21 APRIL 2022

JUDGMENT

ALLEGED VIOLATIONS OF SOVEREIGN RIGHTS AND MARITIME SPACES IN THE CARIBBEAN SEA

(NICARAGUA *v.* COLOMBIA)

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VIOLATIONS ALLÉGUÉES DE DROITS SOUVERAINS ET D'ESPACES MARITIMES DANS LA MER DES CARAÏBES

(NICARAGUA c. COLOMBIE)

21 AVRIL 2022

ARRÊT

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(NICARAGUA *v.* COLOMBIA)

General background — Geography — The Court's 2012 Judgment in Territorial and Maritime Dispute (Nicaragua *v.* Colombia) *case delimited the Parties' continental shelf and exclusive economic zone up to 200-nautical-mile limit — Eastern endpoints could not be determined as Nicaragua had not notified location of baselines — Composition of San Andrés Archipelago.*

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Alleged authorization by Colombia of fishing activities and marine scientific research in Nicaragua's exclusive economic zone — Resolutions of General Maritime Directorate of Ministry of National Defence of Colombia related to industrial fishing in the San Andrés Archipelago — Not possible to determine geographical scope of these resolutions — Two resolutions by Governor of San Andrés Archipelago define fishing zone as including areas within Nicaragua's exclusive economic zone — Colombia continues to assert right to authorize fishing activities in Nicaragua's exclusive economic zone — Examination of alleged incidents at sea — Fishing vessels allegedly authorized by Colombia engaged in fishing activities in Nicaragua's exclusive economic zone — Fishing activities conducted under protection of Colombian frigates — Insufficient evidence that Colombia authorized marine scientific research in Nicaragua's exclusive economic zone — Finding that Colombia has violated Nicaragua's sovereign rights and jurisdiction in its exclusive economic zone by authorizing fishing activities in that zone.

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Alleged infringement by Nicaragua of artisanal fishing rights of inhabitants of San Andrés Archipelago, in particular the Raizales — Applicable law is customary international law as reflected in relevant provisions of Part V of UNCLOS — Question whether inhabitants of San Andrés Archipelago have historically enjoyed artisanal fishing rights in areas now falling within Nicaragua's exclusive economic zone — Affidavits from fishermen from San Andrés Archipelago — Indications that some fishing activities have taken place in areas that now fall within Nicaragua's exclusive economic zone — Period during which such activities took place and whether there was a constant practice not established with certainty — Colombia's claim regarding long-standing practice of artisanal fishing not sufficiently established — Previous positions adopted by or on behalf of Colombia undermine Colombia's claim — Statements of President of Nicaragua do not establish acceptance or recognition by Nicaragua that artisanal fishermen of San Andrés Archipelago have right to fish in Nicaragua's maritime zones without prior authorization.

Colombia has failed to establish that inhabitants of the San Andrés Archipelago enjoy artisanal fishing rights in waters now located in Nicaragua's exclusive economic zone — Counter-claim dismissed.

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Alleged violation of Colombia's sovereign rights and maritime spaces by Nicaragua's use of straight baselines — Nicaragua's Decree No. 33-2013 establishing a system of straight baselines along Caribbean coast — Article 7 of UNCLOS reflects customary international law — Establishment of straight baselines by coastal State falls to be assessed by international rules, to be applied restrictively.

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JUDGMENT

Present: *President* DONOGHUE; *Vice-President* GEVORGIAN; *Judges* TOMKA, ABRAHAM, BENNOUNA, YUSUF, XUE, SEBUTINDE, BHANDARI, ROBINSON, SALAM, IWASAWA, NOLTE; *Judges* ad hoc DAUDET, MCRAE; *Registrar* GAUTIER.

In the case concerning alleged violations of sovereign rights and maritime spaces in the Caribbean Sea,

between

the Republic of Nicaragua,

represented by

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

as Agent and Counsel;

Mr. Alex Oude Elferink, Director, Netherlands Institute for the Law of the Sea, Professor of International Law of the Sea at Utrecht University,

Mr. Vaughan Lowe, QC, Emeritus Chichele Professor of Public International Law, University of Oxford, member of the Institut de droit international, member of the Bar of England and Wales,

Mr. Lawrence H. Martin, Attorney at Law, Foley Hoag LLP, member of the Bars of the United States Supreme Court, the District of Columbia and the Commonwealth of Massachusetts,

Mr. Alain Pellet, Emeritus Professor of the University Paris Nanterre, former Chairman of the International Law Commission, President of the Institut de droit international,

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

as Counsel and Advocates;

Ms Claudia Loza Obregon, Legal Adviser, Ministry of Foreign Affairs of Nicaragua,

Ms Tessa Barsac, Consultant in International Law, Master (University Paris Nanterre), LLM (Leiden University),

as Assistant Counsel;

Mr. Robin Cleverly, MA, DPhil, CGeol, FGS, Law of the Sea Consultant, Marbdy Consulting Ltd,

as Scientific and Technical Adviser;

Ms Sherly Noguera de Argüello, MBA,

as Administrator,

and

the Republic of Colombia,

represented by

H.E. Mr. Carlos Gustavo Arrieta Padilla, former Judge of the Council of State of Colombia, former Attorney General of Colombia and former Ambassador of Colombia to the Netherlands,

as Agent;

H.E. Mr. Manuel José Cepeda Espinosa, former President of the Constitutional Court of Colombia, former Permanent Delegate of Colombia to UNESCO and former Ambassador of Colombia to the Swiss Confederation,

as Co-Agent;

H.E. Ms Marta Lucía Ramírez Blanco, Vice-President and Minister for Foreign Affairs of the Republic of Colombia,

H.E. Mr. Everth Hawkins Sjogreen, Governor of San Andrés, Providencia and Santa Catalina, Colombia,

as National Authorities;

Mr. W. Michael Reisman, McDougal Professor of International Law at Yale University, member of the Institut de droit international,

Mr. Rodman R. Bundy, former avocat à la Cour d'appel de Paris, member of the Bar of the State of New York, partner at Squire Patton Boggs LLP,

Sir Michael Wood, KCMG, member of the International Law Commission, member of the Bar of England and Wales,

Mr. Eduardo Valencia-Ospina, former Registrar and Deputy-Registrar of the International Court of Justice, member and former Special Rapporteur and Chairman of the International Law Commission, former President of the Latin American Society of International Law,

Mr. Jean-Marc Thouvenin, Professor at the University Paris Nanterre, Secretary-General of the Hague Academy of International Law, associate member of the Institut de droit international, member of the Paris Bar, Sygna Partners,

Ms Laurence Boisson de Chazournes, Professor of International Law and International Organization at the University of Geneva, member of the Institut de droit international,

H.E. Mr. Kent Francis James, former Ambassador of Colombia to Belize, former Ambassador of Colombia to Jamaica,

as Counsel and Advocates;

Mr. Andrés Villegas Jaramillo, LLM, Co-ordinator, Group of Affairs before the International Court of Justice at the Ministry of Foreign Affairs of Colombia, member of the Legal Sub-Commission of the Caribbean Sea Commission, Association of Caribbean States,

Mr. Makane Moïse Mbengue, Professor at the University of Geneva, Director of the Department of Public International Law and International Organization, associate member of the Institut de droit international,

Mr. Luke Vidal, member of the Paris Bar, Sygna Partners,

Mr. Eran Sthoeger, Esq., member of the Bar of the State of New York, Adjunct Professor of International Law at Brooklyn Law School and Seton Hall Law School,

Mr. Alvin Yap, Advocate and Solicitor of the Supreme Court of Singapore, Squire Patton Boggs LLP,

Mr. Lorenzo Palestini, PhD, Lecturer at the Graduate Institute of International and Development Studies and at the University of Geneva,

as Counsel;

H.E. Mr. Juan José Quintana Aranguren, Head of Multilateral Affairs, former Ambassador of Colombia to the Netherlands,

H.E. Mr. Fernando Antonio Grillo Rubiano, Ambassador of the Republic of Colombia to the Kingdom of the Netherlands and Permanent Representative of Colombia to the Organisation for the Prohibition of Chemical Weapons,

Ms Jenny Sharyne Bowie Wilches, Second Secretary, Embassy of Colombia in the Netherlands,

Ms Viviana Andrea Medina Cruz, Second Secretary, Embassy of Colombia in the Netherlands,

Mr. Sebastián Correa Cruz, Third Secretary, Embassy of Colombia in the Netherlands,

Mr. Raúl Alfonso Simancas Gómez, Third Secretary, Group of Affairs before the International Court of Justice,

as representatives of the Ministry of Foreign Affairs of Colombia;

Rear Admiral Ernesto Segovia Forero, Chief of Naval Operations,

CN Hermann León, Delegate of Colombia to the International Maritime Organization,

CN William Pedroza, National Navy of Colombia, Director of Maritime and Fluvial Interests Office,

as representatives of the Navy of Colombia;

Mr. Scott Edmonds, Cartographer, Director of International Mapping,

Ms Victoria Taylor, Cartographer, International Mapping,

as Technical Advisers;

Mr. Gershon Hasin, LLM, JSD, Yale Law School,

as Legal Assistant;

Mr. Mark Taylor Archbold, Consultant for the National Unit of Disaster Risk Management,

Mr. Joseph Richard Jessie Martinez, Consultant for the National Unit of Disaster Risk Management,

as Advisers,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 26 November 2013, the Government of the Republic of Nicaragua (hereinafter "Nicaragua") filed in the Registry of the Court an Application instituting proceedings against the Republic of Colombia (hereinafter "Colombia") concerning a dispute in relation to "the violations of Nicaragua's sovereign rights and maritime zones declared by the Court's Judgment of 19 November 2012 [in the case concerning *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*] and the threat of the use of force by Colombia in order to implement these violations".

2. In its Application, Nicaragua sought to found the jurisdiction of the Court on Article XXXI of the American Treaty on Pacific Settlement signed on 30 April 1948, officially designated, according to Article LX thereof, as the "Pact of Bogotá" (hereinafter referred to as such).

3. The Registrar immediately communicated the Application to the Colombian Government, in accordance with Article 40, paragraph 2, of the Statute of the Court. He also notified the Secretary-General of the United Nations of the filing of the Application by Nicaragua.

4. Pursuant to Article 40, paragraph 3, of the Statute of the Court, the Registrar subsequently notified the Members of the United Nations, through the Secretary-General, of the filing of the Application, by transmission of the printed bilingual text.

5. Since the Court included upon the Bench no judge of the nationality of either Party, each Party proceeded to exercise the right conferred upon it by Article 31, paragraph 3, of the Statute of the Court to choose a judge *ad hoc* to sit in the case. Nicaragua first chose Mr. Gilbert Guillaume, who resigned on 8 September 2015, and subsequently Mr. Yves Daudet. Colombia first chose Mr. David Caron and subsequently, following the death of Mr. Caron, Mr. Donald McRae.

6. By an Order of 3 February 2014, the Court fixed 3 October 2014 and 3 June 2015 as the respective time-limits for the filing of a Memorial by Nicaragua and a Counter-Memorial by Colombia. Nicaragua filed its Memorial within the time-limit thus fixed.

7. On 19 December 2014, within the time-limit prescribed by Article 79, paragraph 1, of the Rules of Court of 14 April 1978 as amended on 1 February 2001, Colombia raised preliminary objections to the jurisdiction of the Court. Consequently, by an Order of 19 December 2014, the President noted that, by virtue of Article 79, paragraph 5, of the Rules of Court of 14 April 1978 as amended on 1 February 2001, the proceedings on the merits were suspended and, taking account of Practice Direction V, fixed 20 April 2015 as the time-limit for the presentation by Nicaragua of a written statement of its observations and submissions on the preliminary objections raised by Colombia. Nicaragua filed its statement within the prescribed time-limit.

8. Pursuant to the instructions of the Court under Article 43, paragraph 1, of the Rules of Court, the Registrar addressed to States parties to the Pact of Bogotá the notification provided for in Article 63, paragraph 1, of the Statute of the Court. In accordance with the provisions of Article 69, paragraph 3, of the Rules of Court, the Registrar also addressed to the Organization of American States (hereinafter the "OAS") the notification provided for in Article 34, paragraph 3, of the Statute of the Court and, as provided for in Article 69, paragraph 3, of the Rules of Court, asked that Organization whether or not it intended to furnish observations in writing. The Registrar further stated that, in view of the fact that the current phase of the proceedings related solely to the question of jurisdiction, any written observations should be limited to that question. By letter dated 16 June 2015, the Secretary-General of the OAS indicated that the Organization did not intend to submit any such observations.

9. Referring to Article 53, paragraph 1, of the Rules of Court, the Government of the Republic of Chile (hereinafter "Chile") asked to be furnished with copies of the pleadings and documents annexed in the case. Having ascertained the views of the Parties in accordance with that same provision, the President of the Court decided to grant that request. The Registrar duly communicated that decision to the Government of Chile and to the Parties. Copies of Nicaragua's Application and Memorial and of Colombia's preliminary objections were therefore communicated to Chile. A copy of Nicaragua's written statement of its observations and submissions on the said preliminary objections was also subsequently transmitted to Chile.

10. Pursuant to the same provision of the Rules, the Government of the Republic of Panama (hereinafter "Panama") also asked to be furnished with copies of the pleadings and documents annexed in the case. Taking into account the views of the Parties, the Court decided that copies of the preliminary objections raised by Colombia and of Nicaragua's written statement of its observations and submissions on those objections would be made available to the Government of Panama. The Court decided, however, that it would not be appropriate to furnish Panama with a copy of Nicaragua's Memorial. The Registrar duly communicated that decision to the Government of Panama and to the Parties.

11. Public hearings on the preliminary objections raised by Colombia were held from 28 September to 2 October 2015. In its Judgment of 17 March 2016 (hereinafter the "2016 Judgment"), the Court found that it had jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to entertain the dispute between Nicaragua and Colombia regarding the alleged violations by Colombia of Nicaragua's rights in the maritime zones which, according to Nicaragua, the Court declared in its aforementioned Judgment of 19 November 2012 appertain to Nicaragua. The Court upheld a preliminary objection raised by Colombia in so far as it concerned the existence of a dispute regarding alleged violations by Colombia of its obligation not to use force or threaten to use force.

12. By an Order of 17 March 2016, the Court fixed 17 November 2016 as the new time-limit for the filing of the Counter-Memorial of Colombia; that pleading was filed within the time-limit thus prescribed. In Part III of its Counter-Memorial, Colombia, making reference to Article 80 of the Rules of Court, submitted four counter-claims.

13. Referring to Article 53, paragraph 1, of the Rules of Court, the Government of Panama asked to be furnished with copies of the pleadings and documents annexed in the case on the merits. Having ascertained the views of the Parties in accordance with the same provision, the President of the Court granted that request. However, further to a specific request received from the Agent of

Colombia, the President decided that the copies of the Counter-Memorial being furnished would not include Annexes 28 to 61, which Colombia claimed were "classified as reserved for reasons of national security" under its domestic legislation. The Registrar duly communicated these decisions to the Government of Panama and to the Parties. A copy of Colombia's Counter-Memorial, not including Annexes 28 to 61, was also made available to the Government of Chile (see paragraph 9 above).

14. At a meeting held by the President of the Court with the representatives of the Parties on 19 January 2017, Nicaragua indicated that it considered the counter-claims contained in the Counter-Memorial of Colombia to be inadmissible. By letters dated 20 January 2017, the Registrar informed the Parties that the Court had decided that the Government of Nicaragua should specify in writing, by 20 April 2017 at the latest, the legal grounds on which it relied in maintaining that the Respondent's counter-claims were inadmissible, and that the Government of Colombia should present its own views on the question in writing, by 20 July 2017 at the latest. Nicaragua and Colombia submitted their written observations on the admissibility of Colombia's counter-claims within the time-limits thus fixed.

15. In its Order of 15 November 2017, the Court found that the first two counter-claims submitted by Colombia were inadmissible as such and did not form part of the current proceedings, and that the third and fourth counter-claims submitted by Colombia were admissible as such and did form part of the current proceedings. In its third counter-claim, Colombia asserts that Nicaragua has "failed to respect the traditional and historic fishing rights of the inhabitants of the San Andrés Archipelago, including the indigenous Raizal people, in the waters to which they are entitled to said rights". The fourth counter-claim relates to the adoption by Nicaragua of Decree No. 33-2013 of 19 August 2013 (hereinafter "Decree 33"), which, according to Colombia, established straight baselines that are contrary to international law and violate Colombia's maritime rights and spaces. By the same Order, the Court directed Nicaragua to submit a Reply and Colombia to submit a Rejoinder relating to the claims of both Parties in the current proceedings, and fixed 15 May and 15 November 2018 as the respective time-limits for the filing of those pleadings. The Reply of Nicaragua and the Rejoinder of Colombia were filed within the time-limits thus fixed.

16. By an Order dated 4 December 2018, the Court authorized the submission by Nicaragua of an additional pleading relating solely to the counter-claims submitted by Colombia and fixed 4 March 2019 as the time-limit for the filing of that written pleading. The additional pleading was filed by Nicaragua within the prescribed time-limit.

17. By letter (with 19 annexes) dated 23 September 2019, the Agent of Nicaragua, alleging various "incidents involving the Colombian navy that took place in Nicaraguan waters", requested, on behalf of his Government, the authorization of the Court, pursuant to Article 56 of its Rules, for the annexed documentation to "be included in the formal record of the case". In accordance with Article 56, paragraph 1, of the Rules of Court, copies of the above-mentioned documents were communicated to the other Party, which was requested to inform the Court of any observations that it might wish to make with regard to the production of those documents. By letter dated 3 October 2019, the Agent of Colombia informed the Court that his Government "d[id] not consent to the request by Nicaragua" to produce 19 new documents, and provided the reasons why his Government considered that the request did not meet the requirements under either Article 56 of the Rules of Court or Practice Direction IX, paragraph 3. On 15 October 2019, the Court authorized the

production of the above-mentioned documents by Nicaragua and gave Colombia the opportunity to comment, by 16 December 2019, on the documents thus produced by Nicaragua and to submit documents in support of its comments. Colombia transmitted to the Court its comments on the new documents produced by Nicaragua, as well as documents and audio-visual material in support of those comments, within the time-limit thus fixed.

18. By letter (with four annexes) dated 30 July 2021, the Agent of Nicaragua requested, on behalf of his Government, the authorization of the Court, pursuant to Article 56 of its Rules, for the annexed documentation to "be added to the formal record of the case". In accordance with Article 56, paragraph 1, of the Rules of Court, copies of the above-mentioned documents were communicated to the other Party, which was requested to inform the Court of any observations that it might wish to make with regard to the production of those documents. By letter dated 16 August 2021, the Co-Agent of Colombia stated that his Government "object[ed] to their production and request[ed] the Court to deny Nicaragua's request", and provided the reasons why his Government considered that the request did not meet the requirements under either Article 56 of the Rules of Court or Practice Direction IX, paragraphs 1, 2 and 3. By a letter dated 17 August 2021, the Agent of Nicaragua submitted comments of his Government on Colombia's observations. By letter dated 18 August 2021, the Co-Agent of Colombia provided further observations of his Government on Nicaragua's request. On 1 September 2021, the Court authorized the production of two of the four new documents and gave Colombia the opportunity to comment, by 9 September 2021, on the documents thus produced by Nicaragua and to submit documents in support of its comments. Colombia transmitted to the Court its comments on the new documents produced by Nicaragua, as well as documents in support of those comments, within the time-limit thus fixed.

19. Pursuant to Article 53, paragraph 2, of its Rules, the Court, after ascertaining the views of the Parties, decided that copies of the written pleadings and documents annexed would be made accessible to the public, with the exception of certain annexes to, and figures included in, Colombia's written pleadings. In particular, the Court acceded to Colombia's request that these materials not be made accessible to the public on the basis that, under Colombian legislation, they are classified as secret or reserved for reasons of national security. The Parties were informed that, while, during the hearings, they were free to refer to the titles of these confidential documents as they appeared in the list of annexes, they were not to read out quotations from them nor display slides showing all or part of them. With the exception of the above-mentioned confidential materials, and in accordance with the Court's practice, all pleadings and documents annexed were placed on the Court's website.

20. Public hearings were held on 20, 22, 24, 27 and 29 September and on 1 October 2021. The oral proceedings were conducted in a hybrid format, in accordance with Article 59, paragraph 2, of the Rules of Court and on the basis of the Court's Guidelines for the parties on the organization of hearings by video link, adopted on 13 July 2020 and communicated to the Parties on 21 July 2021. During the oral proceedings, a number of judges were present in the Great Hall of Justice, while others joined the proceedings via video link, allowing them to view and hear the speaker and see any demonstrative exhibits displayed. Each Party was permitted to have up to four representatives present in the Great Hall of Justice and up to five other representatives in an additional room in the Peace Palace equipped with the necessary facilities to follow the proceedings remotely. The remaining members of each Party's delegation were given the opportunity to participate via video link from other locations of their choice.

21. During the above-mentioned hearings, the Court heard the oral arguments and replies of:

For Nicaragua: H.E. Mr. Carlos José Argüello Gómez,
Mr. Alain Pellet,
Mr. Paul Reichler,
Mr. Vaughan Lowe,
Mr. Lawrence Martin,
Mr. Alex Oude Elferink.

For Colombia: H.E. Mr. Manuel José Cepeda Espinosa,
H.E. Mr. Kent Francis James,
Sir Michael Wood,
Ms Laurence Boisson de Chazournes,
Mr. Rodman Bundy,
Mr. Michael Reisman,
Mr. Eduardo Valencia-Ospina,
Mr. Jean-Marc Thouvenin,
H.E. Mr. Carlos Gustavo Arrieta Padilla.

*

22. In the Application, the following claims were made by Nicaragua:

"On the basis of the foregoing statement of facts and law, Nicaragua, while reserving the right to supplement, amend or modify this Application, requests the Court to adjudge and declare that Colombia is in breach of:

— its obligation not to use or threaten to use force under Article 2 (4) of the UN Charter and international customary law;

— its obligation not to violate Nicaragua's maritime zones as delimited in paragraph 251 of the ICJ Judgment of 19 November 2012 as well as Nicaragua's sovereign rights and jurisdiction in these zones;

— its obligation not to violate Nicaragua's rights under customary international law as reflected in Parts V and VI of UNCLOS;

— and that, consequently, Colombia is bound to comply with the Judgment of 19 November 2012, wipe out the legal and material consequences of its internationally wrongful acts, and make full reparation for the harm caused by those acts."

23. In the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Nicaragua,

in the Memorial:

"1. For the reasons given in the present Memorial, the Republic of Nicaragua requests the Court to adjudge and declare that, by its conduct, the Republic of Colombia has breached:

(a) its obligation not to violate Nicaragua's maritime zones as delimited in paragraph 251 of the Court Judgment of 19 November 2012 as well as Nicaragua's sovereign rights and jurisdiction in these zones;

(b) its obligation not to use or threaten to use force under Article 2 (4) of the UN Charter and international customary law;

(c) and that, consequently, Colombia has the obligation to wipe out the legal and material consequences of its internationally wrongful acts, and make full reparation for the harm caused by those acts.

2. Nicaragua also requests the Court to adjudge and declare that Colombia must:

(a) Cease all its continuing internationally wrongful acts that affect or are likely to affect the rights of Nicaragua.

(b) Inasmuch as possible, restore the situation to the *status quo ante*, in

(i) revoking laws and regulations enacted by Colombia, which are incompatible with the Court's Judgment of 19 November 2012 including the provisions in the Decrees 1946 of 9 September 2013 and 1119 of 17 June 2014 to maritime areas which have been recognized as being under the jurisdiction or sovereign rights of Nicaragua;

(ii) revoking permits granted to fishing vessels operating in Nicaraguan waters; and

(iii) ensuring that the decision of the Constitutional Court of Colombia of 2 May 2014 or of any other National Authority will not bar compliance with the 19 November 2012 Judgment of the Court.

(c) Compensate for all damages caused insofar as they are not made good by restitution, including loss of profits resulting from the loss of investment caused by the threatening statements of Colombia's highest authorities, including the threat or use of force by the Colombian Navy against Nicaraguan fishing boats [or ships exploring and exploiting the soil and subsoil of Nicaragua's continental shelf] and third state fishing boats licensed by Nicaragua as well as from the exploitation of Nicaraguan waters by fishing vessels unlawfully 'authorized' by Colombia, with the amount of the compensation to be determined in a subsequent phase of the case.

(d) Give appropriate guarantees of non-repetition of its internationally wrongful acts."

in the Reply:

"1. For the reasons given in Chapters II to V of the present Reply, the Republic of Nicaragua requests the Court to adjudge and declare that:

(a) By its conduct, the Republic of Colombia has breached its international obligation to respect Nicaragua's maritime zones as delimited in paragraph 251 of the Court Judgment of 19 November 2012 as well as Nicaragua's sovereign rights and jurisdiction in these zones; and that, in consequence

(b) Colombia must immediately cease its internationally wrongful conduct in Nicaragua's maritime zones, as delimited by the Court in its Judgment of 19 November 2012, including its violations of Nicaragua's sovereign rights and jurisdiction in those maritime zones;

(c) Colombia must revoke, by means of its choice, all laws and regulations which are incompatible with the Court's Judgment of 19 November 2012, including the provisions in Decrees 1946 of 9 September 2013 and 1119 of 17 June 2014 on maritime areas which have been recognized as under the jurisdiction or sovereign rights of Nicaragua;

(d) Colombia must revoke permits granted to fishing vessels operating in Nicaragua's exclusive economic zone, as delimited in the Court's Judgment of 19 November 2012;

(e) Colombia must ensure that the decision of the Constitutional Court of Colombia of 2 May 2014 or of any other National Authority will not bar compliance with the 19 November 2012 Judgment of the Court;

(f) Colombia must compensate Nicaragua for all damages caused by its violations of its international legal obligations, including but not limited to damages caused by the exploitation of the living resources of the Nicaraguan exclusive economic zone by fishing vessels unlawfully 'authorized' by Colombia to operate in that zone, and the loss of revenue caused by Colombia's refusal to allow, or by its deterrence of, fishing by Nicaraguan vessels or third State vessels authorized by Nicaragua and, generally, for the damages caused by its actions and declarations to the proper exploitation of the resources in Nicaragua's exclusive economic zone, with the amount of the compensation to be determined in a subsequent phase of the case; and

(g) Colombia must give appropriate guarantees of non-repetition of its internationally wrongful acts.

2. For the reasons given in Chapters VI and VII of this Reply, the Republic of Nicaragua requests the Court to adjudge and declare that the Counter-Claims of Colombia are rejected."

On behalf of the Government of Colombia,

in the Counter-Memorial:

"I. For the reasons stated in this Counter-Memorial, the Republic of Colombia respectfully requests the Court to reject the submissions of the Republic of Nicaragua in its Memorial of 3 October 2014 and to adjudge and declare that

1. Nicaragua has failed to prove that any Colombian naval or coast guard vessel has violated Nicaragua's sovereign rights and maritime spaces in the Caribbean Sea;

2. Colombia has not, otherwise, violated Nicaragua's sovereign rights and maritime spaces in the Caribbean Sea;

3. Colombia's Decree 1946 of 9 September 2013 establishing an Integral Contiguous Zone is lawful under international law and does not constitute a violation of any of Nicaragua's sovereign rights and maritime spaces, considering that:

   (a) The Integral Contiguous Zone produced by the naturally overlapping concentric circles forming the contiguous zones of the islands of San Andrés, Providencia, Santa Catalina, Alburquerque Cays, East-Southeast Cays, Roncador, Serrana, Quitasueño and Serranilla and joined by geodetic lines connecting the outermost points of the overlapping concentric circles is, in the circumstances, lawful under international law;

   (b) The powers enumerated in the Decree are consistent with international law; and

4. No Colombian action in its Integral Contiguous Zone of which Nicaragua complains is a violation of international law or of Nicaragua's sovereign rights and maritime spaces.

II. Further, the Republic of Colombia respectfully requests the Court to adjudge and declare that

5. Nicaragua has infringed Colombia's sovereign rights and maritime spaces in the Caribbean Sea by failing to prevent its flag or licensed vessels from fishing in Colombia's waters;

6. Nicaragua has infringed Colombia's sovereign rights and maritime spaces in the Caribbean Sea by failing to prevent its flag or licensed vessels from engaging in predatory and unlawful fishing methods in violation of its international obligations;

7. Nicaragua has infringed Colombia's sovereign rights and maritime spaces by failing to fulfil its international legal obligations with respect to the environment in areas of the Caribbean Sea to which said obligations apply;

8. Nicaragua has failed to respect the traditional and historic fishing rights of the inhabitants of the San Andrés Archipelago, including the indigenous Raizal people, in the waters to which they are entitled to said rights; and

9. Nicaragua's Decree No. 33-2013 of 19 August 2013 establishing straight baselines violates international law and Colombia's maritime rights and spaces.

