

MARITIME DELIMITATION IN THE CARIBBEAN SEA AND THE PACIFIC OCEAN (COSTA RICA V. NICARAGUA)

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SUMMARY: I. *Introduction*. II. *Historical background*. III. *Jurisdiction*.
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I. INTRODUCTION

In 1986, the Dutch Rear Admiral and hydrographer —Wijnand Langeraar— indicated that there were 376 potential maritime boundaries in the world, from which approximately 285 were still awaiting delimitation.¹ He also calculated that the region mostly affected by a lack of (or one could say a necessity for) delimitating maritime boundaries was the Caribbean, with approximately 65 potential maritime boundaries to be delimited.² Langeraar also assumed that until the end of the 20th century, plenty of remaining maritime boundaries would be delimited as a result of political negotiations, bilateral and multilateral treaties, their signatures and ratifications.

In 2015, almost thirty years later, Tafsir Malick Ndiaye —a judge for the International Tribunal for the Law of the Sea— published an article where he noted that there were 420 potential maritime boundaries in the world, but only 200 existing maritime boundary agreements.³ Similar to Langera-

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¹ Langeraar, Wijnand, “Maritime delimitation: The equiratio method—a new approach”, *Maritime Policy*, Amsterdam, vol. 10, núm. 1, 1986, p. 3.

² *Idem*.

³ Malick Ndiaye, Tafsir, “The Judge, Maritime Delimitation and the Grey Areas”, *Indian Journal of International Law*, Heidelberg, vol. 55, núm. 4, 2015, p. 494.

ar, he underlined the necessity of future negotiations regarding the delimitation of maritime boundaries between interested parties.

Notwithstanding the tiny difference in the numbers provided by both authors (deriving mainly from political changes which occurred during the last 30 years), it can easily be concluded that delimitation of maritime boundaries between states is an undoubtedly challenging matter (reflected, *inter alia*, in the fact that there are still more than 200 maritime boundaries awaiting delineations). The importance of maritime entitlements for states, together with the complexity of maritime delimitations (which should achieve an “equitable solution”), is one of the main causes of various disputes between interested states. Thus, many are submitted before international courts and tribunals in order to find a final resolution.

In this article, the territorial dispute regarding maritime delimitation between two neighboring countries, spanning the Central American isthmus from the Caribbean Sea to the Pacific Ocean —Costa Rica and Nicaragua— will be analyzed. The full delimitation process (including the three-stage methodology currently applicable during delimitations) will be explained in this article based on the example of the dispute between Costa Rica and Nicaragua. The analysis will include a presentation of the parties’ arguments together with the Court’s considerations derived from the ICJ Judgment of 2nd February 2018 - Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (*Costa Rica v. Nicaragua*) and the Land boundary in the northern part of Isla Portillos (*Costa Rica v. Nicaragua*).

Due to the complexity of the dispute between Costa Rica and Nicaragua, which involves delimitation in two bodies of water (namely in the Pacific and Caribbean), both delimitations will be analyzed individually. Even though they involve the same countries, geographical circumstances have caused different problems on both sides of the isthmus. Therefore, initially the situation on the Pacific coast will be scrutinized (in Part A of the article), and afterwards in the Caribbean Sea (in Part B).

II. HISTORICAL BACKGROUND

The most accurate way to briefly summarize the relationship between Costa Rica and Nicaragua is to stipulate that they are “uneasy neighbors”. The roots of the various disputes between them (resulting in proceedings before the International Court of Justice), date back to 1986, when Nicaragua brought Costa Rica before the International Court of Justice (ICJ) regarding

border and trans-border armed actions.⁴ This proceeding constituted the first out of six disputes between Costa Rica and Nicaragua before the ICJ. The second was initiated by Costa Rica in 2005 regarding navigational and related rights.⁵ The third in 2010, filed also by Costa Rica, regarded certain activities carried out by Nicaragua in the border area. As a result, in 2011 Nicaragua filed a counter-claim in relation to construction of a road in Costa Rica along the San Juan River⁶ (thus, in 2013 both cases were consolidated by the Court and jointly proceeded).⁷

Nonetheless, disputes regarding not only land boundaries have arisen between these states. Due to their geographical location, the coasts of these two states generate overlapping entitlements to maritime areas in both the Caribbean Sea and the Pacific Ocean. Even though several diplomatic negotiations were undertaken in order to find a satisfactory solution for both states, an agreement has not been reached. Until the initiation of the Court proceeding, there was not a maritime delimitation between them on either side of the isthmus.⁸ As a result of this situation, Costa Rica filed a claim against Nicaragua, on 25th February 2014, regarding maritime delimitation in the Caribbean Sea and the Pacific Ocean⁹ and—in 2017— regarding the land boundary in the Northern part of Isla Portillos.¹⁰ Both cases were consolidated and jointly proceeded.¹¹ As evident, “*Costa Rica and Nicaragua know how to keep the International Court of Justice busy*”.¹²

⁴ ICJ, “Border and transborder Armed Actions (*Nicaragua v. Costa Rica*)”, Order of 19 August 1987, p. 182.

⁵ ICJ, “Dispute regarding Navigational and Related Rights (*Costa Rica v. Nicaragua*)”, Judgment, 13 July 2009, p. 213.

⁶ ICJ, “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*)”, Merits, Judgment, 16 December 2015, p. 665.

⁷ Joined by the Court Order of 17th April 2013.

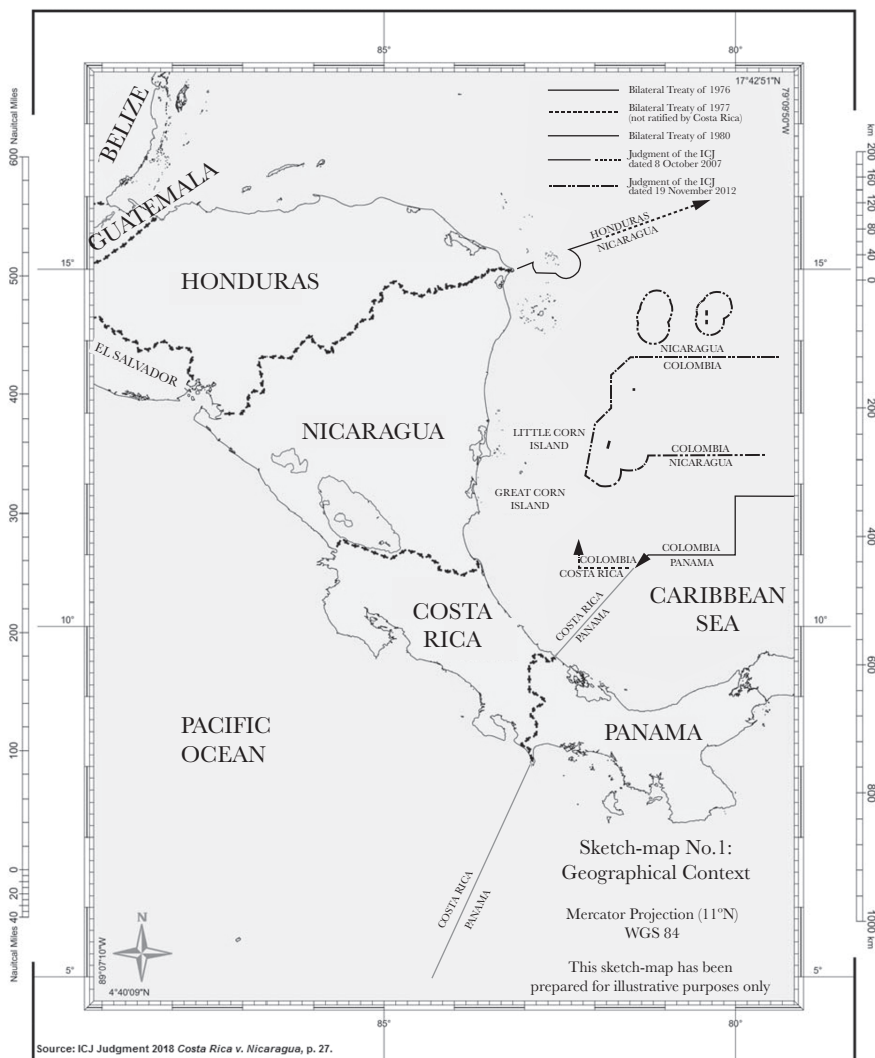
⁸ The Application Instituting Proceedings was filed in the Registry of the Court on 25th February 2014—ICJ, Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (*Costa Rica v. Nicaragua*), para. 6.

⁹ The Application Instituting Proceedings filed in the Registry of the Court on 25th February 2014.

¹⁰ The Case Dispute concerning the precise definition of the boundary in the area of Los Portillos / Harbor head lagoon and the establishment of a new military camp by Nicaragua (*Costa Rica v. Nicaragua*). The Application Instituting Proceedings filed in the Registry of the Court on 16th January 2017.

¹¹ Joined by the Court Order of 2nd February 2017.

¹² Available at: http://lawprofessors.typepad.com/international_law/2014/02/costa-rica-files-new-icj-case-against-nicaragua.html, last accessed 01/08/2018.



III. JURISDICTION

The International Court of Justice was competent in resolving the dispute between Costa Rica and Nicaragua¹³ (as will be duly explained), however,

¹³ ICJ, 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. Ni-*

the law applicable in the resolution of this dispute was found mainly (besides other grounds as, for example, deriving from the jurisprudence) in relevant provisions of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS). Therefore, at first glance, one would think that the International Tribunal for the Law of the Sea (ITLOS) in Hamburg, as an independent judicial body established by UNCLOS to adjudicate disputes arising out of the interpretation and application of the Convention,¹⁴ should have jurisdiction in cases regarding maritime delimitation. However, even though both countries did indeed ratify UNCLOS,¹⁵ they did not choose ITLOS as competent to resolve their current dispute. Moreover, regardless of the fact that both are party to UNCLOS, they also have not declared (pursuant to article 287 para. 1 of UNCLOS),¹⁶ which —out of four— alternative means for dispute settlement they have chosen.¹⁷

Notwithstanding, their dispute was brought before the International Court of Justice, composed of 15 elected judges,¹⁸ which delivered a fi-

caragua), Judgment of 2nd February 2018, para 46. Further: Judgment 2018 *Costa Rica v. Nicaragua*.

