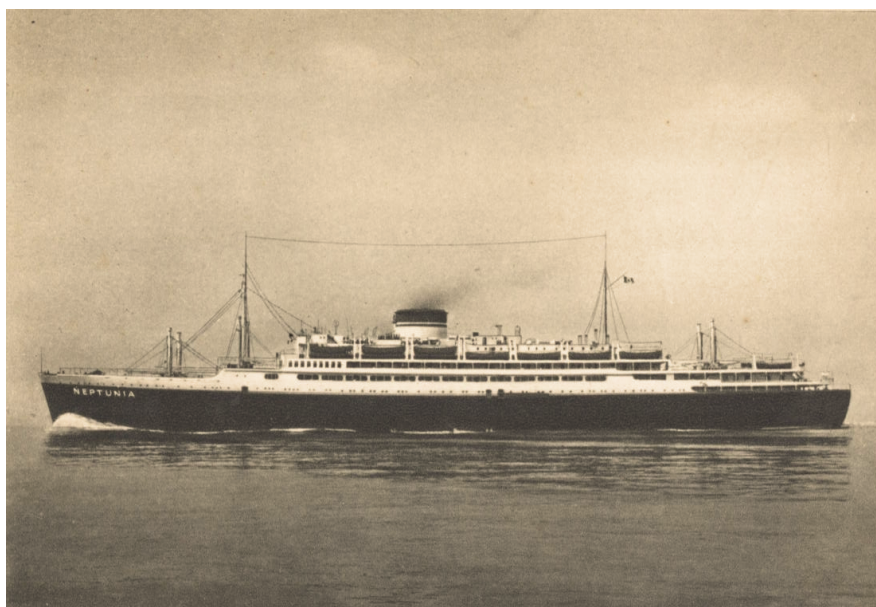


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## THE LAND AND MARITIME DELIMITATION OF THE COURT OF THE HAGUE IN THE AFFAIRS OF COSTA RICA V. NICARAGUA, IN LIGHT OF THEIR PROPOSALS (FEBRUARY 2, 2018)

Eric TREMOLADA ALVAREZ<sup>1</sup>

I.-INTRODUCTION. II.-THE PROCESS. III.-RELEVANT GEOGRAPHY. IV.-RELEVANT HISTORY. V.-THE LEGAL APPROACHES OF THE PARTIES. VI.-THE COURT'S PRONOUNCEMENTS.VII.-CONCLUSIONS.

**ABSTRACT:** Costa Rica and Nicaragua, that rarely reach direct agreements, had not delimited the maritime areas in the Caribbean Sea and the Pacific Ocean, nor the land boundary in the northern part of Isla Portillos. Thus, Costa Rica first initiated an action in the International Court of Justice in 2014 regarding the maritime issue, and later, in 2017, requested the definition of the land boundary of that area in Isla Portillos and that it be noted that Nicaragua had set up a new military camp on its beach.

This text – in view of the parties' proposals - will analyze the recent judgment of the Court in the joined procedures, studying the proceedings followed, the relevant geography and history, the theses of the Parties and the reasoning of the Court.

**KEY WORDS:** International Court of Justice, *res judicata*, territorial and maritime delimitation, methodologies to delimit territorial sea, exclusive economic zone and continental shelf.

### LA RECIENTE DELIMITACIÓN TERRESTRE Y MARÍTIMA DE LA CORTE DE LA HAYA (2 DE FEBRERO DE 2018) EN LOS ASUNTOS DE COSTA RICA CONTRA NICARAGUA A LA LUZ DE SUS PLANTEAMIENTOS

**RESUMEN:** Costa Rica y Nicaragua, que difícilmente llegan a arreglos directos, no habían delimitado los espacios marítimos en el mar Caribe y en el océano Pacífico, como tampoco el límite de tierra en la parte norte de Isla Portillos. Así, Costa Rica inició primero un procedimiento ante la Corte Internacional de Justicia en 2014 por el asunto marítimo, y más tarde, en 2017, solicitó la definición del límite terrestre de esa área de Isla Portillos y que se constate que Nicaragua había establecido un nuevo campamento militar en su playa.

Este escrito –a la luz de los planteamientos de las Partes– analizará la reciente sentencia de la Corte que resolvió unidos los dos procedimientos, estudiando el trámite seguido, la geografía e historia relevantes, las tesis de las Partes y el razonamiento de la Corte.

**PALABRAS CLAVES:** Corte Internacional de Justicia, cosa juzgada, delimitación territorial y marítima, metodologías para delimitar mar territorial, zona económica exclusiva y plataforma continental.

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## **L'ARRÊT DE LA COUR INTERNATIONALE DE JUSTICE DANS LES AFFAIRES DE DÉLIMITATION MARITIME ET TERRESTRE (COSTA RICA C. NICARAGUA), À LA LUMIÈRE DE LEURS PROPOSITIONS RESPECTIVES (2 FÉVRIER 2018)**

**RÉSUMÉ:** Le Costa Rica et le Nicaragua, qui difficilement arrivent à des accords directs, n'ont pas délimité les espaces maritimes de la mer des Caraïbes et de l'océan Pacifique, ni la frontière terrestre dans la partie nord d'Isla Portillos. Ainsi, le Costa Rica a d'abord engagé une procédure en matière maritime devant la Cour internationale de justice en 2014, puis en 2017, a demandé la définition de la frontière terrestre de cette zone d'Isla Portillos et qu'il soit établi que le Nicaragua avait établi un nouveau Camp militaire sur sa plage.

Ce document - à la lumière des approches des parties - analysera le récent arrêt de la Cour qui a résolu les deux procédures ensemble, étudiera la procédure suivie, la géographie et l'histoire pertinentes, les thèses des parties et le raisonnement de la Cour.

**MOT CLÉ:** Cour internationale de Justice, autorité de la chose jugée, délimitation territoriale et maritime, méthodes de délimitation de la mer territoriale, zone économique exclusive et plateau continental.

### **I. INTRODUCTION**

Direct agreements have never been the norm between Costa Rica and Nicaragua, which is why they have appeared before the International Court of Justice on six different occasions. Her lack of will to find solutions is transferred to the International Court of Justice as the principal judicial organ of the United Nations<sup>2</sup>. The first proceedings date back to 1986, when Nicaragua sued Costa Rica and Honduras, alleging various violations of international law, for which both States were internationally responsible, as they favored, from their own territory, certain military activities directed against the Nicaraguan authorities by the opposition. In 1992, the parties had reached an out-of-court agreement, so the Court issued an order registering the suspension of the proceedings and ordering the case be wiped from the general list<sup>3</sup>.

Costa Rica, in turn, sued Nicaragua in 2005, due to a dispute regarding shipping and related rights on a section of the San Juan river, whose southern

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<sup>2</sup> See: MARIÑO MENÉNDEZ, F., "Sobre la función de los tribunales internacionales y en particular del Tribunal Internacional de Justicia en el actual sistema jurídico internacional", *Las Naciones Unidas desde España. 70 aniversario de las Naciones Unidas. 60 aniversario del ingreso de España en las Naciones Unidas*, (X. Pons Rafols dir.), Asociación para las Naciones Unidas en España, Imprenta de la OID, Madrid, 2015, pp. 433-447; and Amr, M. S. M., *The Role of the International Court of Justice as the Principal Judicial Organ of the United Nations*, Kluwer, La Haya, 2003.

<sup>3</sup> International Court of Justice. Border and Transborder Armed Actions (Nicaragua v. Costa Rica). Overview of the Case. Available in: <<http://www.icj-cij.org/en/case/73>>.

bank forms the boundary limit between the two States in accordance with a bilateral treaty from 1858. In its request, Costa Rica stated that Nicaragua had imposed, since the 1990s, several restrictions on Costa Rican ships and their passengers sailing along the San Juan river, violating article VI of the 1858 Treaty. The Court, in 2009, concluded that Nicaragua was not acting in accordance with the obligations set out in the 1858 Treaty<sup>4</sup>, when they demanded that those travelling along the San Juan river aboard Costa Rican ships must have a visa or buy Nicaraguan tourist passes; or when they demanded that the shipping operators who exercised the right to free shipping in Costa Rica pay the price for exit certificates<sup>5</sup>.

In 2010, Costa Rica began new proceedings against Nicaragua, for supposed incursions and occupations by their army in Costa Rican territory, as well as for violating several international agreements<sup>6</sup>. Costa Rica stated that Nicaragua had occupied, on two different occasions, Costa Rican territory, through the construction of a channel along Costa Rican territory, from the San Juan river to the Los Portillos (or Harbor Head Lagoon), and by carrying out dredging works along this river. The Court, in 2015, determined that Costa Rica had sovereignty over the disputed territory in the northern part of Isla Portillos, and considered that the activities carried out by Nicaragua since 2010 in the disputed territory, including the excavation of three channels and the establishment of a military presence in parts of this territory, constituted a violation of Costa Rican territorial sovereignty, and that Nicaragua must therefore repair the damage caused by its illicit activities in Costa Rican territory. The sentence established that Nicaragua must compensate Costa Rica

<sup>4</sup> Instituto de Historia de Nicaragua y Centroamérica. (s.f.). *Tratado de Límites entre Nicaragua y Costa Rica: Jerez – Cañas – Negrete, 1858*. Obtenido de Memoria Centroamericana Ihnca. Disponible en: <[http://memoriacentroamericana.ihnca.edu.ni/uploads/media/Tratado\\_de\\_limites\\_entre\\_Nicaragua\\_y\\_Costa\\_Rica\\_Jerez.pdf](http://memoriacentroamericana.ihnca.edu.ni/uploads/media/Tratado_de_limites_entre_Nicaragua_y_Costa_Rica_Jerez.pdf)>.

<sup>5</sup> QUESADA Q, M. “Disputa fronteriza y valor geoestratégico del río San Juan: Nicaragua y Costa Rica”, *Cuadernos de Geografía: Revista Colombiana de Geografía*, v. 23, n. 2, p. 69-83, jul. 2014.

<sup>6</sup> CAMPOS, A.; OCONITRILLO, K. D.; PONS, L. & RIVERA, I. *El conflicto jurídico ambiental entre Costa Rica y Nicaragua, Relativo a determinadas actividades llegadas a cabo en la zona fronteriza en el año 2010*. Universidad de Costa Rica, December 2012. Retrieved from <[http://ijj.ucr.ac.cr/sites/default/files/documentos/t12-el\\_conflicto\\_jurídico\\_ambiental\\_entre\\_costa\\_rica\\_y\\_nicaragua.pdf](http://ijj.ucr.ac.cr/sites/default/files/documentos/t12-el_conflicto_jurídico_ambiental_entre_costa_rica_y_nicaragua.pdf)>.

for the material damage caused by its illegal activities<sup>7</sup>; and in the case that an agreement was not reached between the parties within the 12 following months, the Court would resolve the issue in later proceedings<sup>8</sup>.