III. The Court is further requested to order Nicaragua

10. With regard to submissions 5 to 8:

(a) To desist promptly from its violations of international law;

(b) To compensate Colombia for all damages caused, including loss of profits, resulting from Nicaragua's violations of its international obligations, with the amount and form of compensation to be determined at a subsequent phase of the proceedings; and

(c) To give Colombia appropriate guarantees of non-repetition.

11. With regard to submission 8, in particular, to ensure that the inhabitants of the San Andrés Archipelago enjoy unfettered access to the waters to which their traditional and historic fishing rights pertain; and

12. With regard to submission 9, to adjust its Decree No. 33-2013 of 19 August 2013 in order that it complies with the rules of international law concerning the drawing of the baselines from which the breadth of the territorial sea is measured.

IV. Colombia reserves its right to supplement or amend these submissions."

in the Rejoinder:

"I. For the reasons stated in its Counter-Memorial and Rejoinder, the Republic of Colombia respectfully requests the Court to reject each of the submissions of the Republic of Nicaragua, and to adjudge and declare that

1. Colombia has not in any manner violated Nicaragua's sovereign rights or maritime spaces in the Southwestern Caribbean Sea.

2. Colombia's Decree No. 1946 of 9 September 2013 (as amended by Decree No. 1119 of 17 June 2014) has not given rise to any violation of Nicaragua's sovereign rights or maritime spaces.

(a) There is nothing in international law that precludes the contiguous zone of one State from overlapping with the exclusive economic zone of another State;

(b) The geodetic lines established in the Decree connecting the outermost points of Colombia's contiguous zone do not violate international law;

(c) The specific powers concerning the contiguous zone enumerated in the Decree do not violate international law;

(d) No Colombian action in the contiguous zone has given rise to any violation of Nicaragua's sovereign rights or maritime spaces.

II. Further, the Republic of Colombia respectfully requests the Court to adjudge and declare that

3. The inhabitants of the San Andrés Archipelago, in particular the Raizales, enjoy traditional fishing rights in maritime areas adjudicated to appertain to Nicaragua.

4. Nicaragua has violated the traditional fishing rights of the inhabitants of the San Andrés Archipelago.

5. Nicaragua's straight baselines established in Decree No. 33-2013 of 19 August 2013 are contrary to international law and violate Colombia's sovereign rights and maritime spaces.

III. The Court is further requested to order Nicaragua

6. With regard to submissions 3 and 4, to ensure that the inhabitants of the San Andrés Archipelago engaged in traditional fishing enjoy unfettered access to:

   (a) Their traditional fishing banks located in the maritime areas adjudicated to appertain to Nicaragua;

   (b) The banks located in Colombian maritime areas, access to which requires navigating through the maritime areas adjudicated to appertain to Nicaragua.

7. To compensate Colombia for all damages caused, including loss of profits, resulting from Nicaragua's violations of its international obligations, with the amount and form of compensation to be determined at a subsequent phase of the proceedings.

8. To give Colombia appropriate guarantees of non-repetition."

24. At the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Nicaragua,

at the hearing of 27 September 2021, on the claims of Nicaragua:

"In the case concerning *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)*, for the reasons explained in the Written and Oral phase, Nicaragua respectfully requests the Court to adjudge and declare that:

(a) By its conduct, the Republic of Colombia has breached its international obligation to respect Nicaragua's maritime zones as delimited in paragraph 251 of the Court Judgment of 19 November 2012, as well as Nicaragua's sovereign rights and jurisdiction in these zones; and that, in consequence

(b) Colombia must immediately cease its internationally wrongful conduct in Nicaragua's maritime zones, as delimited by the Court in its Judgment of 19 November 2012, including its violations of Nicaragua's sovereign rights and jurisdiction in those maritime zones and take all necessary measures effectively to respect Nicaragua's sovereign rights and jurisdiction; these measures include but are not limited to revoking, by means of its choice:

(i) all laws and regulations, permits, licences, and other legal instruments which are incompatible with the Court's Judgment of 19 November 2012, including those related to marine protected areas;

(ii) the provisions of Decrees 1946 of 9 September 2013 and 1119 of 17 June 2014 in so far as they relate to maritime areas which have been recognized as under the jurisdiction or sovereign rights of Nicaragua; and

(iii) permits granted to fishing vessels to operate in Nicaragua's exclusive economic zone, as delimited in the Court's Judgment of 19 November 2012;

(c) Colombia must ensure that the decision of the Constitutional Court of Colombia of 2 May 2014 or of any other National Authority will not bar compliance with the 19 November 2012 Judgment of the Court;

(d) Colombia must compensate Nicaragua for all damage caused by its violations of its international legal obligations, including but not limited to damages caused by the exploitation of the living resources of the Nicaraguan exclusive economic zone by fishing vessels unlawfully 'authorized' by Colombia to operate in that zone, and the loss of revenue caused by Colombia's refusal to allow, or by its deterrence of, fishing by Nicaraguan vessels or third State vessels authorized by Nicaragua and, generally, for the damages caused by its actions and declarations to the proper exploitation of the resources in Nicaragua's exclusive economic zone, with the amount of the compensation to be determined in a subsequent phase of the case; and

(e) Colombia must give appropriate guarantees of non-repetition of its internationally wrongful acts, including by formally acknowledging that the boundary as delimited by the Court in its Judgment of 19 November 2012 will be respected as the international maritime boundary between Colombia and Nicaragua.

(f) Nicaragua also requests that the Court adjudge and declare that it will remain seised of the case until Colombia recognizes and respects Nicaragua's rights in the Caribbean Sea as attributed by the Judgment of the Court of 19 November 2012."

at the hearing of 1 October 2021, on the counter-claims of Colombia:

"In the case concerning *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)*, for the reasons explained in the

Written and Oral phase, Nicaragua respectfully requests the Court to adjudge and declare that the counter-claims of the Republic of Colombia are rejected with all legal consequences."

On behalf of the Government of Colombia,

at the hearing of 29 September 2021, on the claims of Nicaragua and the counter-claims of Colombia:

"I. For the reasons stated in its written and oral pleadings, the Republic of Colombia respectfully requests the Court to reject each of the Submissions of the Republic of Nicaragua, and to adjudge and declare that

1. Colombia has not in any manner violated Nicaragua's sovereign rights or maritime spaces in the Southwestern Caribbean Sea.

2. Colombia's Decree No. 1946 of 9 September 2013 (as amended by Decree No. 1119 of 17 June 2014) has not given rise to any violation of Nicaragua's sovereign rights or maritime spaces.

   (a) There is nothing in international law that precludes the contiguous zone of one State from overlapping with the exclusive economic zone of another State;

   (b) The geodetic lines established in the Decree connecting the outermost points of Colombia's contiguous zone do not violate international law;

   (c) The specific powers concerning the contiguous zone enumerated in the Decree do not violate international law;

   (d) No Colombian action in the contiguous zone has given rise to any violation of Nicaragua's sovereign rights or maritime spaces.

II. Further, the Republic of Colombia respectfully requests the Court to adjudge and declare that

3. The inhabitants of the San Andrés Archipelago, in particular the Raizales, enjoy artisanal fishing rights in the traditional fishing grounds located beyond the territorial sea of the islands of the San Andrés Archipelago.

4. Nicaragua has violated the traditional fishing rights of the inhabitants of the San Andrés Archipelago.

5. Nicaragua's straight baselines established in Decree No. 33-2013 of 19 August 2013 are contrary to international law and violate Colombia's rights and maritime spaces.

III. The Court is further requested to order Nicaragua

6. With regard to submissions 3 and 4, to ensure that the inhabitants of the San Andrés Archipelago engaged in traditional fishing enjoy unfettered access to:

(a) Their traditional fishing banks located in the maritime areas beyond the territorial sea of the islands of the San Andrés Archipelago; and,

(b) The banks located in Colombian maritime areas when access to them requires navigating outside the territorial sea of the islands of the San Andrés Archipelago.

7. To compensate Colombia for all damages caused, including loss of profits, resulting from Nicaragua's violations of its international obligations.

8. To give Colombia appropriate guarantees of non-repetition."

*

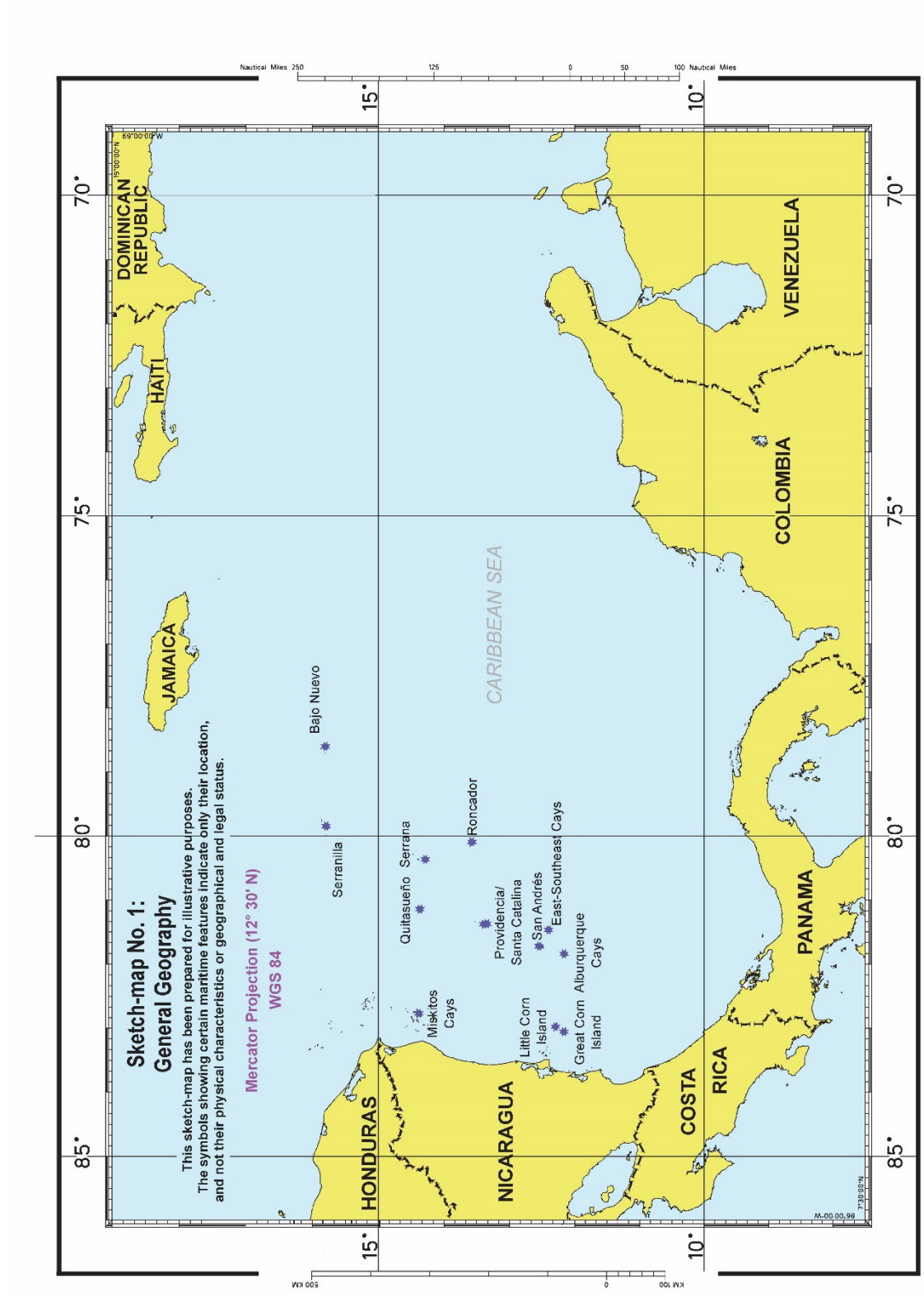
* *

I. GENERAL BACKGROUND

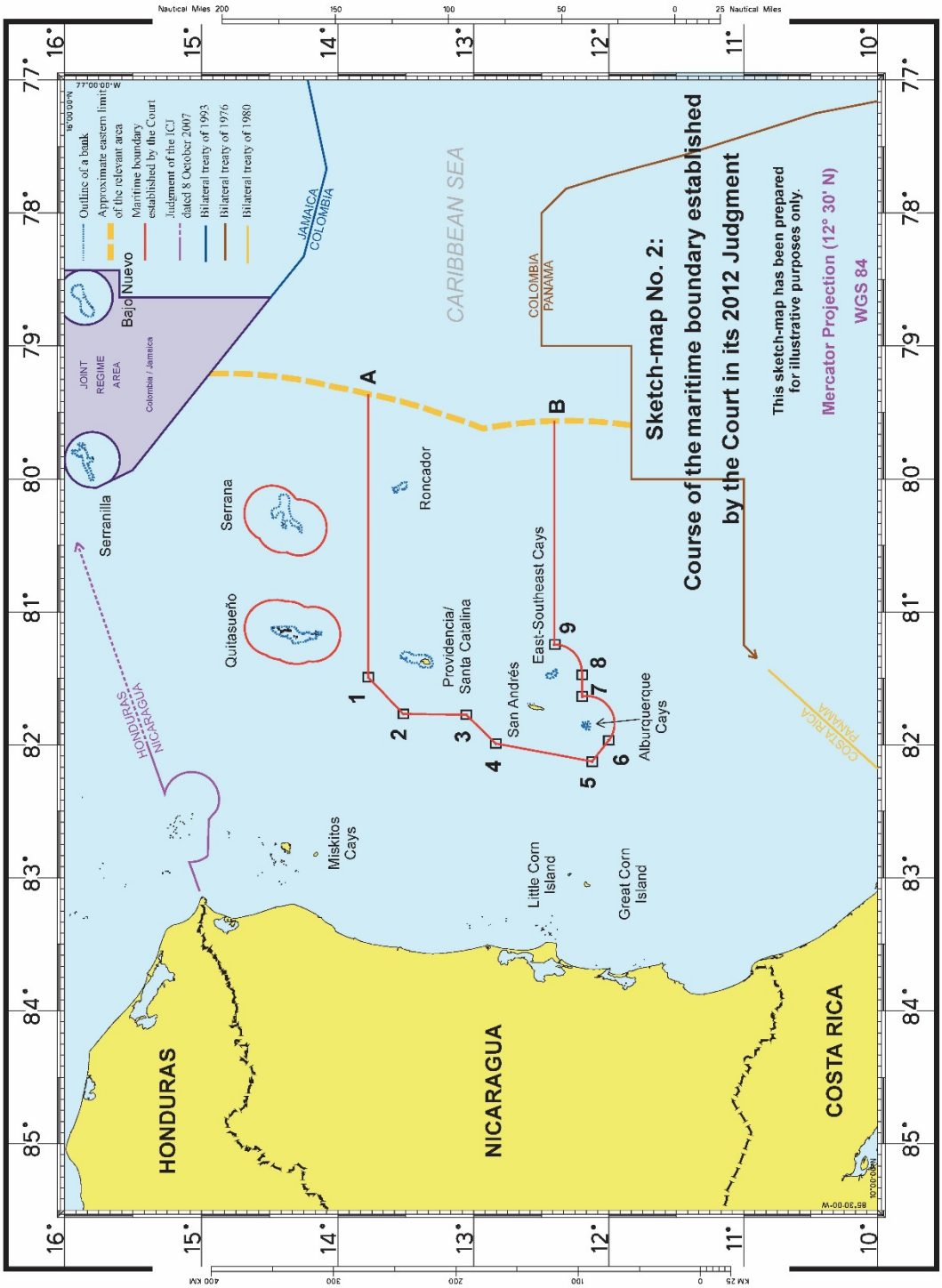
25. The maritime areas with which the present proceedings are concerned are located in the Caribbean Sea, an arm of the Atlantic Ocean partially enclosed to the north and east by a number of islands, and bounded to the south and west by South and Central America. Nicaragua's eastern coast faces the south-western part of the Caribbean Sea. To the north of Nicaragua lies Honduras and to the south lie Costa Rica and Panama. To the north-east, Nicaragua faces Jamaica, and to the east, it faces the mainland coast of Colombia. Colombia is situated to the south of the Caribbean Sea. In terms of its Caribbean front, Colombia is bordered to the west by Panama and to the east by Venezuela. The Colombian islands of San Andrés, Providencia and Santa Catalina lie in the south-west of the Caribbean Sea, approximately 100 to 150 nautical miles to the east of the Nicaraguan coast. (For the general geography of the area, see sketch-map No. 1.)

26. In the Judgment rendered by the Court on 19 November 2012 in the case concerning *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)* (hereinafter the "2012 Judgment"), the Court decided that Colombia had sovereignty over the islands at Alburquerque, Bajo Nuevo, East-Southeast Cays, Quitasueño, Roncador, Serrana and Serranilla (*I.C.J. Reports 2012 (II)*, p. 718, para. 251, subpara. (1)). The Court also established a single maritime boundary delimiting the continental shelf and the exclusive economic zones of Nicaragua and Colombia up to the 200-nautical-mile limit from the baselines from which the territorial sea of Nicaragua is measured (*ibid*., pp. 719-720, para. 251, subpara. (4)). The Court, however, noted in its reasoning that, since Nicaragua had not yet notified the Secretary-General of the United Nations of the location of those baselines under Article 16, paragraph 2, of the 1982 United Nations Convention on the Law of the Sea (hereinafter "UNCLOS" or the "Convention"), the precise location of the eastern endpoints of the maritime boundary could not be determined and was therefore depicted on the sketch-map only approximately (*ibid.*, p. 713, para. 237). (For the course of the maritime boundary established by the Court in its 2012 Judgment, see sketch-map No. 2.)

SKETCH-MAP NO. 1: GENERAL GEOGRAPHY



SKETCH-MAP NO. 2 : COURSE OF THE MARITIME BOUNDARY ESTABLISHED BY THE COURT IN ITS 2012 JUDGMENT



27. The Court notes that, in the present case, the Parties refer to the "San Andrés Archipelago". In this regard, the Court recalls that it addressed the question of the composition of the Archipelago in its 2012 Judgment but left open the question whether certain features are part of the Archipelago, a matter on which the Parties disagreed. In particular, the Court observed that the Treaty concerning Territorial Questions at Issue between Colombia and Nicaragua, signed at Managua on 24 March 1928 (hereinafter the "1928 Treaty"), had not specified the composition of the San Andrés Archipelago and noted that the question about the composition of the Archipelago could not be definitively answered solely on the basis of the geographical location of the maritime features in dispute or of historical records. However, the Court acknowledged that the 1928 Treaty could be understood as including at least the maritime features closest to San Andrés, Providencia and Santa Catalina. The Court held that "[a]ccordingly, the Alburquerque Cays and East-Southeast Cays, given their geographical location (lying 20 and 16 nautical miles, respectively, from San Andrés island) could be seen as forming part of the Archipelago". By contrast, in view of considerations of distance, the Court considered that it was less likely that Serranilla and Bajo Nuevo could form part of the Archipelago. The Court further stated that it did not consider that "the express exclusion of Roncador, Quitasueño and Serrana from the scope of the 1928 Treaty [was] in itself sufficient to determine whether these features were considered by Nicaragua and Colombia to be part of the San Andrés Archipelago" (see *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), I.C.J. Reports 2012 (II)*, pp. 648-649, paras. 52-56).

28. In the present case, Nicaragua alleges that Colombia has violated Nicaragua's sovereign rights and jurisdiction in Nicaragua's exclusive economic zone in various ways. First, it contends that Colombia has interfered with Nicaraguan-flagged or Nicaraguan-licensed fishing and marine scientific research vessels in this maritime zone in a series of incidents involving Colombian naval vessels and aircraft. Nicaragua also claims that Colombia repeatedly directed its naval frigates and military aircraft to obstruct the Nicaraguan Navy in the exercise of its mission in Nicaraguan waters. Secondly, Nicaragua states that Colombia has granted permits for fishing and authorizations for marine scientific research in Nicaragua's exclusive economic zone to Colombians and nationals of third States. Thirdly, Nicaragua alleges that Colombia has violated its exclusive sovereign right to explore and exploit natural resources by offering and awarding hydrocarbon blocks encompassing parts of Nicaragua's exclusive economic zone.

29. Nicaragua further objects to Presidential Decree No. 1946 of 9 September 2013, as amended by Decree No. 1119 of 17 June 2014 (hereinafter "Presidential Decree 1946"), whereby Colombia established an "integral contiguous zone", which "ostensibly unified the maritime 'contiguous zones' of all of Colombia's islands, keys and other maritime features in the area". Nicaragua claims that the "integral contiguous zone" overlaps with waters attributed by the Court to Nicaragua as its exclusive economic zone and therefore "substantially transgresses areas subject to Nicaragua's exclusive sovereign rights and jurisdiction". Nicaragua further claims that the Decree violates customary international law and that its mere enactment engages Colombia's international responsibility.

30. In its counter-claims, Colombia first asserts that the inhabitants of the San Andrés Archipelago, in particular the Raizales, enjoy artisanal fishing rights in the traditional fishing banks located beyond the territorial sea of the islands of the San Andrés Archipelago. It contends that Nicaragua has infringed the traditional fishing rights of the inhabitants of the San Andrés Archipelago to access their traditional fishing banks located in the maritime areas beyond the territorial sea of the islands of the San Andrés Archipelago and those banks located in the Colombian maritime areas, access to which requires navigating outside the territorial sea of the islands of the San Andrés Archipelago.

31. Secondly, Colombia challenges the lawfulness of Nicaragua's straight baselines established by Decree 33 (see paragraph 15 above). More specifically, Colombia contends that the straight baselines, which connect a series of maritime features appertaining to Nicaragua east of its continental coast in the Caribbean Sea, have the effect of pushing the external limit of its territorial sea far east of the 12-nautical-mile limit permitted by international law, expanding Nicaragua's internal waters, territorial sea, exclusive economic zone and continental shelf. According to Colombia, Nicaragua's straight baselines thus directly impede the rights and jurisdiction to which Colombia is entitled in the Caribbean Sea.

32. Before examining Nicaragua's claims and Colombia's counter-claims, the Court will address the scope of its jurisdiction *ratione temporis*, an issue raised by Colombia in its Counter-Memorial.

II. SCOPE OF THE JURISDICTION *RATIONE TEMPORIS* OF THE COURT

33. In its 2016 Judgment, the Court concluded that it had jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to entertain the dispute concerning the alleged violations by Colombia of Nicaragua's rights in the maritime zones which, according to Nicaragua, the Court declared in its 2012 Judgment appertain to Nicaragua (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 43, para. 111 (2)).

34. Colombia, while accepting that the Court otherwise has jurisdiction in the case, contends that "the Court lacks jurisdiction *ratione temporis* to consider any claims that are based on events that are alleged to have transpired after Colombia ceased to be bound by the provisions of the Pact". It argues that, by virtue of Article XXXI of the Pact of Bogotá, the Parties recognized as compulsory the jurisdiction of the Court in all disputes of a juridical nature that arise among them concerning "[a]ny question of international law" (Article XXXI, subparagraph *(b)*) or "[t]he existence of any fact which, if established, would constitute the breach of an international obligation" (Article XXXI, subparagraph *(c)*), but only "so long as the present Treaty is in force".

35. Colombia maintains that this view is reinforced by the 2016 Judgment, in which, according to Colombia, the Court stated that the dispute was limited to those events which allegedly occurred before the critical date. Colombia is of the view that, for the Court to have jurisdiction to consider whether facts alleged by a party in support of its claim constitute a breach of an international obligation by the other party, "those facts must have occurred during a period when a jurisdictional basis exists between the parties". In this regard, it argues that "[j]urisdiction to deal with a dispute over the legal consequences of facts that are in existence during the period when a jurisdictional title exists is not the same thing as ruling on the legal consequences of facts that occur *after* a compromissory clause has lapsed" (emphasis in the original).

36. Moreover, Colombia argues that the alleged events in the present case do not amount to a continuing pattern of illegal conduct on the part of Colombia and that they do not constitute a "composite act" within the meaning of Article 15 of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (hereinafter the "ILC Articles on State Responsibility"). It considers that the Court should adopt an "event-by-event" analysis rather than

the "pattern of conduct" approach advanced by Nicaragua. Colombia argues that Nicaragua's contentions, if upheld, would lead to a "perverse effect" and would run counter to the Court's jurisprudence.

*

37. Nicaragua, for its part, claims that Colombia's interpretation of Article XXXI of the Pact of Bogotá is incompatible with the text and context of that provision. Nicaragua maintains, moreover, that the effect of Colombia's denunciation of the Pact of Bogotá under Article LVI is to prevent the Court from pronouncing on acts occurring after the termination of the treaty that would form the subject of a new dispute, distinct from the present one before the Court in respect of which it has found that it has jurisdiction.

38. Nicaragua maintains that "[t]he appropriate test for determining the existence of jurisdiction over facts occurring after the filing of an application is . . . whether the facts 'aris[e] directly out of the question which is the subject-matter of [the] Application'". Nicaragua argues that the events which occurred after 27 November 2013, like those which occurred before that date, arose directly out of the question which is the subject-matter of the Application. According to Nicaragua, those subsequent events, which are both composite and continuing in character, do not form a new dispute, but are manifestations of the same dispute that is presently before the Court. Moreover, Nicaragua contends that Colombia itself refers to events that occurred after the institution of the proceedings in order to support its counter-claims.

* *

39. The Court recalls that, at the preliminary objection stage, Colombia's first preliminary objection was that the Court lacked jurisdiction because Colombia had given its notice of denunciation of the Pact of Bogotá on 27 November 2012, before Nicaragua filed its Application in the present case. The Court rejected Colombia's objection on the ground that, by virtue of Article LVI, paragraph 1, of the Pact, Article XXXI thereof, which conferred jurisdiction on the Court, remained in force between the Parties on the date that the Application in the present case was filed. The subsequent termination of the Pact of Bogotá as between Nicaragua and Colombia did not affect the jurisdiction which existed on the date when the proceedings were instituted.

The question raised by Colombia in the present context concerns the interpretation of Articles XXXI and LVI of the Pact of Bogotá, which was addressed by the Court at length in the 2016 Judgment.

Article XXXI states:

> "In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:

> *a)* The interpretation of a treaty; *b)* Any question of international law; *c)* The existence of any fact which, if established, would constitute the breach of an international obligation; *d)* The nature or extent of the reparation to be made for the breach of an international obligation."

According to Colombia, the phrase "so long as the present Treaty is in force" in Article XXXI provides a temporal limitation to Colombia's consent to the Court's jurisdiction over disputes as described in subparagraphs *(b)* and *(c)*. It argues that the Court does not have jurisdiction over the claims based on the events that allegedly occurred after the Pact of Bogotá ceased to be in force for Colombia.

40. The Court does not consider that Colombia's argument correctly reflects the meaning of Article XXXI. Subparagraphs *(b)* and *(c)* of that Article refer to the subject-matter of a dispute over which the Court may exercise jurisdiction (see *Border and Transborder Armed Actions (Nicaragu*a v. *Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 84, para. 34). The phrase "so long as the present Treaty is in force" limits the period within which such a dispute must have arisen. Since the Court has already decided in its 2016 Judgment that there existed a dispute between the Parties that fell within the scope of Article XXXI at the time Nicaragua filed its Application, the question of consent under Article XXXI with regard to that dispute does not arise at the present stage of the proceedings. The question now before the Court is whether its jurisdiction over that dispute extends to facts or events that allegedly occurred after the lapse of the title of jurisdiction.

41. Colombia maintains that its view on the Court's jurisdiction *ratione temporis* is reinforced by the 2016 Judgment, in which, according to Colombia, the Court stated that the dispute was limited to the facts that occurred before the filing of the Application. However, Colombia mischaracterizes the 2016 Judgment, in which the Court, applying its settled jurisprudence, recalled that the date at which its jurisdiction has to be established is the date on which the application is filed with the Court (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 18, para. 33, citing *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, pp. 437-438, paras. 79-80, and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 613, para. 26). In order to determine whether the Court has jurisdiction in a particular case, it has to ascertain whether there existed a dispute between the parties on the date on which the application was filed. For that purpose, the Court's decision must be based on the acts which allegedly occurred before that date. Contrary to what Colombia claims, the 2016 Judgment does not preclude the Court from entertaining those incidents that allegedly occurred after the filing of the application.