¹⁴ Stępień, Barbara, “Międzynarodowy Trybunał Prawa Morza w Hamburgu”, in Kuźniak, Brygida (ed.), *Sądy i trybunały oraz pozasądowe sposoby załatwiania sporów międzynarodowych – perspektywa polska*, Warsaw, C. H. Beck, 2015, p. 99.

¹⁵ Convention UNCLOS was ratified by Costa Rica on 21st September 1992 and by Nicaragua on 3rd May 2000, available at: http://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm, last accessed 14/11/2018).

¹⁶ Article 287 para. 1 of UNCLOS states that “When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention: (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI; (b) the International Court of Justice; (c) an arbitral tribunal constituted in accordance with Annex VII; (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein”.

¹⁷ This method is the Montreux formula, according to which state parties to the convention may choose the dispute settlement procedure, which then becomes obligatory. Stępień, Barbara, *op. cit.*, p. 100. See also: Anderson, David, *Modern Law*, Leiden, Brill, 2008, p. 508-511; Caminos, Hugo, “The Jurisdiction and Procedure of the International Tribunal for the Law of the Sea: An Overview” in van Dyke, Jon *et al* (eds.), *Governing Ocean Resources: New Challenges and Emerging Regimes: A Tribute to Judge Choon-Ho Park*, Leiden, Brill, 2013, p. 261.

¹⁸ The composition of the Court may vary depending on the case. It results from the fact that special circumstances may impede a judge from taking part in a proceeding as well as the fact that a judge(s) *ad hoc* may be chosen by a party. The Registrar of the International Court of Justice, *The International Court of Justice: Handbook*, The Hague, Triangle Bleu, 2013, p. 25.

nal, unappealable decision.¹⁹ This was possible by virtue of article 282 of UNCLOS,²⁰ which allows parties to agree in searching for a resolution to their disputes through the provisions of article 36, para. 2 of the Court's Statute.²¹ Moreover, the Court was also competent in resolving an analyzed dispute in accordance with the provisions of Article 36, para. 1, of its Statute,²² by virtue of the operation of the Article XXXI²³ of the American Treaty on Pacific Settlement of Disputes (the Pact of Bogota).²⁴

As it was agreed by both parties in their Memorial and Counter-Memorial, both accepted the general jurisdiction of the Court by virtue of their declarations²⁵ and, as a result, the International Court of Justice had juris-

¹⁹ Kuźniak, Brygida, "Prezentacja wybranych instytucji i konstrukcji prawnych", in Kuźniak, Brygida (ed.), *Sądy i trybunały oraz pozasądowe sposoby załatwiania sporów międzynarodowych—perspektywa polska*, Warsaw, C. H. Beck, 2015, p. 18.

²⁰ Article 282 of UNCLOS states that "If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this Part, unless the parties to the dispute otherwise agree".

²¹ Article 36 para. 2 of the Statute of the Court states that "The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: a. the interpretation of a treaty; b. any question of international law; c. the existence of any fact which, if established, would constitute a breach of an international obligation; d. the nature or extent of the reparation to be made for the breach of an international obligation".

²² Article 36 para. 1 of the Statute of the Court states that "The jurisdiction of the Court comprises all cases which the parties refer to and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force".

²³ Article XXXI of the Pact of Bogota states that "In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory ipso facto without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning: (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute the breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation".

²⁴ Both countries signed the Pact of Bogota on 04/30/48. Costa Rica ratified it on 04/27/49 and Nicaragua on 06/21/50, available at: <http://www.oas.org/juridico/spanish/firmas/a-42.html>, last accessed 01/11/2018). Additionally, both parties expressed their commitment to the Pact of Bogotá through article III of the Pact of Amity, signed in Washington on 21st February 1949.

²⁵ Both countries accepted the jurisdiction of the Court, by virtue of their declarations. Costa Rica recognized by its declaration of 20th February 1973 "as compulsory ipso facto

diction *ratione personae* over the analyzed dispute in accordance with the aforementioned provisions. Additionally, the ICJ's competence *ratione materiae* derived from the fact that "the subject of these proceedings were disputes of a juridical nature between Costa Rica and Nicaragua concerning a question of international law, namely the extent and limits of the respective maritime zones of the two States"²⁶ (which complies with article 36, para. 2, point b, of the Statute of the Court).

Even though, as explained above, legally speaking the choice of the International Court of Justice was fully justified, it raised questions regarding the standing of the Tribunal in Hamburg. Since its establishment in 1996 there have been only 2 cases regarding the delimitation of maritime boundaries submitted to ITLOS,²⁷ while in the same period, there have been another 10 cases pertaining to maritime delimitations submitted before the ICJ.²⁸ As this paper does not intend to delve into a comparative analysis between the International Court of Justice and the International Tribunal of

and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes of the kinds referred to in Article 36, paragraph 2, of the Statute of the International Court of Justice". Nicaragua accepted by its declaration of 24th September 1929 unconditionally the jurisdiction of the Court (with further reservation, which is not applicable in this case). Texts of declarations, available at: <http://www.icj-cij.org/en/declarations>, (last accessed 25/10/2018).

²⁶ Memorial of Costa Rica of 3rd February 2015, vol. I, para. 1.8.

²⁷ Dispute no. 23 concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (*Ghana v Côte d'Ivoire*), ITLOS Judgment of 23rd September 2017, and case no. 16 regarding the delimitation of the maritime boundary in the Bay of Bengal (*Bangladesh v. Myanmar*), Judgment, ITLOS Reports 2012, p. 4, available at: <https://www.itlos.org/en/cases/list-of-cases/>, last accessed 14/11/2018).

²⁸ This includes 3 pending cases before the ICJ pertaining to this topic such as: The Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (*Nicaragua v. Colombia*); Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (*Nicaragua v. Colombia*); Maritime Delimitation in the Indian Ocean (*Somalia v. Kenya*). And the following 7 closed cases: The conjoined Case of the 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 of 2nd February 2018; Maritime Dispute (Peru v. Chile), Judgment, I.C.J. Reports 2014, p. 3; Territorial and Maritime Dispute (*Nicaragua v. Colombia*), Judgment, I.C.J. Reports 2012, p. 624; Maritime Delimitation in the Black Sea (*Romania v. Ukraine*), Judgment, I.C.J. Reports 2009, p. 61; Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (*Nicaragua v. Honduras*), Judgment, I.C.J. Reports 2007, p. 659; Land and Maritime Boundary between Cameroon and Nigeria (*Cameroon v. Nigeria: Equatorial Guinea intervening*), Judgment, I.C.J. Reports 2002, p. 303; Maritime Delimitation and Territorial Questions between Qatar and Bahrain (*Qatar v Bahrain*), Merits, Judgment, I.C.J. Reports 2001, p. 40, available at: <http://www.icj-cij.org/en/list-of-all-cases>, last accessed 16/10/2018.

the Law of the Sea, this situation is only brought to the attention of the reader in order to highlight a certain level of distrust by states in relation to ITLOS. To elucidate the peculiarity of such a situation, one could compare the International Tribunal for the Law of the Sea, which should resolve disputes based on UNCLOS, to the European Court of Human Rights, which resolves disputes based on the European Convention of Human Rights.²⁹

IV. LITIS

On 25th February 2014, Costa Rica submitted to the Court an application instituting proceedings, requesting the Court “to determine the complete course of the single maritime boundaries [together with its precise geographical coordinates] between all the maritime areas appertaining, respectively, to Costa Rica and to Nicaragua in the Caribbean Sea and in the Pacific Ocean”.³⁰ In order to do this, Costa Rica asked the Court to apply “equitable principles and to take into account relevant circumstances, in order to achieve equitable solutions in accordance with international law”.³¹ In its Counter-memorial, Nicaragua agreed with the claim of Costa Rica regarding the subject and the scope of the Court’s proceeding.³²

PART A - DELIMITATION IN THE PACIFIC OCEAN

As previously mentioned, the dispute in the Pacific sector will be initially analyzed together with the arguments of the parties, the Court’s considerations and applicable methodology (starting with an explanation of the concept of: the relevant coast, baselines, relevant area, median / equidistance line³³ and the proportionality test). Consequently, the same methodology of analysis will be applicable regarding delimitation in the sector of the Caribbean Sea (in Part B of this article).

²⁹ Anderson, David, *Modern Law of the Sea: Selected Essays*, Leiden, Brill, 2008, p. 508.

³⁰ “Application instituting proceedings...”, *op. cit.*, para. 15.

³¹ Memorial of Costa Rica as of 3rd February 2015, vol. 1, para. 1.1.

³² Counter-Memorial of Nicaragua as of 8th December 2015, para. 1.5.

³³ Currently, both terms “equidistance line” and “median line” are used interchangeably and they will also be applied interchangeably in this article. Schofield, Clive, “One step forwards, two steps back? Progress and challenges in the delimitation of maritime boundaries since the drafting of the United Nations Convention on the Law of the Sea”, in Xue, Guifang and White, Ashley (eds.), *30 Years of UNCLOS (1982-2012): Progress and Prospects*, Wollongong, University of Wollongong, 2013, pp. 217-239.

1. *Relevant Coast*

One of the basic principles regarding maritime delimitation, which underpins the jurisprudence on this issue, is that the “land dominates the sea”³⁴ in such a way that seaward projections of the coast generate maritime claims.³⁵ Therefore, it is necessary to determine a relevant coast as the first step in the further delimitation of maritime entitlements of interested countries. One of the main court cases pertaining to this analyzed dispute is the ICJ Judgment in the case *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*.³⁶ In this judgment (recalled often by both parties in their Memorial and Counter-Memorial), the Court underlined the main characteristics of the coast, which were necessary to consider such a coast as relevant.

The ICJ stated that:

“the coast, in order to be considered as relevant for the purpose of the delimitation, must generate projections which overlap with projections from the coast of the other Party”.³⁷ However, according to the Court, “the submarine extension of any part of the coast of one Party which, because of its geographic situation, cannot overlap with the extension of the coast of the other, is to be excluded from further consideration by the Court”.³⁸

As states’ maritime projections are limited up to 200 nautical miles,³⁹ Costa Rica determined the relevant coast as being composed of two segments, interpreting the aforementioned jurisprudence, from Punta Zacate to Cabo Blanco and from Punta Herradura to Punta Salsipuedes on the Osa Peninsula (which is within 200 nautical miles of Nicaragua’s coast), and all of Nicaragua’s Pacific coast as it is within 200 nautical miles of Costa Rica’s coast.⁴⁰

³⁴ For more about this principle see Bing Bing, Jia, “The Principle of the Domination of the Land over the Sea: A Historical Perspective on the Adaptability of the Law of the Sea to New Challenges”, *German Yearbook of International Law*, Berlin, vol. 57, 2014, pp. 63-95.