In 2017, Costa Rica requested that the Court resolve the issue of the damages owed to them for Nicaragua's illicit activities. The Court resolved this issue on the 2<sup>nd</sup> of February 2018, establishing that the damage to the environment, and the consequential deterioration or loss of capacity of the environment to provide goods and services, was cause for compensation, and determined the sum for the restoration of the damaged surroundings, as well as the loss or deterioration of environmental goods and services, as 378,890.59 US dollars<sup>9</sup>.

In 2011, Nicaragua began proceedings against Costa Rica for violations of Nicaraguan sovereignty and great environmental damage in its territory. Nicaragua stated that Costa Rica was carrying out extensive road construction along the majority of the borderlands between the two countries, with serious environmental consequences. The Court, in 2013, in accordance with the principle of good administration of justice, and needing to economize on proceedings, considered it appropriate to link this case with the related issue of certain activities carried out by Nicaragua in the borderlands. In its sentence in 2015, the Court concluded that the construction of the road by Costa Rica led to the risk of sensitive trans-border damage; it therefore determined that Costa Rica had not fulfilled its obligation under general international law to carry out an environmental impact evaluation (EIE). The Court concluded

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<sup>7</sup> QUINTANA, J. J. "Cuestiones de procedimiento en los casos *Costa Rica c. Nicaragua* y *Nicaragua c. Costa Rica* ante la Corte Internacional de Justicia", *Anuario Colombiano de Derecho Internacional* (ACDI), 2017, 10, pp. 117-159.

<sup>8</sup> International Court of Justice. *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. *Reports* 2015.

<sup>9</sup> On 22<sup>nd</sup> March 2018, Nicaragua informed the Court Registry that on 8<sup>th</sup> March 2018, it had transferred the total amount of the compensation awarded, to Costa Rica. See: International Court of Justice. *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Compensation Owed by the Republic of Nicaragua to the Republic of Costa Rica* Judgment, I.C.J. *Reports* 2018.

that a declaration of illicit conduct regarding Costa Rica's violation of the obligation to carry out an EIE was an adequate measure of satisfaction<sup>10</sup>.

All of this led Costa Rica to seek the definitive definition of the border with Nicaragua: in maritime terms, regarding the Caribbean Sea and the Pacific Ocean; and on land, in the northern sector of Isla Portillos. Hence, this paper deals with two disputes that Costa Rica brought before the International Court of Justice against Nicaragua. The first one on February 25<sup>th</sup>, 2014, which referred to the establishment of single maritime limits between the two States in the Caribbean Sea and the Pacific Ocean, respectively. It sought to define the borders of all maritime areas that belonged to each of them, in accordance with applicable regulation and the principles of international law. The second proceeding was filed with the Court three years later, on January 16<sup>th</sup>, 2017, and was related to a dispute over the precise definition of the boundary of the area of Los Portillos - Harbor Head Lagoon, and the establishment of a new Nicaraguan military camp on the beaches of Isla Portillos.

The Court, taking into account the assertions made by Costa Rica in the case regarding the land border in the northern part of Isla Portillos, and considering the tight link between these claims and certain aspects of the dispute in the case regarding the maritime delimitation in the Caribbean Sea and Pacific Ocean, joined the two proceedings by an order on February 2<sup>nd</sup>, 2017.

## II. THE PROCESS

Costa Rica, having stated that diplomatic means had been exhausted to resolve their disputes over maritime boundaries with Nicaragua, requested that the Court determine the complete layout of a single maritime boundary between all maritime areas belonging to the two States. Thus, considering that its coasts generate rights superimposed on the areas on both sides of the isthmus, it initiated the proceeding before the Court on February 25<sup>th</sup>, 2014, requesting the maritime delimitation in the Caribbean Sea and the Pacific Ocean, based on international law.

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<sup>10</sup> International Court of Justice. *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. *Reports* 2015

On May 31<sup>st</sup>, 2016, in order to resolve the conflict, the Court requested an expert opinion to help establish pertinent factual issues. By order of June 16<sup>th</sup>, 2016, Eric Fouache and Francisco Gutiérrez were appointed as independent experts, whose task was to determine the state of the coast between the point suggested by Costa Rica and the point suggested by Nicaragua in their allegations, as the starting point of the maritime boundary in the Caribbean Sea.

On January 16<sup>th</sup>, 2017, Costa Rica filed another lawsuit against Nicaragua, to specify the definition of the boundary in the area of Los Portillos - Harbor Head Lagoon, and it was found that Nicaragua had established a new military camp on the beach of Isla Portillos.

Thus, in view of the assertions made by Costa Rica in the case concerning the land border in the northern part of Isla Portillos, and the close link between these claims and certain aspects of the dispute in the case concerning the maritime delimitation in the Caribbean Sea and the Pacific Ocean, the Court - as mentioned - joined the two procedures on February 2<sup>nd</sup>, 2017.

In the latter case, Costa Rica argued the jurisdiction of the Court, citing its statement on February 20<sup>th</sup>, 1973 and the statement made by Nicaragua on September 24<sup>th</sup>, 1929. Declarations that, based on the Statutes of the International Court of Justice and the Permanent Court of International Justice, mentioned the acceptance of compulsory jurisdiction. Costa Rica also noted that the Court has jurisdiction “in accordance with the provisions of Article 36, paragraph 1, of its Statute, by virtue of the application of the American Treaty on Settlement of Disputes in the Pacific (*“Tratado Americano de Solución de Controversias en el Pacífico”*) ... Article XXXI”.

The Court held hearings on the background of the joined cases from July 3<sup>rd</sup> to 13<sup>th</sup>, 2017, and issued a ruling for the two cases on February 2<sup>nd</sup>, 2018. Within this ruling, it determined the course of the single maritime borders between Costa Rica and Nicaragua in the Caribbean Sea and the Pacific Ocean<sup>11</sup>.

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<sup>11</sup> The Court decided that the maritime boundary between the two States in the Caribbean Sea would follow the course established in paragraphs 106 and 158 of the Judgment, and in the Pacific Ocean, it would follow the course set forth in paragraphs 175 and 201 of the same. See: International Court of Justice. 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). Judgment, I.C.J., 2 February, Reports 2018.

It was also made clear that Costa Rica has sovereignty over the entire northern part of Portillo Island, including its coastline to the point where the right bank of the San Juan River reaches the low-water line of the coast of the Caribbean Sea, with the exception of Harbor Head Lagoon and the sandbar that separates it from the Caribbean Sea; in these spaces, sovereignty belongs to Nicaragua<sup>12</sup>.

Finally, it found that Nicaragua had established and maintained a military camp in Costa Rican territory, thus violating the sovereignty of the Republic of Costa Rica and that, Nicaragua must therefore withdraw its military camp from that territory.

### III. RELEVANT GEOGRAPHY

Costa Rica and Nicaragua, located in Central America, share a land boundary that spans the Central American isthmus from the Caribbean Sea to the Pacific Ocean. To the north of that limit, we find Nicaragua and to the south of it, Costa Rica. Once contextualized the location of both, it is important to note that Costa Rica shares a border with Panama in the south and Nicaragua with Honduras in the north.

Isla Portillos, whose northern part was the subject of the dispute over land boundaries, is an approximate area of 17 square kilometers, which is bordered to the west by the San Juan River and to the north by the Caribbean Sea. At its northwestern end, there is a sandy beach of varying length, that diverts the final course of the San Juan River, displacing its mouth to the west. On the coast of Isla Portillos, approximately 3.6 kilometers east of the mouth of the San Juan River, there is a lagoon, called Laguna Los Portillos by Costa Rica and Laguna Harbor Head by Nicaragua. This lagoon is separated from the Caribbean Sea by a sand bank.

The Caribbean Sea is located in the western part of the Atlantic Ocean. This Sea is partially enclosed to the north and east by the Caribbean islands, and borders South and West with South and Central America, respectively. In the Caribbean, off the coast of Nicaragua, there are several islands and cays, of which the Corn Islands are the most prominent, located 26 nautical miles from its coast, and which have an area, respectively, of 9.6 square kilometers (Great Corn Island) and 3 square kilometers (Little Corn Island). The Corn

<sup>12</sup> This, within the limits defined in paragraph 73 of the Judgment. *Ibid.*



Islands have a population of close to 7,400 inhabitants. Other small features found off the Nicaraguan coast include Paxaro Bovo, the Palmenta Cays, Pearl Cays, Tyra Rock, Man of War Cays, Ned Thomas Cay, Miskitos Cays, Dead Cay and Edinburgh Reef. Costa Rica also has two small islands - Isla Pájaros and Isla Uvita - less than half a nautical mile from its coast, near the city of Limón.

On the Pacific side, the coast of Nicaragua is relatively straight and generally follows a northwest to southeast direction. The Costa Rican coast is more sinuous and includes the peninsulas of Santa Elena (near the land limit), Nicoya and Osa (International Court of Justice, 2018b).

In this section, it is important to mention the delimitations previously made. In the Caribbean Sea, Costa Rica concluded, on February 2<sup>nd</sup>, 1980, a treaty with Panama that delimited a maritime boundary; this treaty came into force on February 11<sup>th</sup>, 1982. This country also negotiated and signed a maritime delimitation treaty with Colombia in 1977, but it was never ratified.

In this same sea, the maritime borders of Nicaragua with Honduras - to the north - and Colombia - to the east - were established by Court judgments in 2007<sup>13</sup> and 2012<sup>14</sup>, respectively. Colombia and Panama also concluded a maritime delimitation treaty that established their boundary in the Caribbean Sea on November 20<sup>th</sup>, 1976, which came into force on November 30<sup>th</sup>, 1977<sup>15</sup>.

Regarding the Pacific Ocean, it should be noted that the aforementioned treaty signed by Costa Rica and Panama in 1980 also delimited its maritime border in this ocean. Nicaragua, in the Pacific, has not concluded any treaty that establishes a maritime boundary.

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<sup>13</sup> International Court of Justice. Case concerning Territorial and Maritime dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras). Judgment, I.C.J., 8 of October 2007, *Reports* 2007 (II).

