eritrea.

75. Returning to the Honduran line as shown on figure 8, at about 82° 10' W, the Honduran line is no longer within 12 nautical miles of any geographic feature; thus, it serves as an exclusive economic zone boundary, and it does for only 8.3 nautical miles before crossing the 82nd meridian. Thus, from the mouth of the Rio Coco at Gracias a Dios to 82° W — a distance of about 65 nautical miles — the Honduran line serves to limit Honduras’s territorial sea for more than 80 per cent of its reach to 82° W longitude. In other words, along the 65 nautical-mile length of the Honduran line, 53 nautical miles serve as a territorial sea boundary.

76. Now, what does the Convention say about the boundary of the territorial sea? Article 15 of the Convention says:

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

Finally, let us just say a word about the terminal point. Honduras believes the boundary should stop at 82° W longitude, but we recognize that this is a sensitive point for Nicaragua and we regard it as unnecessary to pull the Court into the matter. Honduras, thus, has not articulated a specific terminal point for its line, but has agreed, as Nicaragua has agreed, that the terminal point of the Court’s line should be expressed in terms of a line that extends in a direction until the jurisdiction of a third State is reached.

77. This completes the examination of the technical characteristics of the Honduran line.

B. The basis of the traditional line

1. The historical roots

78. I would now like to begin a discussion of the elements that form the legal basis of the Honduran line. These are the historical roots, the geographic circumstances and the conduct of the Parties. Now we are placing on the screen figure 11, which shows the Honduran line and the Nicaraguan proposal. As Professor Sánchez Rodríguez has shown, when the Spanish colonies of Central America became independent from Spain in 1821 they adopted the principle of *uti possidetis juris* of 1821 for the purpose of agreeing that the boundaries of the newly-established republics should be the frontiers of the Spanish provinces they were succeeding. This had and has several consequences for Honduras and Nicaragua.

79. First, no territory in Central America was without an owner including the islands of Spain in the sea off the coast of Honduras and Nicaragua. Second, *de facto* possession by one party or the other would not be relevant in resolving a territorial dispute between Central American States where the legal title is established by virtue of this principle.

80. While the principles are straightforward and perhaps they are even common ground between the Parties, it is also true that their application has proved difficult. Throughout a large part of the nineteenth century, as we said yesterday, these two States contested large portions of

their land boundary. Ultimately recourse was had to arbitration under the 1894 Treaty and, as we know, this led to the King of Spain's Award in 1906. Nicaragua contested that Award on various grounds and, as we know, that brought the Parties to the Court and in 1960 this Court rendered its opinion in the matter and upheld the 1906 Award of the King of Spain.

81. Now why is it relevant now here? It is so for two reasons at least. First, the King of Spain established the mouth of the Rio Coco as the end of the land boundary between the Parties. Second, while the small Spanish islands along the coast contested by Honduras and Nicaragua were not named in the Award of the King of Spain, by application of the *uti possidetis* principle the islands had belonged to Spain and by further application of this principle the islands came to belong to one or the other of these two countries.

82. Were the coastal islands known in the Spanish Empire at the time of the independence of the Central American States? Certainly they were. In the record there are maps of this region dating from that period, and now on the screen is one of those maps (figure 12) which Professor Sands showed on Tuesday (PS1-2) and it appeared at plate 27 in the map annexes to the Honduran Counter-Memorial. This map is dated 1801. It clearly shows the coastal features and the islands. You can see that Cabo Gracias a Dios is named, and the grouping of islands north of 15° N latitude, shown on this chart perhaps in not exactly the right position, but you can see that the island grouping is named "Alargado alla" corresponding to what we see today on nautical charts as Arrecife Alargado. Now these are undoubtedly small features, but they are not unstable. They have been in this position for a long, long time.

83. Given the propensity of the Spanish Empire to use parallels of latitude and meridians of longitude to identify jurisdictional divisions, and in light of Spain's 2-marine-league maritime claim, it is inconceivable that a maritime division between Nicaragua and Honduras at the time of independence would have occurred along any line other than the latitude of Cabo Gracias a Dios, or that the islands north of the latitude of Cabo Gracias a Dios would have been deemed to appertain to Nicaragua at the time.

84. In this regard, it may be recalled that once the independence of the Central American republics had been achieved, Spain entered into treaties with each of them, which included Spain's renunciation of any claim to the territory of each new State. In these treaties, Spain not only

renounced any claim to mainland territory, it specifically renounced any claim to the islands adjacent to the coast of the country concerned. Both Professor Greenwood and Professor Sánchez Rodríguez mentioned this point. For instance, the relevant treaty between Spain and Nicaragua is dated 25 July 1850 and it can be found at Annex 11 of Nicaragua's Reply. On the screen is Article 1 of that treaty (figure 13) and we are highlighting the phrase "adjacent islands". The corresponding treaty between Spain and Honduras is dated 15 March 1866. Here again we put on the screen Article 1 of that treaty (figure 14) which uses the phrase "adjacent islands that lie along its coasts in both oceans". Is it possible to believe that the concept of adjacency, used here, could mean that the islands north of Cabo Gracias a Dios were deemed to appertain to the country, or coast, that lies south of that cape?

85. Of course, the *uti possidetis* principle can only be understood in the context of the time, and Honduras does not argue, it does not argue, that the boundaries of the modern features of international law (the extended territorial sea, the continental shelf or the exclusive economic zone) were determined in 1821. Honduras *does* argue, however, that the practice of Spain in colonial times, the respect of the Central American States for the *uti possidetis* principle, and the confirmation of that principle in the 1906 Award and the 1960 Judgment of the Court, altogether, confirm Honduras's sovereignty over the islands north of the latitude of the cape where their land boundary reaches the sea. That territorial sovereignty — rooted in history — provides the traditional line which separates these Honduran islands from the Nicaraguan islands to the south, gives the Honduran line a rich historical basis that contributes to its legal foundation.

86. Briefly, what is the historical basis of the Nicaraguan proposal? It has none. Nicaragua has not argued that its line has a historical basis. It has made a feeble effort in its Memorial to demonstrate a historical connection to the islands north of 15° by suggesting that those islands may have been visited by Indians of the Mosquito coast¹. It has not pursued that argument. There simply is no basis for the Nicaraguan proposal in this case. There is no historical basis.

¹MN, p. 2, para. 7.

2. The geographic basis

87. What about the geographic basis of the traditional line? Professor Quéneudec on Wednesday examined the geographic circumstances within which this delimitation takes place. Two geographical facts are of particular note with reference to the geographic basis of the traditional line.

