

DECLARATION OF JUDGE *AD HOC* GAJA

While I am in agreement with the rest of the operative part of the Judgment and with most of the reasons given, I do not share the view that maritime areas lying south of the 14° 59.8' N parallel should be attributed to Honduras as part of its territorial sea.

According to Article 3 of the United Nations Convention on the Law of the Sea (UNCLOS), “[e]very State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles”. While Honduras has generally exercised this right to a full extent, it has constantly considered that the territorial sea pertaining to the cays in the Media Luna group does not extend in a southerly direction beyond the 14° 59.8' N parallel. This is a choice that a State is perfectly entitled to make under UNCLOS. By so fixing the southern border of its territorial sea, Honduras made in any case sure that all the cays, rocks and reefs in the area were comprised within its territorial waters. One advantage of the claimed delimitation was its relative simplicity.

The final submissions of the Government of Honduras still reflected the position that its territorial sea would not cross the 14° 59.8' N parallel. By accepting this, the Court would have avoided giving “a disproportionate effect . . . to an insignificant maritime feature”, as the Court stated when attributing to Qit’at Jaradah a territorial sea of less than 12 nautical miles. This was done also when the delimitation affected on the one hand Bahrain’s territorial sea and on the other Qatar’s exclusive economic zone (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Merits, Judgment, I.C.J. Reports 2001*, pp. 104 and 109, para. 219). A similar approach was taken by the Arbitral Tribunal in the *Eritrea/Yemen* case (United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. XXII, p. 371, para. 162).

(Signed) Giorgio GAJA.

---