<sup>14</sup> International Court of Justice. Territorial and Maritime Dispute (Nicaragua v. Colombia): Judgment, I.C.J., 19 November, *Reports* 2012 (II).

<sup>15</sup> Cfr. United Nations, *Treaty Series* (UNTS), vol. 1074, p. 221.

#### IV. RELEVANT HISTORY

The Court recalled that in the Costa Rican case against Nicaragua, regarding certain activities carried out by Nicaragua in the border area<sup>16</sup>, it had been established that the parties' disputes dated back to a historical context in the 1850s. After hostilities between the two States in 1857, the governments of Costa Rica and Nicaragua signed a Treaty of Limits on April 15<sup>th</sup>, 1858, that was ratified by Costa Rica on April 16<sup>th</sup>, 1858 and by Nicaragua on April 26<sup>th</sup>, 1858<sup>17</sup>.

The Treaty of 1858 fixed the course of the land border between Costa Rica and Nicaragua, from the Pacific Ocean to the Caribbean Sea<sup>18</sup>. According to Article II of the aforementioned Treaty, the boundary between the two States runs along the right (Costa Rica) shore of the San Juan River from a point three English miles below Castillo Viejo, a small town in Nicaragua, to the end of Punta de Castilla, at the mouth of the San Juan on the Caribbean coast<sup>19</sup>.

Nicaragua challenged the validity of the Treaty of 1858 on several occasions, hence both States signed another document on December 24<sup>th</sup>, 1886, by which they agreed to submit the validity of the 1858 Treaty to the President of the United States of America, Grover Cleveland, to arbitration. They also agreed that if it was determined that the 1858 Treaty were valid, President Cleveland should also decide "*on all other points of doubtful interpretation that either Party may find in the Treaty.*" Thus, on June 22<sup>nd</sup>, 1887, Nicaragua informed Costa Rica of 11 points of doubtful interpretation, which were then presented to President Cleveland for resolution. Cleveland's 1888 award confirmed, in paragraph 1, the validity of the Treaty of 1858 and determi-

<sup>16</sup> International Court of Justice. Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment, I.C.J. Reports 2015, page 665

<sup>17</sup> Cfr. United Nations, *Treaty Series* (UNTS), vol. 118, p. 439.

<sup>18</sup> TIJERINO, F. K. "Conflictos limítrofes y discurso nacionalista. La frontera Nicaragua-Costa Rica (1824-1858)", *Las fronteras del Istmo. Fronteras y sociedades entre el sur de México y América Central* (P. Bovin dir.), Centro de Estudios Mexicanos y Centroamericanos. México, 2005, pp. 97-107.

<sup>19</sup> International Court of Justice. 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). Judgment, I.C.J., 2 February, Reports 2018, paragraph 51.

ned, in paragraph 3, that the border between the two States on the Atlantic side began “at the end of Punta de Castilla in the mouth of the San Juan de Nicaragua River”<sup>20</sup>.

After the Cleveland Award, the Parties agreed on a Convention on border demarcation that they signed in San Salvador on March 27<sup>th</sup>, 1896<sup>21</sup>. In it, they established two national demarcation commissions, each composed of two members. Said agreement also stated that the commissions would include an engineer, appointed by the President of the United States of America, who “will have broad powers to decide any type of differences that may arise in the course of any operation and whose decision would be final”. As a consequence, the General of the United States, Edward Porter Alexander, was appointed and during the demarcation process, which began in 1897 and ended in 1900, he issued five awards.

In the first of these, from September 30<sup>th</sup>, 1897, General Alexander determined the initial segment of the land border near the Caribbean Sea, in light of the geomorphological changes that had taken place since 1858. He defined this segment as starting from “the extreme northwest that appears to be the mainland, on the east side of Harbor Head Lagoon” and then ran across the sandbar, from the Caribbean Sea to the waters of Harbor Head Lagoon. From there, he determined that the limit “would follow the water’s edge around the port until it reached the river by the first channel”. However, as the Court pointed out in the 2015 judgment, what the arbitrator considered to be the “first channel” was a branch of the San Juan River that then flowed into the Harbor Head Lagoon<sup>22</sup>.

Since the time of the Alexander’s awards and the work of the demarcation commissions, the northern part of Isla Portillos has undergone significant geomorphological changes. In 2010, a dispute arose between Costa Rica and Nicaragua, regarding certain activities carried out by Nicaragua in that area. In its 2015 judgment, the Court considered the impact of some of these changes on the issue of territorial sovereignty, declaring “that the

<sup>20</sup> Cfr. United Nations, *Treaty Series* (UNTS), vol. 118, p. 439, paragraph 52.

<sup>21</sup> Cfr. Naciones Unidas. *Informes de Laudos Arbitrales Internacionales*, RIAA, 2007, vol. XXVIII, p. 211.

<sup>22</sup> International Court of Justice. *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. *Reports* 2015, page 699, paragraph 73.

territory under Costa Rica's sovereignty extends to the right bank of the San Juan Inferior River up to its mouth in the Caribbean Sea"<sup>23</sup>. Thus, Costa Rica had sovereignty over an area of 3 km<sup>2</sup> in the northern part of Isla Portillos, although the Court pointed out in its description of this area that it does not specifically refer to the stretch of coastline bordering the Caribbean Sea that is between the Harbor Head Lagoon and the mouth of the San Juan river, which, according to both Parties, is Nicaraguan<sup>24</sup>. The land boundaries in this stretch of coast is one of the issues that was disputed between the Parties in the joined cases.

In relation to the maritime zones, the two Parties established, in May 1997, a Bilateral Subcommittee on Limits and Cartography to carry out preliminary technical studies on possible maritime delimitations in the Pacific Ocean and the Caribbean Sea. In 2002, the deputy foreign ministers of both countries instructed the Bilateral Subcommittee to begin negotiations. The Subcommittee held five meetings between 2002 and 2005. Several technical meetings were also held between the National Geographic Institute of Costa Rica and the Nicaraguan Institute of Territorial Studies, during the same period. After these initial meetings, negotiations on maritime delimitations between the two States stalled<sup>25</sup>. Sovereignty exacerbated, based on the state territory<sup>26</sup>.

## V. THE LEGAL APPROACHES OF THE PARTIES

The land border in the northern part of Isla Portillos poses questions of territorial sovereignty that had to be examined first due to its possible implications for maritime delimitation in the Caribbean. In this issue, the Parties express dissenting opinions on the interpretation of the 2015 judgment, and present contradictory allegations on certain issues related to sovereignty over the coast of the northern part of Isla Portillos.

<sup>23</sup> *Ibid.*, page 702, paragraph 92.

<sup>24</sup> *Ibid.*, pages 696-697, paragraphs 69-70 and page 740, paragraphs 229.

<sup>25</sup> International Court of Justice. 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). Judgment, I.C.J., 2 February, *Reports* 2018, paragraphs 53-56.

<sup>26</sup> BARBERIS, J., "El territorio del Estado", CEBDI, vol. IV, 2000, pp. 223-323.

According to Costa Rica's reading of that judgment, it was established that the beach of Isla Portillos belongs to Costa Rica, a decision that has the force of *res judicata*. For them, only the issue regarding the precise location of the boundary at each end of the Harbor Head Lagoon sand bar remained unsettled.

In Costa Rica's view, in accordance with Article II of the 1858 Treaty, the continental boundary extends along the right bank of the Lower San Juan River to its mouth in the Caribbean Sea and the land boundary is found on the right bank of the San Juan River at its mouth. Thus, and to their knowledge, the only Nicaraguan territory in the area of Isla Portillos is the enclave of the Los Portillos - Harbor Head lagoon and the sandbar that separates the lagoon from the Caribbean Sea<sup>27</sup>.

On the other hand, Nicaragua argued that the 2015 judgment did not set the limits of the territory in dispute, since the case of "certain activities" referred to the responsibility of the State for unlawful acts and did not refer to the delimitation. In that case, the Court was not required to adopt a position with regard to sovereignty over the relevant stretch of coastline or its precise limits, so in their opinion, the sovereignty over the beach of Isla Portillos had not been determined.

Regarding the Treaty of 1858 and subsequent Cleveland and Alexander's awards, Nicaragua understood that they described a fixed point in Punta de Castilla as being the point of departure of the border, and not at the mouth of the San Juan River. It emphasized that President Cleveland established the starting point of the land limit "at the end of Punta de Castilla at the mouth of the San Juan River of Nicaragua, since both existed on April 15<sup>th</sup>, 1858." A binding ruling for the Parties, which had made the starting point clear as an "immobile fixed point" whose location would not change after changes in river flow. Therefore, the first Alexander's award made "great efforts to find where Punta de Castilla was, because that was the fixed starting point for the border."

Nicaragua, in its Counter-Memorial, argued that the San Juan River channel, which emptied into Harbor Head Lagoon and marked the land boundary at the time of the first Alexander's award, continues to flow into the lagoon.

<sup>27</sup> International Court of Justice. *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)*. Judgment, I.C.J., 2 February, *Reports* 2018, paragraphs. 61 & 62.

Hence, it understood that the beach of Isla Portillos and the sandbar between the Harbor Head lagoon and the Caribbean Sea make up the remainder of the barrier that separated the lagoon from the Caribbean Sea, considering it as an independent element, separate from the continent.

Thus, in Nicaragua's view, the land boundary between the Parties began at the northeast corner of the sandbar that separates the Harbor Head lagoon from the Caribbean Sea, cuts through that sandbar and follows the water's edge around the lagoon until it joins the canal that connects the Harbor Head lagoon with San Juan Inferior. The border then follows the outline of Isla Portillos to lower San Juan. Consequently, it argued that the stretch of coastline between the Harbor Head Lagoon and the mouth of the San Juan River was under Nicaraguan sovereignty.

In spoken allegations, Nicaragua tried to reinforce its arguments with a certain tone of fatality, making the Court see that if it accepted the position of Costa Rica and decided that the coast was not under its sovereignty, "the entire structure, carefully created by the Treaty of 1858, and the awards would be dismantled" and the border would have to be revised.

Finally, in this regard, Nicaragua acknowledged in the hearings that in recent years, the channel that connected Harbor Head Lagoon with the San Juan River had "partially disappeared", and that as the rules of accretion and erosion do not apply to the current situation, consequently, "the limit should continue to be defined by the approximate location of the previous channel, so that the boundary that now separates the beach from the wetland behind it corresponds to the vegetation line"<sup>28</sup>.