88. The first is that the traditional line extends seaward roughly perpendicular to the general direction of the Central American coast that runs from the Nicaragua-Costa Rica land boundary terminus northward to Cape Falso in Honduras where the coast of Central America begins its turn to the west. The relevant coasts of Nicaragua and Honduras in this maritime boundary case face east. In the midst of the eastward facing coastal front is Cabo Gracias a Dios that points east, and the land boundary river runs east to reach the sea at the eastern tip of that cape.

89. In these circumstances, it is hardly surprising that the Parties adopted a practice sustained for many years by their conduct wherein their *de facto* maritime boundary ran east along the latitude of Cabo Gracias a Dios where their land boundary meets the sea.

90. The second geographical fact concerns the islands which the new Nicaraguan line now claims for Nicaragua. Nicaragua says these islands should be disregarded in the matter before the Court and it is convenient for Nicaragua to be blind to the islands. By being blind to them Nicaragua avoids the reality that, since the islands belong to Honduras, the maritime boundary between Honduras and Nicaragua must run between the Honduran islands — all of which lie north of 15° -- and those of Nicaragua, which lie to the south. Whether this maritime boundary is the traditional line or, as we shall see, the provisional equidistance line or even an adjusted equidistance line, these lines all run roughly the same way, eastward from Cabo Gracias a Dios, properly separating the geographic features that belong to Honduras from those that belong to Nicaragua.

91. Thus, these two geographical facts — the eastward facing coast of Central America at the land boundary terminus and the Honduran islands north of 15°, provide a sound geographic basis for the Honduran position.

92. What is the geographic basis of the Nicaraguan proposal? Nicaragua constructs its new line by bisecting the angle formed by two other lines. These other two lines are put forward by Nicaragua to represent what it calls the relevant coastal fronts of Nicaragua and Honduras.

93. Nicaragua represents its own coastal front — the Nicaraguan coastal front is one that faces east; or, put another way, as Nicaragua does in its Memorial: “The direction of the Nicaraguan coast basically follows a meridian of longitude.”² Now, one cannot argue with that proposition — the Nicaraguan coast runs from north to south and faces east. The general direction of the coast and the direction in which a coast faces are two attributes in the assessment of a relevant coast in a maritime delimitation problem; and, in these regards, one cannot argue with the perspective given by Nicaragua that its relevant coast runs from north to south and faces east.

94. However, Nicaragua errs when it suggests that the entirety of the Nicaraguan coastal front is relevant to this delimitation, namely the entire coast of Nicaragua from Cabo Gracias a Dios to Nicaragua’s border with Costa Rica. As Professor Quéneudec has demonstrated, the relevant coast in any delimitation case is the coast that faces the delimitation area. Much of the Nicaraguan coast identified as relevant by Nicaragua in this case is far from where this delimitation must take place. The Nicaraguan coast near to Costa Rica may be relevant to that delimitation but not to this one. Thus, while Nicaragua correctly identifies the direction of its relevant coast, it correctly identifies the direction that it faces, it incorrectly includes in its assessment portions of the Nicaraguan coast that are not relevant here.

95. Turning to Nicaragua’s representation of the relevant coast of Honduras, it can only be said that it fails in legal terms in all respects. What Nicaragua portrays as Honduras’s relevant coast does not correctly represent the general direction of the coast of Honduras relevant to this delimitation. It does not correctly represent the direction in which the relevant coast of Honduras faces and Nicaragua includes in its assessment coasts, indeed large amounts of Honduran land territory, that are far removed from the area pertinent to this case. Nicaragua suggests to the Court an extremely distorted presentation of the relevant Honduran coastal front — Professor Quéneudec has reviewed that thoroughly with you — it suggests this coastal front is simply a line that stretches

²MN, p. 17, para. 35.

directly from Honduras's boundary with Nicaragua to its boundary with Guatemala. This is not a coastal façade in any sense of the term. Nicaragua makes no effort to present a simplified representation of the coastal façade of Honduras or to identify the Honduran coast that faces the area in which this delimitation must take place.

96. Having created two lines that are without legal basis, Nicaragua then determines the mathematical bisector of those lines and asserts that such a line would serve as an equitable maritime boundary and, it just so happens as well, that it would attribute sovereignty over islands. I would like to pause here just very briefly to say a word or two about the bisector method.

97. First, Honduras does not deny that geometrical methods of delimitation, such as perpendiculars and bisectors, are methods that may produce equitable delimitations in some circumstances. Certainly there is some State practice that illustrates the use of perpendiculars; and there is one example in judicial practice of the use of a bisector, in the first segment of the boundary line determined by the Chamber in the *Gulf of Maine* case.

98. However, to state that the bisector method is the "alter ego" of equidistance, as was said at page 13 of the 7 March transcript (CR 2007/3, para. 199), perhaps goes too far — particularly if the evidence is limited to the examples that Mr. Brownlie submitted on the previous day.

99. Mr. Brownlie in his presentation on 6 March (CR 2007/2, pp. 14-15, paras. 20-29), gave nine examples of State practice to support Nicaragua's argument. Most of these examples are notional perpendiculars to the general direction of the coast that conform to what an equidistance line would look like in those circumstances. I might note that all of those boundary lines were determined after the Parties had resolved any question of territorial sovereignty. The first example he gave was the 1960 Senegal-Guinea Bissau agreement that runs at 240° from the African coast. Now, if you work at it, you can argue it is a bisector of two coastal fronts, other commentators would say it is a perpendicular to the general direction of the coast. The second example was the 1964 Sharjah-Umm al Qaywayn boundary — clearly a perpendicular to a common coastal front. Third was the 1968 Abu Dhabi-Dubai boundary — another perpendicular. The fourth was the Mexico-United States boundary in the Gulf of Mexico — and I would like to come back to that in a moment. Fifth was the 1972 Brazil-Uruguay boundary, another perpendicular that conforms to the equidistance line in the circumstances, and one specifically in that case where the starting-point

problems at the mouth of the Chuy Stream had to be overcome before the maritime delimitation could take place. Sixth was the 1973 Argentina-Uruguay boundary. Mr. Brownlie showed a graphic of the inner portion of that line which is a perpendicular to the closing line of the Rio de la Plata. He did not mention that the outer portion is a segmented equidistance line. Seventh was the 1980 Costa Rica-Panama boundary—another example of a perpendicular that conforms to equidistance in the circumstances. The eighth was the 1981 Brazil-French Guiana boundary—the same, a perpendicular that conforms to equidistance in the circumstances. The ninth was the 1996 boundary between Estonia and Latvia which, as he said, is a perpendicular to the closing line of the Gulf of Riga; but what was not mentioned was that within the Gulf of Riga the boundary winds its way around the Estonian islands. Altogether, this is pretty thin support for the angle bisector method that Nicaragua proposes here.