42. With regard to the lapse of the jurisdictional title, the Court has stated in a number of cases that, "according to its established jurisprudence, if a title of jurisdiction is shown to have existed at the date of the institution of proceedings, any subsequent lapse or withdrawal of the jurisdictional instrument is without effect on the jurisdiction of the Court" (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, p. 445, para. 95; see also *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 18, para. 33; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 28,

para. 36; *Nottebohm (Liechtenstein* v. *Guatemala), Preliminary Objection, Judgment, I.C.J. Reports 1953*, p. 123). There is nothing in the Court's jurisprudence to suggest that the lapse of the jurisdictional title after the institution of proceedings has the effect of limiting the Court's jurisdiction *ratione temporis* to facts which allegedly occurred before that lapse.

43. Although the question posed by Colombia has not previously been presented to the Court, considerations that have been brought to bear on the adjudication of a claim or submission made after the filing of an application can be instructive in the present case. In the view of the Court, the criteria that it has considered relevant in its jurisprudence to determine the limits *ratione temporis* of its jurisdiction with respect to such a claim or submission, or the admissibility thereof, should apply to the Court's examination of the scope of its jurisdiction *ratione temporis* in the present case.

44. In cases involving the adjudication of a claim or submission made after the filing of the application, the question has in some cases been addressed as one of jurisdiction and, in others, as one of admissibility. The Court has in such instances considered whether such a claim or submission arose directly out of the question which is the subject-matter of the application or whether entertaining such a claim or submission would transform the subject of the dispute originally submitted to the Court (see *Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 203, para. 72; *LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, p. 484, para. 45; *Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, pp. 266-267, paras. 67 and 69-70; and *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium), Judgment, I.C.J. Reports 2002*, p. 16, para. 36). With regard to facts or events subsequent to the filing of the application, in *Certain Questions of Mutual Assistance in Criminal Matters*, the Court referred to the above jurisprudence and stated the following:

> "When the Court has examined its jurisdiction over facts or events subsequent to the filing of the application, it has emphasized the need to determine whether those facts or events were connected to the facts or events already falling within the Court's jurisdiction and whether consideration of those later facts or events would transform the 'nature of the dispute'" (*Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France), Judgment, I.C.J. Reports 2008*, pp. 211-212, para. 87).

Although the Court did not find the above criteria applicable to that case, since the matter before it concerned jurisdiction *ratione materiae* and not jurisdiction *ratione temporis*, it affirmed the relevance of criteria relating to "continuity" and "connexity" for "determining limits *ratione temporis* to its jurisdiction" (*ibid.*, p. 212, para. 88).

45. In the 2016 Judgment, the Court did not address the question of jurisdiction *ratione temporis* with regard to those alleged incidents that occurred after the denunciation of the Pact of Bogotá came into effect. However, its Judgment implies that the Court has jurisdiction to examine every aspect of the dispute that the Court found to have existed at the time of the filing of the Application. As the Court has pointed out,

> "it has become an established practice for States submitting an application to the Court to reserve the right to present additional facts and legal considerations. The limit of the freedom to present such facts and considerations is 'that the result is not to transform

> the dispute brought before the Court by the application into another dispute which is different in character' (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 427, para. 80)" (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 318-319, para. 99). See also *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, pp. 213-214, paras. 116-118).

It follows that the task of the Court is to decide whether the incidents alleged to have occurred after the lapse of the jurisdictional title meet the aforementioned criteria drawn from the Court's jurisprudence.

46. The incidents said to have occurred after 27 November 2013 generally concern Colombian naval vessels and aircraft allegedly interfering with Nicaraguan fishing activities and marine scientific research in Nicaragua's maritime zones, Colombia's alleged policing operations and interference with Nicaragua's naval vessels in Nicaragua's maritime waters and Colombia's alleged authorization of fishing activities and marine scientific research in Nicaragua's exclusive economic zone. These alleged incidents are of the same nature as those that allegedly occurred before 26 November 2013. They all give rise to the question whether Colombia has breached its international obligations under customary international law to respect Nicaragua's rights in the latter's exclusive economic zone, a question which concerns precisely the dispute over which the Court found it had jurisdiction in the 2016 Judgment.

47. In light of the foregoing considerations, the Court concludes that the claims and submissions made by Nicaragua in relation to incidents that allegedly occurred after 27 November 2013 arose directly out of the question which is the subject-matter of the Application, that those alleged incidents are connected to the alleged incidents that have already been found to fall within the Court's jurisdiction, and that consideration of those alleged incidents does not transform the nature of the dispute between the Parties in the present case. The Court therefore has jurisdiction *ratione temporis* over Nicaragua's claims relating to those alleged incidents.

III. ALLEGED VIOLATIONS BY COLOMBIA OF NICARAGUA'S RIGHTS IN ITS MARITIME ZONES

48. The dispute between the Parties in the present case raises questions concerning the rights and duties of the coastal State and the rights and duties of other States in the exclusive economic zone. The Applicant and the Respondent agree that the applicable law between them is customary international law. Nicaragua is a party to UNCLOS and Colombia is not; consequently, UNCLOS is not applicable between them. The Court notes that both Parties acknowledge that a number of the provisions of UNCLOS that they refer to reflect customary international law. They disagree, however, about whether that is true of other provisions that are at issue in the present case. The Court will consider whether the particular provisions of the Convention relevant to the present case reflect customary international law when addressing Nicaragua's claims and Colombia's counter-claims.

A. Colombia's contested activities in Nicaragua's maritime zones

1. Incidents alleged by Nicaragua in the south-western Caribbean Sea

49. In its submissions, Nicaragua requests the Court to adjudge and declare that, by its conduct, Colombia has breached its international obligation to respect Nicaragua's maritime zones as delimited by the Court in its 2012 Judgment. Nicaragua claims that, after the Court delivered its Judgment on maritime delimitation, Colombia engaged in a series of acts that violated Nicaragua's sovereign rights and jurisdiction in Nicaragua's exclusive economic zone. Nicaragua maintains that Colombia attempted to enforce its own jurisdiction in Nicaragua's maritime zones, including by obstructing, through both naval and aerial means, Nicaragua's exercise of its own jurisdiction; by harassing and intimidating Nicaraguan-flagged and Nicaraguan-licensed fishing vessels; and by authorizing Colombians and nationals of third States to operate in those zones. Nicaragua also refers to instances in which it alleges that Colombia asserted its sovereignty over Nicaragua's exclusive economic zone or otherwise rejected the 2012 Judgment.

50. Nicaragua contends that Colombia must establish that the rights it claims in Nicaragua's exclusive economic zone are "attributed" to it, and not to Nicaragua, under customary international law. According to Nicaragua, the set of sovereign rights of the coastal State for the purpose of exploring and exploiting, conserving and managing natural resources in the exclusive economic zone "contains no exception or qualification that would give or preserve traditional fishing rights of artisanal fishermen".

51. The Applicant recognizes that the Respondent enjoys, in Nicaragua's exclusive economic zone, freedoms of navigation and overflight and other internationally lawful uses of the sea related to these freedoms. It does not question Colombia's right to take action against Colombian-flagged vessels or against a vessel suspected of drug-trafficking that a Colombian naval vessel may happen to encounter in Nicaragua's exclusive economic zone. The Applicant argues, however, that in light of the ordinary meaning of the word "navigation", the scope of the Respondent's freedom of navigation is limited to the passage of ships or the movement of ships on water and does not include systematic acts of "monitoring" and "tracking".

52. The Applicant complains that the Respondent has erected and implemented a régime of surveillance and enforcement that treats Nicaragua's exclusive economic zone as if it were Colombian "national waters". Nicaragua further argues that Colombia has no right to enforce or police environmental standards in Nicaragua's exclusive economic zone, because UNCLOS is clear in allocating jurisdiction to coastal and flag States in relation to the protection and preservation of the marine environment.

*

53. For its part, Colombia contends that in the exclusive economic zone, States other than the coastal State enjoy freedoms of navigation and overflight as well as other internationally lawful uses of the sea. According to Colombia, in assessing the lawfulness of a State's conduct in another State's exclusive economic zone, regard needs to be had to the customary international law of the sea, which may be identified by reference to both the text of UNCLOS and to State practice; to other rules of customary international law, including local custom; to commitments undertaken in unilateral declarations; and to rules reflected in other applicable treaties. It is not the case, in the Respondent's view, that a right not specifically attributed to third States necessarily vests with the coastal State.

54. In support of the legality of its actions, the Respondent claims that it has acted in accordance with three types of rights and duties recognized by international law: (i) the right and duty to protect and preserve the environment of the south-western Caribbean Sea; (ii) the due diligence duty within the relevant maritime area; and (iii) the right and duty to protect the habitat of the Raizales and other local communities inhabiting the Archipelago. Colombia asserts that, in view of the fragility of the Caribbean ecosystem resulting from threats such as marine-based pollution, overfishing and other predatory practices, it has adopted a series of protective measures and become a party to bilateral and regional agreements to protect and preserve the area, among which the most important are the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, done at Cartagena de Indias on 24 March 1983 (hereinafter the "Cartagena Convention") and the Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, done at Kingston on 18 January 1990 (hereinafter the "SPAW Protocol"). In addition, Colombia established two special reserve areas for marine environmental protection in 2000 and 2005, the Seaflower Biosphere Reserve and the Seaflower Marine Protected Area, with the respective aims of protecting the marine environment in the south-western Caribbean Sea and the habitat of the Raizales community.

55. The Respondent claims that it therefore has the right and duty to protect and preserve the environment of the south-western Caribbean Sea and the duty to exercise due diligence within the relevant marine area. It states that "[e]nvironmental concerns within the Southwestern Caribbean Sea need to be fully taken into account regardless of considerations of sovereignty or sovereign rights". According to Colombia, it has the right to monitor and track any practices that endanger the marine environment and urge them to cease. The Respondent maintains that to find unlawful under customary international law an activity of Colombia that is not specifically recognized as encompassed by its freedoms of navigation and overflight, or other permissible uses of the sea, it must be proved that "Colombia's actions impeded, or materially prejudiced, Nicaragua's ability to exercise its sovereign rights".

* *

56. The Court recalls that the applicable law between the Parties is customary international law. The Court notes that, by the time UNCLOS was concluded, the concept of the exclusive economic zone had already received widespread acceptance by States. In 1985, the Court found it incontestable that the institution of the exclusive economic zone had become a part of customary law (*Continental Shelf (Libya Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 33, para. 34). To date, around 130 States, including both parties and non-parties to the Convention, have adopted national legislation or administrative decrees declaring an exclusive economic zone.

57. Customary rules on the rights and duties in the exclusive economic zone of coastal States and other States are reflected in several articles of UNCLOS, including Articles 56, 58, 61, 62 and 73. Article 56 reads as follows:

> "Article 56
>
> *Rights, jurisdiction and duties of the coastal State in the exclusive economic zone*
>
> 1. In the exclusive economic zone, the coastal State has:
>
> *(a)* sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
>
> *(b)* jurisdiction as provided for in the relevant provisions of this Convention with regard to:
>
> (i) the establishment and use of artificial islands, installations and structures;
>
> (ii) marine scientific research;
>
> (iii) the protection and preservation of the marine environment;
>
> *(c)* other rights and duties provided for in this Convention.
>
> 2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.
>
> 3. The rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI."

58. Articles 61 and 62 address the conservation and utilization of the living resources in the exclusive economic zone. Under Article 61, the coastal State has the responsibility to conserve the living resources in that maritime zone. For that purpose, it shall determine the allowable catch of the living resources in the exclusive economic zone and ensure, through proper conservation and management measures, taking into account the best scientific evidence available to it, that the living resources in that zone are not endangered by over-exploitation. The coastal State shall take measures

to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of the coastal fishing communities and the special requirements of developing States. Article 62 provides that in order to achieve an optimum utilization of the living resources in the exclusive economic zone, the coastal State shall determine its capacity to harvest the living resources of the zone, and, where it does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements, give other States access to the surplus of the allowable catch, with particular attention paid to the rights of landlocked States and geographically disadvantaged States. Article 62 also provides that nationals of other States fishing in a coastal State's exclusive economic zone shall comply with the conservation measures established in the laws and regulations adopted by the coastal State in conformity with the Convention.

59. Moreover, under Article 73 of UNCLOS, the coastal State, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, has the power to take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations it has adopted in conformity with UNCLOS.

60. In exercising its sovereign rights and jurisdiction in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall observe its other obligations under the law of the sea.

61. Customary international law also attributes rights and duties to other States in the exclusive economic zone, as reflected in Article 58 of UNCLOS, which states:

> "Article 58
>
> *Rights and duties of other States in the exclusive economic zone*
>
> 1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.
>
> 2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.
>
> 3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part."

62. Thus, under customary international law, all States enjoy the freedoms of navigation and overflight, as well as other internationally lawful uses related to such freedoms, in another State's exclusive economic zone. Moreover, the customary rules as reflected in Articles 88 to 115 of UNCLOS and other pertinent rules of international law are applicable to the exclusive economic zone in so far as they are not incompatible with the régime of that zone.

63. In exercising their rights and performing their duties in the exclusive economic zone, other States shall have due regard to the sovereign rights and jurisdiction of the coastal State in that zone.

*

64. In considering whether the evidence establishes the violations of customary international law alleged by Nicaragua, the Court will be guided by its jurisprudence on questions of proof. The Court recalls that, "as a general rule, it is for the party which alleges a particular fact in support of its claims to prove the existence of that fact" (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 26, para. 33; see also *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 660, para. 54). The Court will treat with caution evidentiary materials prepared for the purposes of a case, as well as evidence from secondary sources (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 731, para. 244; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, pp. 201, 204 and 225, paras. 61, 68 and 159; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 41, para. 65). It will consider evidence that comes from contemporaneous and direct sources to be more probative and credible. The Court will also "give particular attention to reliable evidence acknowledging facts or conduct unfavourable to the State represented by the person making them" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 201, para. 61, citing *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 41, para. 64). Finally, while press articles and documentary evidence of a similar secondary nature are not capable of proving facts, they can corroborate, in some circumstances, the existence of facts established by other evidence (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Merits, Judgment, I.C.J. Reports 2015 (I)*, p. 87, para. 239, citing *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 40, para. 62).

65. In the present case, Nicaragua refers to over 50 alleged incidents at sea. The Court observes that, for most of these events, Nicaragua mainly relies on the following materials as evidence: a letter from the Nicaraguan Naval Force to the Ministry of Foreign Affairs of Nicaragua dated 26 August 2014, which contains a report of alleged incidents produced pursuant to a request for information from the Ministry of Foreign Affairs and which is accompanied by daily reports from the Navy and, in respect of some of the alleged incidents, audio recordings of exchanges between the vessels

involved. According to Nicaragua, these daily reports in map format were prepared contemporaneously with the incidents and maintained in the logs of the Nicaraguan armed forces. The above-mentioned report listing alleged incidents was also annexed to a diplomatic Note sent by Nicaragua to Colombia, dated 13 September 2014. Moreover, Nicaragua adduces three letters from the President of the Nicaraguan Chamber of Fisheries to the Executive Director of the Nicaraguan Institute of Fisheries and Aquaculture (hereinafter "INPESCA"), dated, respectively, 6 January 2014, 1 July 2014, and 24 July 2014, each of which refers to certain incidents allegedly reported by captains or crewmembers of fishing vessels to their vessel owners. For alleged incidents between 2015 and 2017, Nicaragua also produces daily reports from its Navy, some with audio recordings attached. In addition to these letters and materials, Nicaragua refers to diplomatic Notes, affidavits, photographic and audio-visual materials, and media reports.

66. In considering the evidentiary weight of the reports from the Nicaraguan Navy, some of which are accompanied by audio recordings, the Court takes into account Nicaragua's assertion that these reports were prepared contemporaneously with alleged events, while also bearing in mind that they appear to have been prepared for the purposes of the current proceedings and that, in many instances, they do not contain first-hand evidence. The Court approaches with some caution the letters from the President of the Nicaraguan Chamber of Fisheries to the Executive Director of INPESCA, which do not contain first-hand accounts of events and at least some of which appear to have been specially prepared for the purposes of the case.

67. In response, Colombia presents, for certain incidents, its naval maritime travel reports and navigation logs to prove that its naval frigates did not have encounters with Nicaraguan vessels at the times and the places alleged by Nicaragua, or that the naval frigates concerned were recorded docking at the port or elsewhere at the relevant time. In respect of some incidents, Colombia also provides communications from officers of the Colombian Navy, audio recordings, photographic evidence, and video footage of its own, as well as affidavits. In addition, in respect of incidents which allegedly occurred before 18 March 2014, Colombia refers to the statement made on that date by the Chief of Nicaragua's Army that there had been "no incidents" involving Colombia or its Navy.

68. With regard to Colombia's evidence, the Court considers that the Colombian Navy's maritime travel reports and navigation logs have probative value, as they mostly provide information from contemporaneous and direct sources. The Court will attach particular significance to reliable evidence that admits or establishes facts unfavourable to Colombia. In the same way as with the evidence adduced by Nicaragua, the Court will treat with caution reports and affidavits adduced by Colombia which appear to have been prepared specially for the purposes of the case.

69. Upon examination of the evidence submitted by Nicaragua, the Court finds that for many alleged incidents, Nicaragua seeks to establish that Colombian naval vessels violated Nicaragua's rights in its maritime zones; yet its evidence does not prove, to the satisfaction of the Court, that Colombia's conduct in Nicaragua's exclusive economic zone went beyond what is permitted under customary international law as reflected in Article 58 of UNCLOS. In relation to a number of other alleged incidents, Nicaragua's evidence is primarily based on what fishermen reported to the owners

of their vessels, on materials that were apparently prepared for the purposes of the present case without other corroborating evidence, on audio recordings that are not sufficiently clear, or on media reports that either do not indicate the source of their information or are otherwise uncorroborated. The Court does not consider that such evidence suffices to establish Nicaragua's allegations against Colombia.

The Court considers that, with regard to the alleged incidents referred to above, Nicaragua has failed to discharge its burden of proof to establish a breach by Colombia of its international obligations. The Court will therefore dismiss those allegations for lack of proof.

70. With regard to the rest of the alleged incidents, the Court will examine in detail the evidence adduced by Nicaragua, together with Colombia's responses to each of the alleged incidents.

* *

The alleged incidents of 17 November 2013

71. Nicaragua claims that in the morning of 17 November 2013 the ARC *Almirante Padilla*, a Colombian frigate, ordered the *Miss Sofia*, a Nicaraguan lobster ship, to move from its position at 14° 50' 00" N and 81° 45' 00" W because the lobster ship was in "Colombian waters". According to Nicaragua, when the *Miss Sofia* refused to leave, the Colombian frigate sent a speedboat to chase the lobster ship away. Nicaragua bases these allegations on the report of incidents attached to the letter from the Nicaraguan Naval Force to the Ministry of Foreign Affairs of Nicaragua, dated 26 August 2014 and the letter from the President of the Nicaraguan Chamber of Fisheries to the Executive Director of INPESCA, dated 6 January 2014. On the basis of the same evidence, Nicaragua claims that, later that day at around 3 p.m., after one of its coast guard vessels, the *Río Escondido*, informed the ARC *Almirante Padilla* that it was in Nicaraguan waters, the Colombian frigate refused to leave, stating that the Government of Colombia did not recognize the 2012 Judgment. Nicaragua argues that the different narrative of the alleged incident provided by Colombia (see paragraph 72 below) is not inconsistent with its own allegations, as the two accounts pertain to events that occurred at different times of the day.

72. With regard to these events, Colombia acknowledges that the ARC *Almirante Padilla* and the *Miss Sofia* were in the Luna Verde area on 17 November 2013. Colombia claims, however, that on that day the ARC *Almirante Padilla* unsuccessfully tried to contact the *Miss Sofia* in order to return two fishermen whom it had rescued in the late afternoon and who appeared to have been abandoned by the *Miss Sofia*. Colombia asserts that, due to its inability to establish contact with the fishing vessel, its frigate contacted the Nicaraguan patrol boat. Colombia claims that it acted in accordance with its obligation under customary international law to assist any person found at sea in the exclusive economic zone in danger of being lost. In relation to these events, Colombia refers to signed declarations by two fishermen, dated 17 November 2013, attesting to their good treatment by the crew of the Colombian frigate, to audio-visual material, and to a communication from the Commander of the ARC *Almirante Padilla* to the Commander of the Specific Command of San Andrés and Providencia dated 20 November 2013. Colombia did not provide any information or evidence concerning the location and activities of the ARC *Almirante Padilla* before 5.10 p.m. that day.

The alleged incidents of 27 January 2014

73. Nicaragua claims that, on 27 January 2014, the Colombian frigate ARC *Independiente* informed the *Caribbean Star*, a Nicaraguan lobster ship, located at 14° 47' 00" N and 81° 52' 00" W, that it was fishing illegally in the Seaflower Biosphere Reserve. In support of this claim, Nicaragua relies on an audio recording, the letter from the President of the Nicaraguan Chamber of Fisheries to the Executive Director of INPESCA dated 1 July 2014, and the report of incidents attached to the letter from the Nicaraguan Naval Force to the Ministry of Foreign Affairs dated 26 August 2014. According to the audio recording submitted by Nicaragua, the Colombian frigate stated "the Colombian [S]tate has determined that the judgment of the International Court of Justice is not applicable, therefore the units of the [Colombian Navy] will continue exercising sovereignty and control over these waters". Also on the basis of the report attached to the letter dated 26 August 2014, Nicaragua alleges that, on the same day, the ARC *Independiente* harassed the *Al John*, another lobster ship, operating with a Nicaraguan fishing licence at 14° 44' 00" N and 81° 47' 00" W.

74. For its part, Colombia states that it cannot confirm the authenticity of the audio recording. It denies, by reference to the maritime travel report of the ARC *Independiente* for 27 January 2014, that the *Independiente* encountered the *Caribbean Star* on that day, but concedes that the ARC *Independiente* was in Nicaragua's exclusive economic zone and that it interacted with the *Al John*. Colombia refers to a communication from the Commander of the Colombian Naval Force of the Caribbean, dated 28 January 2014, in support of its claim that the ARC *Independiente* did not harass the *Al John* as Nicaragua asserts but rather informed it that its practices in the Seaflower Biosphere Reserve were illegal. According to the communication on which Colombia relies, the captain of the *Al John* asked the Colombian frigate to allow his crew to continue to work "in these Nicaraguan waters". Colombia claims that this was the end of the communication, indicating that the fishermen were neither intimidated nor prevented from carrying out their activities.

The alleged incidents of 5 February 2014

75. According to Nicaragua, on 5 February 2014, the ARC *20 de Julio*, a Colombian frigate, informed the Nicaraguan Navy vessel *Tayacán* and 12 Nicaraguan fishing boats operating in the vicinity of 14° 44' 01" N and 81° 39' 08" W to withdraw from Colombia's contiguous zone and territorial sea. Nicaragua relies, in this regard, on the report of incidents and an audio recording attached to the letter dated 26 August 2014. In the audio recording submitted by Nicaragua, the speaker identifies himself as representing the "[Navy] of the Republic of Colombia, ARC '20 de Julio'" and informs "Nicaraguan units" that "you are in Colombia jurisdictional waters — the Colombian State has determined that the ruling by The Hague is not applicable; therefore, the units of the [Navy] of the Republic of Colombia will continue to exercise sovereignty over these waters". The speaker also notes the specific co-ordinates at which the Nicaraguan units are located as 14° 44' 02" N and 81° 39' 06" W. By reference to the letter from the President of the Nicaraguan Chamber of Fisheries to the Executive Director of INPESCA dated 1 July 2014, as well as the above-mentioned report, Nicaragua also claims that, later that day, the ARC *20 de Julio* intercepted the *Nica Fish*, a Nicaraguan fishing boat, located at 14° 44' 00" N and 81° 39' 00" W, and urged it to withdraw from "Colombian waters".

76. Colombia does not challenge the authenticity of the audio recording submitted by Nicaragua, nor does it deny that its vessel interacted with the *Tayacán*, which the ARC *20 de Julio* identified as being located at 14° 44' N and 81° 36' W. Colombia, however, asserts that the mere reading of a statement concerning the 2012 Judgment, without any evidence of interference with Nicaragua's sovereign rights, does not amount to a violation of international law. Colombia also refers to the maritime travel report of the ARC *20 de Julio*, which it argues supports its claim that on 5 February 2014 the frigate identified only one fishing vessel, the *Nica Fish*, with which it did not interact.

The alleged incidents of 12 and 13 March 2014

77. Nicaragua claims that on 12 March 2014 the Colombian frigate ARC *20 de Julio* harassed the Nicaraguan lobster ship *Al John*, which was located at approximately 14° 44' 00" N and 81° 50' 00" W, by ordering it to withdraw from the area in which it was fishing and by sending a speedboat to chase it away. Nicaragua also alleges that the Colombian frigate and speedboat had a "hostile attitude". In respect of this alleged incident, Nicaragua relies on the letter from the President of the Nicaraguan Chamber of Fisheries to the Executive Director of INPESCA dated 1 July 2014 and the report attached to the letter from the Nicaraguan Naval Force to the Ministry of Foreign Affairs of Nicaragua dated 26 August 2014. Moreover, Nicaragua claims, on the basis of the same evidence, that, the following day, the same Colombian frigate ordered the *Marco Polo*, a Nicaraguan fishing boat in the vicinity of 14° 43' 00" N and 81° 45' 00" W, to leave the area in which it was fishing.

78. In response, Colombia accepts that the ARC *20 de Julio* interacted with the *Al John* and the *Marco Polo* on 12 and 13 March 2014, respectively. Colombia claims that its frigate simply informed each of the fishing vessels that they were operating "in a UNESCO specially-protected area" and invited them to suspend their environmentally harmful practices and to change them for other methods. The Respondent submits a communication from the Commander of the ARC *20 de Julio* to the Colombian Navy's Specific Command of San Andrés and Providencia dated 13 March 2014 to which photographic evidence and the transcription of communications with the two fishing vessels were attached, which indicates that the ARC *20 de Julio*, reading from a proclamation, informed the *Al John* and the *Marco Polo* that they were engaged in predatory fishing practices in a protected area. Colombia notes that, according to its transcription of those communications, the captain of the *Al John* said that it would move when it was "done fishing" and the *Marco Polo* replied that it would continue "exercising legal fishing". Colombia claims that these responses support its contention that there was no harassment or violation of Nicaragua's sovereign rights.

The alleged incident of 3 April 2014

79. Nicaragua alleges that on 3 April 2014 a Colombian Navy ocean patrol ship, the ARC *San Andrés*, harassed the *Mister Jim*, a Nicaraguan fishing boat, located at 14° 44' 00" N and 82° 00' 00" W, and advised it by radio that it should not continue to fish for lobster and should withdraw from the area. In relation to this allegation, Nicaragua relies on the report attached to the letter from the Nicaraguan Naval Force to the Ministry of Foreign Affairs of Nicaragua dated 26 August 2014 and the letter from the President of the Nicaraguan Chamber of Fisheries to the Executive Director of INPESCA dated 1 July 2014.

80. While conceding that an interaction did occur between the ARC *San Andrés* and the *Mister Jim*, Colombia claims that the ARC *San Andrés* invited the *Mister Jim* to suspend its environmentally harmful fishing practices and to make use of authorized fishing methods instead. The communication from the Commander of the Specific Command of San Andrés and Providencia to the Commander of the Naval Force of the Caribbean dated 7 April 2014 and submitted by Colombia with respect to this incident confirms that the interaction indeed took place. Colombia introduces evidence that indicates that, as part of the exchange, the ARC *San Andrés*, reading from a proclamation, "invited the *Mister Jim* to suspend its predatory fishing practices, which are harmful to the marine environment, and change its methods to authorized ones".

The alleged incident of 28 July 2014

81. Nicaragua alleges that on 28 July 2014 the captain of the Nicaraguan-flagged fishing vessel *Doña Emilia* informed a Nicaraguan Navy vessel that "a few days earlier", while at 14° 29' 00" N and 81° 53' 00" W, a Colombian Navy vessel advised the *Doña Emilia* that it could not operate in that area. Nicaragua supports this allegation by reference to the report and an audio recording attached to the letter from the Nicaraguan Naval Force to the Ministry of Foreign Affairs, dated 26 August 2014.