In relation to the alleged violations of the sovereignty of Costa Rica, this country stated that, "in establishing and maintaining a new military camp on the beach of Isla Portillos, Nicaragua has violated the sovereignty and territorial integrity of Costa Rica" and, in addition, it violated the December 2015 judgment. Costa Rica was referring to a military camp that was placed in August 2016 "northwest of the lagoon's sand bank and installed on the beach of the northern part of Isla Portillos", and requested that the Court order that "Nicaragua must withdraw its military camp".

Nicaragua, on the other hand, stated, firstly, that the camp was located on the "sand bank that separates Laguna de la Cabeza del Puerto from the

<sup>28</sup> *Ibid.*, paragraphs 63-66.

Caribbean Sea”. Later, in its allegations, Nicaragua did not contest that the camp was on the beach outside the boundaries of the sandbar that separates the lagoon from the Caribbean Sea; however, it argued that “the entire coast belongs to Nicaragua.” The Nicaraguan defense argued that the Court, at that time, had not issued any decision with *res judicata* effect regarding the beach where the camp was located. As an alternative argument, Nicaragua argued that, even if the Court determined that the entire coastline is under Costa Rican sovereignty, the camp was still positioned on a part of the beach that belongs to Nicaragua, due to the presence of a water channel that runs behind the camp and connects with Harbor Head Lagoon<sup>29</sup>.

In the case, divergent opinions of the Parties regarding the starting point of the land boundary were evident, when they explained the starting point of the maritime delimitation in the Caribbean Sea. For Costa Rica, the maritime delimitation should begin at the mouth of the San Juan River; however, aware of the instability of the coast and, in particular, the characteristics near the point where the San Juan River flows into the Caribbean Sea, it suggested that the starting point of the maritime delimitation not be located at the western end of the mouth of the river where the sand accumulates, but on “the solid ground of Isla Portillos”<sup>30</sup>.

Nicaragua, on the other hand, maintained that, according to the Treaty of 1858 and the Cleveland’s award, the land border line began “at the end of Punta de Castilla at the mouth of the San Juan River in Nicaragua, since both existed on April 15<sup>th</sup>, 1858”, and that this point should be used for the maritime delimitation in the Caribbean, even if it had been submerged by the sea<sup>31</sup>.

Costa Rica maintained that, in terms of the enclave under the sovereignty of Nicaragua, a starting point could not be established for the maritime delimitation on the sandbank that separates the Harbor Head lagoon from the Caribbean Sea, due to the general characteristics of the sandbank and, in particular, its instability. Nicaragua addressed the issue of the starting points of the maritime delimitation related to the enclave only as an alternative, in the event that the Court did not accept its main argument that the starting

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<sup>29</sup> *Ibid.*, paragraphs 74-76.

<sup>30</sup> *Ibid.*, paragraphs 79-80.

<sup>31</sup> *Ibid.*, paragraph 81.

point of the maritime delimitation is the same point identified by General Alexander as the starting point for the land boundary<sup>32</sup>.

Costa Rica argued that the Court should first delimit the boundaries of the Parties in the territorial sea, and then -using another method- that of the exclusive economic zone and the continental shelf. It understood the delimitation of the territorial sea in accordance with Article 15 of the United Nations Convention on the Law of the Sea (UNCLOS) and the delimitation of the exclusive economic zone and the continental shelf under the parameters of Articles 74 and 83 of the same Convention.

Nicaragua, on the other hand, argued that Article 15 of the United Nations Convention on the Law of the Sea does not stipulate how delimitation should be effected, but only how States should act in the event of an agreement not being reached on delimitation. It also emphasized that there was no practical difference between the delimitation regime of the territorial sea and the regime applicable to the delimitation of the exclusive economic zone and the continental shelf, described respectively in Articles 15, 74 and 83 of the UNCLOS. In their opinion, “the approaches to the delimitation of the different maritime zones are convergent” and all the relevant provisions of the UNCLOS should be read together and in context.

Regardless of the above, the Parties - in accordance with the jurisprudence of the Court - agreed that, for the delimitation of the territorial sea, it was first necessary to establish the equidistance line. They then proceeded to discuss it by drawing a provisional equidistant line, and subsequently argue whether special circumstances existed that would justify the adjustment of the same<sup>33</sup>. The agreement of the parties on the solution criteria applied in the jurisprudence favors the resolution of the conflict<sup>34</sup>.

Both Costa Rica and Nicaragua requested that the Court draw a single delimitation line for their exclusive economic zones and continental shelves.

<sup>32</sup> *Ibid.*, paragraphs 87-88.

<sup>33</sup> *Ibid.*, paragraphs 91-94.

<sup>34</sup> See: LÓPEZ MARTÍN, A. G., “La labor de la Corte Internacional de Justicia en el arreglo de las controversias territoriales. Una aproximación a los criterios de solución aplicados en su jurisprudencia”, *El Derecho internacional en el mundo multipolar del siglo XXI. Obra Homenaje al profesor Luis Ignacio Sánchez Rodríguez* (S. Torres Bernárdez, J.C. Fernández Rozas, C. Fernández de Casadevante Romaní, J. Quel López, A.G. López Martín coords.), Iprolex, Madrid, 2013, pp. 513-533.



They also recognized the need to identify the relevant coasts that could generate projections that overlap between their coasts, but, as would be expected, they do so with different approaches. Nicaragua argued that a coastline segment can be considered relevant only if its frontal projection “overlaps with the projection to the sea from the coast of the other Party”. Costa Rica maintained that, with some exceptions, the relevant coasts are determined through the establishment of coasts that generate overlapping rights using radial projections<sup>35</sup>.

Although the Parties differed in their methods, they reached almost identical approaches with respect to the relevant coasts in the Caribbean Sea. Nicaragua maintained that “its relevant coast includes the coast up to Coconut Point”, while the entire Costa Rican coast was relevant. Costa Rica adopted the same position with respect to its own coast, but considered that “only the coast of Nicaragua that ends at or near Punta de Perlas is relevant”<sup>36</sup>.

However, depending on the configuration of the relevant coasts in the general geographical context, the relevant area may include certain maritime spaces and exclude others that are not related to the case in question<sup>37</sup>. Therefore, the concept of the relevant area or area should be taken into account as part of the maritime delimitation methodology<sup>38</sup>.

The Parties agree that the relevant area or zone should not include the spaces attributed to Colombia based on the 2012 judgment and those attributed to Panama by the 1980 bilateral treaty with Costa Rica<sup>39</sup>. In this sense, they were consistent with what the Court declared in the Territorial and Maritime Dispute of Nicaragua against Colombia:

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<sup>35</sup> International Court of Justice. 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). Judgment, I.C.J., 2 February, *Reports* 2018, paragraphs 107-109.

<sup>36</sup> *Ibid.*, paragraph 110.

<sup>37</sup> International Court of Justice. Territorial and Maritime Dispute (Nicaragua v. Colombia): Judgment, I.C.J., 19 November, *Reports* 2012 (II), paragraph 157.

<sup>38</sup> International Court of Justice. Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, I.C.J. *Reports* 2009, page 99, paragraph 110.

<sup>39</sup> International Court of Justice. 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). Judgment, I.C.J., 2 February, *Reports* 2018, paragraph 117).

The Court recalls that the relevant area cannot be extended beyond the area in which the rights of both Parties overlap. Consequently, if one of the Parties has no right in a particular area, either by an agreement with a third State or because that area is outside a judicially determined limit between that Party and a third State, that area cannot be treated as part of the relevant area for the present purposes<sup>40</sup>.

In the north, to determine the relevant area, Nicaragua argued that a line should be drawn perpendicular to the general direction of the coast, starting from Punta Coco, until it reaches the border with Colombia. Costa Rica, on the other hand, argued that the relevant zone should also include the waters that fall “within the radial projection of other parts of the coast that are relevant”.

In terms of the south, in order to define the relevant area, Costa Rica adopts a theoretical line that continues in the direction of its maritime boundary with Panama, as established in its 1980 bilateral treaty. Nicaragua’s position on the relevant zone is that it must be limited to the south by the lines drawn in the 1980 Treaty between Costa Rica and Panama and in the 1977 Treaty between Costa Rica and Colombia. However, it argued that if the Court adopted the position of Costa Rica on the 1977 Treaty and extended this area beyond the established limits, its limit would be the line established in the 1976 Treaty between Panama and Colombia<sup>41</sup>.

The Parties, aware that the Court would delimit the exclusive economic zone and the continental shelf according to its three-step methodology -as it did in the case of maritime delimitation in the Black Sea-, first drawing, provisionally, an equidistant line using the most appropriate base points on the relevant coasts; then considering whether there were relevant circumstances that could have justified an adjustment of the equidistance line drawn; and finally, evaluating the global equity of the border resulting from the first two stages, verifying if there is a marked disproportionality between the length of the relevant coasts and the maritime areas therein; - agree with regard to the selection of base points, except in two issues:

<sup>40</sup> International Court of Justice. Territorial and Maritime Dispute (Nicaragua v. Colombia): Judgment, I.C.J., 19 November, *Reports* 2012 (II), paragraph 163).

<sup>41</sup> International Court of Justice. 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). Judgment, I.C.J., 2 February, *Reports* 2018, paragraphs 118-119.

First, that Costa Rica, while acknowledging that in the territorial and maritime dispute between Nicaragua and Colombia, the Corn Islands had full effect on the delimitation, argued that in this case, the delimitation was different, because it referred to “the opposite coasts of opposite islands” and not adjacent coasts, thus opposing the placement of base points on them. Nicaragua, on the other hand, argued that, considering the proximity of Corn Islands to the continent, “to ignore them as base points” would have meant erasing an integral component of the coast of Nicaragua from the map, since these islands were capable of generating an exclusive economic zone and a continental shelf<sup>42</sup>.

Second, Costa Rica argued that the base points should not be located in the small insular features located along the coast, such as Paxaro Bovo and Palmenta Cays, and stressed that the islets, cays and rocks do not generate rights to an exclusive economic area or continental shelf. On the contrary, Nicaragua argued that these maritime features can provide baselines for the construction of the provisional equidistance line, because they are “fringe islands” that “form an integral part of the Nicaraguan coast”<sup>43</sup>.