³⁵ *North Sea Continental Shelf (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands)*, Judgment, I.C.J. Reports 1969, para. 96.

³⁶ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 61.

³⁷ *Ibidem*, para. 99.

³⁸ *Continental Shelf (Tunisia v Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, para. 75.

³⁹ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, para. 101.

⁴⁰ Memorial of Costa Rica..., *op. cit.*, para. 3.3.

Nicaragua agreed with Costa Rica's determination of its relevant coast from Punta Zacate, but only until Punta Guiones, indicating that the rest of the coast, in the south, indicated by Costa Rica, could not be considered relevant, as it did not generate seaward overlapping projections with the relevant coast of Nicaragua.⁴¹ Moreover, Nicaragua also disagreed with Costa Rica that all parts of Nicaragua's coast were relevant in terms of this case.⁴² According to Nicaragua, the only part of its coast that generated overlapping entitlements with Costa Rica's coast was located between Punta la Flor on the Bay of Salinas and a point to the north of the town of Corinto (so named the Corinto point).⁴³

As one can see, even though both parties in general agreed upon the applicable criteria, derived from the jurisprudence, for the determination of the relevant coast for further delimitations,⁴⁴ they did not reach an agreement regarding the factual situation and the issue of "overlapping projections".⁴⁵

2. *Baselines*

Determination of the relevant coast enables proceeding with the next step of the delimitation process, namely determination of the baseline. Currently, there are two common methods of measuring the relevant coasts of states utilized by international judicial bodies, notably straight-line approximations⁴⁶ (in the case of complex geographical configurations

⁴¹ Counter-Memorial of Nicaragua..., *op. cit.*, para. 2.21.

⁴² *Ibidem*, para. 2.20.

⁴³ *Ibidem*, para. 2.18.

⁴⁴ Memorial of Costa Rica..., *op. cit.*, para. 3.3-3.5.; Counter-Memorial of Nicaragua, *op. cit.*, para. 2.15 y 2.16.

⁴⁵ Memorial of Costa Rica..., *op. cit.*, para. 3.6-3.8; Counter-Memorial of Nicaragua..., *op. cit.*, para. 2.18-2.24.

⁴⁶ North Sea Continental Shelf (*Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands*), Judgment, I.C.J. Reports 1969, para. 98; Continental Shelf (*Tunisia v Libyan Arab Jamahiriya*), Judgment, I.C.J. Reports 1982, para. 131; Delimitation of the Maritime Boundary in the Gulf of Maine Area (*Canada v United States of America*), Judgment, I.C.J. Reports 1984, para. 221; Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau (*Guinea v Guinea-Bissau*), Award, 14th February 1985, XIX RIAA 149, para. 97; Continental Shelf (*Libyan Arab Jamahiriya v Malta*), Judgment, I.C.J. Reports 1985, para. 68; Delimitation of Maritime Areas between Canada and France (*St. Pierre and Miquelon*), Award (1992) 31 ILM 1145, para. 33; Maritime Delimitation in the Area between Greenland and Jan Mayen (*Greenland v Jan Mayen*), Judgment, I.C.J. Reports 1993, para. 61 and Sketch Map 2; ITLOS, Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (*Bangladesh v Myanmar*), Judgment, 14th March 2012,

—multiple straight-line segments⁴⁷) and —slightly less popular— measurement along the natural configuration of the coast. According to the International Court of Justice, the main advantage of the straight-lines approximations is the possibility of establishing a “necessary balance” between states with a straight and concave or convex coast. It also allows reduction of irregular coastlines to their “truer proportions”.⁴⁸ Additionally, such a solution enables “avoid[ing] difficulties caused by the sinuosity of the coast and to ensure consistency in measuring the respective coasts of the Parties”.⁴⁹

As a result of the above-mentioned jurisprudence, Costa Rica measured the relevant coasts of both states using both methods (however, as Nicaragua applied only the straight-line method, the length of natural configuration of coasts presented by Costa Rica will not be analyzed now as it is not possible to compare this data with Nicaragua’s). Thus, Costa Rica indicated the application of following straight-lines on Costa Rica’s coast, as follows: from Punta Zacate to Santa Elena, from Santa Elena to Cabo Velas, from Cabo Velas to Punta Guiones, from Punta Guiones to Cabo Blanco, from Punta Herradura to Punta Llorona and from Punta Llorona to Punta Salsipuedes.⁵⁰ The total length of Costa Rica’s relevant coast measured in such a way equaled 415 kilometres. As Costa Rica considered all Nicaragua’s coast as relevant, it indicated one long straight line along all Nicaragua’s coast, which gave 300 kilometres.⁵¹ Therefore, according to

paras. 201, 204 and Sketch Map 3; UNCLOS Annex VII Tribunal, Bay of Bengal Maritime Boundary Arbitration (*Bangladesh v India*), Award, 7 July 2014, para. 281. Memorial of Costa Rica, *op. cit.*, para. 3.9.

⁴⁷ Continental Shelf (*Tunisia v Libyan Arab Jamahiriya*), Judgment, I.C.J. Reports 1982, para.131; Delimitation of the Maritime Boundary in the Gulf of Maine Area (*Canada v United States of America*), Judgment, I.C.J. Reports 1984, para. 221; Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau, Award, 14th February 1985, XIX RIAA 149, para. 97; Delimitation of Maritime Areas between Canada and France (*St. Pierre and Miquelon*), Award (1992) 31 ILM 1145, para. 33; ITLOS, Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (*Bangladesh v Myanmar*), Judgment, 14th March 2012, paras. 201, 204, UNCLOS Annex VII Tribunal, Bay of Bengal Maritime Boundary Arbitration (*Bangladesh v India*), Award, 7th July 2014, para. 281. Memorial of Costa Rica..., *op. cit.*, para. 3.9.

⁴⁸ North Sea Continental Shelf (*Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands*), Judgment, I.C.J. Reports 1969, para. 98.

⁴⁹ ITLOS, Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (*Bangladesh v Myanmar*), Judgment, 14th March 2012, para. 204.

⁵⁰ Memorial of Costa Rica..., *op. cit.*, para. 3.9 y 3.10.

⁵¹ *Ibidem*, para. 3.9.

Costa Rica, the relevant coast ratio of both parties is 1:1.4 (in favor of Costa Rica).⁵²

As explained earlier, Nicaragua agreed only partially with the determination of the relevant coast by Costa Rica, and therefore —agreed also only partially with the straight lines drafted by Costa Rica (it accepted only 3 straight lines: Punta Zacate – Santa Elena, Santa Elena – Cabo Velas, Cabo Velas – Punta Guiones).⁵³ Costa Rica’s relevant coast measured along these three straight lines equaled 144 kilometers.⁵⁴

Regarding its own territory, Nicaragua considered only the straight lines between Punta la Flor (on the Bay of Salinas) and the Corinto point, which gave 238 km of straight-line measurements.⁵⁵ Thus, according to Nicaragua, the ratio between the relevant coasts of both states in the Pacific Ocean was 1:1.65 (in favor of Nicaragua).⁵⁶ The reason why the relevant coasts’ length ratio is important will be explained later in this article, together with the proportionality test.

After careful consideration of the arguments of both parties, the Court decided to apply the straight-line approximations to measure their relevant coasts.⁵⁷ Moreover, the Court noticed that the parties in general agreed regarding the coordinates and length of the relevant coast of Nicaragua and that Costa Rica’s coast was the one causing a substantial disagreement between them.

Therefore, the Court indicated that the entire coast of Nicaragua (starting from Punta Arranca Barba and finishing at Punta Cosigüina) generated potential maritime entitlements, which overlapped with Costa Rica’s claims. As a consequence, the length of Nicaragua’s relevant coast, measured in such a way, was 292.7 km.⁵⁸

In the context of Costa Rica’s relevant coast, the Court agreed that the relevant coast of Costa Rica was composed of two parts. Thus, the first part of its relevant coast was constructed by the following straight lines: from Punta Zacate to Punta Santa Elena, from Punta Santa Elena to Cabo Velas, from Cabo Velas to Punta Guiones and from Punta Guiones to Cabo Blanco. Meanwhile, the second part of the relevant coast ran along the straight

⁵² *Idem*.

⁵³ Counter-Memorial of Nicaragua..., *op. cit.*, para. 2.25.

⁵⁴ *Ibidem*, para. 2.26.

⁵⁵ *Ibidem*, para. 2.18.

⁵⁶ *Ibidem*, para. 2.26.

⁵⁷ Judgment 2018 *Costa Rica v. Nicaragua*, *op. cit.* para. 179.

⁵⁸ *Ibidem*, para. 180.

lines linking Punta Herradura, the Osa Peninsula, Punta Llorona and Punta Salsipuedes. As a result, Costa Rica's relevant coast was 416.4 km long.⁵⁹ Thus, the relevant coast ratio between the parties, indicated by the Court, was 1:1.42 (favoring Costa Rica).

3. *Relevant Area*

The delimitation of the relevant area enables determination of the proportion of claims between the engaged states (if the proposed delimitation does not result in a “significant”⁶⁰ or “gross”⁶¹ disproportion) and it helps to “make a broad assessment of the equitableness of the result”⁶² during the last —third— step in the delimitation process.⁶³ As the calculations of the relevant area are meant only to verify proportionality of claims (as explained later in the proportionality test) between states, they do not need to be precise and they can simply be an approximation.⁶⁴ Therefore, the size of the total relevant area in the Pacific Ocean was approximately 202,800 square kilometers,⁶⁵ according to Costa Rica, and almost half smaller - 102,770 square kilometers,⁶⁶ according to Nicaragua.

Analyzing the arguments of both parties, the Court decided that the relevant area was approximately 164,500 square kilometers⁶⁷ (which appears to be a middle ground between the sizes claimed by both parties).

4. *Starting point*

In order to proceed with further delimitation, it is necessary to choose a starting point for such a delimitation. Such a starting point is the geographi-

⁵⁹ *Ibidem*, para. 181.

⁶⁰ Maritime Dispute (*Peru v Chile*), Judgment, I.C.J. Reports 2014, para. 194.

⁶¹ *Barbados v The Republic of Trinidad and Tobago*, Award of The Arbitral Tribunal of 11th April 2006, para. 238.