82. Colombia accepts that one of its naval vessels, the ARC *7 de Agosto*, interacted with the *Doña Emilia* on 22 July 2014. It presents a communication from the Commander of the Specific Command of San Andrés and Providencia to the Commander of Colombia's Naval Force of the Caribbean dated 22 July 2014. According to this communication, the ARC *7 de Agosto* informed the *Doña Emilia* that it had been found carrying out predatory fishing in a UNESCO protected environmentally sensitive area, and invited it "to suspend such harmful practice for the marine environment and change it for authorized methods". In support of its assertion that Nicaragua was not impeded from exercising its sovereign rights in the area, Colombia also refers to the transcript of the audio recording provided by Nicaragua, according to which the captain of the *Doña Emilia* stated that the fishing vessel ignored the Colombian naval vessel and continued with its fishing activities.

The alleged incidents of 26 March 2015

83. Nicaragua claims that on 26 March 2015 the ARC *11 de Noviembre*, located at 14° 50' 00" N and 81° 41' 00" W, stated to Nicaraguan coast guard vessel GC-401 *José Santos Zelaya* that, "according to the Colombian government, the ruling of The Hague [was] inapplicable, which is why [it was] in the Colombian Archipelago of San Andrés [and] Providencia". According to Nicaragua, later that day, the ARC *11 de Noviembre* informed the Nicaraguan-flagged fishing vessel *Doña Emilia* that it was engaging in predatory fishing at co-ordinates 14° 50' 2.98" N and 81° 47' 3.62" W and asked it to suspend this practice. In respect of these alleged events, Nicaragua relies on daily reports of its Navy and audio recordings. According to Nicaragua's transcript of one of these recordings, the captain of the ARC *11 de Noviembre* told the *Doña Emilia* that its fishing technique was "totally prohibited anywhere . . . regardless of the fishing license that a boat has" and asked the fishing vessel whether the "instructions" were clear.

84. For its part, Colombia claims that, even if true, Nicaragua's audio recording relating to GC-401 *José Santos Zelaya* shows no violation of Nicaragua's sovereign rights, and that Nicaragua is seeking to negate Colombia's rights in the south-western Caribbean Sea. As for the alleged interaction between the ARC *11 de Noviembre* and the *Doña Emilia*, Colombia claims to have no record of this encounter. It further claims that, if Nicaragua's audio recording is authentic, Nicaragua has distorted the alleged interaction. Colombia asserts that, in the recording, the Colombian officer informed the fishing vessel that "it was in a UNESCO specially-protected area, where predatory fishing was not permitted" and the officer "merely invited the vessel to suspend this harmful fishing practice and change it for authorized methods". According to Colombia, this alleged incident does not constitute a violation of Nicaragua's sovereign rights.

The alleged incident of 21 August 2016

85. Nicaragua further claims that on 21 August 2016 the captain of the *Marco Polo* reported that, while fishing at 14° 51' 00" N and 81° 41' 00" W, the Colombian frigate ARC *Almirante Padilla* informed the vessel that its fishing activities were illegal and "proceeded to emit an acute sound in the water, which obstructed the *Marco Polo*'s fishing for lobster, thereby forcing it to leave the area". In respect of this incident, Nicaragua relies on the letter from the Navy to the Commander in Chief of the Army, dated 20 August 2016, accompanied by a signed complaint from the captain of the Nicaraguan fishing vessel *Marco Polo*, as well as a daily report of its Navy.

86. Regarding the encounter with the *Marco Polo,* Colombia accepts that the ARC *Almirante Padilla* had an encounter with the Nicaraguan fishing vessel in question, but argues that the Colombian frigate, after finding the *Marco Polo* to be undertaking predatory fishing, merely read a proclamation used to address Nicaraguan fishing vessels engaging in what Colombia regarded as predatory practices and invited the crew to suspend its environmentally harmful fishing practices. Colombia relies on the maritime travel report of the ARC *Almirante Padilla* in claiming that the fishing vessel ignored this invitation, which, in Colombia's view, implies that the *Marco Polo* did not leave the area and was not precluded from carrying out its fishing activities.

The alleged incidents of 6 and 8 October 2018

87. Nicaragua alleges that, on 6 October 2018, the ARC *Almirante Padilla*, a Colombian naval vessel, intercepted the *Dr Jorge Carranza Fraser*, a Mexican-flagged vessel conducting marine scientific research activities with Nicaragua's authorization in waters south of Alburquerque Cay. Nicaragua claims that the Mexican-flagged vessel was located at 13° 51' 50.79" N and 81° 27' 18.066" W when the Colombian vessel "ordered it to stop its activities and prevented it from continuing [its marine scientific research activities], claiming that it was operating in Colombian waters". Nicaragua further alleges that, two days later, the ARC *Almirante Padilla* again intercepted the Mexican-flagged vessel while operating at 11° 51' 39.798" N and 80° 58' 9.998" W and ordered it to leave. Nicaragua bases its claim on evidence that includes diplomatic Notes, a letter from the Mexican National Institute of Fisheries and Aquaculture (hereinafter "INAPESCA"), dated 16 April 2019, and affidavits provided by two Mexican crew members accompanied by contemporaneous radar screen photographs. In respect of its allegations concerning the Mexican-flagged vessel, Nicaragua also refers to the original and modified navigation course and sampling stations of that vessel.

88. Colombia argues that the alleged incident "was a non-event". By reference to a communiqué by INAPESCA dated 8 October 2018, which indicates that on 5 October 2018 the Mexican-flagged vessel had already transited the area in which the alleged incident took place, Colombia claims that the Mexican-flagged vessel "could not have been where Nicaragua claims it was on 6 October 2018". Colombia further states that contemporaneous materials emanating from INAPESCA do not mention the alleged interference by Colombia and that neither Mexico nor INAPESCA protested the alleged event. While Colombia accepts that the INAPESCA letter dated 16 April 2019 refers to an encounter the Mexican-flagged vessel had with a marine patrol vessel from a third State, it notes that the letter "did not mention Colombia". Additionally, Colombia questions the veracity of the affidavits submitted by Nicaragua on the grounds that "[t]he individual who served as the notary public in both of them is . . . a recently retired member of Nicaragua's military as well as legal counsel in the current proceedings".

The alleged incident of 11 December 2018

89. Nicaragua claims that in the late evening of 10 December 2018 the Nicaraguan Navy vessel *Tayacán* boarded the *Observer*, a Honduran-flagged fishing boat, and found it to be conducting illegal fishing for lobster at 14° 58' 00" N and 81° 00' 00" W. According to Nicaragua, while escorting the *Observer* to a Nicaraguan port early in the morning of 11 December 2018, its naval vessel detected the presence of the ARC *Antioquia*, a Colombian Navy frigate, which established communication, demanding that the Nicaraguan Navy release the *Observer*. Nicaragua alleges that its naval vessel was harassed first by a low-flying plane and then by a fast boat dispatched by the ARC *Antioquia*, forcing the *Tayacán* to change course. According to Nicaragua, the ARC *Antioquia* followed the *Tayacán* for hours and then took hostile actions with the aim of impeding the transfer of the *Observer*, culminating in the *Antioquia* bumping several times into both the *Observer* and the *Tayacán.* Nicaragua further alleges that the crew of the *Antioquia* pointed guns at Nicaraguan naval personnel aboard the *Observer*, demanding that they surrender. In respect of these allegations, Nicaragua relies on, among other things, an affidavit from the Commander and Second Commander of the *Tayacán*; signed and notarized interviews with the captain, second captain, and two crew members of the *Observer*; audio-visual material; photographs; and audio recordings.

90. With respect to the alleged events of 10-11 December 2018, Colombia argues that the *Observer* was not fishing in Nicaragua's exclusive economic zone but was in transit between Colombia's islands. In this regard, Colombia refers to, among other things, how lobster fishing is carried out, the timing of the alleged events, and data from the vessel monitoring system of the *Observer*. Colombia also relies on these data in support of its claim that the ARC *Antioquia* was in the area in response to a distress call from the *Observer*. Colombia denies that it deployed either a low-flying plane or a fast boat to harass the Nicaraguan vessel and refers, in support of its position, to a communication from the Commander of Colombia's Air Force dated 23 October 2019, which states that on 11 December 2018 there were no flights by the Colombian Air Force in the area, as well as to an affidavit by the captain of the ARC *Antioquia* and the maritime travel report of the ARC *Antioquia*. Moreover, relying on audio-visual material, audio recordings, and the affidavit from the captain of the ARC *Antioquia*, Colombia claims that Nicaraguan officials tried to ram the ARC *Antioquia* and deliberately manoeuvred the *Tayacán* in order to have the *Observer* and the ARC *Antioquia* bump into each other. Colombia also questions the credibility of the affidavits produced

by Nicaragua, since the notary public for those affidavits is a recently retired member of Nicaragua's military who has served as legal counsel for Nicaragua in the present case. Referring to an affidavit from a crew member of the *Observer*, Colombia considers, moreover, that the interviews on which Nicaragua relies were taken under duress and that the Court should thus not take them into consideration.

* *

91. The Court considers that, based upon the above-mentioned evidentiary material, a number of facts on which Nicaragua's claim rests are established. First of all, as to many of the alleged incidents, the evidence supports Nicaragua's allegations regarding the location of Colombian frigates (see the alleged incidents of 17 November 2013; 27 January 2014; 12 and 13 March 2014; 3 April 2014; 28 July 2014; 21 August 2016; 6 and 8 October 2018). Colombia's own naval reports and navigation logs, as contemporaneous documents, also corroborate the specific geographic co-ordinates presented by Nicaragua, which lie within the area east of the 82° meridian, often in the fishing ground at or around Luna Verde, located within the maritime area that was declared by the Court to appertain to Nicaragua.

92. Moreover, the Colombian naval vessels purported to exercise enforcement jurisdiction in Nicaragua's exclusive economic zone (see the alleged incidents of 27 January 2014; 13 March 2014; 3 April 2014; 28 July 2014; 26 March 2015; 21 August 2016). In communications with Nicaraguan naval vessels and fishing vessels operating in Nicaragua's exclusive economic zone, Colombian naval officers, at times reading from a government proclamation, requested Nicaraguan fishing vessels to discontinue their fishing activities, alleging that those activities were environmentally harmful and were illegal or not authorized. These officials also stated to the Nicaraguan vessels that the maritime spaces concerned were "Colombian jurisdictional waters" over which Colombia would "continue to exercise sovereignty" on the basis of the determination by the Colombian Government that the 2012 Judgment "is not applicable". The evidence sufficiently proves that the conduct of Colombian naval vessels was carried out to give effect to a policy whereby Colombia sought to continue to control fishing activities and the conservation of resources in the area that lies within Nicaragua's exclusive economic zone.

93. Colombia relies on two legal grounds to justify its conduct at sea. First, Colombia claims that its actions, even if proved, are permitted as an exercise of its freedoms of navigation and overflight. Secondly, Colombia asserts that it has an international obligation to protect and preserve the marine environment of the south-western Caribbean Sea and the habitat of the Raizales and other inhabitants of the Archipelago. It argues that environmental concerns need to be fully taken into account regardless of considerations of sovereignty or sovereign rights.

94. With regard to the Respondent's first assertion, the Court considers that, in accordance with the customary rules on the exclusive economic zone, freedoms of navigation and overflight enjoyed by other States in the exclusive economic zone of the coastal State, as reflected in Article 58 of UNCLOS, do not include rights relating to the exploration, exploitation, conservation and management of the natural resources of the maritime zone, nor do they give other States jurisdiction to enforce conservation measures in the exclusive economic zone of the coastal State. Such rights and jurisdiction are specifically reserved for the coastal State under customary international law, as reflected in Articles 56 and 73 of UNCLOS.

95. With regard to Colombia's assertion relating to its international obligation to preserve the marine environment of the south-western Caribbean Sea, it is not contested between the Parties that all States have the obligation under customary international law to protect and preserve the marine environment. In the exclusive economic zone, however, it is the coastal State that has jurisdiction to discharge that obligation. As stated by the International Tribunal for the Law of the Sea (hereinafter "ITLOS"), "the conservation of the living resources of the sea is an element in the protection and preservation of the marine environment" (*Southern Bluefin Tuna Cases (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 295, para. 70). In this respect, the coastal State bears the responsibility within its exclusive economic zone to take legislative, administrative and enforcement measures in accordance with customary international law, as reflected in the relevant provisions of UNCLOS, for the purpose of conserving the living resources and protecting and preserving the marine environment. A third State, in the capacity of a flag State, also has "an obligation to ensure compliance by vessels flying its flag with relevant conservation measures concerning living resources enacted by the coastal State for its exclusive economic zone" (*Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 37, para. 120). However, a third State has no jurisdiction to enforce conservation standards on fishing vessels of other States in the exclusive economic zone.

96. The Court observes that great emphasis has been placed by the Respondent on its obligations to protect the marine environment of the south-western Caribbean Sea and the habitat of the Raizales and other inhabitants of the Archipelago under the Cartagena Convention and the SPAW Protocol (hereinafter referred to as the "Cartagena régime"). The Cartagena Convention was concluded with the objective of enhancing international co-operation to prevent, reduce and control pollution from various sources in the wider Caribbean region and to ensure sound environmental management. The SPAW Protocol is one of the three protocols to the Cartagena Convention, under which the States parties undertake to establish protected areas and take measures for the preservation of endangered species and marine areas. Colombia became a party to the Cartagena Convention on 2 April 1988 and Nicaragua became a party on 24 September 2005. Both Colombia and Nicaragua are parties to the SPAW Protocol, which entered into force on 17 June 2000. Colombia deposited its instrument of ratification on 5 January 1998; Nicaragua deposited its instrument of ratification on 4 May 2021.

97. In implementing the Cartagena régime, Colombia established the Seaflower Biosphere Reserve and the Seaflower Marine Protected Area. The Court observes that Colombia's two marine natural reserves were established in the south-western Caribbean Sea at the time when there were overlapping maritime claims between Colombia and Nicaragua in the area. As a result of the

maritime delimitation in the 2012 Judgment, these two marine natural reserves now partly overlap with Nicaragua's exclusive economic zone (see the map "Colombia's Seaflower Marine Protected Area", figure 2.3, Colombia's Counter-Memorial, p. 51). The question in the present case concerns the extent to which Colombia may exercise its rights and discharge its obligations under the Cartagena régime in an area that presently falls within the exclusive economic zone of Nicaragua. In Colombia's view, should Nicaragua fail to control and police predatory or other illegal fishing activities carried out by Nicaraguan nationals or by nationals of third States in that area, Colombia has the right and duty under the Cartagena régime to exercise due diligence to control such activities.

98. The maritime delimitation between the Parties directly affects the rights and duties of Colombia in the parts of the Seaflower Marine Protected Area and the Seaflower Biosphere Reserve that overlap with Nicaragua's exclusive economic zone. Colombia is under an international obligation to respect Nicaragua's sovereign rights and jurisdiction in those areas, not only on the basis of customary international law on the exclusive economic zone, but also on the basis of the Cartagena Convention and the SPAW Protocol. Article 10 of the Cartagena Convention states:

> "The Contracting Parties shall, individually or jointly, take all appropriate measures to protect and preserve rare or fragile ecosystems, as well as the habitat of depleted, threatened or endangered species in the Convention area. To this end, the Contracting Parties shall endeavour to establish protected areas. The establishment of such areas shall not affect the rights of other Contracting Parties and third States. In addition, the Contracting Parties shall exchange information concerning the administration and management of such areas."

The provision stating that "[t]he establishment of such areas shall not affect the rights of other Contracting Parties and third States" means that in discharging its obligations under the Cartagena Convention, Colombia must respect the sovereign rights and jurisdiction of Nicaragua in its exclusive economic zone. It may not, therefore, enforce conservation standards and protection measures in the area that is within Nicaragua's exclusive economic zone.

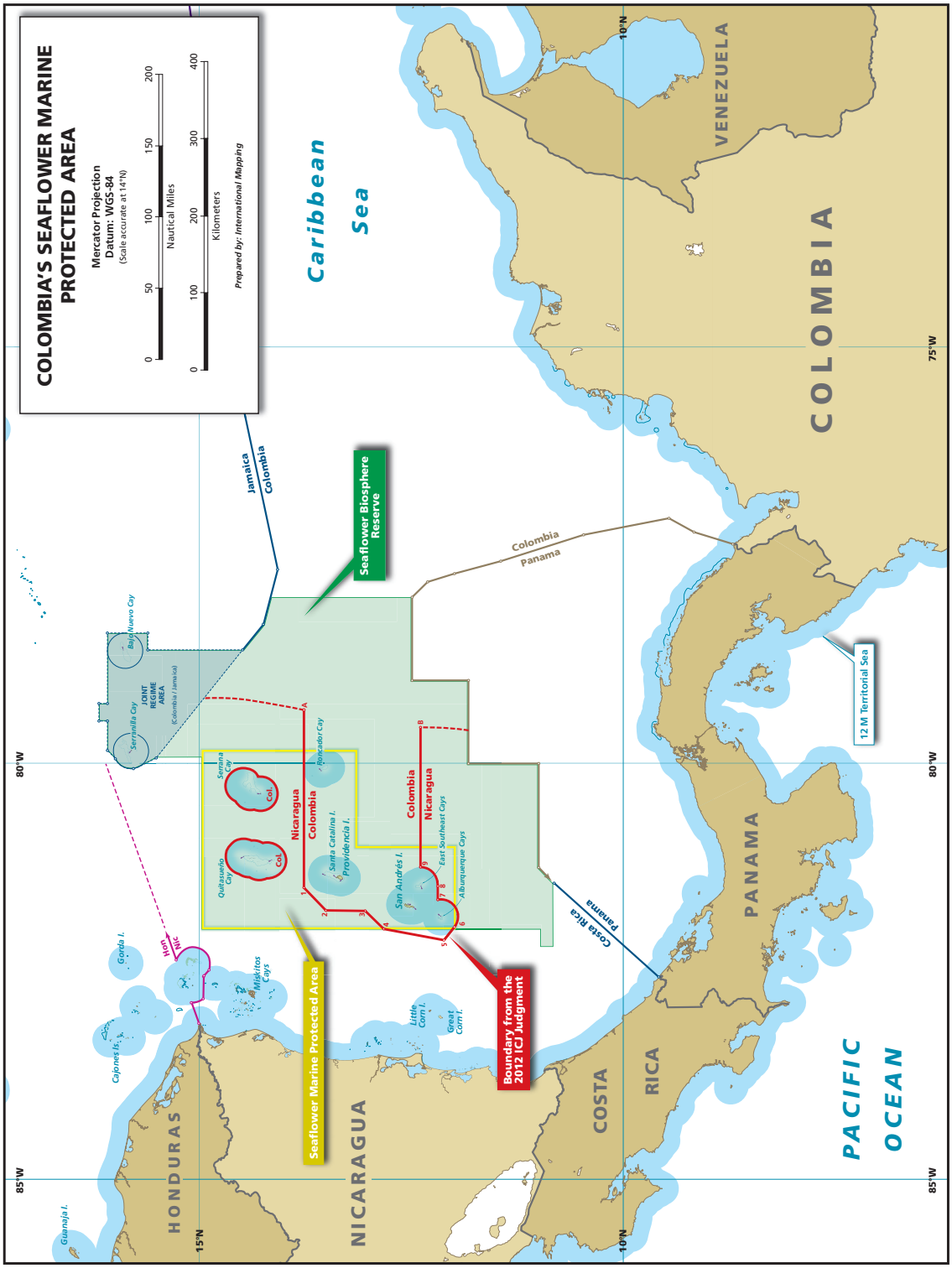
99. A similar provision is contained in the SPAW Protocol. Article 3, paragraph 1, of the Protocol states that each party "shall . . . take the necessary measures to protect, preserve and manage [certain areas and species of flora and fauna] in a sustainable way, within areas of the Wider Caribbean Region in which it exercises sovereignty, or sovereign rights or jurisdiction". Paragraph 2 of Article 3 further states that

> "[e]ach Party shall endeavour to co-operate in the enforcement of these measures, without prejudice to the sovereignty, or sovereign rights or jurisdiction of other Parties. Any measures taken by such Party to enforce or to attempt to enforce the measures agreed pursuant to this Protocol shall be limited to those within the competence of such Party and shall be in accordance with international law".

Contrary to Colombia's claim, therefore, under the SPAW Protocol the power of the States parties to adopt and enforce conservation measures is limited to the maritime areas in which they exercise sovereignty, or sovereign rights or jurisdiction. The fragility of the ecological environment of a protected area established by a State party does not provide a legal basis for it to take measures in areas that are subject to the sovereignty, sovereign rights or jurisdiction of another State party.

MAP SHOWING THE SEAFLOWER MARINE PROTECTED AREA AND THE SEAFLOWER BIOSPHERE RESERVE ACCORDING TO COLOMBIA

(*Source:* Colombia's Counter-Memorial, Figure 2.3, p. 51)



100. According to customary international law on the exclusive economic zone, Nicaragua, as the coastal State, enjoys sovereign rights to manage fishing activities and jurisdiction to take measures to protect and preserve the maritime environment in its exclusive economic zone. The evidence before the Court shows that the conduct of Colombian naval frigates in Nicaraguan maritime zones was not limited to "observing" predatory or illegal fishing activities or "informing" fishing vessels of such activities, as claimed by Colombia. This conduct often amounted to exercising control over fishing activities in Nicaragua's exclusive economic zone, implementing conservation measures on Nicaraguan-flagged or Nicaraguan-licensed ships, and hindering the operations of Nicaragua's naval vessels (see paragraph 92 above). The Court considers that Colombia's legal arguments do not justify its conduct within Nicaragua's exclusive economic zone. Colombia's conduct is in contravention of customary rules of international law as reflected in Articles 56, 58 and 73 of UNCLOS.

101. In light of the foregoing considerations, the Court finds that Colombia has violated its international obligation to respect Nicaragua's sovereign rights and jurisdiction in the latter's exclusive economic zone by interfering with fishing activities and marine scientific research by Nicaraguan-flagged or Nicaraguan-licensed vessels and with the operations of Nicaragua's naval vessels, and by purporting to enforce conservation measures in that zone.

2. Colombia's alleged authorization of fishing activities and marine scientific research in Nicaragua's exclusive economic zone

102. Nicaragua also claims that Colombia authorized fishing activities and marine scientific research in Nicaragua's exclusive economic zone. In support of these contentions, it refers to legal measures adopted by Colombia, as well as alleged incidents at sea. Nicaragua argues that, by these actions, Colombia violated its sovereign rights and jurisdiction in its exclusive economic zone.

103. According to Nicaragua, Colombia issued permits to Colombians and nationals of third States to fish in Nicaragua's exclusive economic zone. In this regard, Nicaragua refers to resolutions issued annually by the General Maritime Directorate of the Ministry of National Defence of Colombia (hereinafter "DIMAR"), starting with a resolution dated 26 June 2013 (Resolution No. 0311 of 26 June 2013; Resolution No. 305 of 25 June 2014; Resolution No. 0437 of 27 July 2015; Resolution No. 0459 of 27 July 2016; and Resolution No. 550 of 15 August 2017), each of which lists anywhere from six to nineteen foreign-flagged industrial fishing vessels which "shall automatically be granted a permit to stay and operate in the jurisdiction of the San Andrés and Providencia Harbour Master's Offices for the term of one year". In Nicaragua's view, the jurisdiction defined in these resolutions extends to maritime areas within Nicaragua's exclusive economic zone. Additionally, Nicaragua alleges that these resolutions encourage such fishing through financial incentives.

104. Nicaragua claims, moreover, that the Governor of the Department of the Archipelago of San Andrés, Providencia and Santa Catalina (hereinafter the "Governor of the San Andrés Archipelago") issued resolutions concerning the applicability of Colombian fishing permits to Nicaragua's exclusive economic zone. In this regard, Nicaragua specifies that Resolution No. 5081 of 22 October 2013 authorized the use by the Honduran-flagged vessel *Captain KD* of an existing industrial and commercial fishing permit to fish in "[a]ll banks (Roncador, Serrana and Quitasueño, Serranilla) and Shallows (Alicia and Nuevo), and the area known as *La Esquina* or *Luna Verde*", this latter area being "plainly under the jurisdiction of Nicaragua". Nicaragua also refers to Resolution No. 4780 of 2015 as recognizing the applicability of an "Industrial Commercial Fishing Permit" in "the area known as . . . '*La Esquina*' or '*Luna Verde*'". In addition, Nicaragua claims that Resolution No. 2465 of 2016 grants "'Traditional Commercial Fisherm[e]n' the right to engage in traditional fishing 'within the maritime jurisdiction of the Department of the Archipelago of San Andrés, Providencia and Santa Catalina', which includes maritime areas within Nicaragua's EEZ".

105. Further, Nicaragua refers to alleged incidents at sea in support of its claim that Colombia authorized and protected fishing and marine scientific research activities in Nicaragua's exclusive economic zone. Nicaragua emphasizes that the alleged fishing-related incidents all occurred "in or near the *Luna Verde* area".

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106. Colombia contends that Nicaragua's allegation that it authorized Colombians and nationals of other States to fish and conduct marine scientific research activities in Nicaraguan waters is without merit. Regarding the resolutions issued by DIMAR, Colombia claims that the entity concerned does not possess the competence to grant fishing licences and that the resolutions do not grant economic incentives to promote fishing in Nicaragua's exclusive economic zone. In Colombia's view, the financial exemptions it granted comprise only financial relief without authorizing or encouraging industrial fishing and make no reference to Nicaragua's maritime zones.

107. Moreover, Colombia claims that the resolutions issued by the Governor of the San Andrés Archipelago do not authorize fishing activities in Nicaragua's exclusive economic zone; they expressly indicate that the only areas where fishing activities are authorized are Roncador, Serrana, Quitasueño, Serranilla, Bajo Alicia and Bajo Nuevo, areas which, according to Colombia, the Court has recognized as lying within Colombia's territorial sea and exclusive economic zone. The resolutions do not, in Colombia's view, authorize fishing activities in the Luna Verde bank or in other maritime spaces situated within Nicaragua's exclusive economic zone. As regards Nicaragua's reliance on Resolution No. 4780, Colombia contends that this resolution is not a fishing permit, that it does not concern the vessel to which Nicaragua refers, and that the reference in its preamble to Luna Verde does not purport to grant a licence to fish there. Colombia further claims that Resolution No. 2465 of 2016 is completely irrelevant, since it has "nothing to do with the granting of fishing permits or any Nicaraguan maritime spaces".

108. In respect of Nicaragua's claim concerning the *Captain KD*, Colombia argues that the authorization for an "integrated commercial industrial fishing permit" was granted in September 2012, before the maritime boundary was delimited by the Court, and that Resolution No. 5081 of 22 October 2013 referred to by Nicaragua does not grant authorization to fish at the Luna Verde bank.

109. As regards the incidents alleged by Nicaragua to demonstrate that Colombia authorized fishing and marine scientific research in Nicaragua's exclusive economic zone, Colombia claims that Nicaragua offers no direct evidence, or at least no direct evidence whose authenticity Colombia can confirm. It claims that Colombian vessels that were present at the location and time that some of the incidents alleged by Nicaragua occurred were there in exercise of Colombia's freedoms of navigation and overflight, or other internationally lawful uses of the sea.

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110. Before turning to the evidence relating to the incidents at sea alleged by Nicaragua, the Court will first consider the resolutions under which Nicaragua claims Colombia authorized fishing by Colombian-flagged and foreign vessels in Nicaragua's exclusive economic zone.

111. The resolutions in question were issued by two Colombian governmental authorities: DIMAR and the Governor of the San Andrés Archipelago. According to its resolutions, DIMAR has been conferred the "function of authorizing the operation of ships and naval craft in Colombian waters". While the permits granted by DIMAR to foreign vessels to stay and operate in the San Andrés Archipelago are subject to the authorization of the Governor of the San Andrés Archipelago, they nonetheless constitute an exercise of DIMAR's function of authorizing the operation of fishing vessels. The Court cannot dismiss Nicaragua's allegation simply on the basis of Colombia's statement that DIMAR is not the competent authority to grant such permits without further examining the evidence before it.