Both Parties believed that an adjustment of the provisional equidistance line was necessary for the delimitation of the exclusive economic zone and the continental shelf, but supported their claim on different circumstances. Nicaragua argued that it would suffer a cutting effect caused by “the convex and northern-oriented nature of the coast of Costa Rica in Punta Castilla, immediately adjacent to the concave coast of Nicaragua”, hence the need to adjust the line to achieve an equitable result. Costa Rica contested Nicaragua’s argument, because the convexity and concavity invoked could not be characterized as “marked” and, although it was inevitable, it did not consider it unfair<sup>44</sup>.

With regard to the starting point of the maritime delimitation in the Pacific Ocean, Costa Rica and Nicaragua agreed that it was the midpoint of the closure line of Salinas Bay, and that the closure line was the one taken

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<sup>42</sup> *Ibid.*, paragraphs 138-139.

<sup>43</sup> *Ibid.*, paragraph 141.

<sup>44</sup> *Ibid.*, paragraphs 147-149.

between Punta Zacate, in Costa Rican territory, and Punta Arranca Barba, in Nicaraguan territory<sup>45</sup>.

However, in order to establish the mid-line in the territorial sea, Costa Rica selected a series of base points on some islets just off Punta Zacate and Punta Descartes, as well as two other points located on a protrusion towards the sea on the peninsula of Santa Elena, called Punta Blanca. Nicaragua argued that the configuration of the coast, in the vicinity of Salinas Bay, was a special circumstance that requires the Court to adjust the equidistance line in the territorial sea. It understood that the peninsula of Santa Elena had a distortion effect on the line of equidistance, since it began at the first turning point, controlled by the base points on Punta Blanca, which notably cuts Nicaraguan coastal projections in the territorial sea. Consequently, Nicaragua requested that the Court adjust the equidistance line by deducting the base points on the Santa Elena Peninsula that would cause the boundary to be diverted to the coast of Nicaragua<sup>46</sup>.

The Parties also disagreed as to whether the configuration of the coast constitutes a special circumstance in terms of Article 15 of the UNCLOS, which would justify an adjustment of the provisional middle line in the territorial sea. The problem is whether the location of base points on the Santa Elena Peninsula has a significant distorting effect on the provisional median line, which would result in a cut-off of the coastal projections of Nicaragua within the territorial sea<sup>47</sup>.

For the purpose of delimiting the maritime boundary for the exclusive economic zone and the continental shelf in the Pacific Ocean, and aware of the methodology established by the Court, each Party elaborated its arguments regarding the relevant coasts and the relevant area or zone. Costa Rica argued that the entire Nicaraguan coast, from Punta Arranca Barba to Punta Cosigüina, is relevant for the purposes of delimitation in the Pacific Ocean. It also argued that its own relevant coastline was divided into two parts. That which extended from Punta Zacate to Cabo Blanco in the Nicoya Peninsula, and from Punta Herradura to Punta Salsipuedes.

<sup>45</sup> *Ibid.*, paragraph 169.

<sup>46</sup> *Ibid.*, paragraphs 170-171.

<sup>47</sup> *Ibid.*, paragraph 174.

Nicaragua argued that its relevant coast in the Pacific Ocean goes from Punta La Flor in Salinas Bay, to Corinto Point. With regard to the relevant coast of Costa Rica, Nicaragua maintains that it includes only the coast from Punta Zacate in the Bay of Salinas to Punta Guiones in the Nicoya Peninsula<sup>48</sup>.

Regarding the relevant area, Costa Rica argued that maritime areas should be considered relevant for the purposes of delimitation only if both Parties have a potential right over them. Similarly, it argued that while the identification of the relevant area does not need to be exact, it identified the relevant area with the use of radial projections. In this case, a relevant area enclosed within a 200-nautical-mile radius envelope of arcs was produced, which identifies the area of potential rights superimposed between the Parties, and borders to the north on a straight line that begins at Punta Cosigüina and perpendicular to the direction of the Nicaraguan coast<sup>49</sup>.

Nicaragua agreed with Costa Rica that the relevant area is identified by reference to the areas in which the possible maritime rights of the Parties overlap. However, it argued that the relevant area should be identified through the use of frontal coastal projections. Consequently, Nicaragua suggests that the relevant area should be bounded by the 200 nautical mile limits of the exclusive economic zones of the Parties in the west, by a line perpendicular to the general direction of the Costa Rica coast between Cabo Velas and Punta Scripts and starting at Punta Guiones in the south, and by a line perpendicular to the general direction of the coast of Nicaragua starting from the point of Corinth in the north<sup>50</sup>.

To draw the provisional equidistance line in the exclusive economic zone and on the continental shelf, Costa Rica identified on its own coast a series of base points in the peninsula of Santa Elena, located in the characteristics named Punta Blanca and Punta Santa Elena. In addition, Costa Rica indicated a base point on the Nicoya Peninsula, located at Cabo Velas, which controls the provisional equidistance line, beginning at a point approximately 120 nautical miles from the Parties coast. On the coast of Nicaragua, Costa Rica identifies a series of base points in the vicinity of Punta Sucia, Punta Pie

<sup>48</sup> *Ibid.*, paragraphs 176-178.

<sup>49</sup> *Ibid.*, paragraph 182.

<sup>50</sup> *Ibid.*, paragraph 183.

del Gigante and Punta Masachapa. In this way, Costa Rica maintains that its provisional equidistant line and the provisional equidistant line in Nicaragua are not materially different<sup>51</sup>.

Nicaragua agreed that the base points selected by Costa Rica on the Nicaraguan coast faithfully reflect the macro-geography of the area. However, Nicaragua points out that, were it not for the existence of the Nicoya Peninsula, the provisional equidistance line would be essentially perpendicular to the general direction of the Parties' coast. However, the provisional equidistance line of Nicaragua did not differ from that suggested by Costa Rica<sup>52</sup>.

Costa Rica maintained that there is no relevant circumstance that could justify an adjustment of the provisional equidistance line in the Pacific Ocean. It argued that although the Santa Elena Peninsula and the Nicoya Peninsula are significant geographical features, they were not capable of producing an unequal effect by distorting the provisional equidistance line to the detriment of Nicaragua. Likewise, it argued that the disparity between the length of the relevant coasts of the Parties was not sufficiently marked to require the adjustment of the provisional equidistance line, and that there was no coastal concavity that unequally disrupted the coastal projections of Nicaragua<sup>53</sup>.

Conversely, Nicaragua argued that the provisional equidistance line in the Pacific Ocean produced a marked and unjustified cut of its coastal projections, since the direction of the coasts of the peninsula of Santa Elena and the Nicoya peninsula does not correspond to the general direction of the coast of Costa Rica. Nicaragua considered that the placement of base points in these characteristics led to a provisional equidistance line that deviated to the north, thus cutting its coastal projections and excessively distorting the provisional equidistance line if it were not adjusted. Hence, Nicaragua argued that an equitable solution with respect to the exclusive economic zone and the continental shelf could be achieved by giving effect to half of both the Santa Elena peninsula and the Nicoya peninsula<sup>54</sup>.

<sup>51</sup> *Ibid.*, paragraph 186.

<sup>52</sup> *Ibid.*, paragraph 187.

<sup>53</sup> *Ibid.*, paragraph 190.

<sup>54</sup> *Ibid.*, paragraph 191.

## VI. THE COURT'S PRONOUNCEMENTS

In the first place, the Court emphasized that “the principle of *res judicata*, as reflected in articles 59 and 60 of its Statute, is a general principle of law that protects, at the same time, the judicial function of a court or tribunal court and the Parties in a case that has resulted in a final judgment without appeal<sup>55</sup>.” However, for the *res judicata* to be applied in a specific case, the Court, as it pronounced in the cases of the delimitation of the continental shelf between Nicaragua and Colombia, beyond 200 nautical miles from the Nicaraguan coast<sup>56</sup>, and in the case concerning the application of the Convention for the Prevention and Punishment of the Crime of Genocide, “must determine whether the first claim has been definitively resolved yet”, since, if this has not actually been determined, neither expressly nor by necessary implication, no force of *res judicata* can be applied<sup>57</sup>.

Similarly, the Court recalls that the operative part of its 2015 judgment established that Costa Rica had sovereignty over the territory in dispute, as defined in paragraphs 69-70 of that Judgment<sup>58</sup>. The term “disputed territory” was described in those paragraphs as “the northern part of Isla Portillos, that is, the wetland area of about 3 square kilometers between the right bank of the disputed channel, the right bank of the San Juan River up to its mouth in the Caribbean Sea and the Harbor Head Lagoon”. However, the Court noted that the territory in dispute “does not refer specifically to the

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<sup>55</sup> TREMOLADA, E. “La cosa juzgada en las sentencias de la Corte Internacional de Justicia, en las disputas de Nicaragua contra Colombia y de Perú contra Chile”, *La arquitectura del ordenamiento internacional y su desarrollo en materia económica* (E. Tremolada editor), Universidad Externado de Colombia, Bogotá, 2015 pp. 83-102.

<sup>56</sup> Corte Internacional de Justicia. Cuestión de la delimitación de la plataforma continental entre Nicaragua y Colombia más allá de 200 millas náuticas de la costa nicaragüense (Nicaragua, Colombia), Excepciones preliminares, Sentencia, ICJ *Reports* 2016, pages 125-126, paragraphs 58-60.

<sup>57</sup> Corte Internacional de Justicia. Asunto relativo a la aplicación de la Convención para la Prevención y la Sanción del Delito de Genocidio (Bosnia y Herzegovina v. Serbia y Montenegro), Sentencia, ICJ *Reports* 2007 (I), page 95, paragraph 126.

<sup>58</sup> International Court of Justice. Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment, I.C.J. *Reports* 2015, pages 697 & 740, paragraphs 69 & 229.

stretch of coastline bordering the Caribbean Sea between the Harbor Head Lagoon, which both Parties consider to be Nicaraguan, and the mouth of the San Juan River”<sup>59</sup>.

The Court also recalled that the Parties on that occasion “did not address the issue of the precise location of the mouth of the river, nor did they provide detailed information on the coast. Neither of the Parties requested that the Court define the limit with greater precision with respect to this coast. As a consequence, the Court will abstain from doing so”<sup>60</sup>. Thus, making it clear that no decision had been made in its 2015 judgment on the question of sovereignty over the coast of the northern part of Portillo Island, since it had been expressly excluded, so it was not possible that the sovereignty issue regarding that part of the coast were *res judicata*.