⁶² Continental Shelf (*Libyan Arab Jamahiriya v Malta*), Judgment, I.C.J. Reports 1985, para. 75.

⁶³ Maritime Delimitation in the Black Sea (*Romania v. Ukraine*), Judgment, I.C.J. Reports 2009, para. 110.

⁶⁴ Territorial and Maritime Dispute (*Nicaragua v. Colombia*), Judgment, I.C.J. Reports 2012, para. 158.

⁶⁵ Memorial of Costa Rica, *op. cit.*, para. 3.12.

⁶⁶ Counter-Memorial of Nicaragua, *op. cit.*, para. 2.39.

⁶⁷ Judgment 2018 *Costa Rica v. Nicaragua*, *op. cit.*, para. 185.

cal point from which the median/equidistance line starts (one could stipulate this as separating the maritime entitlements between neighboring states). In this case, both Costa Rica and Nicaragua agreed that such a starting point in their case was located on the Salinas Bay (the precise location of the starting point should be the mid-point of the closing line across the Salinas Bay).⁶⁸ As both parties agreed upon the location of the starting point, the Court found such a solution acceptable.⁶⁹

5. *Equidistance line*

As accepted in the doctrine, and agreed by both parties, the maritime boundary of territorial sea (and further maritime entitlements) follows the median line from the starting point to the intersection of the outer limits of the territorial seas.⁷⁰

According to article 15 of UNCLOS, in the case when

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

Pursuant to another two articles of UNCLOS (article 74 and 83), which refer to the delimitation of the exclusive economic zone and continental shelf respectively, such a delimitation between states of adjacent coasts “shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution”.

What can be concluded from the aforementioned three articles of UNCLOS is that —even though they are differently constructed— all

⁶⁸ Memorial of Costa Rica, *op. cit.*, para. 3.13; Counter-Memorial of Nicaragua, *op. cit.*, para. 2.41.

⁶⁹ Judgment 2018 *Costa Rica v. Nicaragua*, *op. cit.*, para. 169.

⁷⁰ Gómez-Robledo Verduzco, Alonso, “Apuntes sobre delimitación en derecho internacional del mar”, *Anuario Mexicano de Derecho Internacional*, Mexico, vol. XVI, 2016, pp. 262-267.

of them require the application of an equidistance line (barring special circumstances).⁷¹

A. *Delimitation of the territorial sea*

In the context of the delimitation of the territorial sea, Costa Rica raised that none of the states had claimed a historical title to maritime areas beyond the Salinas Bay closing line and, furthermore, that there were also no special circumstances which would justify a different, as opposed to median line, territorial sea delimitation.⁷²

In this case, Nicaragua disagreed with Costa Rica's position regarding the delimitation of the median line and claimed that such a provisional equidistance line would produce "a marked and unjustified cut-off of Nicaragua's maritime projections that must be remedied if a truly equitable solution is to be achieved".⁷³ Moreover, Nicaragua claimed that, in contrast to Costa Rica's position, special circumstances influencing a different course of median line existed (namely the configuration of the coast in the vicinity of the Salinas Bay).

Consequently adjustment of the equidistance line would be deemed necessary.⁷⁴ Additionally, Nicaragua also did not share Costa Rica's view regarding the Santa Elena Peninsula, which —following the ICJ jurisprudence, Nicaragua described as— "a remote project of... [the] coast line... which if given full effect, would «distort the boundary and have disproportionate effects»".⁷⁵ According to Nicaragua, the Santa Elena Peninsula

...deflects the equidistance line significantly —approximately 45°— from the direction that it would follow if the effect of the basepoints on the Santa Elena peninsula is disregarded in order to draw a simplified equidistance line on the basis of the general direction of the coast, such as the ICJ has used in several cases.⁷⁶

⁷¹ Land and Maritime Boundary between Cameroon and Nigeria (*Cameroon v. Nigeria: Equatorial Guinea intervening*), Judgment, I.C.J. Reports 2002, para. 288.

⁷² Memorial of Costa Rica, *op. cit.*, para. 3.14.

⁷³ Counter-Memorial of Nicaragua, *op. cit.*, para. 2.63.

⁷⁴ *Ibidem*, para. 2.46.

⁷⁵ Maritime Delimitation and Territorial Questions between Qatar and Bahrain (*Qatar v. Bahrain*), Merits, Judgment, I.C.J. Report, 2001, para. 247.

⁷⁶ *Exempli Gratia*, Continental Shelf (*Tunisia v. Libyan Arab Jamahiriya*), Judgment, I.C.J. Reports 1982, para. 119, 122, 133 (B); Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984, para. 213; Territorial and Maritime Dispute

Therefore, the Court needed to analyze whether locating the base point on the Santa Elena Peninsula would distort the provisional median line causing a cut-off of Nicaragua's potential entitlements within the territorial sea.⁷⁷ During its analysis, the Court recalled the jurisprudence stating that the "islets, rocks and minor coastal projections" may cause a disproportionate effect on the equidistance line.⁷⁸ As a consequence, such a disproportionate effect may require the adjustment of the median line in the context of the territorial sea delimitation.

After careful consideration of the arguments, the Court decided that the Santa Elena Peninsula (located in the vicinity of the Salinas Bay) could not be qualified as a "minor coastal projection, which has a disproportionate effect on the delimitation line".⁷⁹ Agreeing with Nicaragua's arguments would cause a significant cut-off of Costa Rica's coastal projections within the territorial sea, which was not justified in the present case.⁸⁰

B. Delimitation of the exclusive economic zone and the continental shelf

In order to conduct the delimitation of the exclusive economic zone and the continental shelf it was necessary to analyze —once again— if the adjustment of the equidistance line was not required (this time "outside" the territorial sea).

Costa Rica, also in this case, sustained its position that there were no special circumstances justifying an adjustment of the median line. Whereas, Nicaragua, as previously, argued that the Santa Elena Peninsula and the Nicoya Peninsula "[do] not correspond to the general direction of the Costa Rica's coast"⁸¹ and —therefore— locating a base point regarding either of them would generate a distorting effect on the provisional equidistance line (unless it was adjusted). Therefore, Nicaragua's proposal was to give a half effect to both: the Santa Elena Peninsula and the Nicoya Peninsula.

between Nicaragua and Honduras in the Caribbean Sea (*Nicaragua v. Honduras*), Judgment, I.C.J. Reports 2007, paras. 294-296.

⁷⁷ Judgment 2018 *Costa Rica v. Nicaragua*, para. 174.

⁷⁸ Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Merits, Judgment, I.C.J. Reports 2001, p. 114, para. 246; Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985, p. 48, para. 64; North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969, p. 36, para. 57.

⁷⁹ Judgment 2018 *Costa Rica v. Nicaragua*, para. 174.

⁸⁰ *Idem*.

⁸¹ *Ibidem*, para. 192.

In this context, the Court pointed out that there were two separate questions to answer:⁸² 1) did the existence of the Santa Elena Peninsula generate an inequitable cut-off of Nicaragua's coastal projections, and 2) did the existence of the Nicoya Peninsula cause a similar situation?

Answering the first question, the Court pointed out that while it did not consider the Santa Elena Peninsula as affecting the equidistance line in the context of the delimitation of the territorial sea (within 12 nautical miles), it did however produce a disproportionate effect in terms of the direction of the provisional median line further: approximately 120 nautical miles away from the coast of the parties (as evident during the delimitation of the exclusive economic zone and the continental shelf).⁸³ Lack of an adjustment to the provisional equidistance line would result in a major cut-off of Nicaragua's potential maritime entitlements.

Regarding the second question, it was also recalled by the Court that the Nicolay Peninsula was "a large landmass, corresponding to approximately one seventh of Costa Rica's territory, and with a large population".⁸⁴ Therefore, the Nicolay Peninsula needed to be deemed as a substantial part of Costa Rica's coast and —as a result— its direction could not be considered "to depart from the general direction of Costa Rica's coast".⁸⁵

Concluding, the Court decided that it was necessary to adjust the median line by giving the half effect to the Santa Elena Peninsula, whereas such an adjustment was not required in the case of the Nicoya Peninsula.⁸⁶

6. *Final step – The Proportionality Test*

According to the doctrine and case law, in the final step of the delimitation process, the Court considers whether the delimitation line constructed by the application of the previous steps "does not, as it stands, lead to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State by reference to the delimitation line".⁸⁷

⁸² *Idem*.

⁸³ *Ibidem*, para. 193.

⁸⁴ *Ibidem*, para. 195.

⁸⁵ *Idem*.

⁸⁶ *Ibidem*, para. 198.

⁸⁷ Maritime Delimitation in the Black Sea (*Romania v. Ukraine*), Judgment, I.C.J. Reports 2009, para. 122.

In order to do so, the Court should conduct a proportionality test, meaning that the Court should compare the ratio (a relationship, proportion) of a relevant coast's lengths and the ratio of the areas allocated to both states as a result of the construction of the equidistance line (and the delimitation of maritime boundary between parties).

However, as was indicated by the ICJ in the case *Nicaragua v. Colombia*, the purpose of this exercise "is not to attempt to achieve even an approximate correlation between the ratio of the lengths of the Parties' relevant coasts and the ratio of their respective shares of the relevant area. It is, rather to ensure that there is not a disproportion so gross as to 'taint' the result and render it inequitable".⁸⁸

Nicaragua raised that a mechanical adherence to strict equidistance in the territorial sea would create "a patent inequity in the territorial sea delimitation and is also an obstacle to the establishment of a line that achieves an equitable solution for the delimitation of the exclusive economic zone and continental shelf, seawards of the 12-mile territorial sea limit".⁸⁹ Therefore, Nicaragua proposed that: "an adjustment southwards in the deflected «outer» part of the strict equidistance line, west of the Punta Blanca turning point, would take due account of these circumstances and enable the achievement of an equitable result within the territorial sea and beyond".⁹⁰ In Nicaragua's view, recognition of the existence of special circumstances would allow the achievement of an equitable result.

Moreover, what was a considerable concern for Nicaragua was Costa Rica's Nicoya Peninsula, which according to Nicaragua, distorted the course of the provisional equidistance line proposed by Costa Rica and —as a result— cut Nicaragua off from its maritime projections. Nicaragua argued for abatement of the effect produced by the Nicoya Peninsula which, according to the ICJ's jurisprudence, could be interpreted as an effect of "special feature from which an unjustifiable difference of treatment could result".⁹¹ Therefore, Nicaragua proposed to give a "half effect" to the Nicoya Peninsula and design a line which would be midway between Costa Rica's proposed equidistance line and a line which would eliminate the distorting effect of the Nicoya Peninsula.⁹² Such conduct would enable achievement of an equitable result.