112. The case file shows that since the Court delivered its 2012 Judgment, DIMAR has annually issued resolutions relating to industrial fishing in the San Andrés Archipelago. Nicaragua refers to five resolutions: Resolution No. 0311 of 2013, Resolution No. 305 of 2014, Resolution No. 0437 of 2015, Resolution No. 0459 of 2016 and Resolution No. 550 of 2017.

113. The preamble of the first resolution states that, given the "negative economic and social effects" caused by the 2012 Judgment, "it was deemed necessary to implement special transitory measures applicable to national and foreign ships that have been engaged in industrial fishing in said area of the national territory". On its scope of application, Article 2 of the resolution states: "The provisions of this resolution shall be applicable exclusively to the following ships dedicated to industrial fishing in the jurisdiction of the San Andrés and Providencia Harbour Master's Offices".

On the granting of fishing permits for foreign ships, the resolution provides:

> "Article 4. *Stay-and-operation permit for foreign ships*. The foreign-flag motor ships listed in Section 2 of Article 2 of this resolution shall automatically be granted a permit to stay and operate in the jurisdiction of the San Andrés and Providencia Harbour Master's Offices for the term of one year from the entry into force of this resolution, upon authorization of the office of Secretary of Agriculture and Fishing of the Government of San Andrés, Providencia and Santa Ca[ta]lina."

114. Among the "special transitory measures" provided for by the resolution are payment exemptions granted to the national and foreign ships listed therein (Article 3). The content of Article 2 and Article 4 of Resolution No. 0311 of 2013, and an exemption from payment of certain fees, were consistently reaffirmed in subsequent resolutions.

115. With regard to the financial exemptions, the Court considers that, for the purposes of the present case, it is unnecessary to determine whether such measures granted by the Colombian Government "authorize" or "encourage" industrial fishing, as alleged by Nicaragua, or whether they comprise only financial relief to serve the objectives of the resolution, as claimed by Colombia. Insomuch as the jurisdiction of the San Andrés and Providencia Harbour Master's Offices accords with the maritime boundary between the Parties, measures taken under the resolution are matters that rest within the jurisdiction of Colombia. The critical issue for the Court to determine is the geographical scope of the fishing authorizations granted by the Colombian Government.

116. The Court observes that neither of the above-mentioned articles nor any other provisions contained in the DIMAR resolutions specify the extent of "the jurisdiction of the San Andrés and Providencia Harbour Master's Offices", a crucial issue for the purposes of the present case. On the basis of the resolutions themselves, the Court cannot determine whether the geographical scope of the area in which the listed fishing vessels were authorized to operate extends into Nicaragua's maritime area. Therefore, the Court must examine other evidence before it, including the resolutions issued by the Governor of the San Andrés Archipelago.

117. The documents submitted by Nicaragua include five resolutions issued by the Governor of the San Andrés Archipelago: Resolution No. 5081 of 22 October 2013, Resolution No. 4997 of 10 November 2014, Resolution No. 4356 of 1 September 2015, Resolution No. 4780 of 24 September 2015, and Resolution No. 2465 of 30 June 2016, each of which specifies the fishing zones for the fishing operations. In Resolution No. 4356 of 2015, the relevant fishing zone is described as comprising "all of the banks (Roncador, Serrana and Quitasueño, and Serranilla) and Shoals (Alicia and Nuevo), and the zone where fishing is permitted by the laws, which includes our [Colombia's] island territory and authorized fishing zones". Resolution No. 4997 of 2014 provides the same, with the addition of "zones where [activities for extraction of Fishery Resources are] permitted by . . . fishing regulations, and system *[sic]* of Protected Marine Areas that apply in the Department for Industrial Fishing". The fishing zone in Resolution No. 2465 of 2016 is described as "the territory that is within the jurisdiction of the Department of the Archipelago of San Andrés, Providencia and Santa Catalina". The scope of jurisdiction is not defined more clearly in these three resolutions than it is in the aforementioned DIMAR resolutions. In Resolution No. 5081 of 22 October 2013 and Resolution No. 4780 of 24 September 2015, however, the fishing zone is described more precisely.

118. In Resolution No. 5081 of 22 October 2013, the fishing zone is defined as follows:

> "All banks (Roncador, Serrana y Quitasue[ñ]o, Serranilla) and Shallows (Alicia and Nuevo), and the area known as *La Esquina* or *Luna Verde*, which encompasses our insular territory and fishing zones; nonetheless, protected areas and fisheries regulations of the department and fisheries legislation must be respected."

The fishing zone in Resolution No. 4780 contains the same reference to "the area known as . . . *La Esquina* or *Luna Verde*, which includes our [Colombia's] island territory and fishing zones".

119. As previously noted, the fishing ground at La Esquina or Luna Verde is located in Nicaragua's exclusive economic zone as delimited by the 2012 Judgment. The express inclusion of "*La Esquina* or *Luna Verde*" in the fishing zone described in resolutions issued by the Governor of the San Andrés Archipelago after the 2012 Judgment suggests that Colombia continues to assert the right to authorize fishing activities in parts of Nicaragua's exclusive economic zone.

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120. In light of the above consideration of Colombia's relevant resolutions, the Court will now examine the alleged incidents at sea to determine whether Colombia authorized fishing activities and marine scientific research in Nicaragua's exclusive economic zone.

The alleged incident of 13-14 February 2014

121. Nicaragua claims that, on 13 February 2014, the Nicaraguan vessel *Tayacán*, while on patrol at 14° 48' 00" N and 81° 36' 00" W, saw personnel from the Colombian frigate ARC *Almirante Padilla* board the *Blu Sky*, a Honduran-flagged fishing vessel. According to Nicaragua, when the *Tayacán* communicated with the *Blu Sky* on the next day in the vicinity of 14° 56' 00" N and 81° 35' 00" W, the captain of the *Blu Sky* informed the *Tayacán* that he had received authorization by Colombia to fish there. In respect of these allegations, Nicaragua relies on the report attached to the letter from the Nicaraguan Naval Force to the Ministry of Foreign Affairs dated 26 August 2014.

122. In response, Colombia asserts that Nicaragua was unaffected by the boarding of the fishing vessel, since Nicaragua is not the flag State of the vessel and since Nicaragua did not license it. By reference to two resolutions issued by the Governor of the San Andrés Archipelago, the Respondent claims that the alleged "fishing permits granted by Colombia" do not in fact grant fishing rights in Luna Verde or in any other area of Nicaragua's exclusive economic zone and that, therefore, the contention that Colombia authorized the *Blu Sky* to fish in that zone is false.

The alleged incident of 23 March 2015

123. Nicaragua claims that, on 23 March 2015, when one of its coast guard vessels, located at 14° 40' 00" N and 81° 45' 00" W, observed the Honduran-flagged fishing vessel *Lucky Lady* and asked it under whose authority it was fishing, the Colombian frigate ARC *Independiente* intervened, stating that "[the] *Lucky Lady* is under the protection of the government of Colombia" and that Colombia does not abide by the Court's 2012 Judgment. In relation to this alleged incident, Nicaragua relies on an audio recording and the daily reports of its Navy.

124. For its part, Colombia claims that the timing and location of this alleged incident cannot be established from Nicaragua's audio recording. Moreover, in denying that it granted any official authorization to fish in Nicaragua's exclusive economic zone, Colombia refers to a sailing record in which it granted the *Lucky Lady*, destined for the Northern Islands, permission to leave a Colombian port.

The alleged incident of 12 September 2015

125. Referring to audio recordings and the daily reports of its Navy, Nicaragua further claims that, on 12 September 2015, when Nicaragua's Navy vessel the *Tayacán* encountered the Tanzanian-flagged industrial fishing vessel *Miss Dolores* at 14° 54' 00" N and 81° 28' 00" W, a nearby Colombian frigate asked the *Tayacán* to stay away from the *Miss Dolores*, stating that the *Tayacán* had not been authorized by Colombia "to exercise visitation rights on the *Miss Dolores* flagship of Tanzania, which is fishing for the Colombian government".

126. Regarding this alleged incident, Colombia asserts that its circumstances, date and location cannot be ascertained from Nicaragua's audio recordings. Colombia also claims that, even if the audio recordings submitted by Nicaragua were authentic, they would confirm Nicaragua's attempt to claim sovereignty over maritime spaces in which international law only grants it limited sovereign rights, since they suggest that a Nicaraguan officer claimed to be "exercising sovereignty" in the waters in question.

The alleged incidents of 12 and 13 January 2016

127. Relying on audio recordings and the daily reports of its Navy, Nicaragua makes allegations concerning incidents involving the Honduran-flagged fishing vessel the *Observer* on 12 and 13 January 2016. More specifically, Nicaragua claims that, on 12 January 2016, the commander of one of its coast guard vessels, located at 14° 41' 00" N and 81° 41' 00" W, ordered the *Observer* to stop fishing there, to which the *Observer* replied that the Colombian authorities allowed it to fish in that area and indeed "ordered [it] to come and work here". Nicaragua claims that, later that day, its coast guard vessel attempted to hail the *Observer* after seeing it fish in the same area with the protection of a Colombian frigate, and that the Colombian frigate intervened, stating that the *Observer* was authorized by the Colombian maritime authority to fish in the area. Nicaragua alleges that the Colombian frigate gave a similar response the next day, when the Nicaraguan vessel informed the frigate that the *Observer*, located at 14° 42' 27" N and 81° 42' 39" W, had to leave the area.

128. With respect to these alleged events, Colombia claims, on the basis of a Note Verbale from the Ministry of Foreign Affairs of Colombia to the Ministry of Foreign Affairs of Nicaragua dated 1 February 2016, that Nicaraguan patrol boats were observed "on 11 and 12 January 2016 — . . . not on 12 and 13 January" and that "communications between the vessels were conducted in an amicable and professional manner". Colombia refers also to the fact that, if authentic, the audio recordings would confirm Nicaragua's attempt to claim sovereignty over maritime spaces in which international law only grants it limited sovereign rights, given the latter's reported reference to "Nicaraguan territorial waters", among other similar statements.

The alleged incidents of 6 January 2017

129. On the basis of an audio recording and the daily reports of its Navy, Nicaragua claims that, on 6 January 2017, the Honduran-flagged fishing vessel *Capitán Geovanie* refused to follow an order by the Nicaraguan Navy vessel *Tayacán* to leave Nicaragua's exclusive economic zone and that a Colombian frigate then announced that it was in the Archipelago of San Andrés and Providencia to guarantee the security of all vessels present in the area, before asking the *Capitán Geovanie* whether the *Tayacán* was interfering with its work and telling the *Capitán Geovanie* to continue its fishing in "historically Colombian waters". Nicaragua further alleges that the Colombian frigate told the Nicaraguan vessel not to attempt to board or prevent the fishing activities of the *Capitán Geovanie*, adding that the fishing vessel "is authorized by the Colombian maritime authority". Nicaragua claims, also on the basis of an audio recording and the daily reports of its Navy, that the Colombian frigate informed two other Honduran-flagged and Colombian-authorized fishing vessels, the *Observer* and the *Amex*, located at 14° 43' 00" N and 81° 45' 00" W and 14° 48' 00" N and 81° 42' 00" W respectively, that it would remain in the area for their safety.

130. In response, Colombia claims that some of the audio recordings submitted by Nicaragua contain no indication as to when or where the alleged incidents occurred. Moreover, Colombia claims that the audio recordings do not support Nicaragua's allegation that Colombia authorized those fishing vessels to fish in Nicaragua's exclusive economic zone. As regards the *Capitán Geovanie*, Colombia refers to the audio recording submitted by Nicaragua in support of its claim that the *Capitán Geovanie* left San Andrés with a specific sailing record, which, according to Colombia, indicates that authorization was given for fishing only in the Northern Islands, not in Nicaragua's exclusive economic zone. As regards Nicaragua's allegations concerning the other two vessels, Colombia claims that the alleged Colombian officer merely stated that they were watching over the safety of the vessels and that, in exercising its internationally lawful uses of the sea, Colombia "provides security to vessels of *all* nationalities" (emphasis in the original). Colombia further contends that Nicaragua's assertions concerning the alleged incidents on that day are implausible. Colombia states that given the meteorological conditions at the time it is difficult to believe that there were several vessels fishing so far from land.

* *

131. The evidence presented by the Parties is largely based on the same type of materials as described above (paragraphs 65-68). The Court considers that the evidence reveals at least three facts. First, the fishing vessels allegedly authorized by Colombia did engage in fishing activities in Nicaragua's exclusive economic zone during the relevant time. In this regard, the Court notes that the six foreign fishing vessels involved in the alleged incidents summarized above were identified by name in some of the resolutions of DIMAR and of the Governor of the San Andrés Archipelago. Secondly, such fishing activities were often conducted under the protection of Colombian frigates, a fact that Colombia does not deny. Thirdly, Colombia recognizes that the Luna Verde area is in Nicaragua's exclusive economic zone.

132. The Court considers that Colombia's responses to Nicaragua's allegations are not entirely convincing. Colombia's response that Nicaragua attempted to claim sovereignty over maritime spaces does not provide a legal basis for Colombia to claim a right to authorize fishing in Nicaragua's exclusive economic zone (see Colombia's responses to the alleged incidents of 12 September 2015 and of 12 and 13 January 2016). Nicaragua's efforts to prevent and stop fishing activities authorized by Colombia in Nicaragua's exclusive economic zone are a legitimate exercise of its sovereign rights and jurisdiction, to which it is entitled under customary international law. Moreover, the evidence demonstrates that Colombian frigates not only explicitly stated that the fishing vessels were authorized by the Colombian maritime authority to fish in the area but they also, in unequivocal terms, informed Nicaraguan naval vessels that those fishing ships were "under the protection of the government of Colombia". Colombia, in its responses to Nicaragua's allegations, denies that it authorized fishing activities in Nicaragua's exclusive economic zone. It does not, however, explain why its naval frigates constantly asserted their authority to protect those fishing activities purportedly unauthorized in Nicaragua's exclusive economic zone when Nicaraguan naval vessels intervened as to such fishing activities on the basis that they were not authorized by Nicaragua. The conduct of Colombian naval frigates, which is attributable to Colombia, confirms that Colombian authorization of fishing activities extended to the maritime area that now appertains to Nicaragua.

133. As regards Colombia's alleged authorization of marine scientific research in Nicaragua's exclusive economic zone, the Court cannot find in the resolutions before it any express reference to authorization of marine scientific research operations. Without other credible evidence to corroborate Nicaragua's claim in this regard, the Court cannot draw a conclusion from the available evidence that Colombia also authorized marine scientific research in Nicaragua's exclusive economic zone.

134. On the basis of the above considerations, the Court concludes that Colombia has violated Nicaragua's sovereign rights and jurisdiction in its exclusive economic zone by authorizing vessels to conduct fishing activities in Nicaragua's exclusive economic zone.

3. Colombia's alleged oil exploration licensing

135. In its Reply, Nicaragua claims that Colombia, through its National Hydrocarbon Agency (hereinafter the "ANH"), offered and awarded "hydrocarbon blocks encompassing parts of Nicaragua's [exclusive economic zone]", thereby violating Nicaragua's sovereign rights. Nicaragua asserts in particular that, according to an ANH list and a map of hydrocarbon blocks, in 2010 the ANH offered 11 blocks in areas that at least in part encroach on Nicaragua's exclusive economic zone (blocks Nos. 3050 to 3057 and 3059 to 3061, named CAYOS 1, 2, 3, 5, 6, 7, 10, 11, 12, 13, and 14), and awarded two blocks (Nos. 3050 and 3059) to a consortium made up of Ecopetrol (Colombia), Repsol (Spain) and YPF (Argentina), although the relevant contracts have yet to be signed. As for the remaining nine blocks, Nicaragua contends that the ANH's list and its map of hydrocarbon blocks in 2017 continue to indicate that those blocks are "available" for licensing.

136. Nicaragua admits that an additional submission modifying substantially the requests in the Application would be inadmissible, but maintains that facts and legal considerations on the petroleum blocks are used to give detail to Nicaragua's initial requests. In its view, they constitute an "argument" rather than a "new claim".

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137. With regard to Nicaragua's claim relating to oil exploration licensing, Colombia first raises the question of admissibility. It maintains that, as Nicaragua has submitted the issue concerning petroleum blocks for the first time in the Reply, this claim is inadmissible. According to Colombia, the claim is neither implicit in Nicaragua's Application or Memorial, nor does it "arise directly out of the question that is the subject-matter of the Application". Colombia also contends that the claim was submitted "at a time when the Respondent is no longer able to assert preliminary objections".

138. Colombia argues that even if the claim were admissible, it has no merit. Colombia asserts that in 2011 it suspended all offshore petroleum blocks that were licensed before the Court's 2012 Judgment and has not signed or pursued any new contracts. According to Colombia, its courts have prohibited all petroleum activities within the Seaflower Biosphere Reserve. With regard to the remaining blocks referred to by Nicaragua based on a map from the ANH dated 17 February 2017, Colombia argues that the evidence is inadmissible, because it concerns a subject-matter different from the claims contained in the Application and falls outside the temporal jurisdiction of the Court. Colombia contends that even if the Court were to take account of the map in question, it does not show any violation of Nicaragua's sovereign rights. Colombia asserts that none of those blocks have been the object of any implementation process, and that, accordingly, there is no existing contract or proposal for the blocks in question, nor could there be. Colombia also alleges that Nicaragua itself has admitted that no such contracts have been issued.

* *

139. The Court will first address the admissibility of Nicaragua's claim concerning Colombia's alleged oil exploration licensing.

140. The Court has discussed its jurisprudence on a claim made after the filing of the application in paragraph 44 above. Nicaragua's allegation regarding Colombia's oil exploration licensing concerns the question whether Colombia has violated Nicaragua's sovereign rights in the exclusive economic zone. Although a different kind of activity is involved, Nicaragua's claim does not transform the subject-matter of the dispute as stated in the Application, since the dispute between the Parties involves the rights of the Parties in all maritime zones as delimited by the 2012 Judgment. Nicaragua's claim arises directly out of the question which is the subject-matter of the Application. The Court is therefore of the view that Nicaragua's claim is admissible.

141. Regarding the merits of the claim, the evidence shows, including by Nicaragua's own account, that Colombia offered 11 oil concession blocks for licensing and awarded two blocks in 2011, at a time when the maritime boundary between the Parties had not yet been delimited. The documents before the Court also demonstrate that signature of the contracts for the said petroleum blocks was first suspended by the parties concerned in 2011 and later by a decision of the administrative tribunal of San Andrés, Providencia and Santa Catalina in 2012. Nicaragua also concedes that, to date, the contracts in question have not been signed.

142. As regards the facts since then, Nicaragua has only produced as evidence a "Map of Lands" taken from the ANH's website dated 17 February 2017, which shows a number of "available" blocks in the areas that partially overlap with Nicaragua's exclusive economic zone. The map is not corroborated by any other credible evidence that the ANH still intends to offer and award those blocks. The Court notes in this regard that Nicaragua did not pursue its claim during the oral proceedings and that it acknowledged Colombia's statement that no concessions had been awarded in the areas concerned. Colombia, for its part, reiterated that the blocks in question "[had] not been implemented and [would] not be pursued, and [would] not be offered".

143. In light of the foregoing, the Court finds that Nicaragua has failed to prove that Colombia continues to offer petroleum blocks situated in Nicaragua's exclusive economic zone. The allegation that Colombia violated Nicaragua's sovereign rights by issuing oil exploration licences must therefore be rejected.

4. Conclusions

144. In light of the foregoing considerations, the Court finds that Colombia has breached its international obligation to respect Nicaragua's sovereign rights and jurisdiction in its exclusive economic zone (i) by interfering with fishing and marine scientific research activities of Nicaraguan-flagged or Nicaraguan-licensed vessels and with the operations of Nicaraguan naval vessels in Nicaragua's exclusive economic zone; (ii) by purporting to enforce conservation measures in Nicaragua's exclusive economic zone; and (iii) by authorizing fishing activities in Nicaragua's exclusive economic zone. Colombia's wrongful conduct engages its responsibility under international law.

B. Colombia's "integral contiguous zone"

145. Among its allegations of Colombia's violations of Nicaragua's rights in its maritime zones, Nicaragua refers to Colombia's Presidential Decree 1946, which establishes an "integral contiguous zone" around Colombian islands in the western Caribbean Sea. Nicaragua does not deny Colombia's entitlement to a contiguous zone, but it maintains that both the geographical extent of the "integral contiguous zone" and the material scope of the powers which Colombia claims it may exercise therein exceed the limits permitted under customary international rules on the contiguous zone. In Nicaragua's view, by establishing the "integral contiguous zone", Colombia violated Nicaragua's rights in the latter's exclusive economic zone.

146. The Parties disagree as to whether Article 33 of UNCLOS on the contiguous zone reflects customary international law. Before examining Presidential Decree 1946, the Court will first consider the customary rules applicable to the contiguous zone.

1. The applicable rules on the contiguous zone

147. Nicaragua claims that the provisions of Article 33 of UNCLOS reflect customary international law and that the 24-nautical-mile limit prescribed therein is supported by "practically unanimous" State practice. With regard to the powers that the coastal State may exercise in the contiguous zone, Nicaragua maintains that Article 33, paragraph 1, reflects customary international law. It further contends that Colombia has not been able to establish that State practice points to an evolution in customary international law such that it now authorizes States to exercise control in their contiguous zone over matters other than those listed in Article 33 of UNCLOS.

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148. For its part, Colombia takes the view that Article 33 of UNCLOS "does not reflect present-day customary international law on the contiguous zone". It maintains that "under existing customary international law, a coastal State is permitted to establish zones contiguous to its territorial sea, of varying breadth and for a range of purposes, going in some respects beyond those expressly envisaged in Article 33 of UNCLOS". In this regard, according to Colombia, "the coastal State may exercise the control necessary to protect and safeguard its essential interests, including but not limited to those relating to customs, fiscal, immigration or sanitary laws and regulations enacted to protect its interests in its territory and territorial sea". In Colombia's view, this right enables the coastal State to safeguard essential interests in matters such as security, drug trafficking, pollution, and cultural heritage within its contiguous zone.

* *

149. As demonstrated by the general practice of States and as accepted by both Parties, the concept of the contiguous zone is well established in international law. The establishment by States of contiguous zones preceded the adoption in 1958 of the Convention on the Territorial Sea and the Contiguous Zone (hereinafter the "1958 Convention") and of UNCLOS. To date, about 100 States, including States that are not parties to UNCLOS, have established contiguous zones.

150. The Parties hold divergent views as to whether Article 33 of UNCLOS reflects the contemporary customary rules on the contiguous zone. Article 33 reads as follows:

> "1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:
>
> *(a)* prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;
>
> *(b)* punish infringement of the above laws and regulations committed within its territory or territorial sea.
>
> 2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured."

151. With regard to the régime governing the contiguous zone, the Court first notes that under the law of the sea the contiguous zone is distinct from other maritime zones in the sense that the establishment of a contiguous zone does not confer upon the coastal State sovereignty or sovereign rights over this zone or its resources. The drafting history of Article 24 of the 1958 Convention and that of Article 33 of UNCLOS demonstrate that States have generally accepted that the powers in the contiguous zone are confined to customs, fiscal, immigration and sanitary matters as stated in Article 33, paragraph 1. With regard to the breadth of the contiguous zone, most States that have established such zones have set the breadth thereof within a 24-nautical-mile limit consistent with Article 33, paragraph 2, of UNCLOS. Some States have even reduced the breadth of previously established contiguous zones to conform to that limit.

152. In the development of the contiguous zone régime, the question whether the coastal State may include "security" in the list of matters over which it may exercise control in the contiguous zone was extensively considered by States. For its part, the International Law Commission (hereinafter the "ILC") in its Commentary on Article 66 of the draft Articles concerning the law of the sea, which subsequently became Article 24 of the 1958 Convention, gave the following reason for not including security among the matters in respect of which the coastal State may exercise control in its contiguous zone:

> "The Commission did not recognize special security rights in the contiguous zone. It considered that the extreme vagueness of the term 'security' would open the way for abuses and that the granting of such rights was not necessary. The enforcement of customs and sanitary regulations will be sufficient in most cases to safeguard the security of the State. In so far as measures of self-defence against an imminent and direct threat to the security of the State are concerned, the Commission refers to the general principles of international law and the Charter of the United Nations." (Commentary to the articles concerning the law of the sea, *Yearbook of the International Law Commission*, 1956, Vol. II, p. 295, Article 66, Comment (4)).

153. At the First United Nations Conference on the Law of the Sea in 1958, a Polish proposal to add "security" to the list of matters under the contiguous zone régime was adopted by a narrow majority in the First Committee, but it did not obtain the required majority for adoption by the plenary (Official Records of the First United Nations Conference on the Law of the Sea (1958), Vol. II, doc. A/CONF.13/38, p. 40, para. 63). Instead, the Conference accepted, by an overwhelming majority, a proposal submitted by the United States which incorporated Ceylon's proposal to add "immigration" to the article (*ibid.*, para. 64). During the negotiations at the Third United Nations Conference on the Law of the Sea, the wording of Article 24, paragraph 1, of the 1958 Convention was adopted in Article 33, paragraph 1, of UNCLOS without any change as regards the matters in respect of which the coastal State may exercise control.

154. Although there are a few States that maintain in their national laws the power to exercise control with respect to security in the contiguous zone, their practice has been opposed by other States. The materials adduced by Colombia with regard to national legislation on the contiguous zone do not support Colombia's claim that the customary rules on the contiguous zone have evolved since the adoption of UNCLOS such that they allow a coastal State to extend the maximum breadth of the contiguous zone beyond 24 nautical miles or expand the powers it may exercise therein.

155. In conclusion, the Court considers that Article 33 of UNCLOS reflects contemporary customary international law on the contiguous zone, both in respect of the powers that a coastal State may exercise there and the limitation of the breadth of the contiguous zone to 24 nautical miles (hereinafter "the 24-nautical-mile rule").

2. Effect of the 2012 Judgment and Colombia's right to establish a contiguous zone

156. Nicaragua maintains that the Parties' entitlements should be limited by the maritime boundary established by the Court in its 2012 Judgment. In Nicaragua's view, the rights of Colombia as a third State in Nicaragua's exclusive economic zone are governed by Article 58 of UNCLOS, which reflects customary international law and which does not encompass contiguous zone rights. The delimitation of the exclusive economic zone includes the delimitation of the contiguous zone, "if only implicitly". Nicaragua argues that the fact that the 2012 Judgment makes no express mention of the contiguous zone is not decisive.

157. Colombia argues that it is entitled under international law to establish a contiguous zone around the San Andrés Archipelago and that the 2012 Judgment does not provide a legal basis to deny such a right. It claims that the exercise of "contingent powers" by a coastal State with respect to "specified categories of events" within its contiguous zone neither negates nor otherwise infringes a neighbouring State's exercise of its sovereign rights within its overlapping exclusive economic zone. The right of the coastal State to establish a contiguous zone is independent of, and not incompatible with, any resource-oriented exclusive economic zone rights of another State in the same space.

* *

158. The Court notes that in the proceedings leading to the 2012 Judgment, the Parties discussed the contiguous zone but did not request the Court to delimit it in drawing a single maritime boundary, nor did the Court address the contiguous zone, as the issue did not arise during the delimitation. In this regard, the Court recalls that, in the operative paragraph of that Judgment, it found that Colombia "has sovereignty over the islands at Alburquerque, Bajo Nuevo, East-Southeast Cays, Quitasueño, Roncador, Serrana and Serranilla" and that it decided on both "the single maritime boundary delimiting the continental shelf and the exclusive economic zones" of the two Parties and "the single maritime boundary around Quitasueño and Serrana" (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, pp. 718-720, para. 251, subparas. (1), (4) and (5)). The Court considers that, in the absence of any reference to the contiguous zone, the 2012 Judgment cannot be taken to imply that the delimitation of the exclusive economic zone includes the delimitation of the contiguous zone, as claimed by Nicaragua. The 2012 Judgment does not delimit, expressly or otherwise, the contiguous zone of either Party.

159. With regard to maritime areas in which Colombia's "integral contiguous zone" overlaps with Nicaragua's exclusive economic zone, the Court observes that Nicaragua contends that Colombia is not entitled to establish a contiguous zone that overlaps with Nicaragua's exclusive economic zone following the maritime delimitation between them. Nicaragua further maintains that the rights of Colombia in Nicaragua's exclusive economic zone are limited to the rights set forth in Article 58 of UNCLOS, which does not encompass contiguous zone rights.