Similarly, in its 2015 judgment, the Court interpreted that the Treaty of 1858 stipulated that “the territory under Costa Rica’s sovereignty extends to the right bank of the San Juan Inferior river until it reaches the Caribbean Sea”<sup>61</sup>. However, the absence of “detailed information”, which had been observed in the 2015 judgment, had left the geographical situation of the area in question unclear with respect to the configuration of the coast of Isla Portillos, in particular with respect to the existence of characteristics on the coast and the presence of a channel that separates the wetland from the coast.

Hence, the need for an evaluation carried out by the experts appointed by the Court and that was not contested by the Parties, dispelling any uncertainty about the current configuration of the coast and the existence of a channel that connects the San Juan River with the Lagoon Harbor Head. Experts stated, among other things, that there was no longer a water channel connecting the San Juan River with Harbor Head Lagoon. As there was no channel, there could be no limit running along it, dismissing Nicaragua’s claim that “the limit should continue to be defined by the approximate location of the previous channel”, since it ignored the fact that the channel in question, as it existed at the time of the Alexander awards, was to the north of the current beach and, as the experts pointed out, had been submerged by the sea, due to coastal recession. Therefore, the Court determined that Costa Rica has

<sup>59</sup> *Ibid.*, paragraph 70.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*, page 703 paragraph 92.



sovereignty over all of Portillos Island, up to the point where the river reaches the Caribbean Sea. It added that this and the 2015 trial showed that the starting point of the land limit was the point where the right bank of the San Juan River reaches the low-water line of the Caribbean coast. A point that is currently at the end of the sandy area that constitutes the right bank of the San Juan River at its mouth<sup>62</sup>.

However, as indicated in the 2015 trial, the Parties agreed that Nicaragua had sovereignty over Harbor Head Lagoon<sup>63</sup>, which is why Costa Rica requested that the Court determine the precise location of the land limit that separates both ends of the sandbank, and in doing so, also determine that the only Nicaraguan territory existing today in the area of Isla Portillos is limited to the Los Portillos - Harbor Head Lagoon enclave.

In relation to the sandbar that separates the lagoon from the Caribbean Sea, the experts established that although there are temporary channels in the barrier, it is above the water level, even at high tide. This expertise was not contested by the Parties and helped the Court to understand that the Parties agreed that both Harbor Head Lagoon and the sandbank that separates it from the Caribbean Sea are under the sovereignty of Nicaragua<sup>64</sup>.

On the alleged violations of Costa Rica's sovereignty, the Court noted that the experts have established that the edge of the northwestern end of the Harbor Head lagoon is located to the east of the site of the military camp. Thus, the Court concludes that the military camp was placed by Nicaragua on the beach near the sandbar, but not on it. The installation of the camp thus violated the territorial sovereignty of Costa Rica, hence its withdrawal. However, it was specified that Nicaragua did not breach the 2015 judgment because, as noted above, the limit with respect to the coast had not been defined on that occasion. Therefore, the Court considered that the declaration

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<sup>62</sup> International Court of Justice. 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). Judgment, I.C.J., 2 February, *Reports* 2018, paragraph 71

<sup>63</sup> International Court of Justice. Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment, I.C.J. *Reports* 2015, page 697, paragraph 70.

<sup>64</sup> International Court of Justice. 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). Judgment, I.C.J., 2 February, *Reports* 2018, paragraphs 72-73.

of a violation of the sovereignty of Costa Rica and the order addressed to Nicaragua to withdraw its camp from the territory constituted an adequate reparation<sup>65</sup>.

The Court recalled that the point of departure of the land boundary is normally used to determine the starting point of maritime delimitation. However, given that the point of departure of the land border in this case is currently at the end of the sandy area bordering the San Juan River where the river reaches the Caribbean Sea and -in accordance with the designated experts' indication- the great instability of the coastline in the area of the mouth of the San Juan River, prevented the identification in the sandbox of a fixed point that was suitable as a starting point for the maritime delimitation, the Court preferred to select a fixed point at sea and connect it to the starting point on the coast using a mobile line. Taking into account the fact that the phenomenon that characterizes the coast at the mouth of the San Juan River is the recession caused by the erosion of the sea, it was considered appropriate to place a fixed point in the sea at a distance of 2 nautical miles from the coast in the middle line<sup>66</sup>.

The Court, in accordance with the agreement of the Parties and its jurisprudence in matters of maritime delimitation and territorial issues between Qatar and Bahrain<sup>67</sup> and territorial and maritime dispute between Nicaragua and Honduras<sup>68</sup>, proceeded in two stages for the delimitation of the territorial sea. First, it established a provisional middle line; and second, it considered whether there were special circumstances that justified the adjustment of said line.

The Court constructed the provisional middle line to delimit the territorial sea only on the basis of points located on the natural coast, which may include points located on islands or rocks. The points used were landmarks

<sup>65</sup> *Ibid.*, paragraphs 77-78.

<sup>66</sup> *Ibid.*, paragraph 86.

<sup>67</sup> Corte Internacional de Justicia. Delimitación marítima y cuestiones territoriales entre Qatar y Bahrein (Qatar v. Bahrein), Fondo, Sentencia, ICJ *Reports* 2001, page 94, paragraph 176.

<sup>68</sup> International Court of Justice. Case concerning Territorial and Maritime dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras). Judgment, I.C.J., 8 of October 2007, *Reports* 2007 (II), page 740, paragraph 268.

located on solid ground and therefore have a relatively higher stability than the points placed on the sandy features.<sup>69</sup>

Regarding whether there were special circumstances that justified the adjustment of said line, the Court considered two special circumstances: first one, the high instability and narrowness of the sandy area near the mouth of the San Juan River, which constitutes a barrier between the Caribbean Sea and important territory belonging to Nicaragua, which did not allow it to select a base point in that part of the Costa Rican territory. For this reason, it opted for a fixed point at sea, in the middle line, connected by a mobile line to whichever point on the mainland of the Costa Rican coast that is closest to the mouth of the river. A point that, by the way, had been identified by the designated experts and recognized as the situation of the coast at that time<sup>70</sup>.

The second special circumstance considered by the Court for the delimitation of the territorial sea was the instability of the sandbar that separates the Harbor Head lagoon from the Caribbean Sea and its situation as a small enclave within the territory of Costa Rica. Reflecting on this, it concluded that if territorial waters were attributed to the enclave, they would be of little use for Nicaragua, while breaking the continuity of the territorial sea of Costa Rica. This consideration was decisive in the delimitation in the territorial sea, since it did not take into account any right that could result from the enclave<sup>71</sup>.

Regarding the delimitation of the exclusive economic zone and the continental shelf, the Court considered the entire continental coast of Costa Rica relevant - coinciding with the Parties - and the continental coast of Nicaragua to Punta Gorda in the north, where the coast shows a significant inflection. At the same time, it rejected the inclusion of the coasts of the Corn Islands and the Pearl Cays as relevant, because of the way in which the former are projected and the absence of evidence of human habitability with respect to the latter.

Thus, and given that the relevant coasts of Nicaragua and Costa Rica are not characterized by sinuosity, the length of the relevant coasts was measured

<sup>69</sup> International Court of Justice. 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). Judgment, I.C.J., 2 February, *Reports* 2018, paragraph 100.

<sup>70</sup> *Ibid.*, paragraph 104.

<sup>71</sup> *Ibid.*, paragraph 105.

on the basis of their natural configuration, resulting in a total length of the coasts of 228.8 km for Costa Rica and 465.8 km for Nicaragua, that is, a ratio of 1: 2.04 in favor of Nicaragua<sup>72</sup>.

In relation to the relevant areas or zones, the Court considered that, with the exception of the space allocated to Colombia in the 2012 judgment, the area where there are overlapping projections in the north includes all maritime space located at a distance of 200 nautical miles from the coast of Costa Rica. On the other hand, in the south, the situation was more complicated, due to the presence of claims from third States, regarding which the Court could not pronounce:

When the areas are included solely for the purpose of roughly identifying the overlapping rights of the Parties in the case, which may be considered to constitute the relevant area - and which will eventually participate in the final stage of tests of disproportionality -, the rights of third parties cannot be affected<sup>73</sup>.

As indicated in the territorial and maritime dispute of Nicaragua versus Colombia, the Judgment of the Court could only address the maritime boundary between the Parties, “without prejudice to any claim by a third State or any claim that any of the Parties may have against a third State”<sup>74</sup>. In other words, the ruling could refer to those claims, but could not determine whether they are well founded<sup>75</sup>.

Based on the above, the Court observed that the 1976 Treaty between Panama and Colombia involved third States and could not be considered relevant for the delimitation between the Parties. Similarly, with respect to the 1977 Treaty between Costa Rica and Colombia - not ratified - the Court specified that there was no evidence of a Costa Rican waiver of its maritime

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<sup>72</sup> *Ibid.*, paragraphs 111-114.

<sup>73</sup> Corte Internacional de Justicia. Delimitación marítima en el mar Negro (Rumania c. Ucrania). Sentencia, I.C.J. *Reports* 2009, page 100, paragraph 114.

<sup>74</sup> International Court of Justice. Territorial and Maritime Dispute (Nicaragua v. Colombia): Judgment, I.C.J., 19 November, *Reports* 2012 (II), paragraph 228.

<sup>75</sup> International Court of Justice. 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). Judgment, I.C.J., 2 February, *Reports* 2018, paragraphs 120-123.

rights, and if it had ever occurred, it would certainly not have intended to be effective with respect to a State other than Colombia<sup>76</sup>.

In order to define the single maritime boundary relative to the exclusive economic zone and the continental shelf, the Court was to “achieve an equitable solution” in accordance with Articles 74 and 83 of the UNCLOS. Once again, it used its established three-step methodology. It provisionally drew an equidistant line, using the most appropriate base points, then considered whether there were relevant circumstances that justified an adjustment of the equidistance line drawn, and finally evaluated the overall equity of the frontier resulting from the first two stages, verifying whether there was a marked disproportionality between the length of the relevant coasts and the maritime areas that were in them<sup>77</sup>.

This required a previous clarification from the Court, with respect to the most appropriate base points. The conclusion was that they could be placed in the Corn Islands, to construct a line of provisional equidistance, given that these islands have a significant number of inhabitants and maintain economic life, largely satisfying the requirements set forth in article 121 of the UNCLOS<sup>78</sup>.

*Palmenta Cays*, a group of marginal islands bordering the Nicaraguan coast, and *Paxaro Bovo*, a rock located 3 nautical miles off the south coast of Punta del Mono, were considered appropriate by the Court to place baselines in both features and construct the provisional equidistance line<sup>79</sup>. The Court reached this conclusion, recalling the relevance it also gave to a group of

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<sup>76</sup> *Ibid.*, paragraph 134.