⁸⁸ Territorial and Maritime Dispute (*Nicaragua v. Colombia*), Judgment, I.C.J. Reports 2012, para. 242.

⁸⁹ Counter-Memorial of Nicaragua, *op. cit.*, para. 2.49.

⁹⁰ *Ibidem*, para. 2.50.

⁹¹ North Sea Continental Shelf (*Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands*), Judgment, I.C.J. Reports 1969, para. 91.

⁹² Counter-Memorial of Nicaragua", *op. cit.*, para. 2.73.

Additionally, Nicaragua claimed (supported by many technical-geographical arguments)⁹³ that Costa Rica's provisional equidistance line was inconsistent with the dominant geographic realities of the case in hand. However, as already mentioned in this article, these kinds of arguments particularly need to be assessed by field experts, not lawyers.

Lastly, both parties claimed that the solutions proposed by them would not cause any disproportionate result. Therefore, the proportions of ratios between their respective coastal lengths and the apportionment of areas that would be allocated to them were presented.

According to Costa Rica, the provisional equidistance line divided the relevant area (specifically 202,800 square kilometers) between parties allocating 130,700 square kilometers to Costa Rica and 72,100 square kilometers to Nicaragua. This gave a relevant area ratio of 1:1.8 (favoring Costa Rica).⁹⁴ Therefore, if the relevant coasts' length ratio was 1:1.4 (favoring Costa Rica), the proportion between relevant coasts and the relevant area allocated to the parties provides an equitable result.

However, pursuant to Nicaragua's view, the half-effect line would result in dividing the relevant area (*i. e.* 102,770 square kilometers) in such a way that 66,840 square kilometers would be allocated to Nicaragua and 35,930 square kilometers to Costa Rica. In such a scenario, the ratio of allocated areas would be 1.86 (Nicaragua) to 1 (Costa Rica).⁹⁵ Thus, if the relevant coasts' length ratio was 1.65 (Nicaragua) to 1 (Costa Rica), the application of the half-effect equidistance line would allow achievement of an equitable solution (without the creation of a significant disproportion).

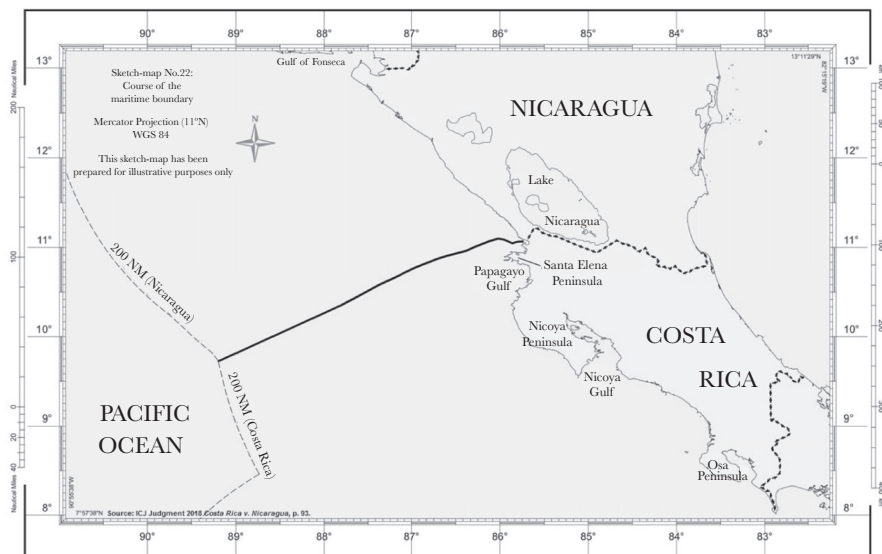
According to the Court, the length of Costa Rica's relevant coast was 416.4 km long, while Nicaragua's relevant coast was 292.7 km long (as previously explained). Thus, the relevant coast ratio was 1:1.42 (favoring Costa Rica).⁹⁶ Moreover, the Court determined the size of the relevant area to be approximately 164,500 square kilometers. Consequently, division of the relevant area between both parties along the equidistance line (which constitutes the maritime boundary between them) established by the Court resulted in granting 93,000 square kilometers to Costa Rica and 71,500 square kilometers to Nicaragua. Hence, the ratio of the relevant areas divided was 1:1.30 (favoring Costa Rica).

⁹³ *Ibidem*, para. 2.56–2.61.

⁹⁴ Memorial of Costa Rica, *op. cit.*, para. 3. 24.

⁹⁵ Counter-Memorial of Nicaragua, *op. cit.*, para. 2.78.

⁹⁶ Judgment 2018, *Costa Rica v. Nicaragua*, *op. cit.*, para. 203.



Therefore, comparing the ratio of the relevant coast with the ratio of the relevant area, the Court concluded that the delimitation of the exclusive economic zone and the continental shelf between parties as conducted by the Court did not produce a significant disproportion and the delimitation of the maritime boundary achieved an equitable result.⁹⁷

PART B - DELIMITATION IN THE CARIBBEAN SEA

Nicaragua and Costa Rica are located in the western half of the Caribbean Sea; whose total area covers more than 2,600,000 km². The size and oval shape of the Caribbean Sea creates a number of overlapping maritime claims between many countries of the region such as Nicaragua, Honduras, Jamaica, Colombia, Panama, Costa Rica and others.⁹⁸ The myriad of state actors on the Caribbean arena have resulted in several court proceedings (involving Costa Rica and Nicaragua) regarding maritime territorial disputes in the Caribbean Sea namely: the case concerning the Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea

⁹⁷ *Idem*.

⁹⁸ Counter-Memorial of Nicaragua, *op. cit.*, para. 3.3.

(*Nicaragua v Honduras*),⁹⁹ the case concerning the Territorial and Maritime Dispute (*Nicaragua v. Colombia*)¹⁰⁰ in which Costa Rica and Honduras filed an application for permission to intervene,¹⁰¹ the Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (*Nicaragua v Colombia*)¹⁰² and the case pertaining to the Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (*Nicaragua v Colombia*).¹⁰³

The number of court cases regarding the same water basin and involving the same countries illustrates how complicated the situation is in this region. Therefore, not only was the territorial dispute between Costa Rica and Nicaragua in the Caribbean Sea more complex (geographically and legally) than the above-analyzed dispute in the Pacific, it additionally stimulated more emotions between parties (which could be seen, *inter alia*, in the language employed by both parties in their Memorial and the Counter-Memorial).¹⁰⁴

1. *Relevant Coast*

As explained in the first part of this article, during the Pacific analysis, determination of the relevant coast which projects at sea is the first necessary step in maritime delimitation.

According to Costa Rica, the entire Costa Rican Caribbean coast was within 200 nautical miles of Nicaragua's coast, but only that portion of Nicaragua's coast south of Punta Gorda (N) was within 200 nautical miles

⁹⁹ Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (*Nicaragua v Honduras*), Judgment, I.C.J. Reports 2007, p 659.

¹⁰⁰ Territorial and Maritime Dispute (*Nicaragua v Colombia*), Preliminary Objections, Reports 2007, p. 832 and Territorial and Maritime Dispute (*Nicaragua v Colombia*), Merits, Judgment, I.C.J. Reports 2012, p. 624.

¹⁰¹ Application for Permission to Intervene by the Government of Costa Rica filed in the Registry of the Court on 25th February 2010; Application for Permission to Intervene by the Government of Honduras filed in the Registry of the Court on 10th June 2010.

¹⁰² Pending case: Question of the Delimitation of the Continental Shelf Between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (*Nicaragua v Colombia*), I.C.J. Preliminary Objections, 17th March 2016.

¹⁰³ Pending case: Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (*Nicaragua v Colombia*).

¹⁰⁴ Namely: "To conclude, Costa Rica seems to have fallen prey to a paradox that only confirms the scope of its inconsistencies", "This is an unacceptable claim or, to put it in the words of Arbitrator General Alexander, "Costa Rica's claim [is] simply outrageous". Counter-Memorial of Nicaragua, *op. cit.*, paras. 3.33 y 3.36.

of Costa Rica's coast.¹⁰⁵ Yet, as noticed by Costa Rica (and briefly explained regarding the delimitation in the Pacific region), "pure distance from the opposing party's coast is not the only criterion for determining which coast is relevant".¹⁰⁶ Additionally, as further indicated by Costa Rica, it was required to make an assessment of the following circumstances: "1) coastlines within deep indentations; 2) sections of coast that face away from the area of overlapping potential entitlements; and 3) sections of coast that face a third State and therefore are relevant only for delimitation with that third State".¹⁰⁷

According to Costa Rica, the first two hypotheses were not applicable in the Caribbean dispute between parties.¹⁰⁸ However, in Costa Rica's view, the third situation (involvement of a third State) was present in this case. Costa Rica claimed that a significant section of Nicaragua's Caribbean coast faced certain Colombian Islands (San Andrés, Providencia and Santa Catalina). Therefore, according to Costa Rica, Nicaragua's coastline north of Punta de Perras, which faced Colombia could not be considered as facing Costa Rica —and as a result— should not be relevant for the maritime delimitation between both parties.¹⁰⁹ Thus, Costa Rica's entire Caribbean coast should be considered relevant, but Nicaragua's coast north of Punta de Perras should not be taken into consideration.¹¹⁰

The position regarding Costa Rica's relevant coast was supported by Nicaragua.¹¹¹ However, Nicaragua disagreed with Costa Rica's description of Nicaragua's relevant coast and the relevant area for the delimitation in the Caribbean Sea (even if the Court were to accept Costa Rica's position on its 1977 Treaty with Colombia, which will be explained later). However, as indicated by Nicaragua, the disagreement pertained more to Costa Rica's reasoning than to the pure extent of the relevant coast.

As indicated above, according to Costa Rica, Nicaragua's coast north of Punta de Perras could not constitute part of Nicaragua's relevant coast due to the fact that it faced the coast of a third State (Colombia), and for that reason would be only relevant for the delimitation between Nicaragua and Colombia (for which Costa Rica recalled the *Cameroon v Nigeria* judgment,¹¹²

¹⁰⁵ Memorial of Costa Rica, *op. cit.*, para. 4.3.

¹⁰⁶ *Ibidem*, para. 3.4.

¹⁰⁷ *Ibidem*, para. 4.4.