100. Let me return to that Mexico-United States delimitation that he cited in the Gulf of Mexico, and we are putting now on the screen figure 15, the map that was employed by Mr. Brownlie, which is IB8. Now there are three boundary lines really here: there is a 1970 territorial sea boundary, which is the black line that comes right off the mouth of the Rio Coco; there is a 1976-1978 exclusive economic zone component, which has two segments and these can be seen in red; and then there is a 2000 component, which is the blue line, which delimits the outer continental shelf between Mexico and the United States beyond 200 nautical miles. I believe it would come as a surprise to Mexican and United States officials involved in those negotiations if they were informed that they had negotiated—and had intended to negotiate—boundaries that were perpendicular to the general direction of the coast. These boundary lines are all equidistance lines, in all of their parts, as is the Mexico-United States boundary in the Pacific Ocean.

101. We can see that the general direction of the coast that Nicaragua has placed on the map is really artificial and has no relation to the coast of the two countries in the Gulf of Mexico. In fact, after this boundary leaves the concave mainland coast in the vicinity of the Rio Grande, it becomes a boundary between opposite coasts, and notably in the construction of the equidistance line, particularly in the central and eastern sectors of this line, very small Mexican islands, called Arrecife Alacran and Cayo Arenas, that are situated 75 nautical miles off the Yucatan peninsula,

were base points on the Mexican side. On the screen now is figure 16, which is a map from the *International Maritime Boundaries* series of the American Society [of International Law] showing these equidistance lines: and these also show the location of Cayo Arenas and Arrecife Alacran that were used as base points in the construction of this line. If anything, this boundary is a regional example of an equidistance line delimitation between coasts that are both adjacent and opposite, where the parties agreed to use small islands as base points in the equidistance line construction. I submit, as well, that this also is pretty weak evidence to justify the Nicaraguan bisector proposal.

102. In summary, Nicaragua's new bisector proposal has no geographic basis, and you can find only limited support for the bisector method in State practice or judicial practice. The Nicaraguan proposal has no geographic basis because the method employed to develop the bisector line itself does not rely on the relevant coasts that face the area to be delimited, and it disregards the territorial sovereignty of the islands off the coast. Nicaragua's presentation of the bisector geometry that it creates is contrived for one reason — and that, simply, is to enable the geometric construction of a new Nicaraguan proposal that just so happens to place the Honduran islands on Nicaragua's claimed side of that line. The new Nicaraguan proposal not only extends from the eastward facing coast of Central America in an oblique direction, one that has no relationship to the relevant coasts that face the area to be delimited, it also places the Honduran islands on the wrong side — the Nicaraguan claimed side — of that line. The Nicaraguan line thus has no geographic basis in the relevant geographic circumstances in this case.

3. The basis in the conduct of the Parties

103. Let me turn briefly to the conduct of the Parties. Professor Sands has dealt extensively with the facts pertaining to the conduct of the Parties in this case. The facts are very clear. Before the change in government in Nicaragua in 1979, Nicaragua made no claim to jurisdiction north of the latitude of Cabo Gracias a Dios.

104. In contrast, Honduras's position has been consistent; the Honduran line is well founded in the conduct of the Parties which contributes to its legal foundation. The traditional line predates Nicaragua's change of position by many years. And one category of facts, reviewed thoroughly by

Professor Sands, provides a particularly clear, straightforward, and unambiguous picture. These facts pertain to the abutting oil concessions that both Parties issued from the early 1960s forward. The concessions were aligned along the traditional line.

105. Nicaragua argues that these facts are not relevant because there was no formal agreement and because there was some uncertainty about the precise latitude of the land boundary terminus in those days. The fact that there was no formal treaty or that a lack of clarity existed about the precise latitude of the mouth of the Rio Coco, whether it be 15°, or 14° 59.8' N, or 14° 59' 08" N, which was the essence of the difference, is hardly relevant now. The evidence shows that the Parties deliberately aligned their oil practice for about one-and-a-half decades.

106. The evidence is overwhelming, and Professor Sands has reviewed it with you. There can be no doubt that whatever technical uncertainty may have existed as to the precise latitude of the boundary relationship, meaning the precise latitude of the mouth of the river at the Rio Coco, it cannot deny the practice engaged in by both governments.

107. In this regard, it is worth reminding that in the *Tunisia/Libya* case there were minor overlaps between the Libyan and the Tunisian concessions in the vicinity of the land boundary terminus at Ras Adjir, and there was no formal continental shelf treaty, yet the deliberate alignment of oil concessions was particularly relevant in that case. Indeed, in the *Tunisia/Libya* case the Court found a *de facto* boundary to exist, reflected in the colonial practice to be sure, consistent with the geography to be sure, as a perpendicular to the general direction of the coast, but evidenced as well by a Tunisian oil concession that was issued in October 1966 and a Libyan concession that was issued in April 1968 which were aligned — deliberately aligned — for an 8-year period, from 1968 to 1976, when the pattern broke down.

108. It may be helpful to review for a few minutes those facts that pertain to the oil concessions that were before the Court at that time, so as more fully to appreciate that Judgment and its application here. It will be recalled that in that case, the case was before the Court by way of a Special Agreement that was signed in 1977, that followed several serious naval engagements in the middle of 1976 that related to offshore petroleum activities. Now on the screen is figure 17, which is a reproduction of map No. 3 from the Libyan Memorial, and it is reproduced as map No. 41 in the pleadings that were published by the Court (*I.C.J. Pleadings, Continental Shelf*

(*Tunisia/Libyan Arab Jamahiriya*), Vol. VI, plate 41). This depicts two key concessions — one Libyan and one Tunisian. The label on the Libyan map is in error because it dates the Tunisian concession 1967: actually it was October 1966. These concessions and their location were well known and while it is not clear at this scale, the eastern side of the Tunisian concession area is a series of stepped lines approximating a 26° line from the Tunisia/Libya land boundary terminus at Ras Adjir and it extends to a latitude 33° 55' N, and we are going to mark that position for ease of reference (X).