160. In the first place, the Court notes that the contiguous zone and the exclusive economic zone are governed by two distinct régimes. It considers that the establishment by one State of a contiguous zone in a specific area is not, as a general matter, incompatible with the existence of the exclusive economic zone of another State in the same area. In principle, the maritime delimitation between Nicaragua and Colombia does not abrogate Colombia's right to establish a contiguous zone around the San Andrés Archipelago.

161. Under the law of the sea, the powers that a State may exercise in the contiguous zone are different from the rights and duties that a coastal State has in the exclusive economic zone. The two zones may overlap, but the powers that may be exercised therein and the geographical extent are not the same. The contiguous zone is based on an extension of control by the coastal State for the purposes of prevention and punishment of certain conduct that is illegal under its national laws and regulations, while the exclusive economic zone, on the other hand, is established to safeguard the coastal State's sovereign rights over natural resources and jurisdiction with regard to the protection of the marine environment. This distinction between the two régimes was recognized during the negotiations of UNCLOS (Official Records of the Third United Nations Conference on the Law of the Sea, Vol. II, Summary records of the 31st Meeting of the Second Committee, 7 August 1974, UN doc. A/CONF.62/C.2/SR.31, pp. 233-234). In exercising the rights and duties under either régime, each State must have due regard to the rights and duties of the other State.

162. The Court does not accept Nicaragua's assertion that Article 58 of UNCLOS encompasses all the rights that Colombia has within its contiguous zone. In the parts of the "integral contiguous zone" which overlap with Nicaragua's exclusive economic zone, Colombia may exercise its powers of control in accordance with customary rules on the contiguous zone as reflected in Article 33, paragraph 1, of UNCLOS and it has the rights and duties under customary law as reflected

in Article 58 of UNCLOS. In the Court's view, in exercising its powers in the parts of its "integral contiguous zone" which overlap with Nicaragua's exclusive economic zone, Colombia is under an obligation to have due regard to the sovereign rights and jurisdiction which Nicaragua enjoys in its exclusive economic zone under customary law as reflected in Articles 56 and 73 of UNCLOS.

163. Given the above considerations, the Court concludes that Colombia has the right to establish a contiguous zone around the San Andrés Archipelago in accordance with customary international law.

3. The compatibility of Colombia's "integral contiguous zone" with customary international law

164. Having concluded that the provisions of Article 33 of UNCLOS reflect customary international law and that a coastal State is entitled to a contiguous zone which may overlap with the exclusive economic zone of another State, the Court will next consider the compatibility of Colombia's "integral contiguous zone" established under Presidential Decree 1946 with customary international law and Nicaragua's claims in that regard.

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165. Regarding Presidential Decree 1946, Nicaragua claims that, according to the maps issued by Colombia, parts of the "integral contiguous zone" reach into Nicaragua's exclusive economic zone and extend beyond 24 nautical miles from the baselines from which Colombia's territorial sea is measured. In its view, Colombia's justification for using geodetic lines to draw the "integral contiguous zone" by reference to the special geographical situation of the San Andrés Archipelago has no legal basis in international law.

166. As for the powers to be exercised in the "integral contiguous zone" under Article 5 (2) and Article 5 (3) of Colombia's Presidential Decree 1946, Nicaragua contends that some of the powers contained therein, including those concerning the protection of security, national maritime interests and cultural heritage, are not listed in Article 33, paragraph 1, of UNCLOS and are unsupported by general State practice. It argues that Colombia has not been able to establish that State practice has evolved into a rule of customary international law authorizing States to exercise control in their contiguous zone over matters other than those listed in Article 33 of UNCLOS. Nicaragua claims that the powers claimed by Colombia conflict with Nicaragua's powers in its exclusive economic zone. According to Nicaragua, Colombia wrongfully stretches the phrase "sanitary laws and regulations" in Article 33, paragraph 1, of UNCLOS to encompass laws and regulations relating to environmental protection.

167. With respect to cultural heritage in the contiguous zone, Nicaragua maintains that only a State party to UNCLOS may claim the right referred to in Article 303 and that Colombia has not demonstrated that that provision reflects customary international law. Nicaragua further complains

that the power to protect cultural heritage in the "integral contiguous zone" is contradictory to Colombia's own domestic law, which reserves to Colombia itself the sole control over cultural heritage in its exclusive economic zone.

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168. In response to Nicaragua's arguments against the establishment of the "integral contiguous zone", Colombia denies that it acted wrongfully under international law. Colombia argues that the spatial construction of the "integral contiguous zone" is dictated by the natural and special configuration of the San Andrés Archipelago and that its use of geodetic lines is consistent with the established jurisprudence in this regard and serves solely to define a "functional" area within which Colombia may execute the powers granted by international law. It argues that even if the Court were to find that the 24-nautical-mile limit of the contiguous zone reflects customary international law, the geographical configuration of the "integral contiguous zone" is justified by a "customary exemption" to this rule. In its view, "in unique geographical circumstances, the techniques according to which the external limit of a maritime zone is determined, if reasonable in context, may depart from the general rules in order to create a viable contiguous zone that enables the achievement of its purposes" where "the application of the general rule would create an impracticable contiguous zone".

169. Colombia argues that the powers prescribed under Presidential Decree 1946 are based on "context, function and policy considerations", which are permitted under customary international law. According to Colombia, even if the Court were to proclaim that Article 33, paragraph 1, reflects customary law, the powers to be exercised in the "integral contiguous zone" still fall within the scope of that provision. In particular, Colombia argues that protection of the marine environment is consistent with a contemporary interpretation of the term "sanitary", and protection of security and national maritime interests can also fall into the "customs", "fiscal", "immigration" and "sanitary" generic categories. With respect to the power to preserve cultural heritage, Colombia argues that it is explicitly permitted by Article 303 of UNCLOS.

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170. The Parties are divided over the conformity with customary international law of the provisions of Article 5 of Presidential Decree 1946, which set out the geographical extent of the "integral contiguous zone" and the material scope of the powers that may be exercised therein. Article 5 reads as follows:

> "Contiguous zone of the island territories
> in the western Caribbean Sea
>
> 1. Without prejudice to the terms of Section 2 of this Article, the Contiguous Zone of the island territories of Colombia in the Western Caribbean Sea extends up to a distance of 24 nautical miles measured from the baselines referred to in Article 3 above.

2. The Contiguous Zones adjacent to the territorial sea of the islands which form the island territories of Colombia in the Western Caribbean Sea, except for the islands Serranilla and Bajo Nuevo, where they intersect, generate a continuous and uninterrupted Contiguous Zone, across the whole of the Department of the Archipelago of San Andrés, Providencia and Santa Catalina, over which the competent national authorities will exercise the powers recognized by international law and Colombian laws mentioned in Section 3 of this Article.

In order to secure the proper administration and orderly management of the entire Archipelago of San Andrés, Providencia and Santa Catalina, and of their islands, cays and other formations and their maritime areas and resources, and in order to avoid the existence of irregular figures or contours which would make practical application difficult, the lines indicated for the outer limits of the contiguous zones will be joined to each other through geodetic lines. In the same fashion, these will be linked to the contiguous zone of the island of Serranilla by geodetic lines which maintain the direction of parallel 14° 59' 08" N, and to Meridian 79° 56' 00" W, and thence to the North, thus forming an Integral Contiguous Zone of the Department Archipelago of San Andrés, Providencia and Santa Catalina.

3. **Modified by Decree 1119 of 2014, Art. 2.** In developing what has been provided for in the previous numeral, with the purpose of protecting the sovereignty in its territory and territorial sea, in the Integral contiguous zone established in this Article Colombia exercises the faculties of enforcement and control necessary to:

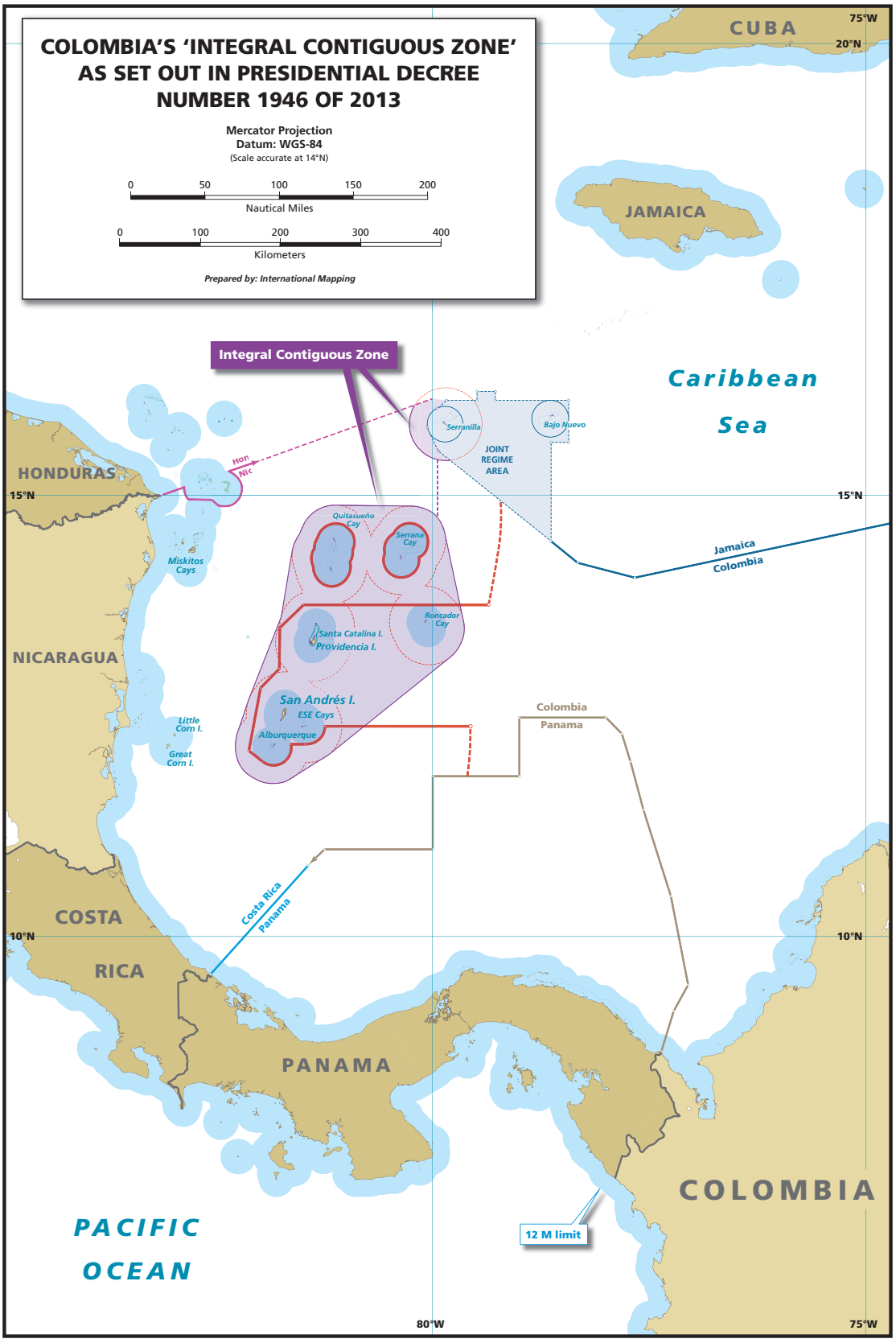
(a) **Modified by Decree 1119 of 2014, Art. 2.** Prevent and control the infractions of the laws and regulations related with the integral security of the State, including piracy and trafficking of drugs and psychotropic substances, as well as conduct contrary to security in the sea and the national maritime interests, the customs, fiscal, migration and sanitary matters which take place in its insular territories or in their territorial sea. In the same manner, violations against the laws and regulations related with the preservation of the environment and the cultural heritage will be prevented and controlled.

(b) Punish violations of laws and regulations related to the matters indicated in section a) above, committed in its island territories or in their territorial sea.

PARAGRAPH ***Added by Decree 1119 of 2014, Art. 3.*** The application of this article will be carried out in conformity with international law and Article 7 of the Present Decree."

171. Colombia produces an illustrative map depicting the "integral contiguous zone", which it claims is an accurate depiction of how the Decree should apply in practice. Nicaragua also produces a map that it claims was presented by the Colombian President on the day Presidential Decree 1946 was issued. The two maps do not coincide in their depiction of the "integral contiguous zone", but both of them show that some parts of the "integral contiguous zone" extend more than 24 nautical miles from Colombia's baselines and overlap with Nicaragua's exclusive economic zone. (For illustrative purposes, the Court includes the map produced by Colombia in its Counter-Memorial.)

MAP SHOWING COLOMBIA'S "INTEGRAL CONTIGUOUS ZONE" ACCORDING TO COLOMBIA
(*Source:* Colombia's Counter-Memorial, Figure 5.1, p. 204)



172. Colombia does not deny that the "integral contiguous zone", in various parts, extends beyond 24 nautical miles, but claims its position to be justified on the basis of customary international law. According to Colombia, a coastal State is permitted under customary international law to establish contiguous zones "of varying breadth", going beyond those expressly envisaged in Article 33 of UNCLOS.

173. As is stated above, the 24-nautical-mile rule provided for in Article 33, paragraph 2, is an established customary rule. The coastal State does not have the right to extend the breadth of its contiguous zone as it sees fit. The Court notes that the simplification of boundary lines is not uncommon in maritime delimitation between two States, but in such cases a simplified boundary is achieved by mutual agreement or through a third-party settlement. By contrast, in the present case, the establishment of the outer limit of the "integral contiguous zone" is a unilateral act of Colombia that directly affects the rights and interests of Nicaragua.

174. Colombia refers to the *Fisheries* case between the United Kingdom and Norway and the 2012 Judgment as a jurisprudential basis for the simplified configuration of the "integral contiguous zone". Neither of the Judgments invoked by Colombia, however, is applicable to the present case. Any consideration of the geographical circumstances by Colombia must respect the 24-nautical-mile rule, as required by customary international law reflected in Article 33, paragraph 2, of UNCLOS. Colombia may choose to reduce the breadth of the "integral contiguous zone" if it wishes to simplify the configuration of the zone, but it has no right to expand it beyond the 24-nautical-mile limit to the detriment of the exercise by Nicaragua of its sovereign rights and jurisdiction in its exclusive economic zone.

175. In sum, Colombia is under an international obligation to observe the 24-nautical-mile rule. The geographical extent of the "integral contiguous zone" is not in conformity with customary international law, as reflected in Article 33, paragraph 2, of UNCLOS.

176. With regard to the material scope of Colombia's powers within the "integral contiguous zone", Article 5 (3) *(a)* of Presidential Decree 1946 provides that Colombia shall exercise powers in the "integral contiguous zone" to prevent and control infringements of laws and regulations regarding

> "the integral security of the State, including piracy, trafficking of drugs and psychotropic substances, as well as conduct contrary to the security in the sea and the national maritime interests, the customs, fiscal, migration and sanitary matters which take place in its insular territories or in their territorial sea. In the same manner, violations against the laws and regulations related with the preservation of the maritime environment and the cultural heritage will be prevented and controlled."

Under this provision, the scope of the powers under which the Colombian authorities may exercise control in the contiguous zone is much broader than the material scope of the powers enumerated in Article 33, paragraph 1, of UNCLOS (see paragraph 150 above).

177. The Court notes that, in terms of security, Article 5 (3) refers to the "integral security of the State", which, according to Colombia, includes suppressing piracy and drug-trafficking, as well as conduct contrary to security at sea. As the Court has previously found, security was not a matter that States agreed to include in the list of matters over which a coastal State may exercise control in

the contiguous zone; nor has there been any evolution of customary international law in this regard since the adoption of UNCLOS (see paragraph 154 above). The inclusion of security in the material scope of Colombia's powers within the "integral contiguous zone" is therefore not in conformity with the relevant customary rule.

178. In respect of the power to protect "national maritime interests", Article 5 (3) of Presidential Decree 1946, through its broad wording alone, appears to encroach on the sovereign rights and jurisdiction of Nicaragua as set forth in Article 56, paragraph 1, of UNCLOS. This is also true with regard to violations of "laws and regulations related with the preservation of the environment". As the "laws and regulations" are adopted by Colombia, the power thus conferred on the Colombian authorities to ensure their implementation in part of Nicaragua's exclusive economic zone is contrary to Article 56, paragraph 1 *(b)* (iii), of UNCLOS, which grants the coastal State, Nicaragua in the present case, jurisdiction in its exclusive economic zone over the "protection and preservation of the marine environment".

179. Although under UNCLOS, as stated above, all States parties have an obligation to preserve the marine environment in the exclusive economic zone, other States must observe the laws and regulations adopted by the coastal State for the conservation of the living resources and for the preservation of the marine environment. A flag State may enforce such conservation measures adopted by the coastal State with regard to its national vessels operating in the exclusive economic zone (see *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 37, para. 120). This is not the situation in the present case with regard to the powers authorized under Presidential Decree 1946. Article 5 (3) confers on the Colombian authorities powers that, if exercised in the area overlapping with Nicaragua's exclusive economic zone, would encroach on the sovereign rights and jurisdiction of Nicaragua.

180. With regard to Colombia's argument that the word "sanitary" can now be taken to include the protection of the marine environment, the Court is not convinced that the meaning of that word, as used in Article 33, paragraph 1, of UNCLOS, has evolved to extend to the protection of the marine environment, a matter that is separately governed by customary international law on the environment. The term "sanitary" was originally included in the provisions on the contiguous zone because of its connection with customs regulations (Commentary to the articles concerning the law of the sea, *Yearbook of the International Law Commission*, 1956, Vol. II, p. 295, Article 66, Comment (3)). There is no basis, either in law or in State practice, to give this term the expansive interpretation proposed by Colombia.

181. Article 5 (3) *(a)* of Presidential Decree 1946 also refers to cultural heritage. In support of its position, Colombia invokes Article 303, paragraph 2, of UNCLOS. Nicaragua challenges Colombia's claim on the basis that Colombia, as a non-party to UNCLOS, may not claim the right set out in Article 303 and that Colombia has not demonstrated that Article 303, paragraph 2, reflects customary international law.

182. The Court recalls that paragraphs 1 and 2 of Article 303, entitled "Archaeological and historical objects found at sea", provide as follows:

> "1. States have the duty to protect objects of an archaeological and historical nature found at sea and shall co-operate for this purpose.

2. In order to control traffic in such objects, the coastal State may, in applying article 33, presume that their removal from the sea-bed in the zone referred to in that article without its approval would result in an infringement within its territory or territorial sea of the laws and regulations referred to in that article."

183. The Court notes that in Article 5 (3) *(a)*, of Presidential Decree 1946, the phrase "cultural heritage" is used. Since Colombia relies on Article 303, paragraph 2, the Court takes it that Colombia uses this phrase to mean objects of an archaeological and historical nature.

184. Article 303 is included in the general provisions of Part XVI of UNCLOS. The *travaux préparatoires* and the ILC's Commentary to the articles concerning the law of the sea indicate that the negotiating States did not wish to include objects of cultural heritage found on the sea-bed as part of the natural resources of the continental shelf and, therefore, did not include cultural heritage in the continental shelf régime (*Yearbook of the International Law Commission*, 1956, Vol. II, p. 298). During the negotiations at the Third United Nations Conference on the Law of the Sea, the negotiating States agreed to give the coastal State the power to exercise control over objects of an archaeological and historical nature found in its contiguous zone and that the removal of such objects can be regarded as an infringement of its laws and regulations on customs, fiscal, immigration or sanitary matters. Such extended power is strictly confined to the limit of 24 nautical miles under Article 303, paragraph 2, which was accepted by the plenary of the Third United Nations Conference on the Law of the Sea (UN doc. A.CONF.62/L.58, para. 15).

185. Following the conclusion of UNCLOS, a growing number of States have extended the application of their cultural heritage legislation over the contiguous zone, and multilateral treaties have been concluded to protect underwater cultural heritage.

186. Taking into account State practice and other legal developments in this field, the Court is of the view that Article 303, paragraph 2, of UNCLOS reflects customary international law. It follows that Article 5 (3) of Presidential Decree 1946, in so far as it includes the power of control with respect to archaeological and historical objects found within the contiguous zone, does not violate customary international law.

4. Conclusion

187. In light of the foregoing, the Court finds that the "integral contiguous zone" established by Colombia's Presidential Decree 1946 is not in conformity with customary international law in two respects. First, the geographical extent of the "integral contiguous zone" contravenes the 24-nautical-mile rule for the establishment of the contiguous zone. Secondly, Article 5 (3) of Presidential Decree 1946 confers certain powers on Colombia to exercise control over infringements of its laws and regulations in the "integral contiguous zone" that extend to matters that are not permitted by customary rules as reflected in Article 33, paragraph 1, of UNCLOS.

188. Having reached this conclusion, the Court will consider the question whether the establishment of the "integral contiguous zone" by enactment of Presidential Decree 1946 constitutes, in and of itself, a breach by Colombia of its international obligations owed to Nicaragua, which engages its international responsibility.

* *

189. Nicaragua claims that Colombia's enactment of Presidential Decree 1946, even if not implemented, is sufficient to constitute an internationally wrongful act engaging Colombia's responsibility. Nicaragua adds that, in any event, the incidents at sea have shown that, in implementing Presidential Decree 1946, Colombia infringed and continues to infringe Nicaragua's sovereign rights and jurisdiction in its exclusive economic zone.

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190. In rejecting Nicaragua's claim, Colombia maintains, even assuming — "*quod non*" — that the "integral contiguous zone" established in Presidential Decree 1946 were found to be inconsistent with customary international law, the enactment of the Decree would not *ipso facto* constitute an internationally wrongful act. It argues that the lawfulness of Presidential Decree 1946 must be evaluated on the basis of whether its "application" has failed to comply with the "due regard" obligation owed to Nicaragua. It argues that Nicaragua has failed to show a single instance where Colombia impeded Nicaragua from exercising its exclusive economic zone rights within the "integral contiguous zone".

* *

191. The Court recalls the ILC's observation that there is no general rule applicable to the question whether a State engages its international responsibility by the enactment of national legislation. The question depends on the specific terms of the obligation concerned and the circumstances of the case. The ILC's Commentary explains:

> "The question often arises whether an obligation is breached by the enactment of legislation by a State, in cases where the content of the legislation *prima facie* conflicts with what is required by the international obligation, or whether the legislation has to be implemented in the given case before the breach can be said to have occurred. Again, no general rule can be laid down applicable to all cases. Certain obligations may be breached by the mere passage of incompatible legislation. Where this is so, the passage of the legislation without more entails the international responsibility of the enacting State, the legislature itself being an organ of the State for the purposes of the attribution of responsibility. In other circumstances, the enactment of legislation may not in and of

> itself amount to a breach, especially if it is open to the State concerned to give effect to the legislation in a way which would not violate the international obligation in question. In such cases, whether there is a breach will depend on whether and how the legislation is given effect." (Commentary to Article 12 of the ILC Articles on State Responsibility, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 57, para. 12.)

192. The Court will decide the question for the purposes of the present case in light of the obligations of which Colombia is allegedly in breach and the specific context of the case.

193. Colombia's Presidential Decree 1946 was initially issued not long after the delivery of the 2012 Judgment. Coupled with the official statements made at the highest level of the Colombian Government with regard to the 2012 Judgment and the events at sea, the enactment of Presidential Decree 1946 contributed to the dispute between the Parties, which eventually led to the institution of the present proceedings by Nicaragua. As the Court has found that Colombia's "integral contiguous zone" established under Presidential Decree 1946 is, in two respects, incompatible with the rules of customary international law on the contiguous zone and infringes upon Nicaragua's rights in its exclusive economic zone (see paragraph 187 above), the Court must address the request made by Nicaragua in its final submissions with regard to Presidential Decree 1946. The Court is mindful that Colombia amended Presidential Decree 1946 in 2014 to provide that the Decree will be applied in compliance with international law. Given the finding of the Court and the circumstances of the case, however, the Court does not consider that this additional provision is sufficient to address the concern raised by Nicaragua with respect to Presidential Decree 1946. Colombia is under an international obligation to remedy the situation.

194. On the basis of the above considerations, the Court concludes that, in respect of the maritime areas in which Colombia's "integral contiguous zone" overlaps with Nicaragua's exclusive economic zone, Colombia's "integral contiguous zone", which the Court has found to be incompatible with customary international law as reflected in Article 33 of UNCLOS, infringes upon Nicaragua's sovereign rights and jurisdiction in the exclusive economic zone. Colombia's responsibility is thereby engaged. Colombia has the obligation, by means of its own choosing, to bring the provisions of Presidential Decree 1946 into conformity with customary international law in so far as they relate to maritime areas declared by the Court in its 2012 Judgment to appertain to Nicaragua.

C. Conclusions and remedies

195. The Court has concluded (see paragraph 144 above) that Colombia breached its international obligation to respect Nicaragua's sovereign rights and jurisdiction in its exclusive economic zone (i) by interfering with fishing activities and marine scientific research activities of Nicaraguan-flagged or Nicaraguan-licensed vessels and with the operations of Nicaraguan naval vessels in Nicaragua's exclusive economic zone; (ii) by purporting to enforce conservation measures in Nicaragua's exclusive economic zone; and (iii) by authorizing fishing activities in Nicaragua's exclusive economic zone. This wrongful conduct engages Colombia's responsibility under international law. Colombia must therefore immediately cease its wrongful conduct.

196. The Court has also found (see paragraphs 187 and 194 above) that the "integral contiguous zone" established by Colombia's Presidential Decree 1946 is not in conformity with customary international law, both because its breadth exceeds 24 nautical miles from the baselines from which Colombia's territorial sea is measured and because the powers that Colombia asserts within the "integral contiguous zone" exceed those that are permitted under customary international law. In the maritime areas where the "integral contiguous zone" overlaps with Nicaragua's exclusive economic zone, the "integral contiguous zone" infringes upon Nicaragua's sovereign rights and jurisdiction in the exclusive economic zone. Colombia's responsibility is thereby engaged. Colombia has the obligation, by means of its own choosing, to bring the provisions of Presidential Decree 1946 into conformity with customary international law in so far as they relate to maritime areas declared by the Court in its 2012 Judgment to appertain to Nicaragua.

197. In its final submissions, Nicaragua made a number of requests for additional remedies (see paragraph 24 above). Considering the nature of Colombia's internationally wrongful acts, the Court considers that the remedies stated above suffice to redress the injury that Colombia's internationally wrongful acts have inflicted on Nicaragua.

198. As regards the request by Nicaragua to order Colombia to pay compensation, the Court considers that in the course of the proceedings Nicaragua did not offer evidence demonstrating that Nicaraguan-flagged or Nicaraguan-licensed vessels or their fishermen suffered material damage or were effectively prevented from fishing as a result of Colombia's acts of interference by its naval frigates in Nicaragua's exclusive economic zone. Nicaragua's claim that fishing activities authorized by Colombia, in Nicaragua's exclusive economic zone, have caused "a substantial loss of profits for Nicaragua and its licensed fishermen" is not substantiated. In the absence of "any evidence capable of demonstrating . . . financially assessable injury", the Court will not uphold a claim for compensation (*Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2009*, p. 267, para. 149). Therefore, Nicaragua's request for compensation must be rejected. Accordingly, there is no basis for the Court to defer the question of compensation to a further stage.

199. Finally, Nicaragua requests that the Court remain seised of the case until Colombia recognizes and respects Nicaragua's rights in the Caribbean Sea as attributed by the 2012 Judgment. The Court considers that there is no legal basis for the Court to accept such a request. Nicaragua's request must therefore be rejected.

IV. COUNTER-CLAIMS MADE BY COLOMBIA

200. The Court recalls, as outlined in paragraph 15 of the present Judgment, that in its Order dated 15 November 2017 it ruled pursuant to Article 80 of the Rules of Court that "there is no direct connection, either in fact or in law, between Colombia's first and second counter-claims and Nicaragua's principal claims", and that those counter-claims are inadmissible as such and do not form part of the present proceedings (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Counter-Claims, Order of 15 November 2017, I.C.J. Reports 2017*, p. 314, para. 82 (A) (1) and (2)). The Court found, however, that there is a direct connection between Colombia's third and fourth counter-claims and Nicaragua's principal claims and that therefore those counter-claims are admissible and do form part of the present proceedings (*ibid.*, p. 314, para. 82 (A) (3) and (4)). The Court will next examine the merits of Colombia's third and fourth counter-claims in turn.