¹⁰⁸ *Ibidem*, para. 4.5.

¹⁰⁹ *Ibidem*, para. 4.9.

¹¹⁰ *Idem*.

¹¹¹ Counter-Memorial of Nicaragua, *op. cit.*, para. 3.59.

¹¹² Land and Maritime Boundary between Cameroon and Nigeria (*Cameroon v Nigeria: Equatorial Guinea intervening*), Judgment, I.C.J. Reports 2002, p. 303.

where the Court stated that part of Cameroon's coastline could not be considered to be relevant for the purpose of the delimitation between both parties, as it was facing Bioko Island —belonging to a third state— Equatorial Guinea).¹¹³

In Nicaragua's opinion, Costa Rica's application of the Bioko analogy to the current dispute was fully ungrounded. According to Nicaragua, both cases (Bioko Island and San Andrés) were completely different due to the varying sizes of the islands and their relation to neighboring countries.¹¹⁴ In support of its position, Nicaragua recalled the ICJ judgment in the dispute between Nicaragua and Colombia, where the Court stated that: "That potential entitlement [of Nicaragua] thus extends to the sea bed and water column to the east of the Colombian islands where, of course, it overlaps with the competing potential entitlement of Colombia derived from those islands".¹¹⁵

Regarding the Northernmost Part of Nicaragua's coast, Nicaragua considered that its relevant coast included the coast up to Coconut Point (further north than Punta de Perlas, as indicated by Costa Rica).¹¹⁶

After careful analysis of the arguments of the parties, as well as the situation in the Caribbean Sea, the Court decided that Costa Rica's entire coast was relevant for the purposes of the delimitation of the maritime entitlements between parties. Regarding Nicaragua's mainland coast, the Court considered it to be relevant up to Punta Gorda (N). Additionally, it was also concluded that the coasts of both parties, as described above, needed to be considered relevant as their maritime projections overlapped with each other.¹¹⁷

2. *Facio-Fernández Treaty*, 1977

One of the very interesting issues which can be found in the dispute between Nicaragua and Costa Rica was the importance of a maritime delimitation treaty with a third state: this is the Treaty on Delimitation of Marine and Submarine Areas and Maritime Cooperation signed between Colombia and Costa Rica in 1977 (also known as the Facio-Fernández Treaty, 1977). The reason why this treaty appeared in the context of a delimitation

¹¹³ *Ibidem*, para. 291.

¹¹⁴ Counter-Memorial of Nicaragua..., *cit.*, para. 3.61.

¹¹⁵ Territorial and Maritime Dispute (*Nicaragua v. Colombia*), Merits, Judgment, I.C.J. Reports 2012, para. 159.

¹¹⁶ Counter-Memorial of Nicaragua..., *cit.*, para. 3.64.

¹¹⁷ Judgment 2018, *Costa Rica v. Nicaragua*, *op. cit.*, para. 111.

dispute between Costa Rica and Nicaragua was the fact that —according to Nicaragua— the 1977 Treaty “fixed and limited Costa Rica’s interests in the maritime spaces of the Caribbean Sea”.¹¹⁸

Contrarily, Costa Rica claimed that the Facio-Fernández Treaty has never been ratified by Costa Rica and therefore has never come into force. To support its view, Costa Rica recalled the ICJ Judgment of 19th November 2012 in the case between *Nicaragua v Colombia*, where the Court stated that the 1977 Treaty was “*impractical and ineffective*”.¹¹⁹ According to Costa Rica, even if the 1977 Treaty had come into force, it would have resulted in a *res inter alios acta* for Nicaragua and Costa Rica.¹²⁰

Nicaragua opposed Costa Rica’s position citing the “impracticability and ineffectiveness” of this treaty, arguing that the 1977 Treaty had come into force and was thus legally binding. Nicaragua supported its view by recalling the ICJ judgment in the case between *Libya and Chad*, where the Court stated that

[A] boundary established by treaty thus achieves a permanence which the treaty itself does not necessarily enjoy. The treaty can cease to be in force without in any way affecting the continuance of the boundary... [W]hen a boundary has been the subject of agreement, the continued existence of that boundary is not dependent upon the continuing life of the treaty under which the boundary is agreed.¹²¹

Analyzing this matter, the Court stated that it could not be concluded that Costa Rica intended to renunciate the right to its maritime entitlements (according to the Facio-Fernández Treaty). Moreover, the Court underlined that even if, hypothetically, Costa Rica had ever such an intention, it was only possible with regard to Colombia and not to any other state.¹²²

3. *The Matter of Islands*

One of the main reasons rendering the delimitation in the Caribbean Sea more complicated than the delimitation in the Pacific was the presence of Nicaragua’s islands and the impact they cause. Presently, there are two

¹¹⁸ Counter-Memorial of Nicaragua..., *cit.*, para. 3.32.

¹¹⁹ Memorial of Costa Rica, *op. cit.*, para. 2.13.

¹²⁰ *Ibidem*, para. 2.36.

¹²¹ Territorial Dispute (*Libyan Arab Jamahiriya v Chad*), Judgment, I. C. J. Reports 1994, para. 72 y 73.

¹²² Judgment 2018 *Costa Rica v. Nicaragua*, *op. cit.* para. 134.

main points reflected in the ICJ jurisprudence regarding the regime and their importance in the delimitation process.

According to article 121 of UNCLOS¹²³ and international customary law, which was also reflected in the ICJ judgment in the case *Nicaragua v Colombia*, islands enjoy the same status as other land territory, and therefore generate the same maritime rights (this is the right to a territorial sea, a contiguous zone, an exclusive economic zone and a continental shelf). In *Nicaragua v Colombia* the Court stated that:

By denying an exclusive economic zone and a continental shelf to rocks which cannot sustain human habitation or economic life of their own, paragraph 3 provides an essential link between the long-established principle that “islands, regardless of their size,... enjoy the same status, and therefore generate the same maritime rights, as other land territory” (*ibid.*) and the more extensive maritime entitlements recognized in UNCLOS and which the Court has found to have become part of customary international law. The Court therefore considers that the legal régime of islands set out in UNCLOS Article 121 forms an indivisible régime, all of which (as Colombia and Nicaragua recognize) has the status of customary international law.¹²⁴

The International Tribunal for the Law of the Sea also underlined that in cases where there is a delimitation between a territorial sea of one country and an exclusive economic zone (or a continental shelf) of the other, privilege should be given to the territorial sea. This was expressed by ITLOS in the judgement in the case *Qatar v. Bahrain*¹²⁵ and *Bangladesh v Myanmar*, where the ITLOS stated that “A conclusion to the contrary would result in giving more weight to the sovereign rights and jurisdiction of Myanmar in its exclusive economic zone and continental shelf than to the sovereignty of Bangladesh over its territorial sea”.¹²⁶ However, ITLOS

¹²³ Article 121 of UNCLOS states that “An island is a naturally formed area of land, surrounded by water, which is above water at high tide (para. 1); Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory (para. 2); Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf (para. 3)”.

¹²⁴ Territorial and Maritime Dispute (*Nicaragua v. Colombia*), Judgment, I.C.J. Reports 2012, para. 139.

¹²⁵ Maritime Delimitation and Territorial Questions between Qatar and Bahrain (*Qatar v Bahrain*), Merits, Judgment, I.C.J. Reports 2001, p. 40.

¹²⁶ Delimitation of the maritime boundary in the Bay of Bengal (*Bangladesh v Myanmar*), Judgment, ITLOS Reports 2012, para. 169.

also noticed that one general rule regarding the effect of islands in regard to their exclusive economic zone and continental shelf does not exist and their effect “depends on the geographic realities and the circumstances of the specific case”.¹²⁷

The aforementioned considerations are important in light of this analyzed case, as—in Nicaragua’s view—Costa Rica decided to ignore the presence of islands in close proximity to Nicaragua’s mainland coast such as Cayos de Perlas and the Corn Islands. According to Nicaragua, both these islands generated maritime projections which overlapped with the maritime projections of Costa Rica’s relevant coast. Therefore, the coasts of both islands facing south and southeast needed to be considered as part of Nicaragua’s relevant coast.¹²⁸

The Court concluded that only the coasts of the Corn Islands should be considered during the determination of the relevant coast of Nicaragua. In the context of Cayos de Perlas, the Court pointed out that Nicaragua did not provide any proof regarding their capacity “to sustain human habitation or economic life of their own” (as required by article 121 of UNCLOS) and therefore their coasts should not be considered to be relevant.¹²⁹

4. *Baselines*

As explained in the Pacific case, the next step in the delimitation process is the construction of baselines. Therefore, according to Costa Rica, by application of the straight baseline approach, the relevant coastal length for Costa Rica was 195 kilometers and 165 kilometers for Nicaragua (this gave a relevant coast ratio of 1:1.2 in favor of Costa Rica). By application of the natural configuration approach, the relevant coastal length for Costa Rica was 225 kilometers and 215 kilometers for Nicaragua (this gave a relevant coastal length ratio of slightly more than 1:1 in favor of Costa Rica).¹³⁰

According to Nicaragua, if the relevant coast of Costa Rica was measured by straight lines it equaled 193 kilometers (this resulted from the construction of a straight line between the termini of Costa Rica’s land frontiers with Nicaragua and Panama).¹³¹ Accordingly, the relevant mainland coast

¹²⁷ *Ibidem*, para. 317.

¹²⁸ Counter-Memorial of Nicaragua, *op. cit.*, para. 3.65.

¹²⁹ Judgment 2018 *Costa Rica v. Nicaragua*, *op. cit.*, para. 112.

¹³⁰ Memorial of Costa Rica, *op. cit.*, para. 4.10.

¹³¹ The difference between the length of Costa Rica’s relevant coast indicated by Costa Rica and Nicaragua can be explained (in Nicaragua’s opinion) by the usage of a different

of Nicaragua equaled respectively 74 and 97 kilometers (measured by two straight lines between Punta del Mono and the terminus of the land boundary between Nicaragua and Costa Rica and across the indentation between Monkey Point and Punta de Perlas).¹³² Furthermore, Nicaragua measured the relevant coast of its island Cayos de Perlas by a straight line between Moon Cay and Seal Cay (giving 19 kilometers) and the relevant coast of the Corn Islands by two straight lines (along Big and Little Corn Islands) giving respective lengths of 5 and 3 kilometers. Thus, the total length of Nicaragua's relevant coast, measured in such a way, equaled 198 kilometers.¹³³ In such a case, the relevant coast ratio between parties was 1:1.03 (favoring Nicaragua).¹³⁴

If Costa Rica's relevant coast was measured —according to Nicaragua— by its natural configuration, it was 221 kilometers long and the relevant coast of Nicaragua equaled 246 kilometers (including 226 kilometers of Nicaragua's mainland coast and approximately 20 kilometers of the Corn Islands and Cayos de Perlas).¹³⁵ As a result, the relevant coast ratio between parties was 1:1.11 (in favor of Nicaragua).