109. Thus, beginning in April of 1968 there was a deliberate practice of Tunisia and Libya to align their concessions in the area south of 33° 55' N. Four years later, in 1972, the picture began to get complicated. New concessions were issued by both countries but they were north of 33° 55' N and they overlapped, but south of 33° 55' N the situation remained the same. And it remained the same until 1976, just before the Parties came to the Court, when Tunisia expanded its concessions eastward into the Libyan concession. Thus, the deliberate common oil practice along the 26° line south of 33° 55' N occurred over an eight-year period from 1968 to 1976. (Put up figure 18)

110. In this case, the issuance of deliberately aligned oil concessions is longer — beginning from at least 1962 by Honduras and from 1965 by Nicaragua up to the time of Nicaragua's change of position, indeed if not longer³. Based on this concurrence of view, the area in dispute today was not in dispute then.

111. One may ask whether the alignment of Honduras and Nicaragua of these concessions was really deliberate, as was the case between Tunisia and Libya? Surely it was. The evidence of deliberate alignment is conclusively proved if by no other fact than these two countries agreed to a joint project along 15° N latitude in the drilling of the Coco Marina well.

112. Now just consider the Coco Marina project for a minute and its implications. It makes obvious sense for Honduras to co-operate with Nicaragua in a joint project along the traditional line in regard to the oil concessions. It likewise makes sense for Nicaragua to do so *if* Nicaragua respects the traditional line and wishes to promote its interest in connection with the aligned oil

³RN, para. 5.17.

concessions. It makes no sense, however, for Nicaragua to co-operate with Honduras, jointly to authorize the drilling of the Coco Marina well at 15° N latitude if Nicaragua believes that Honduras does not have title to the adjoining area. If indeed, at the time the Coco Marina well was drilled, if Nicaragua had even remote pretensions to the area north of 15° that it now claims, including the islands, Nicaragua would never have agreed to a joint operation with Honduras along the traditional line along at 15° N. No Government in the same situation would do so. The Coco Marina well is about 17 nautical miles due south of the line that Nicaragua now claims. It is inconceivable that Nicaragua claimed the area north of 15° N latitude in 1969 when the Coco Marina well was drilled. This single fact alone is evidence of Nicaragua's past respect for the traditional line and confirmation of the reality of Nicaragua's substantial change in position.

113. The record is incontestable. Nicaragua accepted and acted upon the traditional line up to the time of the change in Government in 1979. There was a true tacit agreement. Since then, Nicaragua has sought to overturn what was agreed and acted upon. Honduras consistently has rejected those efforts and Honduras is now before the Court to seek confirmation of the traditional line, just as in 1960 it sought confirmation from the Court of the 1906 Award.

114. Altogether there is a basis in law for the Honduran line in history, geography and the conduct of the Parties. There is no legal basis for the Nicaraguan proposal.

II. The equitable character of the Honduran line

A. *Its confirmation in the jurisprudence of the Court*

115. I now turn to a discussion of the equitable character of the Honduran line. The objective of an equitable delimitation is to ensure that to the extent possible the maritime boundary leaves to each party the maritime area that lies in front of its coast. This proposition is expressed in international law through the principle of non-encroachment — meaning the non-encroachment of one party on the natural prolongation of the other, or otherwise expressed in terms of avoiding the cut-off of the seaward projection of either of the States concerned. Nicaragua expresses it as follows in its Memorial: “The fundamental requirement of equity is that a delimitation line cannot pass too close to one of the coasts involved.”⁴

⁴MN, p. 119, para. 74.

116. To achieve this objective, the Court must apply a delimitation method. Now in this stage of the practice it is common to refer initially to the provisional equidistance line, to determine whether it should be adjusted, or whether another method should be employed, to achieve an equitable result. Honduras, however, notes that the Court's approach to delimitation method in recent cases has never denied that another method or approach might be employed once the provisional equidistance line has been examined. In Honduras's view, if the Court proceeds to examine the provisional equidistance line in this case, there is nothing in the Court's methodology that would prevent it from adopting the traditional line as the maritime boundary between the Parties.

117. Furthermore, when the Honduran line is held up to the objective of an equitable delimitation, and when the provisional equidistance line is examined, the equitable character of the traditional line is readily apparent.

B. *The Honduran line complies with the principle of non-encroachment*

118. When examining the principle of non-encroachment, the essential legal question is whether the line examined lies too close to the territory of the State concerned. Thus, in these geographic circumstances, the question is: does the Honduran line run too close to Nicaraguan territory so as to cut off the extension of Nicaragua's coastal front into the sea?

119. In Honduras's view, the answer is no. The Honduran line is always the same distance from the mainland of both countries at the mouth of the Rio Coco; for the most part, the Honduran line runs closer to the islands of Honduras than it does to the islands of Nicaragua. Thus, the Honduran line can hardly be said to lie too close to Nicaragua.

120. Furthermore, Nicaragua admits it has a linear coastal front that runs from Cabo Gracias a Dios in the north to its boundary with Costa Rica in the south. The mainland coast of Nicaragua faces east. No part of its mainland coastal front faces north, or north-east, or even east-north-east. It faces east or perhaps even slightly south of east.

121. The traditional line that runs due east from Cabo Gracias a Dios does not run in front of the coastal front of Nicaragua. If a coast only faces east, its seaward extension is not cut off by a boundary that runs east.

122. We have put on the screen plate 49 from the Honduran Rejoinder (figure 19). This figure is simply designed to demonstrate that the traditional line, shown here in red, does not cut off the extension of Nicaragua's coastal front into the sea. The Honduran line complies with the principle of non-encroachment. In contrast, Nicaragua's proposal, which runs obliquely across the eastward facing coastal front of Honduras, does not comply with the principle of non-encroachment.

C. *The Honduran line is equitable when compared against the provisional equidistance line*

1. The reason for the examination

123. Now we turn to the provisional equidistance line. We make this examination notwithstanding the Honduran position that the traditional line has been respected and has been followed by Honduras for many years and by Nicaragua up to 1979 or 1980, and it is the Honduran position in this case. We do so because of the approach adopted by the Court in recent cases to review the provisional equidistance line to assess whether it should be adjusted, or another method employed, to create an equitable solution. We also do so because the provisional equidistance line confirms the equitable character of the Honduran position. It is also necessary to respond to the argument made by Mr. Brownlie in this regard on 7 March (CR 2007/3, pp. 10-13, paras. 190-199).

124. In the recent *Barbados-Trinidad and Tobago* case, the Tribunal referred to the judicial practice of examining the provisional equidistance line as a first step in the analysis of a maritime boundary problem as a "hypothesis" (para. 242). The Court, of course, has said as much on more than one occasion. As such, the question to be examined is whether the provisional equidistance line appears itself to provide an equitable solution, whether an adjustment should be made in applying the equidistance method, or that another method should be employed.