A. Nicaragua's alleged infringement of the artisanal fishing rights of the inhabitants of the San Andrés Archipelago to access and exploit the traditional banks

201. In its third counter-claim Colombia asserts that the ancestral inhabitants of the San Andrés Archipelago, including the Raizales, have for more than three centuries engaged in navigating, fishing and turtling throughout the south-western Caribbean Sea in the maritime areas adjudged in the 2012 Judgment to appertain to Nicaragua, as well as in Colombian waters, access to which requires navigating through a part of Nicaragua's exclusive economic zone. It contends that the Raizales have traditionally fished between the Mosquito Coast and the San Andrés Archipelago, including in "[t]he shallow grounds of Cape Bank and, in particular, along La Esquina, that is to say on both sides of the 82° West Meridian, and the area known as Luna Verde"; and "[t]he deep-sea banks situated North of Quitasueño, East of the 82° West Meridian and West and North-West of Providencia, and between, respectively, Providencia and Quitasueño, Quitasueño and Serrana and Serrana and Roncador". Colombia further contends that while long fishing expeditions to Cape Bank and the Northern Banks have always taken place, artisanal fishermen started sailing to these banks much more frequently in the second half of the twentieth century, due to the decrease in production around San Andrés and Providencia. Colombia asserts that, as a result of the 2012 Judgment, many traditional fishing banks of the inhabitants of the Archipelago are now located in the maritime zones under the jurisdiction of Nicaragua, while certain other fishing grounds located in Colombia's maritime areas can only be accessed by navigating through Nicaragua's exclusive economic zone.

202. In support of its third counter-claim, Colombia asserts, first, that the traditional fishing rights of the Raizales arise out of an uncontested local customary norm or practice spanning centuries, as evidenced through various historical documents and affidavits annexed to the Counter-Memorial. It describes those fishing rights as "limited . . . customary rights of access and exploitation" whose exercise does not negate the exclusive character of the sovereign rights of Nicaragua as the coastal State. Secondly, Colombia argues that, "in the immediate aftermath of the 2012 Judgment, Colombia and Nicaragua recognized, both tacitly and explicitly, that such a . . . long-established practice [of artisanal fishing] had taken the shape of a local customary norm that survived the maritime delimitation". Thirdly, Colombia asserts that Nicaragua has, through the statements of its Head of State, accepted that the artisanal fishermen of the Archipelago have a right to fish in Nicaragua's own maritime zones without the need for bilateral fishing agreements or other mechanisms to preserve these rights and without the fishermen having to request authorization from INPESCA. Colombia argues, in the alternative, that these statements must be viewed as constituting a binding unilateral undertaking by Nicaragua to respect the traditional fishing rights of the Raizales. Finally, Colombia asserts that,

> "[i]t matters little whether the formal source is a local customary norm, a tacit agreement, an act of acquiescence, a unilateral understanding or even a rule of international law on the treatment of vested rights of foreign nationals. The result is the same. The inhabitants of the Archipelago and, in particular, the Raizales have the right to fish in the banks located in the maritime zones found to appertain to Nicaragua . . . without having to request an authorization."

203. In this regard, Colombia refers, *inter alia*, to the following statements by Nicaragua's Head of State:

(i) a statement of 26 November 2012 in which President Ortega allegedly stressed Nicaragua's respect for the rights of the inhabitants of the Archipelago "to fish and navigate in those waters, which they ha[d] historically navigated", while also stating that "artisanal fishermen would require an authorization from the relevant Nicaraguan authorities";

(ii) a statement of 1 December 2012 in which President Ortega allegedly declared that "Nicaragua will respect the ancestral rights of the Raizales" and that "mechanisms for dialogue" would have to be established in order to "ensure the right of the Raizal people to fish";

(iii) a statement of 21 February 2013 in which President Ortega allegedly stated that "the Raizal community, living in San Andrés can continue fishing in the Caribbean waters now belonging to Nicaragua and that their rights as native people will not be affected" but that it was "necessary to work on an agreement between Colombia and Nicaragua to regulate this situation, because right now there is no way to know how many vessels belong to the Raizal community and which are related by industrial fishing";

(iv) a statement of 18 November 2014 in which President Ortega asserted that, while the President of Colombia was prepared to work on an agreement or treaty with Nicaragua to implement the 2012 Judgment, the Parties "agreed that it was necessary to work on reaching an Agreement where the [r]ights of the Raizal Community [would] be guaranteed"; and

(v) a statement by President Ortega, of 5 November 2015 which contains a reference to "engagements . . . with the Raizales Brothers regarding their [f]ishing [r]ights, which will have to be arranged later".

204. Colombia claims that in the aftermath of the 2012 Judgment and, notwithstanding President Ortega's support of the rights of the inhabitants of the San Andrés Archipelago, Nicaragua's Naval Force has followed an active strategy of intimidation, including through threats and pillaging, thereby "preventing on a recurring basis, or at the very least, seriously discouraging the artisanal fishermen of the Archipelago from reaching their traditional banks located in the maritime zones adjudicated to appertain to Nicaragua and the Northern Banks of Quitasueño, Serrana, Serranilla and Bajo Nuevo", as evidenced in 11 affidavits annexed to the Counter-Memorial. Colombia further asserts that the Nicaraguan industrial fishermen operating in the relevant areas are involved in "predatory practices as well as acts of piracy" and that, by the Nicaraguan Naval Force "tolerating these predatory fishing practices and criminal activities", Nicaragua is in further violation of the customary right of the artisanal fishermen in the Archipelago to access and exploit the traditional banks.

205. Colombia considers that Nicaragua "is under an obligation to cease and desist from preventing Colombian artisanal fishermen from accessing their traditional fishing grounds, and to fully respect the traditional, historic fishing rights of the Raizales and other fishermen of the Archipelago to such grounds". Colombia is also of the view that Nicaragua should pay compensation for damage caused, including loss of profits resulting from Nicaragua's alleged violations, and give appropriate guarantees of non-repetition.

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206. In response to Colombia's third counter-claim, Nicaragua argues that "there are absolutely no legal rights, residual or otherwise, of the Raizal population of the small islands of San Andrés, Providencia and Santa Catalina to any purported fishing in the Nicaraguan [exclusive economic zone]" and that the claimed rights are incompatible with the régime of the exclusive economic zone. In Nicaragua's view, "the text and context of the relevant provisions of UNCLOS, the preparatory works, and the jurisprudence all make clear that historic fishing rights, including artisanal fishing rights, did not survive the creation of the [exclusive economic zone] régime". Furthermore, Nicaragua asserts that, in any event, Colombia has failed to establish that the artisanal fishermen of the San Andrés Archipelago have such rights or that Nicaragua has infringed them.

207. First, Nicaragua argues that, in accordance with the Court's jurisprudence, "the régime [of the exclusive economic zone], as codified in Part V of UNCLOS is fully applicable between the Parties as customary international law". For Nicaragua, an examination of the text, context and preparatory work of Part V of the Convention clearly indicates that the exploitation of the living resources of the exclusive economic zone is reserved for the coastal State. The Applicant relies on the text of Article 56, paragraph 1 *(a)*, which provides for the coastal State's "sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil". Nicaragua also notes that Article 61, paragraph 1, of the Convention gives to the coastal State the exclusive right to establish allowable catch limits in its exclusive economic zone; while Article 62, paragraph 2, empowers the same State to establish its own harvesting capacity, with the possibility, under Article 62, paragraph 3, of giving access to other States to the surplus stocks, taking into account, *inter alia*, "the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks". Nicaragua argues that some provisions of UNCLOS concerning other maritime areas, such as Article 51 on archipelagic waters, "contain express carve-outs for traditional fishing rights or the application of other rules of international law". Thus, according to Nicaragua, the absence of a provision in Part V of UNCLOS preserving traditional fishing rights in the exclusive economic zone indicates the intention of the drafters of the Convention to relegate these rights to a "relevant factor" in the allocation of the surplus resources.

208. Nicaragua further asserts that during the negotiation of UNCLOS at the Third United Nations Conference on the Law of the Sea, proposals concerning the protection of historic fishing practices in the exclusive economic zone were discussed and rejected and that a large number of States objected to this protection in the waters adjacent to their coasts, a fact which supports the recognition of exclusive sovereign rights and jurisdiction of the coastal State over the natural resources of the exclusive economic zone. Finally, Nicaragua argues that the jurisprudence, as evidenced by the Court's ruling in the case concerning *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)* (*Judgment, I.C.J. Reports 1984*, p. 246), also supports its argument that, under customary international law, traditional fishing rights have been extinguished by the establishment of the exclusive economic zone, and that coastal States now enjoy a "legal monopoly" over the living resources of the exclusive economic zone.

209. In the alternative, Nicaragua contends that, should the Court find that traditional fishing rights have survived the establishment of the exclusive economic zone, Colombia has, in any event, not discharged its burden of proving either that its fishermen actually had such rights or that

Nicaragua has infringed them. Nicaragua argues further that Colombia's claim of traditional fishing rights is inconsistent with the latter's own prior admissions during the proceedings before the Court in the case concerning *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, where Colombia did not make any reference to the existence of ancestral fishing rights of the Raizales. Nicaragua also refers to a passage of Colombia's Counter-Memorial submitted in the above-mentioned case, where the Respondent indicated that the population of the Archipelago has relied for subsistence on the fisheries and other resources located in "Roncador, Quitasueño, Serrana, Serranilla and Bajo Nuevo", features which are not located in the area the Court declared in its 2012 Judgment to appertain to Nicaragua's exclusive economic zone. Nicaragua also invites the Court to take into account Colombia's statement to the International Labour Organization's Committee of Experts on the Application of Conventions and Recommendations that the fishing areas used by the inhabitants of San Andrés "were not affected by the ICJ ruling, as they consisted of territorial waters awarded to Colombia". Finally, Nicaragua argues that, through official acts, such as Colombia's DIMAR Resolution No. 0121 of 28 April 2004, Colombia itself placed tight limits on the areas where artisanal fishermen were allowed to fish, restricting their area of operation to a distance of 12 nautical miles from the islands of San Andrés and Providencia.

210. Nicaragua also submits that Colombia's own evidence, in the form of the 11 affidavits from artisanal fishermen referenced above, disproves Colombia's claim and demonstrates that fishing did not historically occur in the area the Court declared in its 2012 Judgment to constitute Nicaragua's exclusive economic zone. Nicaragua, moreover, questions the probative value of this type of evidence, arguing that the affidavits were sworn by private persons interested in the outcome of the proceedings, and prepared less than a month before the filing of Colombia's Counter-Memorial, for the purposes of litigation. Nicaragua asserts that, in any event, the affidavits prove that "historic fishing took place largely in the vicinity of Colombia's islands, and not in waters that the Court determined to be part of Nicaragua's [exclusive economic zone]".

211. Nicaragua further asserts that none of the statements in which President Ortega expressed his openness to address Colombia's concerns about the fishing practices of the Raizales, amount to an explicit recognition or acceptance of the alleged traditional fishing rights. In Nicaragua's view, those statements, which must be understood in the particularly delicate context in which they were made, were intended to be conciliatory and to diffuse the political tension created by Colombia's rejection of the Court's 2012 Judgment. Nicaragua emphasizes that, in the statements, President Ortega expressly called for the establishment of appropriate mechanisms to accommodate the activities of the artisanal fishermen, including a bilateral agreement with Colombia. Nicaragua also makes it clear that, while it denies that the inhabitants of the San Andrés Archipelago have a

> "vested 'right' to conduct artisanal fishing in Nicaragua's exclusive economic zone as a matter of law, it remains open, in the spirit of brotherhood and good neighbourly relations, to work with Colombia to reach a bilateral agreement that takes account of . . . the fishing needs of the Raizales".

212. Nicaragua further argues that Colombia has failed to produce any contemporaneous evidence of the alleged incidents of interference by the Nicaraguan Navy. Nicaragua states that the declaration of President Santos of 18 February 2013 and the affidavits on which Colombia relies do not provide any details of the incidents of harassment or pillaging that is alleged to have occurred.

* *

213. The Court observes that Colombia's third counter-claim is premised on two main contentions: first, Colombia asserts that the inhabitants of the San Andrés Archipelago, in particular the Raizales, have for centuries practised traditional or artisanal fishing in locations now falling in Nicaragua's exclusive economic zone. The alleged long-standing practices amongst those communities are said to have given rise to an uncontested "local customary norm" between the Parties or to customary rights of access and exploitation that survived the establishment of Nicaragua's exclusive economic zone. Additionally, Colombia points to statements of President Ortega, the Head of State of Nicaragua, which it characterizes both as accepting or recognizing the existence of those rights and as unilateral statements that are capable of producing "legal effects" in the sense that they amounted to "granting rights to the artisanal fishermen". The Court will examine the merits of each of those arguments before determining whether Colombia has proven Nicaragua's alleged violations.

214. As to Colombia's first main contention, the onus is on Colombia to prove that the inhabitants of the San Andrés Archipelago, in particular the Raizales, have historically practised artisanal fishing in areas that now fall within Nicaragua's exclusive economic zone, giving rise (according to Colombia) to an "uncontested local customary norm" or to "customary rights of access and exploitation" that survived the establishment of Nicaragua's exclusive economic zone.

215. The Court begins by recalling that the Parties' relations in respect of the exclusive economic zone are governed by customary international law (see paragraph 48 above). Accordingly, in order to determine the rights and obligations of the Parties specifically in Nicaragua's exclusive economic zone, the Court will apply the relevant rules of customary international law, as reflected in the relevant provisions of Part V including Article 56 and Article 58 of UNCLOS (see paragraphs 57 and 61 above).

216. Under customary international law, as reflected in Article 56 of UNCLOS, Nicaragua, as the coastal State, enjoys sovereign rights in its exclusive economic zone including "for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil". Furthermore, customary international law as reflected in Articles 61 and 62 of UNCLOS grants to Nicaragua, as the coastal State, the right to "determine the allowable catch of the living resources in its exclusive economic zone" (Article 61, paragraph 1); to determine its capacity to harvest the living resources of the exclusive economic zone and where it does not have the capacity to harvest the entire allowable catch, give access to the surplus of the allowable catch to other States, through agreements or other

arrangements, and pursuant to its terms, conditions and laws (Article 62, paragraph 2). Furthermore, customary international law requires that, in giving access to other States to its exclusive economic zone for the purpose of accessing the surplus of Nicaragua's allowable catch, Nicaragua

> "shall take into account all relevant factors, including, *inter alia*, . . . the requirements of developing States in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone" (Article 62, paragraph 3).

217. Under customary international law, as reflected in Article 58 of UNCLOS, other States, including Colombia, enjoy in Nicaragua's exclusive economic zone, high seas freedoms of navigation and overflight and other internationally lawful uses of the sea related to these freedoms which must, however, be exercised with due regard to Nicaragua's rights as the coastal State.

218. The Court now turns to the question whether Colombia has proved that the inhabitants of the San Andrés Archipelago, in particular the Raizales, have historically enjoyed "artisanal fishing rights" in areas that now fall within Nicaragua's exclusive economic zone and that those "rights" survived the establishment of Nicaragua's exclusive economic zone. Colombia relies on 11 affidavits annexed to its Counter-Memorial to prove the existence of a long-standing practice of artisanal fishing by the inhabitants of the San Andrés Archipelago, in particular the Raizales. The Court recalls that it must exercise caution in giving weight to affidavit evidence especially prepared by a party for the purposes of a case:

> "[W]itness statements produced in the form of affidavits should be treated with caution. In assessing such affidavits the Court must take into account a number of factors. These would include whether they were made by State officials or by private persons not interested in the outcome of the proceedings and whether a particular affidavit attests to the existence of facts or represents only an opinion as regards certain events." (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 731, para. 244.)

219. In the present case, the 11 affidavits annexed to Colombia's Counter-Memorial appear to have been sworn specifically for the purposes of this case and are signed by fishermen who may be considered as particularly interested in the outcome of these proceedings, factors that have a bearing on the weight and probative value of that evidence. The Court must nonetheless analyse the affidavits "for the utility of what is said" and to determine whether they support Colombia's contention (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 731, para. 244).

220. Having reviewed the affidavits on which Colombia relies, the Court observes that they contain indications that some fishing activities have in the past taken place in certain areas that had once been part of the high seas but now fall within Nicaragua's exclusive economic zone. However, the Court also notes that the affidavits do not establish with certainty the periods during which such

activities took place, or whether there was in fact a constant practice of artisanal fishing spanning many decades or centuries, as claimed by Colombia. Some affiants refer to fishing expeditions beyond the Colombian islands being limited to "a few times a year", while others claim to have carried out fishing in those areas since the 1980s and 1990s, a time span which the Court does not consider, in the circumstances of the present case, long enough to qualify such fishing as "a long-standing practice" or to support Colombia's claim concerning the existence of a local custom or of "a local customary right to artisanal fishing". The Court also notes in this regard that most of the affiants speak of having conducted their activities in waters surrounding the Colombian features or in fishing grounds located within Colombia's territorial sea, rather than Nicaraguan maritime areas. The evidence also suggests that the fishing expeditions within the areas now falling within Nicaragua's exclusive economic zone increased in frequency in recent decades as a result of technological developments enabling artisanal fishermen to venture further out to sea, and as a result of the depletion of fish stocks around the Colombian islands, a fact that Colombia itself concedes in its written pleadings and oral arguments. Finally, the Court observes that certain affidavits do not address the alleged historical nature of the fishing conducted in waters now falling in Nicaragua's exclusive economic zone, so that a conclusion in that regard cannot be derived from their reading.

221. The Court is mindful that traditional fishing practices alleged to have taken place over many decades may not have been documented in any formal or official record (cf. *Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2009*, pp. 265-266, para. 141), which calls for some flexibility in considering the probative value of the affidavits submitted by Colombia. Nonetheless, the Court is of the view that the 11 affidavits submitted by Colombia do not sufficiently establish its claim that the inhabitants of the San Andrés Archipelago, in particular the Raizales, have been engaged in a long-standing practice of artisanal fishing in "traditional fishing banks" located in waters now falling within Nicaragua's exclusive economic zone.

222. The Court also considers that the positions adopted by Colombia, *inter alia*, its statement before the International Labour Organization's Committee of Experts on the Application of Conventions and Recommendations, and Resolution No. 0121 of Colombia's General Maritime Directorate of 28 April 2004 (see paragraph 209 above), are inconsistent with Colombia's assertion concerning the existence of such a traditional practice of artisanal fishing in Nicaragua's exclusive economic zone. For example, on two occasions (August 2013 and February-March 2014), the Colombian General Confederation of Labour (hereinafter the "CGT") submitted information on behalf of the Raizal Small-Scale Fishers' Associations and Groups of the Department Archipelago of San Andrés, Providencia and Santa Catalina to the International Labour Organization's Committee of Experts on the Application of Conventions and Recommendations concerning the application by Colombia of the International Labour Organization's Indigenous and Tribal Peoples Convention of 1989. In these communications, the CGT asserted that the 2012 Judgment had negative implications for traditional fishing, as "Raizal fishers have no longer been able to fish with the tranquillity that they did ancestrally" and that "[they] have to cross Nicaraguan maritime territory, which is reported to give rise to difficulties and the payment of fines". The Committee summarized the responses sent by the Government of Colombia refuting the submissions of the CGT as follows:

> "[T]he Government explains that traditional fishing sites are precisely located in the vicinity of areas not affected by the ICJ judgment since it is a question of territorial sea and in this respect the ICJ ruled in favour of Colombia. The Government states that fishers from the islands of San Andrés, Providencia and Santa Catalina can continue fishing in the traditional way." (International Labour Organization, Committee of Experts on the Application of Conventions and Recommendations, Observation (CEACR) — adopted 2013, published 103rd ILC session (2014).)

> "The Government adds that the waters in which the small-scale fishers of the Raizal community traditionally fished continue to belong to Colombia and the fishers can continue their work as they did before the ruling of the ICJ of November 2012. With regard to the right of the inhabitants of San Andrés to have access to traditional fishing areas, the Government specifies that such fishing areas are located precisely around the keys and that these areas were not affected by the ICJ ruling, as they consisted of territorial waters awarded to Colombia, together with the sovereignty of the islands and the seven keys." (International Labour Organization, Committee of Experts on the Application of Conventions and Recommendations, Observation (CEACR) — adopted 2014, published 104th ILC session (2015).)

223. Colombia responds to the above observation by claiming that the Colombian Ministry of Labour "cavalierly concluded . . . that the artisanal fishermen of the San Andrés Archipelago could not have been impacted by the 2012 line" while "fail[ing] to provide even a shred of evidence to support its assertion that the traditional fishing sites were precisely located in the vicinity of areas not affected by the decision". It further points to the plan established by the Colombian Government to alleviate the adverse effects of the 2012 Judgment on the artisanal fishermen and considers that the communications from the fishermen prove its claim in the present proceedings. However, the Court has previously held that "statements emanating from high-ranking official[s] . . . are of particular probative value when they acknowledge facts or conduct unfavourable to the State represented by the person who made them" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 206, para. 78. See also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 41, para. 64). The Court has further observed in the past that

> "persons representing a State in specific fields may be authorized by that State to bind it by their statements in respect of matters falling within their purview. This may be true, for example, of holders of technical ministerial portfolios exercising powers in their field of competence in the area of foreign relations, and even of certain officials." (*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 27, para. 47.)

The Court must consider therefore that the statements noted above, emanating from the Head of the Office of Co-operation and International Relations of Colombia's Ministry of Labour, further undermine Colombia's assertion of the existence of such a traditional practice of artisanal fishing in Nicaragua's exclusive economic zone.

224. The Court also takes note of a report issued by the Comptroller General's Office of the Department Archipelago of San Andrés, Providencia and Santa Catalina. In his 2013 Report on the "Status of Natural Resources and the Environment", the Comptroller of the Archipelago presented the new maritime boundary determined by the Court and the effects of the 2012 Judgment, asserting that the ruling of the Court translated into a substantial reduction of the marine territory of the Archipelago. With regard to the impact of the 2012 Judgment on fisheries, the Comptroller's report alludes to the reduction of fisheries activities, and links it to the concerns expressed by fishermen over "conflicts arising from [the ruling of the Court]". However, the Court observes that, in presenting "a detailed description of each impact on fisheries [of the 2012 Judgment]", the report only refers to the effects of the 2012 Judgment on industrial fishing without any specific mention of detrimental impacts in respect of artisanal fishermen. In addition, the report lists the "Traditional Fishing Location[s]" as follows:

> "San Andrés Island artisanal fishermen distribute themselves throughout the entire shelf, using points of reference for fishing grounds such as: Outside Bank (Northern San Andrés Island), Under the Lee (Western side of San Andres Island), Southend Bank (Southern San Andrés Island), Alburquerque Cays (50 km to the SSW of San Andrés Island), and Meridian 82 on the boundary with Nicaragua.
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> In Providencia and Santa Catalina, fishing takes place in the interior and the exterior of the barrier reef, close to the reef terrace, respecting the park area and the protected marine area . . . [T]he specific work areas are El Faro, Taylor Reef, Morning Star, Northeast Bank, South Banks, and North Banks."

The report also seems to confirm that the artisanal fishermen usually remained close to the Colombian islands and found themselves in Nicaragua's exclusive economic zone only infrequently, a fact supported by the aforesaid affidavits. In view of the foregoing, the Court concludes that previous positions adopted by or on behalf of Colombia further undermine Colombia's assertion concerning the existence of a traditional practice of artisanal fishing in Nicaragua's exclusive economic zone.

225. The Court turns to several statements of Nicaragua's Head of State, which, according to Colombia, either illustrate Nicaragua's acceptance or recognition that the artisanal fishermen of the Archipelago have the right to fish in Nicaragua's maritime zones without having to request prior authorization or alternatively create a legal obligation on the part of Nicaragua to respect those fishing rights.

226. First, the Court observes that, in certain statements, President Ortega refers to the need to "respect the ancestral rights of the Raizales over those waters now fully belonging to [his] country" or to "respect the historical rights of the Raizal people . . . over the region". In other instances, the President affirms that "the [R]aizal community, living in San Andrés can continue fishing in the Caribbean waters now belonging to Nicaragua and that their rights as native people will not be affected".

227. Bearing in mind these observations, the Court begins by considering whether a recognition by Nicaragua of the alleged artisanal fishing rights may be inferred from the above statements. In this context, the Court will examine carefully the words used in those statements in order to ascertain whether such a recognition emerges therefrom. The Court observes that, in several

of President Ortega's statements, reference is made to the need for the Raizal community or the inhabitants of the Archipelago to obtain fishing permits or authorizations from Nicaragua to carry on artisanal or industrial fishing. In addition, President Ortega made references to mechanisms that needed to be established between Nicaragua and Colombia before the artisanal fishermen could operate in waters falling in Nicaragua's exclusive economic zone by virtue of the 2012 Judgment. In this regard, President Ortega proposed, *inter alia*, the creation of a commission "to work [to delimit] where the Raizal people can fish in [the] exercise of their historic rights"; the elaboration of "an agreement between Colombia and Nicaragua to regulate [the] situation"; or the establishment of "a Nicaraguan consular section" on the San Andrés island "to solve the issue of the fishing permits for the [R]aizal community". In the Court's view, the statements by President Ortega do not establish that Nicaragua has recognized that the inhabitants of the San Andrés Archipelago, in particular the Raizales, have the right to fish in Nicaragua's maritime zones without having to request prior authorization. It follows that the Court cannot uphold Colombia's contention that Nicaragua, through the statements of its Head of State, accepted or recognized the rights of the Raizales to fish in Nicaragua's exclusive economic zone without requiring authorization from Nicaragua.

228. The Court will now consider whether the statements of President Ortega constitute a legal undertaking "granting rights to the artisanal fishermen". In determining whether a unilateral declaration by a State official entails the creation of legal obligations, the Court has stated:

> "It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. Declarations of this kind may be, and often are, very specific. When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration. An undertaking of this kind, if given publicly, and with an intent to be bound, even though not made within the context of international negotiations, is binding.
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> . . . . . .
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> With regard to the question of form, it should be observed that this is not a domain in which international law imposes any special or strict requirements. Whether a statement is made orally or in writing makes no essential difference, for such statements made in particular circumstances may create commitments in international law, which does not require that they should be couched in written form. Thus the question of form is not decisive." (*Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, pp. 267-268, paras. 43 and 45; *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, pp. 472-473, paras. 46 and 48.)

229. The Court has also emphasized the need to consider the factual circumstances in which the unilateral statement was made and the need to consider carefully whether the State issuing the declaration intended to be bound by it (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment. I.C.J. Reports 1986*, p. 43, para. 71; *Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 573, para. 39; *Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile), Judgment, I.C.J. Reports 2018 (II)*, p. 555, para. 146). In this regard, the Court is mindful that certain

declarations may express a State's willingness to adopt a particular course of conduct, without being expressed in terms of undertaking a legal obligation (*Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile), Judgment, I.C.J. Reports 2018 (II)*, p. 555, para. 147). The Court has also held that "[w]hen States make statements by which their freedom of action is to be limited, a restrictive interpretation is called for" (*Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 267, para. 44; *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 473, para. 47). It also falls to the Court to "form its own view of the meaning and scope intended by the author of a unilateral declaration which may create a legal obligation" (*Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 573, para. 39, citing *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 269, para. 48; *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 474, para. 50).

230. In the Court's view, the statements of Nicaragua's Head of State indicate that the Nicaraguan authorities were aware of the issues that arose in respect of the fishing activities of the inhabitants of the Archipelago and the challenges that Colombia faced in implementing the 2012 Judgment. In that regard, it appears that Nicaragua expressed an openness to concluding an agreement with Colombia regarding appropriate mechanisms and solutions to overcome those challenges. The Court notes that, in some statements adduced by the Respondent, the Nicaraguan Head of State expressed concerns regarding the rejection by Colombia of the delimitation effected by the Court and affirmed the need to work with Colombia on reaching an agreement to ensure compliance with the 2012 Judgment. President Ortega further alluded to the need to understand the inner workings of domestic politics and to give due time to Colombia to bring its national legislation into compliance with the Court's Judgment. The Court further observes that both Parties agree that the statements were made in the context of political protests in the aftermath of the 2012 Judgment and against the backdrop of the ongoing negotiations with Colombia with the view of achieving an agreement on the implementation of the 2012 Judgment. Bearing in mind the above context and adopting a restrictive interpretation (*Nuclear Tests (Australia* v. *France), I.C.J. Reports 1974*, p. 267, para. 44; *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 473, para. 47), the Court cannot accept Colombia's alternative argument that the statements of President Ortega, referred to above, constitute a legal undertaking on the part of Nicaragua to respect the rights of the artisanal fishermen of the San Andrés Archipelago to fish in Nicaragua's maritime zones without requiring prior authorization from Nicaragua.