The Court decided that the length of the relevant coasts of both parties should be measured by their natural configuration (justifying it by the lack of sinuosity of their coasts). In such a case, the relevant coast of Costa Rica equaled 228.8 kilometers and Nicaragua's relevant coast was 465.8 kilometers. Thus, the relevant coast ratio was 1:2.04 (favoring Nicaragua).¹³⁶

5. *Relevant Area*

Even though, as previously explained, the exact size of the relevant area is not of significant importance and only an approximation suffices, the parties did not agree on the extent of the relevant area for the delimitation of the maritime boundary between them. According to Nicaragua, the relevant area of both countries measured 80,750 square kilometers,¹³⁷ whereas the relevant area presented by Costa Rica equaled 104,700 square kilometers.¹³⁸

location of the terminus of the land boundary on the Caribbean coast. Counter-Memorial of Nicaragua, *op. cit.*, para. 3.67.

¹³² *Ibidem*, para. 3.68.

¹³³ *Idem*.

¹³⁴ *Ibidem*, para. 3.69.

¹³⁵ *Ibidem*, para. 3.67.

¹³⁶ Judgment 2018 *Costa Rica v. Nicaragua*, *op. cit.*, para. 114.

¹³⁷ Counter-Memorial of Nicaragua, *op. cit.*, para. 3.75.

¹³⁸ *Ibidem*, para. 4.12.

In Nicaragua's view, Costa Rica was responsible for the significant difference in the size of the relevant area indicated by both parties, as it "artificially extended" the size of the relevant area by including maritime areas, which should not have been included (namely Nicaragua's maritime areas located north of Nicaragua's relevant coast). Additionally, Costa Rica also ignored an area which should have been included - in Nicaragua's opinion (where seaward projections of the relevant coasts of Nicaragua and Costa Rica overlap).

In Nicaragua's view such a "manipulation" with the size of the relevant area (extending Nicaragua's relevant area and simultaneously diminishing Costa Rica's), may lead to the conclusion that Costa Rica's delimitation proposal provided an equitable result (whereas, if the relevant area were constructed as proposed by Nicaragua, it would be clear that it would be exactly opposite).¹³⁹

What was also interesting in this case was that Costa Rica indicated that the area of overlapping entitlements did not extend beyond 200 nautical miles.¹⁴⁰ From this statement, Nicaragua concluded that it was not required to consider Nicaragua's entitlement to a continental shelf beyond 200 nautical miles in the delimitation process.

The Court concluded that "the area where there are overlapping projections in the north includes the whole maritime space situated within a distance of 200 nautical miles from Costa Rica's coast".¹⁴¹

Moreover, the Court pointed out that the situation in the south caused more concerns as third states were involved. Nevertheless, the rights of the third states could not be affected by the delimitation between the parties, the areas where the third state could have a claim may still be included for the purpose of the determination of the relevant area.¹⁴²

6. *Starting point*

As in the Pacific case, in order to proceed with the delimitation of maritime entitlements, it is necessary to indicate a starting point from which

¹³⁹ *Ibidem*, para. 3.57.

¹⁴⁰ Memorial of Costa Rica, *op. cit.*, para 4.12.

¹⁴¹ Besides those attributed to Colombia in the judgement Territorial and Maritime Dispute (*Nicaragua v. Colombia*), Judgment, I.C.J. Reports 2012, p. 624. Judgment 2018 *Costa Rica v. Nicaragua*, para. 120.

¹⁴² This position derives from the Court jurisprudence, for example, Maritime Delimitation in the Black Sea (*Romania v. Ukraine*), Judgment, I.C.J. Reports 2009, p. 61. *Ibidem*, para. 121.

the equidistance line should begin. In the analyzed case, this phase of the delimitation process caused further disagreements between the parties as, even though the parties in general did agree in terms of the starting point, they did not agree regarding its geographic location.

Costa Rica indicated that the starting point was situated

...on the right bank of the San Juan River at its mouth: the point at which the line dividing the land territories of the two States intersects the coast. That point is located at the northwestern extremity of Costa Rica's Isla Portillos, where Costa Rica's land territory and Nicaragua's waters of the San Juan River meet the Caribbean Sea.¹⁴³

Nicaragua, in general, agreed with Costa Rica's starting point (area) for the delimitation, however it contradicted its exact geographical location (as indicated by Costa Rica).

This disagreement stemmed from the fact that some natural geographical changes to the coast occurred after 1858 (when the Treaty of Limits¹⁴⁴ was signed between parties). Therefore, Costa Rica claimed that the starting point should be physically located 3,6 kilometers north from the point, which—in Nicaragua's view—should stipulate a starting point.¹⁴⁵

As the Court noticed, the issue of the starting point in the delimitation in the Caribbean Sea constituted a specific case due to the instability of the coastline in the vicinity of the San Juan River. Therefore, the Court decided (as advised by Court-appointed experts) to "select a fix point at sea and connect it to the starting-point on the coast by a mobile line", which would be situated 2 nautical miles away from the coast on the median line.¹⁴⁶

7. *Definition of the Boundary in the Area of Los Portillos / Harbor Head Lagoon*

The aforementioned disagreement regarding the geographical location of the starting point for the delimitation of maritime entitlements between Costa Rica and Nicaragua resulted in another court case pertaining to the

¹⁴³ Memorial of Costa Rica, *op. cit.*, para. 4.13.

¹⁴⁴ The land boundary dividing the territories of Nicaragua and Costa Rica was delimited by the *Treaty of Limits* signed in 1858. Article II of the Treaty stated that "*The dividing line between the two Republics, starting from the Northern Sea [Caribbean Sea], shall begin at the end of Punta de Castilla, at the mouth of the San Juan de Nicaragua river, and shall run along the right bank of the said river*". *Idem*.

¹⁴⁵ Counter-Memorial of Nicaragua, *op. cit.*, para. 3.35.

¹⁴⁶ Judgment 2018 *Costa Rica v. Nicaragua*, *op. cit.* para. 86.

precise location of the land boundary between Costa Rica and Nicaragua: separating the Los Portillos/Harbor Head Lagoon sandbar from Isla Portillos.

On 16th January 2017, Costa Rica filed to the Registry of the Court an Application instituting a proceeding against Nicaragua regarding the dispute concerning the precise definition of the boundary in the area of Los Portillos / Harbor Head Lagoon and the establishment of a new military camp by Nicaragua. As previously mentioned, both cases were jointly proceeded as a result of the request submitted by Costa Rica in the Application (para. 5). Additionally it is worth mentioning that the matter of disagreement between the parties was also an “illegal” —in Costa Rica’s view— establishment of a military camp by Nicaragua on the beach of Isla Portillos which, according to Costa Rica, belonged to Costa Rica.¹⁴⁷

After analysis of the vast arguments presented by the parties and experts’ opinions, the Court concluded that both Harbor Head Lagoon and the sandbar separating it from the Caribbean Sea remained under Nicaragua’s sovereignty.¹⁴⁸ At the same time, it was also pointed out that the installation of the camp by Nicaragua violated Costa Rica’s territorial sovereignty as it was situated on the “beach close to the sandbar, but not on it”. As a result, it was ordered to remove it from the territory of Costa Rica.¹⁴⁹

8. *Equidistance line*

A. Delimitation of the territorial sea

As explained in the Pacific delimitation, article 15 of UNCLOS finds an application in the case of the delimitation of the territorial sea. According to Costa Rica, there were no historical claims to waters beyond their commonly-held Bay of San Juan del Norte or any special circumstances which would require an adjustment of the equidistance line.¹⁵⁰ Notwithstanding that the choice of base points for the equidistance line between parties could potentially cause some difficulties due to the geographical instability of the coast, in Costa Rica’s view, it did not constitute “special circumstan-

¹⁴⁷ Application Instituting Proceedings filed in the Registry of the Court on 16th January 2017, Dispute Concerning the Precise Definition of the Boundary in the Area of Los Portillos/Harbor Head Lagoon and the Establishment of a New Military Camp by Nicaragua (*Costa Rica v. Nicaragua*), *op. cit.*, para. 3.

¹⁴⁸ Judgment 2018 *Costa Rica v. Nicaragua*, *op. cit.*, para. 73.

¹⁴⁹ *Ibidem*, para. 77.

¹⁵⁰ Memorial of Costa Rica, *op. cit.*, para. 4.17.

ces” under article 15 of UNCLOS.¹⁵¹ In the Black Sea judgment, the Court decided to “use as base points those which the geography of the coast identifies as a physical reality at the time of the delimitation”.¹⁵²

Therefore, Costa Rica decided to select the base points on the coasts of both parties, which reflected the general direction of the coast at the time of proceeding, and to ignore basepoints on “ephemeral, sandy and unstable features” (as explained in detail in its Memorial).¹⁵³ Yet, according to Nicaragua, the base points should be located “on dry land, starting with the land boundary terminus at Punta Castilla, and not upon any points that lie upon straight baselines but not upon land”.¹⁵⁴

Moreover, Nicaragua argued that the change from the convex to the concave coastline (next to Punta de Castilla, where the starting point was situated), stipulated special circumstances, which would result in a big cut-off of Nicaragua’s entitlements.¹⁵⁵ Costa Rica disagreed with Nicaragua’s position regarding the necessity of an adjustment of the equidistance line.¹⁵⁶

The Court concluded that the combined effect of the convexity and concavity of the coast could not be considered as a special circumstance under article 15 of UNCLOS and therefore it did not justify an adjustment of the equidistance line.¹⁵⁷ Although, the Court indicated that there were another two types of “special circumstances”, which should be taken into consideration: 1) the high instability and narrowness of the sandpit near the mouth of the San Juan River;¹⁵⁸ 2) the instability of the sandbar separating Harbor Head Lagoon from the Caribbean Sea.¹⁵⁹

In the first case, the Court noted that the instability of the sandpit impeded the location of a base point on Costa Rica’s territory. Therefore, the Court proposed that “the fixed point at sea on the median line [should be] connected by a mobile line to the point on solid land on Costa Rica’s coast which is closest to the mouth of the river”.¹⁶⁰

¹⁵¹ Bay of Bengal Maritime Boundary Arbitration (*Bangladesh v India*), Permanent Court of Arbitration, Award, 7th July 2014, para. 248.