125. Thus, the purpose of the exercise we are embarking upon is to see what the provisional equidistance line looks like. Mr. Brownlie was highly critical of the provisional equidistance line set out by Honduras in the Rejoinder. He called it "totally misleading" (CR 2007/3, p. 10, para. 192), and he said that it "does not satisfy the legal and hydrographic criteria of validity of a line described as an 'equidistance line'" (CR 2007/3, p. 11, para. 195). And to support his criticism he seemed to have three specific objections.

126. One of those objections was that Honduras has used the high-tide line rather than the low-tide line of the features shown on the chart as the proper points from which to measure the provisional equidistance line. In response we say the following. First, in the circumstances, whether the provisional equidistance line — as a hypothesis — is developed from the low-tide or high-tide line would not seem to be material in most situations where the line is being examined for a general impression. I suggest that the Court would not be able to discern the difference if this difference was depicted in two lines shown on the papers before you. Second, in mounting this objection, there was no demonstration of where we had erred: there was no chart, there was no specific example cited. Third, the Court may imagine that having been charged with a technical error of this nature, our technical team immediately re-examined its work. They could find no error. Indeed, in the construction of the Honduran provisional equidistance line, the low-tide line on the relevant features was used as the base points for constructing the provisional equidistance line. Now, without having a specific example of error, we can only assume that the criticism mounted by Nicaragua is a result perhaps of a mistaken impression or interpretation of the symbols used on modern nautical charts, and this was elaborated by Professor Greenwood on Monday (CJG 21-22).

127. The second criticism levied at the Honduran provisional equidistance line concerns its first segment. This first segment of the provisional equidistance line is a straight line segment of about 14.8 nautical miles. It extends in an east-south-east direction from the mainland and it extends to a point ($14^{\circ} 57' 23.9''$ N, $82^{\circ} 53' 31.4''$ W) that is a trijunction point that is equally distant from Bobel Cay, Edinburgh Cay and the point fixed by the 1962 Mixed Commission.

128. Now, Nicaragua complains that this is not a true application of the equidistance methodology, but it fails to explain. All Honduras has done is to simplify the equidistance line that extends from the mouth of the river to that point. The fact is that to determine an equidistance line turning point, three base points on geographic features are required. It is possible to use the infinite similarly placed base points on both sides of the Rio Coco for this purpose, which would result in a multitude of turning points before the provisional equidistance line turned and reached the vicinity of the first turning point, which it would do in all events. The method Honduras has employed is simply to simplify that first segment by identifying the point that is equidistant from Honduras's

Bobel Cay, Edinburgh Cay in Nicaragua, and a common fixed point, the 1962 Mixed Commission point.

129. The third criticism levied by Nicaragua is that the provisional equidistance line is based too much on base points located on small islands and not on mainland points. The answer to that simply is that the small islands of the Parties are territorial points, they have a baseline from which the breadth of the territorial sea is measured, and the provisional equidistance line is to be developed from the baselines of the two coastal States. The provisional equidistance line, as such, is the provisional equidistance line, as such. The objection is more a comment by the spokesman that he does not like what the provisional equidistance line looks like, and would wish to argue that its characteristics should be addressed in deciding on the choice and the application of a delimitation method.

2. The base points

130. Now, in any examination of the provisional equidistance line, the first question to be decided concerns the base points to be used.

131. Honduras and Nicaragua are adjacent States, and the land boundary meets the sea at the mouth of the Rio Coco. Because of the eastward projection of the cape, except at the initial stage on either side of the tip of the cape, which we know constantly changes its shape, points on the mainland on either side of the Rio Coco soon fall away. But we have just described one technique that can be used to overcome that problem and there are others. Nonetheless, Nicaragua asserts that it is impossible to employ the equidistance method in this case. It says at paragraph 82 of its Memorial that “the technical method of equidistance is not feasible”. Honduras disagrees with that contention.

132. The base points that are used in the construction are very clear. A map of the area, with the base points highlighted, is now shown (figure 20). After Cabo Gracias a Dios, they are Bobel Cay, Port Royal Cay and South Cay on the Honduran side, and Edinburgh Cay and Edinburgh Reef on the Nicaraguan side. We can see two other features there — Hall Rock on the Honduras side and Cock Rock on the Nicaraguan side. They are present, and arguably they might serve as base points, but as one appears to be covered at high tide, Honduras has chosen not to

include them as base points in this analysis — this hypothesis of what a provisional equidistance line might look like.

133. The features on the Honduran side are islands, as Professor Sands and Professor Quéneudec have demonstrated. Nicaragua has not contested this. They are small but substantial features and they are backed up by a number of Honduran reefs and cays that could be used as base points if these islands did not exist.

134. On the Nicaraguan side the controlling base points for the provisional equidistance line are on Edinburgh Cay and Edinburgh Reef, which, relatively speaking, are somewhat isolated from other Nicaraguan islands. This selection of the Nicaraguan base points may be generous, particularly in so far as drying features shown on the reef are concerned. Nicaragua has made no effort to explain these features to the Court, and Honduras has no independent evidence of their characteristics. Thus, we are left with only the appearance of these features on modern nautical charts. In all events, these features on the Nicaraguan side are smaller than those on the Honduran side and whether they are islands in a legal sense is an open question. However, since again this is an exercise — an hypothesis — we will give Nicaragua the benefit of the doubt and use them as Nicaraguan base points to construct the provisional equidistance line.

3. The resulting provisional equidistance line

135. On this basis then, we may determine the provisional equidistance line that is now being shown on the screen (figure 21). It should be noted immediately that this entire provisional equidistance line falls on the southern side of the traditional line. This is simply a fact that arises because the Honduran islands are closer to 15° N latitude than the Nicaraguan features.

4. Territorial sea/EEZ divisions of the provisional equidistance line

136. From point 1, the provisional equidistance line passes through seven other turning points before reaching 82° W longitude.

137. The first segment from Cabo Gracias a Dios out to point 1 divides the respective territorial seas of the Parties which extend from the mainland before that segment reaches into a pocket of exclusive economic zone; in other words, that first segment is primarily a territorial sea boundary.

138. From point 1 to point 2 the provisional equidistance line proceeds easterly, it exits that pocket of exclusive economic zone, and becomes again a territorial sea dividing line. Point 2 is equidistant from two points on Nicaragua's Edinburgh Cay and one point on Honduras's Bobel Cay.

139. From point 2 to point 3 the provisional equidistance line continues eastward as a territorial sea dividing line. Point 3 is equidistant from Honduras's Bobel Cay and Port Royal Cay and a point on Nicaragua's Edinburgh Reef. From point 3 to point 4 the provisional equidistance line continues eastward as a territorial sea boundary. Point 4 is equidistant from Honduras's Port Royal Cay and South Cay and Nicaragua's Edinburgh Reef. At point 4, the relative eastward position of Honduras's South Cay, as compared to Nicaragua's Edinburgh Reef, begins to push the provisional equidistance line south-eastward.