<sup>77</sup> Corte Internacional de Justicia. Delimitación marítima en el mar Negro (Rumania c. Ucrania). Sentencia, I.C.J. *Reports* 2009, pages 101-103, paragraphs 115-122. International Court of Justice. (2012). Territorial and Maritime Dispute (Nicaragua v. Colombia): Judgment, I.C.J., 19 November, *Reports* 2012 (II), pages 695-696, paragraphs 190 -193. Corte Internacional de Justicia. (2014). Disputa marítima (Perú c. Chile), Sentencia, ICJ *Reports* 2014., page 65, paragraph 180.

<sup>78</sup> International Court of Justice. 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). Judgment, I.C.J., 2 February, *Reports* 2018, paragraph 140.

<sup>79</sup> *Ibid.*, paragraph 142.

marginal islands in the maritime delimitation in the Black Sea, where such formations could be assimilated to the coast<sup>80</sup>.

The Court, for the adjustment or displacement of the equidistance line, fundamentally considered the effect that should be given to the Corn Islands in the determination of the maritime boundary. It concluded that, although they have the right to generate an exclusive economic zone and a continental shelf, they are located at approximately 26 nautical miles from the continental coast and their impact on the provisional equidistance line is disproportionate to their limited size<sup>81</sup>. Thus, based on indications from the International Tribunal for the Law of the Sea in the delimitation of the maritime boundary in the Bay of Bengal:

The effect that will be given to an island in the delimitation of the maritime boundary in the exclusive economic zone and the continental shelf depends on the geographical realities and circumstances of each specific case. There is no general rule in this regard. Each case is unique and requires specific treatment; the ultimate goal is to reach a solution that is fair<sup>82</sup>.

It resolved that, given its limited size and significant distance from the continental coast, the Corn Islands would only enjoy half of the effect, producing an adjustment of the equidistance line in favor of Costa Rica<sup>83</sup>.

The Court dismissed Nicaragua's alleged combination of a convex coast of Costa Rica near Punta de Castilla and its own concave coast, since it had a limited effect on the border line, not being significant enough to justify an adjustment of the line. In the same way, the general concavity of the Costa

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<sup>80</sup> Corte Internacional de Justicia. Delimitación marítima en el mar Negro (Rumania c. Ucrania). Sentencia, I.C.J. *Reports* 2009, page 109, paragraph 149.

<sup>81</sup> QUINDIMIL, J. "Fronteras marítimas y tribunales internacionales: la delimitación marítima a la luz de la jurisprudencia del Tribunal Internacional del Derecho del Mar", *Gobernanza, cooperación internacional y valores democráticos comunes* (E. Tremolada editor), Universidad Externado de Colombia, Bogotá, 2019, pp. 105-123

<sup>82</sup> Tribunal Internacional para el Derecho del Mar. Delimitación de la frontera marítima en la bahía de Bengala (Bangladesh / Myanmar). Sentencia, ITLOS *Reports* 2012, page 86, paragraph 317.

<sup>83</sup> International Court of Justice. 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). Judgment, I.C.J., 2 February, *Reports* 2018, paragraphs 153-154.

Rican coast and its relations with Panama could not justify an adjustment of the equidistance line in its relations with Nicaragua<sup>84</sup>.

Finally, regarding the third stage, the Court had to verify whether there was a significant disproportionality. This aspect was linked to the Court's assessment that it should rule in terms of the general geography of the area: "this continues in each case to be a question of the Court's appreciation; it will rule in reference to the general geography of the area"<sup>85</sup>.

In addition, the Court - as evidenced by the issues of maritime delimitation in the Black Sea and the territorial and maritime dispute between Nicaragua and Colombia - has no intention of making precise calculations, bearing in mind that what it seeks is an equitable delimitation: "The calculations of the relevant area are not intended to be precise, but rather merely approximate and the purpose of delimitation is to achieve a delimitation that is equitable, not an equitable distribution of maritime areas"<sup>86</sup>.

Thus, the tendency of the Court is not to apply a principle of strict proportionality. The maritime delimitation is not designed to produce a correlation between the lengths of the relevant coasts of the Parties and their respective quotas of the relevant area. What the judges seek is to verify a significant disproportionality<sup>87</sup>. Hence, for this case and at this stage of delimitation, the Court endeavored to ensure that there is no disproportion so serious as to corrupt the result in such a way that it would become inequitable<sup>88</sup>.

Based on the above, the Court estimated the relevant area by dividing the maritime boundary of 73,968 square kilometers of Nicaragua among the 30,873 square kilometers of Costa Rica, resulting in a ratio of 1: 2.4 in favor of Nicaragua. It did not consider this relation of coastal lengths to show any

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<sup>84</sup> *Ibid.*, paragraphs 155-156.

<sup>85</sup> Corte Internacional de Justicia. Delimitación marítima en el mar Negro (Rumania c. Ucrania). Sentencia, I.C.J. *Reports* 2009, page 129, paragraph 213.

<sup>86</sup> *Ibid.*, paragraphs page 100, paragraph 111 and International Court of Justice. Territorial and Maritime Dispute (Nicaragua v. Colombia): Judgment, I.C.J., 19 November, *Reports* 2012 (II), paragraph 158.

<sup>87</sup> PASTOR RIDRUEJO, J. A., "El Derecho internacional del Mar y su evolución incesante" *La cooperación internacional en la ordenación de los mares y océanos* (J. PUEYO LOSA, J. JORGE URBINA coords.), Iustel, Madrid, 2008, pp. 25-40.

<sup>88</sup> Territorial and Maritime Dispute (Nicaragua v. Colombia): Judgment, I.C.J., 19 November, *Reports* 2012 (II), paragraphs 240-242.

“marked disproportion”. Thus, it resolved that the delimitation regarding the exclusive economic zone and the continental shelf between the Parties in the Caribbean Sea would follow the line of equidistance as it was adjusted, given that the result was not inequitable<sup>89</sup>.

As mentioned, and based on the agreement between the Parties, the Court determines that the maritime boundary between Costa Rica and Nicaragua in the Pacific Ocean will begin at the midpoint of the Salinas Bay closure line.

The Court, in accordance with its established jurisprudence, applied Article 15 of the UNCLOS, first drawing a provisional median line and then examining whether there were special circumstances that justified its adjustment. For the construction of the provisional middle line in the case of Costa Rica and Nicaragua, they selected the same base points, which are found in certain outstanding features on their coasts and saw no reason to move away from them. Therefore, for the purpose of tracing the provisional median line in the territorial sea, the Court located basic points on certain characteristics in the vicinity of Punta Zacate, Punta Descartes and Punta Blanca on the Costa Rican coast, and on certain features in the vicinity of Punta Arranca Barba, Punta La Flor, Frailes Rocks and Punta Sucia of the coast of Nicaragua<sup>90</sup>.

Meanwhile, as the Court had pointed out in the matters of maritime delimitation and territorial issues between Qatar and Bahrain, the continental shelf of the Libyan Arab Jamahiriya and Malta and that of the continental shelf of the North Sea “islets, rocks and coastal projections” may have a disproportionate effect on the midline. Such an effect may require an adjustment of the provisional midline in the territorial sea. However, in the vicinity of Salinas Bay, the Santa Elena peninsula cannot be considered a minor coastal projection that has a disproportionate effect on the boundary line. The coast of the peninsula of Santa Elena represents a large part of the Costa Rican coast in the area in which the Court has been requested to delimit the territorial sea. In addition, the adjustment proposed by Nicaragua in the territorial

<sup>89</sup> International Court of Justice. 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). Judgment, I.C.J., 2 February, *Reports* 2018, paragraphs 165-166.

<sup>90</sup> *Ibid.*, paragraph 172.



sea would push the boundary near the Costa Rican coast, which would significantly reduce Costa Rica's coastal projections within the territorial sea<sup>91</sup>.

Based on the above, the Court concluded that the territorial sea in the Pacific Ocean would be delimited between the Parties by means of a median line, beginning at the midpoint of the Salinas Bay closure line.

The Court recalled that to consider a coastline relevant for delimitation purposes, it must generate projections that overlap with the projections of the other party's coastline. Since in the Pacific Ocean, the coast of Costa Rica is characterized by a certain degree of sinuosity, while the coast of Nicaragua runs largely along a straight line, the Court considered it appropriate to identify the corresponding coasts of both Parties by means of straight lines and noted that the positions of the Parties do not differ significantly with respect to the identification of the relevant coast of Nicaragua. Thus, it considered that the entire Nicaraguan coast, from Punta Arranca Barba to Punta Cosigüina, generates potential maritime rights that overlap with those of Costa Rica. In the geographical circumstances of the present case, this conclusion does not change if the potential maritime rights are generated by the radial projection method or by the frontal projections method. The length of the relevant coast of Nicaragua, identified and measured, is 292.7 kilometres long<sup>92</sup>.

As the parties' arguments regarding Costa Rica's relevant coastline differed significantly, the Court considered that Costa Rica's coastline between Punta Guiones and Cabo Blanco, as well as between Punta Herradura and Punta Salsipuedes, generates potential overlapping maritime rights with those of the corresponding coast of Nicaragua. It also considered it was appropriate to include certain parts of the Costa Rican coast south of Punta Guiones within the relevant coast. It also observed that the coasts of the Gulf of

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<sup>91</sup> Corte Internacional de Justicia. Delimitación marítima y cuestiones territoriales entre Qatar y Bahrein (Qatar v. Bahrein), Fondo, Sentencia, ICJ *Reports* 200, page 114, paragraph 246. Corte Internacional de Justicia. Plataforma continental (Jamahiriya Árabe Libia / Malta), Sentencia, ICJ *Reports* 1985, page 48, paragraph 64. Corte Internacional de Justicia. Plataforma continental del mar del Norte (República Federal de Alemania / Dinamarca, República Federal de Alemania / Países Bajos), Sentencia, ICJ *Reports* 1969, page 36, paragraph 57.

<sup>92</sup> International Court of Justice. 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). Judgment, I.C.J., 2 February, *Reports* 2018, paragraphs 179-180.