231. For these reasons, the Court concludes that Colombia has failed to establish that the inhabitants of the San Andrés Archipelago, in particular the Raizales, enjoy artisanal fishing rights in waters now located in Nicaragua's exclusive economic zone, or that Nicaragua has, through the unilateral statements of its Head of State, accepted or recognized their traditional fishing rights, or legally undertaken to respect them. In view of this conclusion, the Court need not examine the Parties' arguments in respect of whether or in which circumstances the traditional fishing rights of a particular community can survive the establishment of the exclusive economic zone of another State, or Colombia's contentions concerning Nicaragua's alleged infringement of said rights through the conduct of its Naval Force. In light of all the above considerations, the Court dismisses Colombia's third counter-claim.

232. Notwithstanding the above conclusion, the Court takes note of Nicaragua's willingness, as expressed through statements of its Head of State, to negotiate with Colombia an agreement regarding access by members of the Raizales community to fisheries located within Nicaragua's exclusive economic zone. The Court considers that the most appropriate solution to address the concerns expressed by Colombia and its nationals in respect of access to fisheries located within Nicaragua's exclusive economic zone would be the negotiation of a bilateral agreement between the Parties.

233. The Court also emphasizes that, under customary international law applicable to the exclusive economic zone, as reflected in Article 58 of UNCLOS, third States possess freedom of navigation in this area. It follows that the inhabitants of the Archipelago, including the Raizales, may freely navigate within Nicaragua's exclusive economic zone, including in the course of their travel between the inhabited islands and the fishing areas located on Colombia's side of the maritime boundary.

B. Alleged violation of Colombia's sovereign rights and maritime spaces by Nicaragua's use of straight baselines

234. The Court now turns to Colombia's fourth counter-claim. On 27 August 2013, Nicaragua enacted Decree 33 through which it established a system of straight baselines along its Caribbean coast, from which the breadth of its territorial sea is measured. In the preamble to the Decree, Nicaragua purports to have acted in accordance with the provisions of UNCLOS in establishing those baselines. The Decree identifies nine base points — two are located on the low-water line along Nicaragua's mainland coast and the remaining seven are located on the low-water line along islands seaward of Nicaragua's mainland coast — and eight straight baseline segments. (In the 2018 amendment to Decree 33, Nicaragua made a small adjustment to the location of base point 9, located on its southern coast, to take into account the Court's Judgment of 2 February 2018 in the cases concerning *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica* v. *Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica* v. *Nicaragua)*, a change that neither Party considers material to the present case.)

235. In its fourth counter-claim, Colombia raises three objections to Nicaragua's use of straight baselines. First, the Respondent argues that Nicaragua has not met the necessary geographical preconditions required under Article 7 of UNCLOS, which reflects the customary international law on the use of straight baselines, in that there is no "fringe of islands along the Nicaraguan coast in its immediate vicinity", and the coastline is not "deeply indented and cut into". Colombia also advocates for a strictly frontal projection in determining the extent to which the coast is masked or guarded by the islands and finds that the concerned features "mask no more than 5 to 6 percent of the coast". Secondly, Colombia argues that even if those geographical preconditions were met, the manner in which Nicaragua drew those baselines contravenes the provisions of Article 7, paragraph 3, since the baselines depart significantly from the general direction of Nicaragua's coast and enclose sea areas that are not sufficiently closely linked to the land domain to be subject to the régime of internal waters. Thirdly, Colombia argues that by employing straight baselines, Nicaragua is attempting to misappropriate significant maritime areas as its internal waters and is artificially expanding its territorial sea, exclusive economic zone and continental shelf, in a manner that not only infringes upon Colombia's rights and maritime spaces, but also limits the rights of third States in the Caribbean Sea. Colombia accordingly maintains that Nicaragua's straight baselines established in Decree 33, as amended, are contrary to international law and violate Colombia's rights and maritime spaces.

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236. For its part, Nicaragua asserts that its straight baselines were drawn in accordance with customary international law and the relevant provisions of UNCLOS, and that the Applicant is therefore entitled to determine the status of the waters landward and seaward of those baselines in accordance with international law. Nicaragua also disagrees with Colombia's contention that Decree 33 produces an artificial overlap of Nicaragua's exclusive economic zone with Colombia's entitlement to its own exclusive economic zone and continental shelf. According to Nicaragua, the outer limit of its exclusive economic zone is unaltered by the use of straight baselines, because the outer limit of that zone is controlled by basepoints on the low-water line along its coast that are seaward of the straight baselines.

237. Nicaragua maintains that the geographical configuration of its coast permits the use of straight baselines, in that the coastline is deeply indented and cut into and there is a fringe of islands along the coast in its immediate vicinity, as required by Article 7, paragraph 1, of UNCLOS. Nicaragua further argues that the Court's 2012 Judgment in two instances refers respectively to the "Nicaraguan fringing islands" and the "islands fringing the Nicaraguan coast". Moreover, base points on Nicaragua's fringing islands were used in the construction of a provisional median line. In its view, these islands form a fringe in the immediate vicinity of the coast of Nicaragua. It also disputes Colombia's assertion that the islands do not form a unity with the mainland given the distance between the main features — the Miskitos Cays and the Corn Islands — and the Nicaraguan coast. Nicaragua observes in this respect that Colombia's claim does not take account of the fact that these main features are located in an area in which there are numerous other islands. Nicaragua argues that the Court should be informed by its own approach to determining the seaward projection of relevant coasts in connection with the delimitation of maritime boundaries. In light of the Court's jurisprudence, Nicaragua submits, it would be reasonable to look at a projection of all relevant islands and features between a perpendicular to the general direction of the mainland coast and an angle of 20 degrees to that perpendicular, an approach which allegedly yields a masking effect of 46 per cent.

238. Nicaragua further contends that the course of its baselines does "not depart to any appreciable extent from the general direction of the coast", in accordance with Article 7, paragraph 3, of the Convention. It considers that, as indicated by the Court, in applying the principle of the general direction of the coast, the focus should be on the overall direction of the coast under consideration, not that of specific localities. Second, it asserts that "the sea areas lying within the lines [are] sufficiently closely linked to the land domain to be subject to the régime of internal waters", in accordance with the same provision.

239. Finally, Nicaragua argues that Colombia's rights have not been infringed by Nicaragua's straight baselines. It states that its straight baselines are in conformity with Article 7 of the Convention and, as a consequence, Nicaragua is entitled to apply the régime for internal waters, as defined by the Convention and customary international law, landward of these straight baselines. It adds that the outer limit of Nicaragua's exclusive economic zone has not shifted seaward following the establishment of its straight baselines through Decree 33, since the outer limit of Nicaragua's exclusive economic zone is determined from base points located on the low-water line along Nee Reef and London Reef (low-tide elevations that are located within 12 nautical miles of the Miskitos Cays), Blowing Rock and Little Corn Island, all of which are seaward of those straight baselines.

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240. The Court recalls that when it delimited the maritime boundary between the Parties in the 2012 Judgment, the location of Nicaragua's baselines was unsettled, given that "Nicaragua ha[d] not yet notified the Secretary-General [of the United Nations] of the location of those baselines under Article 16, paragraph 2, of UNCLOS". Accordingly, the location of the eastern endpoints of the maritime boundary was determined only on an approximate basis (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 683, para. 159, and p. 713, para. 237).

241. The Parties agree on the principles governing the determination of appropriate baselines. They consider that Article 5 of UNCLOS sets out the criteria that govern the establishment of normal baselines, namely "the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State". The Parties also agree that customary international law permits a deviation from normal baselines where "the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity". They accept that Article 7 of UNCLOS reflects customary international law on the drawing of straight baselines.

242. The Court recalls that in its Judgment in the *Fisheries* case, it recognized the employment of straight baselines as the "application of general international law to a specific case" given the geographic characteristics of Norway's coast (*Fisheries (United Kingdom* v. *Norway), Judgment, I.C.J. Reports 1951*, p. 131). In assessing the validity of Norway's baselines under international law, the Court indeed identified certain criteria which were codified in Article 4 of the 1958 Convention. This provision corresponds, almost verbatim, to Article 7 of UNCLOS on "Straight baselines", paragraphs 1, 3 and 4 of which provide that:

> "1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.
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> 3. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters.
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> 4. Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in instances where the drawing of baselines to and from such elevations has received general international recognition."

The Court considers that Article 7 of UNCLOS reflects customary international law.

243. The Court recalls that it is for the coastal State to determine its baselines for the purposes of measuring the breadth of its maritime zones, in conformity with international law. However, as the Court has stated in the past, the determination of baselines is "an exercise which has always an international aspect" and falls to be assessed by reference to international rules (*Maritime*

Delimitation in the Black Sea (Romania v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 108, para. 137; see also *Fisheries (United Kingdom* v. *Norway), Judgment, I.C.J. Reports 1951*, p. 132). Moreover, the Court would recall, in relation to the use of straight baselines and the applicable rules, that

> "the method of straight baselines, which is an exception to the normal rules for the determination of baselines, may only be applied if a number of conditions are met. This method must be applied restrictively." (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 103, para. 212.)

244. Customary international law as reflected in Article 7, paragraph 1, of UNCLOS provides for two geographical preconditions for the establishment of straight baselines. The preconditions are alternative and not cumulative. With respect to the straight baselines drawn from Cabo Gracias a Dios on the mainland to Great Corn Island along the coast (points 1-8), Nicaragua asserts that there is "a fringe of islands along the coast in its immediate vicinity" that entitles it to use straight rather than normal baselines. As to the southernmost part of its mainland coast, Nicaragua claims instead that the indentation of the coast from Monkey Point to the land boundary terminus with Costa Rica justifies Nicaragua's straight baselines drawn from point 8 (Great Corn Island) to point 9 (Barra Indio Maíz).

245. The Court notes that there appears to be no single test for identifying a coastline that is "deeply indented and cut into". Since Nicaragua concedes that it is only the southernmost portion of its Caribbean coast between Monkey Point and Barra Indio Maíz that falls to be considered under the second geographic option, the Court must determine whether the straight baseline segment between base points 8 and 9 defined by Decree 33, as amended, is justified on the basis that the corresponding coast is "deeply indented and cut into". An examination of the relevant maps reveals that Nicaragua's southernmost coast does, in fact, curve inward. Under the conditions reflected in Article 7, paragraph 1, of UNCLOS, however, it is not sufficient for the coast to have slight indentations and concavities; the coast must be "deeply indented and cut into". From the Isla del Venado (facing the bay of Bluefields) to Monkey Point, Nicaragua's mainland coast has a smooth configuration. A broad concavity is observable from Punta Grindston Bay to Isla Portillos, at the land boundary terminus with Costa Rica. The indentations along the relevant portion of Nicaragua's coast do not penetrate sufficiently inland or present characteristics sufficient for the Court to consider the said portion as "deeply indented and cut into". The relevant portion is not "of a very distinctive configuration", nor "broken along its whole length" or "constantly open[ing] out into indentations often penetrating for great distances inland" (*Fisheries (United Kingdom* v. *Norway), Judgment, I.C.J. Reports 1951*, p. 127). Thus, recalling that the straight baselines method "must be applied restrictively", the Court finds that the straight baseline segment between base points 8 and 9 defined by Decree 33, as amended, does not conform with customary international law on the drawing of straight baselines as reflected in Article 7, paragraph 1, of UNCLOS.

246. The Court now turns to the remainder of Nicaragua's straight baselines running from point 1 to point 8, where some base points are located on features such as Edinburgh Cay, the Miskitos Cays, Ned Thomas Cay, the Man of War Cays and the Corn Islands. It recalls that base points used to construct straight baselines may be placed on islands, but may not be placed on features that are below water at high tide (low-tide elevations) except in certain situations which are not

present in this case. Article 121, paragraph 1, of UNCLOS, defines an "island" as "a naturally formed area of land, surrounded by water, which is above water at high tide". In the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, the Court viewed the legal definition of an island embodied in Article 121, paragraph 1, as part of customary international law (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain, (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 91, para. 167, and p. 99, para. 195) and it reaffirmed the same in its 2012 Judgment (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 674, para. 139).

247. In this regard, the Court notes that the Parties are divided on the question whether Nicaragua's offshore islands constitute a "fringe of islands along the coast in its immediate vicinity" within the meaning of Article 7, paragraph 1, of UNCLOS. First, the Parties disagree as to whether certain features are islands and whether there is a sufficient number of islands for drawing straight baselines. They also disagree on whether the islands in question "form a unity with the mainland" or have a "masking effect" on Nicaragua's coastline. Lastly, the Parties disagree about the size of the islands and whether their distance from each other and from the mainland justifies the drawing of straight baselines.

248. The Court must begin by ascertaining whether Nicaragua has demonstrated the presence of "islands" and, if so, whether those islands amount to "a fringe . . . along the coast in its immediate vicinity" as required by customary international law. Nicaragua asserts that there are 95 "islands" along its coast and provides a list of these as an annex to its written pleadings. Colombia adopts the view that Nicaragua has failed to prove the existence of the "islands", noting that Nicaragua does not adduce evidence concerning the insular nature or characteristics of these features. Colombia further considers that the feature called Edinburgh Cay, on which Nicaragua has placed a base point, is not an "island" for the purposes of Article 7, paragraph 1, and is shown as a simple "low-tide elevation" on Nautical Chart 28130.

249. As noted by the Parties, the 2012 Judgment contains references to "islands fringing the Nicaraguan coast" and to "the Nicaraguan mainland and fringing islands". While the Parties reach different conclusions on the legal significance of such references by the Court, they agree that the Court did not qualify the said islands as "a fringe of islands" within the meaning of Article 7, paragraph 1, of UNCLOS, nor that the Court was dealing with Nicaragua's claim to straight baselines. Furthermore, the Court clearly indicated that Nicaragua was yet to notify its baselines from which the breadth of its territorial sea would be measured, in accordance with Article 16, paragraph 2, of UNCLOS (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 683, para. 159). Notwithstanding these clarifications, the Court is satisfied, in general terms, on the basis of the above references and noting its findings in its 2012 Judgment according to which "[t]here are a number of Nicaraguan islands located off the mainland coast of Nicaragua" (*ibid.*, p. 638, para. 21), that some of the 95 features listed by Nicaragua are islands, as opposed to low-tide elevations. The Court must emphasize, nonetheless, that it does not automatically follow that all the features listed by Nicaragua are "islands" or that they constitute "a fringe" within the meaning of Article 7, paragraph 1, of UNCLOS. It remains for Nicaragua to prove that there is indeed "a fringe of islands along the coast in its immediate vicinity" within the meaning of that provision.

250. The Parties are divided concerning the insular nature of "Edinburgh Cay" and about whether this feature may be considered an island for the purpose of drawing straight baselines under Article 7 of UNCLOS. The Court notes that, in plotting a provisional equidistance line, the 2012 Judgment refers to "Edinburgh Reef" as part of the islands located off the coast of Nicaragua (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 638, para. 21) and that the Court placed a base point on this feature for the construction of the provisional equidistance line (*ibid.*, pp. 698-700, paras. 201 and 204). However, the Court did not at that time consider the appropriateness of this feature for the purpose of drawing straight baselines, nor did the Court qualify it as an "island" within the meaning of Article 7, paragraph 1, of UNCLOS. The Court has underlined in the past that

> "the issue of determining the baseline for the purpose of measuring the breadth of the continental shelf and the exclusive economic zone and the issue of identifying base points for drawing an equidistance/median line for the purpose of delimiting the continental shelf and the exclusive economic zone between adjacent/opposite States are two different issues" (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 108, para. 137).

251. The Court notes the contradictory data put forward by the Applicant concerning the nature of Edinburgh Cay. Nautical Chart NGA 28130, annexed to the Applicant's written pleadings, indicates that Edinburgh Cay, based on charted data, is not an island. Nicaragua explains that a different chart (British Admiralty Chart 1218), which was part of Nicaragua's pleadings in the case concerning *Territorial and Maritime Dispute*, shows the presence of "several islands on Edinburgh Cay or Reef". In these circumstances, the Court considers that there are serious reasons to question the nature of Edinburgh Cay as an island for the purpose of Article 7, paragraph 1, of UNCLOS. Thus, significant questions arise as to its appropriateness as the location for a base point for the drawing of straight baselines under the same provision. The Court adopts the view that Nicaragua has not demonstrated the insular nature of this feature.

252. In respect of the existence of a fringe of islands, the Court notes that there are no specific rules regarding the minimum number of islands, although the phrase "fringe of islands" implies that there should not be too small a number of such islands relative to the length of the coast (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 103, para. 214). Given the uncertainty about which of the 95 features are islands, the Court is not satisfied, on the basis of the maps and figures submitted by the Parties, that the number of Nicaragua's islands relative to the length of the coast is sufficient to constitute "a fringe of islands" along Nicaragua's coast.

253. The maritime features shown on the maps may be divided into two groups on the basis of their geographic proximity: one group, located off the northernmost part of Nicaragua's mainland coast, extends from Edinburgh Cay to Ned Thomas Cay, including the Miskitos Cays; the second group, located off the central part of Nicaragua's mainland coast, extends from Man of War Cays to the Corn Islands, including the Tyra Cays and Pearl Point (Punta de Perlas).

254. The Parties have alluded in their pleadings to several factors they consider as relevant to determine whether a given group of islands amounts to "a fringe". The Court has equated in the past the term "fringe of islands" to a "cluster of islands" or an "island system" (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 103, para. 214). The arbitral tribunal in the proceedings between Eritrea and Yemen referred to "[a] tightly knit group of islands and islets, or 'carpet' of islands and islets" or to "an intricate system of islands, islets and reefs which guard this part of the coast" (*Second stage of the proceedings between Eritrea and Yemen (Maritime Delimitation), Award, 17 December 1999, Reports of International Arbitral Awards (RIAA)*, Vol. XXII, p. 369, para. 151). Also, it emerges from these considerations that a certain continuity must be observed in respect of the islands in question for them to form a "fringe of islands" within the meaning of Article 7, paragraph 1, of UNCLOS. This conclusion is reinforced by the ordinary meaning of the words "fringe of islands" in other authentic languages of UNCLOS, such as in French, which refers to "un chapelet d'îles", a term which implies a certain succession or continuity. In the Court's view, a "fringe" must enclose a set, or a cluster of islands which present an interconnected system with some consistency or continuity. In certain instances, a fringe of islands "guard[ing] [a] part of the coast" may have a masking effect on a large proportion of the coast from the sea, a criterion which has been used and discussed by the Parties in the present proceedings to demonstrate or refute the existence of a fringe of islands along the Nicaraguan coastline (*Second stage of the proceedings between Eritrea and Yemen (Maritime Delimitation), Award, 17 December 1999, RIAA*, Vol. XXII (2001), p. 369, para. 151).

255. In determining whether the features identified by the Applicant can be considered a "fringe of islands", the Court observes that customary international law, as reflected in Article 7, paragraph 1, of UNCLOS, requires this fringe to be located "along the coast" and in its "immediate vicinity". Read together with the additional requirements of Article 7, paragraph 3, according to which the drawing of straight baselines "must not depart to any appreciable extent from the general direction of the coast" and "the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters", the specific requirements of Article 7, paragraph 1, indicate that a "fringe of islands" must be sufficiently close to the mainland so as to warrant its consideration as the outer edge or extremity of that coast (*Fisheries (United Kingdom* v. *Norway), Judgment, I.C.J. Reports 1951*, p. 128). It is not sufficient that the concerned maritime features be part, in general terms, of the overall geographical configuration of the State. They need to be an integral part of its coastal configuration (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 103, para. 214; *Second stage of the proceedings between Eritrea and Yemen (Maritime Delimitation), Award, 17 December 1999, RIAA*, Vol. XXII (2001), p. 338, para. 14).

256. Bearing in mind these considerations, the Court is of the opinion that the Nicaraguan "islands" are not sufficiently close to each other to form a coherent "cluster" or a "chapelet" along the coast and are not sufficiently linked to the land domain to be considered as the outer edge of the coast. Nicaragua asserts that "there are numerous small cays between the mainland and the Corn Islands and that as a consequence the territorial seas of the two merge and overlap" in order to illustrate the relationship between the "islands" and the mainland. However, the Court notes that Nicaragua's straight baselines enclose large maritime areas where no maritime feature entitled to a territorial sea has been shown to exist. These areas are between Ned Thomas Cay and the Man of War Cays, between East of Great Tyra Cay and the Corn Islands, and from Corn Islands to the land boundary terminus with Costa Rica. The Court further notes that the features and islands located towards the south of Nicaragua's mainland coast — the Man of War and East of Great Tyra Cay and

the Little Corn and Great Corn Islands — appear to be significantly detached from the islands grouped in the north. Furthermore, a notable break in continuity of over 75 nautical miles can be observed between Ned Thomas Cay, on which Nicaragua has plotted base point 4, and Man of War Cays where base point 5 is located. Nicaragua concedes that the groups of islands along its coast are "separate".

257. Furthermore, the Court is not convinced that Nicaragua's islands "guard . . . part of the coast" in such a way that they have a masking effect on a large portion of the mainland coast (*Second stage of the proceedings between Eritrea and Yemen (Maritime Delimitation), Award, 17 December 1999, RIAA*, Vol. XXII (2001), p. 369, para. 151). The segments of Nicaragua's mainland coast facing the areas lying between Ned Thomas Cay and the Man of War Cays and south of the Corn Islands do not seem to be masked by islands. The Court notes that the Parties disagree about the approach to be adopted to assess the extent of the masking effect of the islands and propose different methods by way of different projections. Without adopting a view concerning the relevance of the projections suggested by the Parties in assessing the masking effect of islands for the purpose of Article 7, paragraph 1, of UNCLOS, the Court considers that, even if it were to accept Nicaragua's approach, the masking effect of the maritime features that the Applicant identifies as "islands" is not significant enough for them to be considered as masking a large proportion of the coast from the sea.

258. In light of the above findings, the Court cannot accept Nicaragua's contention that there exists a continuous fringe or an "intricate system of islands, islets and reefs which guard this part of the coast" of Nicaragua (*Second stage of the proceedings between Eritrea and Yemen (Maritime Delimitation), Award, 17 December 1999, RIAA*, Vol. XXII (2001), p. 369, para. 151). It follows that Nicaragua's straight baselines do not meet the requirements of customary international law reflected in Article 7, paragraph 1, of UNCLOS. Having reached this conclusion, the Court need not consider whether the Applicant's straight baselines meet the additional requirements reflected in Article 7, paragraph 3, of UNCLOS.

259. Nicaragua's own evidence establishes that the straight baselines convert into internal waters certain areas which otherwise would have been part of Nicaragua's territorial sea or exclusive economic zone and convert into territorial sea certain areas which would have been part of Nicaragua's exclusive economic zone. The establishment of Nicaragua's straight baselines limits the rights that Colombian vessels would have had in those areas. The availability of the right of innocent passage in areas landward of straight baselines, consistent with Article 8, paragraph 2, of UNCLOS, does not fully address the implications for Colombia of Nicaragua's straight baselines. The Court notes in particular that by converting certain areas of its exclusive economic zone into internal waters or into territorial sea, Nicaragua's straight baselines deny to Colombia the rights to which it is entitled in the exclusive economic zone, including the freedoms of navigation and overflight and of the laying of submarine cables and pipelines, as provided under customary international law as reflected in Article 58, paragraph 1, of UNCLOS.

260. For the reasons set out above, the Court concludes that the straight baselines established by Decree 33, as amended, do not conform with customary international law. The Court considers that a declaratory judgment to that effect is an appropriate remedy.

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261. For these reasons,

THE COURT,

(1) By ten votes to five,

Finds that its jurisdiction, based on Article XXXI of the Pact of Bogotá, to adjudicate upon the dispute regarding the alleged violations by the Republic of Colombia of the Republic of Nicaragua's rights in the maritime zones which the Court declared in its 2012 Judgment to appertain to the Republic of Nicaragua, covers the claims based on those events referred to by the Republic of Nicaragua that occurred after 27 November 2013, the date on which the Pact of Bogotá ceased to be in force for the Republic of Colombia;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa; *Judge* ad hoc Daudet;

AGAINST: *Judges* Abraham, Bennouna, Yusuf, Nolte; *Judge* ad hoc McRae;

(2) By ten votes to five,

Finds that, by interfering with fishing and marine scientific research activities of Nicaraguan-flagged or Nicaraguan-licensed vessels and with the operations of Nicaraguan naval vessels in the Republic of Nicaragua's exclusive economic zone and by purporting to enforce conservation measures in that zone, the Republic of Colombia has violated the Republic of Nicaragua's sovereign rights and jurisdiction in this maritime zone;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa; *Judge* ad hoc Daudet;

AGAINST: *Judges* Abraham, Bennouna, Yusuf, Nolte; *Judge* ad hoc McRae;

(3) By nine votes to six,

Finds that, by authorizing fishing activities in the Republic of Nicaragua's exclusive economic zone, the Republic of Colombia has violated the Republic of Nicaragua's sovereign rights and jurisdiction in this maritime zone;

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa; *Judge* ad hoc Daudet;

AGAINST: *Vice-President* Gevorgian; *Judges* Abraham, Bennouna, Yusuf, Nolte; *Judge* ad hoc McRae;

(4) By nine votes to six,

Finds that the Republic of Colombia must immediately cease the conduct referred to in points (2) and (3) above;

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa; *Judge* ad hoc Daudet;

AGAINST: *Vice-President* Gevorgian; *Judges* Abraham, Bennouna, Yusuf, Nolte; *Judge* ad hoc McRae;

(5) By thirteen votes to two,

Finds that the "integral contiguous zone" established by the Republic of Colombia by Presidential Decree 1946 of 9 September 2013, as amended by Decree 1119 of 17 June 2014, is not in conformity with customary international law, as set out in paragraphs 170 to 187 above;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte; *Judge* ad hoc Daudet;

AGAINST: *Judge* Abraham; *Judge* ad hoc McRae;

(6) By twelve votes to three,

Finds that the Republic of Colombia must, by means of its own choosing, bring into conformity with customary international law the provisions of Presidential Decree 1946 of 9 September 2013, as amended by Decree 1119 of 17 June 2014, in so far as they relate to maritime areas declared by the Court in its 2012 Judgment to appertain to the Republic of Nicaragua;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Bennouna, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte; *Judge* ad hoc Daudet;

AGAINST: *Judges* Abraham, Yusuf; *Judge* ad hoc McRae;

(7) By twelve votes to three,

Finds that the Republic of Nicaragua's straight baselines established by Decree No. 33-2013 of 19 August 2013, as amended by Decree No. 17-2018 of 10 October 2018, are not in conformity with customary international law;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Abraham, Yusuf, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte; *Judge* ad hoc Daudet;

AGAINST: *Judges* Bennouna, Xue; *Judge* ad hoc McRae;

(8) By fourteen votes to one,

Rejects all other submissions made by the Parties.

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte; *Judge* ad hoc Daudet;

AGAINST: *Judge* ad hoc McRae.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-first day of April, two thousand and twenty-two, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Nicaragua and the Government of the Republic of Colombia, respectively.

(Signed) Joan E. DONOGHUE,
President.

(Signed) Philippe GAUTIER,
Registrar.

Vice-President GEVORGIAN appends a declaration to the Judgment of the Court; Judge TOMKA appends a separate opinion to the Judgment of the Court; Judge ABRAHAM appends a dissenting opinion to the Judgment of the Court; Judge BENNOUNA appends a declaration to the Judgment of the Court; Judge YUSUF appends a separate opinion to the Judgment of the Court; Judge XUE appends a declaration to the Judgment of the Court; Judge ROBINSON appends a separate opinion to the Judgment of the Court; Judge IWASAWA appends a declaration to the Judgment of the Court; Judge NOLTE appends a dissenting opinion to the Judgment of the Court; Judge *ad hoc* MCRAE appends a dissenting opinion to the Judgment of the Court.

(Initialled) J.E.D.

(Initialled) Ph.G.