140. From point 4 to point 5 the provisional equidistance line continues to be within 12 nautical miles of Honduran and Nicaraguan base points, and thus most of that segment is a territorial sea dividing line. But after this, the line segments connecting points 5 through 8 divide the exclusive economic zone. And those turning points are equidistant from features on Honduras's South Cay and Nicaragua's Edinburgh Reef.

141. As was pointed out before, more than 80 per cent of the provisional equidistance line shown here limits the territorial sea of Honduras from extending for a full 12 nautical miles. In other words, more than 80 per cent of the single maritime boundary that has been brought to the Court concerns primarily the division of the territorial sea of Honduras and Nicaragua.

5. Comparison of the provisional equidistance line and the traditional line

142. The traditional line claimed by Honduras is more favourable to Nicaragua than the provisional equidistance line. (Figure 22.) We are now just highlighting the comparison between those two. We can see 1,775 km² would be attributed to Honduras by the provisional equidistance line south of the traditional line.

143. Thus, certainly from Honduras's perspective, there is nothing unsuitable about the provisional equidistance line itself.

6. The eastern end of the provisional equidistance line would cut-off the extension seaward of Nicaragua's coastal front

144. The second notable feature of the provisional equidistance line is the change in the general orientation from an eastward-running line to a south-eastward-running line caused by the influence of Honduras's South Cay. (Figure 21.) Because Honduras's South Cay and Nicaragua's Edinburgh Reef are the final two base points, and because South Cay is further east, its influence in the application of the equidistance method is to push the provisional equidistance line to the south-east. In these geographic circumstances this influence continues for some distance, at least until the 82nd meridian.

145. The situation is somewhat reminiscent of the position of Fasht al Jarim in the *Qatar v. Bahrain* case. On the figure now on the screen (figure 23) you can see the amount of maritime area that would have been awarded to Bahrain if Fasht al Jarim had been used as a base point in applying the equidistance method. In that case, the Court applied the provisional equidistance line in the portions of that delimitation associated with the territorial sea, but noted that the position of Bahrain's Fasht al Jarim in the outer sector — the exclusive economic zone sector — as compared to the points on Qatar's coast, caused the provisional equidistance line to swing too much toward Qatar. Thus, the Court determined not to use Fasht al Jarim as a base point.

146. Honduras is not here to argue whether South Cay should be given no effect or one-half effect or full effect because we are satisfied with the traditional line that Honduras believes is an equitable boundary between the Parties. However, should the Court decide instead to employ the equidistance method, Honduras believes that in accordance with Article 15 of the 1982 Convention, there are no special circumstances that call for adjustment of the provisional equidistance line where it serves as the territorial sea boundary between the two States; however, Honduras appreciates that some adjustment of the provisional equidistance line may be called for in the seaward exclusive economic zone sector because of the relative location of Honduras's South Cay.

147. This examination of the provisional equidistance line demonstrates conclusively that the Honduran position is neither aggressive nor designed to maximize Honduran interests. Indeed, the opposite is true. The traditional line falls on the Honduran side of the provisional equidistance line

throughout its length. It is hard to understand how the traditional line is not an equitable boundary in light of the geographic circumstances.

148. Now before concluding this discussion, we take note that Nicaragua has not shown the Court a provisional equidistance line, based on its position that the disputed islands belong to Nicaragua. Nicaragua has said that it is impossible to employ the equidistance method in this case, even though it has referred to median lines in connection with its analysis of where the Court should place the seaward fixed starting-point for this delimitation. In the absence of a presentation by Nicaragua we undertook to show that line, and it was included in the presentations by Professor Greenwood and Professor Dupuy on maps CIJ-20 and PMD-3. Unfortunately, in our haste, those figures — which are the same — are an error and we apologize to the Court and to the Nicaraguan delegation. We would ask that those maps be disregarded and, should there be further reference to this demonstration, we hope it will address the figure that we are now putting on the screen, figure 24, which we will stand behind. This figure corrects the failure on the earlier figure not to use Honduras's Banco Cabo as a base point in the hypothesis, and the failure not to use low-tide features on the northern side of Media Luna in this construction — in this hypothesis — to the advantage of Nicaragua. As you can see, in this construction — using the same methodology that Honduras used for the starting first segment — the line will leave the mainland in an eastward direction, then it will turn sharply north, it will run west of the islands that Nicaragua has placed in dispute, the line would then turn east running north of the disputed islands, running along about 15° 30' N latitude and then it would continue. Now, why has Nicaragua not shown this line to the Court if it believes it is sovereign over the islands? It truly cannot be that it believes that it is impossible to apply the equidistance methodology in this situation. Perhaps one reason is that Nicaragua knew it could not support a claim to the islands that it would have to use as base points in an equidistance line analysis. Perhaps a second reason is that, as this line makes very clear, the islands that Nicaragua has placed in dispute are off the coast of Honduras — they are adjacent to the coast of Honduras. They are not off the coast of Nicaragua. They are not adjacent to the coast of Nicaragua. Perhaps another reason is the aggressive nature when this line is compared to the line that Nicaragua proposes in this case: the aggressive nature of the Nicaraguan proposal as opposed to a provisional equidistance line it might otherwise have supported. So now we place on

this graphic the bisector line that Nicaragua proposes here. As the Court will note, the Nicaraguan proposal is much more aggressive toward Honduras than a Nicaraguan, if you will, provisional equidistance line. This destroys any perspective about the equitableness of Nicaragua's bisector proposal, and it is in stark contrast to the Honduran position that is more generous to Nicaragua than the provisional equidistance line based on Honduran sovereignty to the islands.

D. *The Honduran line has roots in State practice*

149. Thus, we can see that a position of maximum advantage for Honduras would be one based in the equidistance method. However, Honduras in this instance and many other States in other circumstances have chosen to use lines of latitude, or longitude, to mark their maritime boundaries. These lines of latitude or longitude may or may not correspond closely to an equidistance line, particularly where small offshore features might be involved, but they are nonetheless utilized, quite often, by States to construct equitable delimitations because they are deemed by those States to reflect the overall geographical relationship and a historical relationship between two countries.

150. It may be useful to survey briefly the widespread use of lines of latitude or longitude in maritime delimitations. And we will run quickly through the maps in your folder — and we will put them on the screen. These are maps taken again from the *International Maritime Boundaries* series of the American Society of International law, showing agreed boundary lines following lines of latitude or longitude and comparing that, as these maps do, with the equidistance line in the circumstance. These maps are in your folders and full citations are in the prepared statement, and I will go through these rather quickly.