Nicoya face one another and consider that they are not relevant for delimitation purposes. The Court concludes that the first segment of the relevant coast of Costa Rica runs along the straight lines that connect Punta Zacate, Punta Santa Elena, Cabo Velas, Punta Guiones and Cabo Blanco. The second segment of the relevant coast of Costa Rica extends along the straight lines that connect Punta Herradura, the Osa Peninsula, Punta Llorona and Punta Salsipuedes, resulting in a corresponding coast of Costa Rica, along straight lines, with a length of 416.4 kilometres<sup>93</sup>.

The Court recalled that the relevant area, whose identification is part of the established maritime delimitation methodology, includes the maritime spaces in which the potential rights generated by the Parties' coasts are superimposed. In the case, the Court considered that both the potential maritime rights generated by the north coast of Costa Rica, and the possible maritime rights generated by the southern coast of Costa Rica, overlap with the possible maritime rights generated by the corresponding coast of Nicaragua. Thus, the Court considered that the relevant zone borders the north with a line that begins at Punta Cosigüina and that is perpendicular to the straight line that approaches the general direction of the coast of Nicaragua. In the west and in the south, the relevant area is limited by the envelope of arcs that marks the boundaries of the area in which the potential maritime rights of the Parties overlap. It specified that the coast that extends from Cabo Blanco in the northeast to the Gulf of Nicoya and up to Punta Herradura does not generate potential maritime rights that overlap with those generated by the coast of Nicaragua. Therefore, the Court considers that the maritime area toward land, of the line between Cabo Blanco and Punta Herradura and that corresponds approximately to the waters of the Gulf of Nicoya is not part of the relevant area for the purposes of delimitation. The relevant area that it identified measures approximately 164,500 square kilometers<sup>94</sup>.

The Court agreed that the base points selected by the Parties are appropriate for drawing a provisional equidistant line in the Pacific Ocean. Thus, a provisional equidistance line for the exclusive economic zone and the conti-

<sup>93</sup> *Ibid.*, paragraph 181.

<sup>94</sup> *Ibid.*, paragraphs 184-185.

mental shelf will begin at the end of the border in the territorial sea, and from there will follow a series of geodesic lines joining the points<sup>95</sup>.

The Court emphasized that the arguments of the Parties regarding the adjustment of the provisional equidistance line related to two different issues: first, whether the existence of the Santa Elena peninsula results in an inequitable cut in the coastal projections of Nicaragua; second, if the existence of the Nicoya Peninsula similarly creates an inequitable cut of Nicaragua's coastal projections. Thus, it concludes that the Santa Elena peninsula is a protrusion that is close to the point of departure of the maritime border between the Parties and that as it had verified, the effect it produces within the territorial sea does not justify an adjustment of the provisional median line within the 12 nautical miles. However, it stated that the situation was different for the exclusive economic zone and the continental shelf, whose base points located on the Santa Elena peninsula controlled the course of the provisional equidistance line from the 12 nautical mile limit of the territorial sea to a point located approximately 120 nautical miles from the coasts of the Parties, considering that such base points have a disproportionate effect in the direction of the provisional equidistance line. The Court also considers that, beyond the territorial sea, the effect of the Santa Elena peninsula on the provisional equidistance line results in a significant cutoff of the coastal projections of Nicaragua; a court effect that was not equitable<sup>96</sup>.

For these reasons, the Court considered it appropriate to adjust the provisional equidistance line for the exclusive economic zone and the continental shelf, specifying - as it did in the territorial and maritime dispute of Nicaragua against Colombia - that any adjustment made to remedy an inequitable cut to Nicaragua's detriment should not create an inequitable cut to the detriment of Costa Rica (International Court of Justice, 2012, paragraph 216). As an appropriate method to achieve an equitable solution and to reduce the limit of coastal projections created by the presence of the Santa Elena Peninsula, it welcomed Nicaragua's argument giving half of its effect to that peninsula<sup>97</sup>.

Regarding the Nicoya peninsula - a large landmass, which corresponds to one seventh of the territory of Costa Rica, and a large population - , it is a

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<sup>95</sup> *Ibid.*, paragraphs 188-189.

<sup>96</sup> *Ibid.*, paragraphs 192-193.

<sup>97</sup> *Ibid.*, paragraph 194.

prominent part of the continent of Costa Rica, which the Court understood could not be given any less than a total effect, when delimiting the boundary in the exclusive economic zone and on the continental shelf<sup>98</sup>.

Finally, regarding the test of disproportionality, the Court reminded us that the corresponding coast of Costa Rica in the Pacific Ocean has a length of 416.4 kilometers and the corresponding coast of Nicaragua in the Pacific Ocean has a length of 292.7 kilometers. Thus, the two relevant coasts are in a ratio of 1: 1.42 in favor of Costa Rica. Additionally, the Court considered that the maritime boundary established between the Parties in the Pacific Ocean divides the relevant area in such a way that approximately 93,000 square kilometers of that area correspond to Costa Rica and 71,500 square kilometers of that area belongs to Nicaragua. The relation between the maritime areas found for the Parties is 1: 1.30 in favor of Costa Rica<sup>99</sup>.

## VII. CONCLUSIONS

This resolution - in principle - should be the epilogue to the multiple controversies that have arisen between Costa Rica and Nicaragua, which ends up clarifying any doubts that may have remained regarding territorial sovereignty and limits between them. However, good faith is a principle of international relations that is not always practiced. From a legal perspective, and in light of the proposals of the Parties, the statements of the International Court of Justice establish and ratify precedents in the matter of territorial and maritime disputes<sup>100</sup>, as follows:

First, regarding the application of *res judicata*, specifying - as it already had in the case of Nicaragua against Colombia over the extended continental shelf – that it must be determined whether in the first proceeding everything that was debated was definitively resolved, since, if this has not actually been determined, neither expressly nor by necessary implication, no force of *res judicata* can be applied.

<sup>98</sup> *Ibid.*, paragraphs 195-196.

<sup>99</sup> *Ibid.*, paragraph 202.

<sup>100</sup> Sobrino Heredia, J. M., “La mar, un escenario abierto”, *Mares y Océanos en un mundo en cambio: Tendencias jurídicas, actores y factores* (J. M. SOBRINO HEREDIA coord.), Tirant lo Blanch, Valencia, 2007, pp. 23-37.

Second, in relation to the violation of the Costa Rica's sovereignty by installing a Nicaraguan military camp, it was determined that this did exist, its withdrawal was ordered, but it was made clear that the 2015 judgment was not ignored, precisely because the limit with respect to the coast had not been defined (judged) on that occasion. Hence, the withdrawal order addressed to Nicaragua was to be considered an adequate reparation.

Third, the two-stage method for delimitation of the territorial sea was reiterated by establishing a provisional middle line and then verifying whether there were special circumstances that justified the adjustment of the aforementioned line, as had been established in the matters of maritime delimitation and issues between Qatar and Bahrain and in the territorial and maritime dispute between Nicaragua and Honduras.

Fourth, regarding the delimitation of the exclusive economic zone and the continental shelf, the Court recalls the need to identify the relevant coasts to determine the length and the resulting relationship between them. The Court also reiterated, in accordance with the provisions of the maritime delimitation issue in the Black Sea<sup>101</sup>, the need to establish the relevant areas or zones in order to approximately identify the overlapping rights of the Parties -which will be taken into account in the disproportionality test- and the rights of third parties that cannot be affected; the latter in accordance with that stated in the territorial and maritime dispute of Nicaragua v. Colombia in 2012.

Fifth, in order to define the single maritime boundary relative to the exclusive economic zone and the continental shelf, both in the Caribbean Sea and in the Pacific Ocean, the Court was to "achieve an equitable solution" in accordance with articles 74 and 83 of the UNCLOS, as had happened in the cases of the maritime delimitation in the Black Sea<sup>102</sup>, of the territorial and maritime dispute of Nicaragua v. Colombia<sup>103</sup> and in the maritime dispute of Peru v. Chile<sup>104</sup>. Thus, once again, the Court used the three-stage methodology: Provisionally drew an equidistant line using the most appropriate

<sup>101</sup> Corte Internacional de Justicia. Delimitación marítima en el mar Negro (Rumania c. Ucrania). Sentencia, I.C.J. *Reports* 2009.

<sup>102</sup> *Ibid.*

<sup>103</sup> International Court of Justice. Territorial and Maritime Dispute (Nicaragua v. Colombia): Judgment, I.C.J., 19 November, *Reports* 2012 (II).

<sup>104</sup> Corte Internacional de Justicia. Disputa marítima (Perú c. Chile), Sentencia, ICJ *Reports* 2014.

base points, considered if there were relevant circumstances that justified an adjustment of the equidistance line drawn and evaluated the overall equity of the resulting boundary of the first two stages, checking if there was a marked disproportionality between the length of the relevant coasts and the maritime areas that were in them.

Sixth, based on the ruling regarding the delimitation of the maritime boundary in the Bay of Bengal, issued by the International Tribunal for the Law of the Sea, the Court specified that the effect that an island would have on the delimitation of the maritime boundary in the exclusive economic zone and the continental shelf would depend on the geographical realities and the circumstances of the specific case. It made it clear that there is no general rule in this respect; each case is unique and requires specific treatment, since the final objective is to reach a fair solution.

Seventh and last, regarding the verification of the existence of a significant disproportionality, the Court - as it did in the cases of maritime delimitation in the Black Sea and the territorial and maritime dispute of Nicaragua v. Colombia in 2012 - makes it clear that it does not intend to make precise calculations, bearing in mind that what it seeks is an equitable delimitation. In other words, the maritime delimitation is not designed to produce a correlation between the relevant coast lengths of the Parties and their respective quotas of the relevant area; the Court's effort is focused on guaranteeing that there is not a disproportion so serious as to corrupt the result in such a way that it would become inequitable<sup>105</sup>.

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<sup>105</sup> TREMOLADA, E. "A Judgment under International Law: Nicaragua's dispute versus Colombia of 2012", *Desafíos del multilateralismo y de la Paz* (E. Tremolada editor), Universidad Externado de Colombia, Bogotá, 2017, pp. 157-177.

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Luis ROMERO BARTUMEUS

¿Sobrevivirá el Plan Mares al Plan Integral de Seguridad Marítima? La falta de doctrina estratégica española hacia el área del Estrecho de Gibraltar

### DOCUMENTATION

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Relación de Tratados, Acuerdos no Normativos, Memorandos de Entendimiento y Comunicados Conjuntos España-Marruecos, 2018-2019

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### TABLEAU D'ÉQUIVALENCE DES POSTES UNIVERSITAIRES

Tableau d'équivalence des postes Universitaires - Tabla de equivalencia de cargos académicos - Academic Ranks