151. In North America, a line of longitude marks the maritime boundary between Russia and the United States in the Arctic Ocean (1990) (figure 25)⁵.

152. In Middle America, lines of latitude and longitude create a stepped boundary between Colombia and Panama in the Caribbean Sea, and a line of latitude marks a segment of their boundary in the Pacific (1976) (figure 26)⁶.

⁵*International Maritime Boundaries*, Vol. I, report No. 1-6.

⁶*Ibid.*, Vol. I, report No. 2-5.

153. We will not stress the boundary between Honduras and Colombia (1986) or that between Costa Rica and Colombia (1977)⁷, because we know Nicaragua objects to those agreed delimitations, but we can emphasize the recent boundary (2001) between Honduras and the United Kingdom in respect of the Cayman Islands that uses a line of latitude in its eastern segment (figure 27)⁸.

154. In South America, it is well known that the boundaries between Colombia and Ecuador (1975) (figure 28)⁹, the boundaries between Ecuador and Peru (1952) (figure 29)¹⁰, and the boundary between Peru and Chile (1952) (figure 30)¹¹ are lines of latitude.

155. It also should be recalled, the 1984 maritime boundary between Argentina and Chile is a line of longitude, utilizing as well lines of latitude and longitude in its early section (figure 31)¹².

156. In Africa, we might recall that the boundaries between Gambia and Senegal are lines of latitude (1975) (figure 32)¹³, and that the 2002 boundary between Angola and Namibia (figure 33)¹⁴ is a line of latitude, and that the boundaries of Tanzania, with both Mozambique (1988) (figure 34)¹⁵ and Kenya (1976) (figure 35)¹⁶, use lines of latitude in their seaward sectors.

157. In the Red Sea, Saudi Arabia and Yemen used two connected lines of latitude to define their maritime boundary (figure 36)¹⁷.

158. And in Europe, we know that the United Kingdom and Ireland used a series of steps marked by lines of latitude and longitude to define their maritime boundary (1988), the result in this case being a rough approximation of where an equidistance line would fall (figure 37)¹⁸. As

⁷*Ibid.*, Vol. I, report Nos. 2-4 and 2-1.

⁸*Ibid.*, Vol. V, report No. 2-23.

⁹*Ibid.*, Vol. I, report No. 3-7.

¹⁰*Ibid.*, Vol. I, report No. 3-9.

Ibid., Vol. I, report No. 3-5.

Ibid., Vol. I, report No. 3-1.

¹³*Ibid.*, Vol. I, report No. 4-2.

¹⁴*Ibid.*, Vol. V, report No. 4-13.

¹⁵*Ibid.*, Vol. V, report No. 4-7.

¹⁶*Ibid.*, Vol. V, report No. 4-5.

¹⁷*Ibid.*, Vol. IV, report No. 6-16.

¹⁸*Ibid.*, Vol. II, report No. 9-5.

well, the Spain-Portugal agreement of 1976 might also be noted, although this is not in force¹⁹. These lines, which I believe have been referred to as perpendiculars by the Nicaraguan team follow lines of latitude and longitude (figure 38).

159. Thus, the traditional line that has been applied as a tacit agreement by Honduras and Nicaragua is a line that has roots in State practice. The method employed has proved to be equitable in many other cases, and there is no reason to doubt that it may create an equitable boundary in this case.

E. *The Tunisia/Libya precedent*

160. As Honduras noted in the Rejoinder, the *Tunisia/Libya* case is particularly instructive. It is referred often today in the classrooms as an old case, but there is a lot in that case to be learned. Now, obviously, the macro-geographic perspectives of the two situations is quite different, but there is much to be learned by a close examination of the Court's approach in 1982. And we will now start a series of slides showing that geography of the *Tunisia/Libya* case (figure 39).

161. In *Tunisia/Libya*, the Court faced a geographical situation in which the land boundary met the coast at Ras Adjir. Ras Adjir is now highlighted; it is a cape on the coast of the southern Mediterranean Sea. (Highlight 39a) The coasts of Tunisia and Libya on either side of Ras Adjir face northeast into the Mediterranean Sea. (Highlight 39b) Further west along the Tunisian coast, after the Tunisian island of Jerba, in the Gulf of Gabes, the North African coastline makes a major change of direction to the north. (Highlight 39c) Besides this geographical setting, the Court, in that case, faced a set of facts, the essence of which being that for many years the Parties in that case, and the colonial Powers before them, had followed a traditional line of delimitation approximating a perpendicular to the general direction of the coast, (Highlight 39d) at least in so far as the area inshore was concerned. And this included then, as well, substantial oil concession practice that abutted along the traditional line, at least up to 33° 55' N. (Figure 39e)

162. In the case, Tunisia tried to refashion geography by trying to convince the Court that the coast made a major change in coastal direction, not in the Gulf of Gabes, as it does and as the Court

¹⁹*Ibid.*, Vol. II, report No. 9-7.

so found, but Tunisia argued that the coast made a major change in direction at Ras Adjir. Nicaragua's argument is just like the Tunisian argument. Nicaragua tries to convince the Court that Cape Gracias a Dios marks a major change in coastal direction. Tunisia argued that its relevant coast faced not north-east, but it argued it faced east, forgetting entirely about its northward-facing coastline west of Ras Adjir at the land boundary terminus. This led Tunisia to argue that the boundary ought to be the bisector boundary extending at approximately 45° from Ras Adjir. While Tunisia made other arguments of a geomorphological, geological and historical character consistent with that theme, it held forth in its submission that the delimitation could — and here I am quoting from paragraph 15 of the Court's Judgment where it reviewed the Tunisian submission — “be constituted by a line drawn at the Tuniso-Libyan frontier” meaning Ras Adjir, but “parallel to the bisector of the angle formed by the Tuniso-Libyan littoral in the Gulf of Gabes” (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 33, para. 16; emphasis added). Tunisia wanted the Court to create a bisector, way over there on the western coast of the Gulf of Gabes, way over to the west of the delimitation area, and then transfer that bisector to where the land boundary terminus is. Thus, exactly like Nicaragua does in this case, Tunisia argued that a bisector should be created, developed from coastal fronts unrelated to the relevant coasts at the land boundary terminus that faced the area to be delimited. Just as Nicaragua does, Tunisia built its argument on a major change in direction of the coast of North Africa, but one that takes place actually a considerable distance from where the Tunisia-Libya land boundary met the sea.

The Court rejected Tunisia's argument. The Court said: “in assessing the direction of the coastline it is legitimate to disregard for the present coastal configurations found at more than a comparatively short distance from [the land boundary terminus], for example the island of Jerba” (*ibid.*, p. 85, para. 120). The Court was focused on the short part of the coast at the land boundary terminus.

163. On the screen we are putting up the line that was established by the Court (figure 39f). The Court adopted the perpendicular to the general direction of the coast in the vicinity of the land boundary terminus, a line that was also based in the practice of the Parties. The Court followed that line until there was reason to deviate from that line. In *Tunisia/Libya*, there was reason to do

so. First, north of 33° 55' N, the corresponding practice, the oil concession and the historical practice, was not evident any longer as it had been in the area south of 33° 55' . Second, because of the major change in direction in the North African coast in the Gulf of Gabes — not at the land boundary terminus at Ras Adjir — the Tunisian coast there then turned inward to again face the delimitation area. Thus the Court in 1982 abandoned the perpendicular where there was reason to do so. Where there was no corresponding practice of the Parties for the boundary to follow, and where the eastward facing coast of Tunisia had now turned toward the area that was to be delimited, after the major change in direction of the coast of the Gulf of Gabes. For these reasons then the Court adjusted the perpendicular line to the east away from the Tunisian eastward facing coast.

164. Let me just pose a hypothetical question. What if the facts had been the same, that the coast of North Africa did not make a turn to the north at the Gulf of Gabes, but turned west instead, away from the area to be delimited? Would the Court have regarded the perpendicular to the general direction of the coast any differently? Would the Court have considered the colonial history or the abutting oil concessions any differently? Would the Court have considered the colonial history or the abutting oil concessions any differently? Now, of course, we cannot know the answer to that. Perhaps the only thing for sure we can say that would have been different is that there would have been no Tunisian coast north of the Gulf of Gabes, no Kerkennah Islands, to cause the Court to adjust the line that it had started.

165. In the present case, the land boundary meets the sea at the eastern tip of a cape that protrudes from the midst of the eastward facing coast of Central America. A perpendicular projected from this eastward facing coastal front approximates a parallel of latitude. The eastward facing coastal front of Central America does not make a major change in direction until it begins to do so at Cape Falso. When it does so, the coast of Central America turns away from the area to be delimited in this case. Thus, from a geographical perspective and from an analysis of coastal fronts, there is no reason why a boundary that begins as a perpendicular to the general direction of the eastward facing coast of Central America — there is no reason why it should turn. Furthermore, in this case there is no reason to turn the line based in the practice of the Parties or because of other geographical features. The Honduran line leaves to both sides the islands and

rocks belonging to either country, and it reflects the practice of the Parties eastward to 82° W longitude undertaken for many years until Nicaragua at a late date changed its position.

F. *The Honduran line does not reward a party for a late-coming change of position*

166. Let me conclude by saying something about that change of position. The Honduran line is equitable because it reflects a common practice of the Parties in the maritime area leading up to approximately 1980. It does not reward the Party with a late-coming change of position, one which changed long after both countries had claimed and exercised offshore jurisdiction in this area aligned along the traditional line. It is ironic that Nicaragua says at page 33, paragraph 2, of its Memorial, in the chapter entitled “The Relations between Nicaragua and Honduras (1963-1979)” that it says “witnessed the best relationship between Honduras and Nicaragua in all of the XXth century”. One may note that this period takes place immediately following the November 1960 Judgment of the Court in the *King of Spain Award* case, and, of course, it is this same period that witnessed the alignment of oil concessions along the traditional line. But Nicaragua has chosen to disavow what has gone before. As a political matter that may be its right, but international law transcends such political changes.

Madam President, Members of the Court, this concludes my presentation. I would now like to say just a short word to conclude the first round for Honduras.

First, I have been asked by the Agent of Honduras to express to the Court — for purposes of emphasis and clarity — that the observation set forth in his opening statement remains firm: that is to say, that Honduras will reflect further on its final submissions.

Second, it remains for me on behalf of all of the Honduran team to express to the Court our highest esteem and gratitude for your patience and attention to the position of Honduras.

Madam President, that completes the presentation of Honduras in this first round.

The PRESIDENT: Thank you very much, Mr. Colson.

I shall now give the floor to Judge Keith and Judge *ad hoc* Gaja, who each have questions for the Parties. Judge Keith.

Judge KEITH: Thank you, Madam President. My question is for Nicaragua. What consequences for the location of a single maritime boundary would Nicaragua draw were Honduras to have sovereignty over some or all of the islands and maritime features which are located north of parallel of latitude 15° N. Thank you, Madam President.

The PRESIDENT: Thank you, Judge Keith. Judge Gaja, you have the floor.

Judge GAJA: Thank you, Madam President. I would like to address the following question to both Parties. May Logwood Cay and Media Luna Cay be currently regarded as islands within the meaning of Article 121, paragraph 1, of the United Nations Convention on the Law of the Sea? Thank you.

The PRESIDENT: Thank you, Judge Gaja. The written text of these questions will be sent to the Parties as soon as possible. The Parties may decide, if they deem it convenient, to answer during the second round of oral argument. It will also be possible for them to provide written responses to the questions within one week as from the closure of the present oral proceedings, that is to say, by Friday 30 March 2007 at the latest. In this latter case, any comments that a Party may wish to make, in accordance with Article 72 of the Rules of Court, on the responses by the other Party must be submitted not later than Tuesday 10 April 2007.

This marks the end of today's sitting. I thank each of the Parties for the statements made in the course of the first round of oral argument. The Court will meet again on Monday 19 March from 3 p.m. to 6 p.m. and on Tuesday 20 March from 10 a.m. to 1 p.m. to hear the second round of oral argument of the Republic of Nicaragua. At the end of the sitting on Tuesday, Nicaragua will present its final submissions.

The Republic of Honduras will then present its oral reply on Thursday 22 March from 3 p.m. to 6 p.m. and on Friday 23 March from 10 a.m. to 1 p.m. At the end of the sitting next Friday, Honduras will present its final submissions.

Therefore, each Party has at its disposal a total of two full sessions of three hours for the whole of its further oral reply. Pursuant to Article 60, paragraph 1, of the Rules of Court, these next oral presentations must be as succinct as possible. The purpose of the second round of oral

argument is to enable each of the parties to reply to the arguments advanced orally by the other party, and must not accordingly constitute a repetition of earlier arguments. The Parties will decide how much of the time allotted to them they need for this further purpose.

The Court now rises.

The Court rose at 11.45 a.m.