¹⁵² Maritime Delimitation in the Black Sea (*Romania v Ukraine*), Judgment, I.C.J. Reports 2009, para. 131.

¹⁵³ Memorial of Costa Rica, *op. cit.*, para. 4.19.

¹⁵⁴ Counter-Memorial of Nicaragua, *op. cit.*, para. 3.83.

¹⁵⁵ *Ibidem*, para. 3.85-3.91.

¹⁵⁶ Memorial of Costa Rica..., *cit.*, para. 4.17.

¹⁵⁷ Judgment 2018 *Costa Rica v. Nicaragua*, *op. cit.*, para. 103.

¹⁵⁸ *Ibidem*, para. 104.

¹⁵⁹ *Ibidem*, para. 105.

¹⁶⁰ *Ibidem*, para. 104.

In the second case, the Court decided that the delimitation of the territorial sea between the parties should not include any entitlements resulting from a small enclave caused by the instability of the sandbar separating Harbor Head Lagoon from the Caribbean Sea.¹⁶¹

B. Delimitation of the exclusive economic zone and the continental shelf

In the context of the construction of an equidistance line during the delimitation of the exclusive economic zone and the continental shelf, the issue of islands appeared again —generating additional difficulties—. Further compounding complications is the fact that there is no one agreed position in the jurisprudence regarding the effect caused by islands during the construction of a median line.

The concerns connected with the construction of the equidistance line were related to the placement of the base points on: 1) the Corn Islands; and 2) Paxaro Bovo and Palmenta Cays.

Referring to the first issue, Costa Rica claimed that —according to jurisprudence— the basepoints of Nicaragua’s Corn Islands, which were situated approximately 30 nautical miles from the Nicaraguan mainland, should not be taken into account during calculation of the provisional equidistance line. Costa Rica supported this claim, recalling again the *Black Sea* case, in which the Court stated that Ukraine’s Serpents’ Island, which was located approximately 20 nautical miles away from the mainland, should not be used to construct the provisional equidistance line. A similar approach was taken by the Court in the delimitation between *Bangladesh v Myanmar*¹⁶² and *Bangladesh v India*.¹⁶³

Regarding the second point, Costa Rica also did not take into consideration “several small insular features” along Nicaragua’s coast, especially Paxaro Bovo and Palmenta Cays, during construction of the equidistance line.¹⁶⁴ Nicaragua opposed this position, arguing that its insular features were entitled, under UNCLOS, to the territorial sea —and as a result— the

¹⁶¹ *Ibidem*, para. 105.

¹⁶² Delimitation of the maritime boundary in the Bay of Bengal (*Bangladesh v Myanmar*), Judgment, ITLOS Reports 2012, para. 265.

¹⁶³ Bay of Bengal Maritime Boundary Arbitration (*Bangladesh v India*), Permanent Court of Arbitration, Award, 7th July 2014, para. 367.

¹⁶⁴ Memorial of Costa Rica, *op. cit.*, para. 4. 19.

equidistance line should be properly delimited taking into consideration their presence.¹⁶⁵

According to Costa Rica, there were also no “special circumstances” which would require an adjustment of the provisional equidistance line (the Corn Islands could have been such features, however, if they were excluded from the delimitation, there was no need to make any adjustment). Nicaragua disagreed with Costa Rica’s analogy between the Corn Islands and Serpents’ Island (derived from the ICJ *Romania v Ukraine* judgment). The main difference —according to Nicaragua— between both cases, which impeded such an analogy, was the islands’ size and the number of their habitants (Serpents’ Island was much smaller than the Corn Islands with also a much smaller population).¹⁶⁶ Moreover, Nicaragua also questioned Costa Rica’s comparison of the Corn Islands to St. Martin’s Islands (in the dispute between *Bangladesh v Myanmar*), where ITLOS expressed the view that — due to the location of St. Martin’s Island, just in front of Myanmar’s mainland — the establishment of a base point on St. Martin’s would result in “an unwarranted distortion of the delimitation line”.¹⁶⁷

What Costa Rica did indicate as a relevant special circumstance was the coastal concavity and cut-off created by this conjunction with a notional delimitation with a third state.¹⁶⁸ This required an adjustment to the provisional equidistance line in order to achieve an equitable result in the delimitation between both parties as the concave shape of the coast and adjacent coast of Nicaragua and Panama would result in a cut-off effect on Costa Rica’s coast.¹⁶⁹

To support its claim, Costa Rica cited: the North Sea Continental Shelf cases (where Germany was, in Costa Rica’s view, in a similar position),¹⁷⁰ the ITLOS judgment in the *Bangladesh v Myanmar* case¹⁷¹ and the PCA Award regarding the delimitation dispute between *Bangladesh v India*.¹⁷²

¹⁶⁵ Counter-Memorial of Nicaragua, *op. cit.*, para. 3.84.

¹⁶⁶ *Ibidem*, para. 3.103 y 3.104.

¹⁶⁷ Delimitation of the maritime boundary in the Bay of Bengal (*Bangladesh v Myanmar*), Judgment, ITLOS Reports 2012, para. 265.

¹⁶⁸ Memorial of Costa Rica, *op. cit.*, para. 4. 30.

¹⁶⁹ *Ibidem*, para. 4. 41.

¹⁷⁰ North Sea Continental Shelf (*Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands*), Judgment, I.C.J. Reports 1969, para. 8.

¹⁷¹ Delimitation of the maritime boundary in the Bay of Bengal (*Bangladesh v Myanmar*), Judgment, ITLOS Reports 2012, para. 292.

¹⁷² Bay of Bengal Maritime Boundary Arbitration (*Bangladesh v India*), Permanent Court of Arbitration, Award, 7th July 2014, para. 408.

Nicaragua agreed that the concavity and convexity of the adjacent coasts constitute “special circumstances”.¹⁷³ Therefore, to achieve an adjustment to the equidistance line, Nicaragua proposed the application of simplified coastlines (by drawing a straight line from Monkey Point to Punta Castilla). Such a solution would allow elimination of the distorting effect of the concavity of Nicaragua’s coastline.¹⁷⁴ Nicaragua also noticed that a simplified line could be applied in the case of Costa Rica’s coast (however, then it would have a smaller effect on the equidistance line than the simplified line of Nicaragua’s coast).¹⁷⁵ Therefore, it can be concluded that the parties did not agree on the location of the provisional equidistance line and its base points.¹⁷⁶

Firstly, it must be stated that the Court found the Corn Islands relevant for the purpose of constructing the median line during the delimitation of the maritime entitlements between the Parties. After careful analysis, the Court concluded that the Corn Islands “have a significant number of inhabitants and sustain economic life” and —therefore— fulfill the necessary requirements for an island to be able to generate an exclusive economic zone and continental shelf (as stated in article 121 of UNCLOS).¹⁷⁷

Analyzing the case of the Paxaro Bovo and the Palmenta Cays, the Court stated that both formations could be “assimilated to the coast” as they were located respectively three and one nautical miles from the coast.¹⁷⁸

Addressing the arguments referring to the adjustment of the equidistance line due to special circumstances, the Court noted that the Corn Islands should be given only half effect due to the disproportion between their small size and their location 26 nautical miles away from the mainland coast.¹⁷⁹ Therefore, to preserve the equal result, the equidistance line should be adjusted in favor of Costa Rica.

Concurrently, the Court concluded that the adjustment of the median line due to the concavity of Costa Rica’s coast was not required, as the po-

¹⁷³ Counter-Memorial of Nicaragua, *op. cit.*, para. 3.88.

¹⁷⁴ *Ibidem*, para. 3.90.

¹⁷⁵ *Ibidem*, para. 3.91.

¹⁷⁶ *Ibidem*, 3.100.

¹⁷⁷ Judgment 2018 *Costa Rica v. Nicaragua*, *op. cit.*, para. 140.

¹⁷⁸ Such a position derives from the Court jurisprudence presented in various cases such as the Maritime Delimitation in the Black Sea (*Romania v. Ukraine*) (Judgment, I.C.J. Reports 2009, p. 109, para. 149) and the Territorial and Maritime Dispute (*Nicaragua v. Colombia*) (Judgment, I.C.J. Reports 2012 (II), p. 678, para. 145; see also *ibid.*, p. 699, para. 201). *Ibidem*, para. 142.

¹⁷⁹ *Ibidem*, para. 153.

tential cut-off was insignificant (especially in light of the aforementioned adjustment due to the disproportionate effect caused by the Corn Islands).¹⁸⁰

C. Final step. The Proportionality Test

As previously explained during the delimitation in the Pacific, the third and last step in the delimitation process is a review of the delimitation line developed during the earlier steps of the delimitation; ensuring that it does not lead effectuate any significant disproportion in regard to “respective coastal lengths and the apportionment of areas that ensue”.¹⁸¹

In Costa Rica’s opinion, the adjusted equidistance line allows achievement of an equitable solution in the Caribbean Sea delimitation.¹⁸² The total relevant area of 104,700 square kilometers would be divided by the equidistance line in the following way: 49,200 square kilometers would be granted to Costa Rica and 55,500 square kilometers to Nicaragua. This would result in the ratio 1:1.1 (in favor of Nicaragua). Thus, if the relevant coasts’ length ratio was 1:1.2 in favor of Costa Rica (measured by straight lines) or almost 1:1 (measured by natural configuration), the employed solution would not cause any disproportionate result.

Nicaragua disagreed with Costa Rica’s position and argued that such a solution would lead to an inequitable result (in contrast to Nicaragua’s proposal). To support this view, Nicaragua underlined that the delimitation line proposed by Nicaragua included the delimitation line between Costa Rica and Colombia (on which Costa Rica agreed years ago). As previously indicated by Nicaragua, the total relevant area measured 80,750 square kilometers. Following Nicaragua’s proposal, 23,860 square kilometers would be allocated to Nicaragua and 22,840 square kilometers to Costa Rica, which would give a ratio of 1:1.04 (in favor of Nicaragua).¹⁸³ If the relevant coast ratio was 1:1.03 in favor of Nicaragua (measured by straight baselines)¹⁸⁴ or 1:1.11 also in favor of Nicaragua (measured by natural configuration of the coast), the proposed median line warrants achievement of an equitable solution.

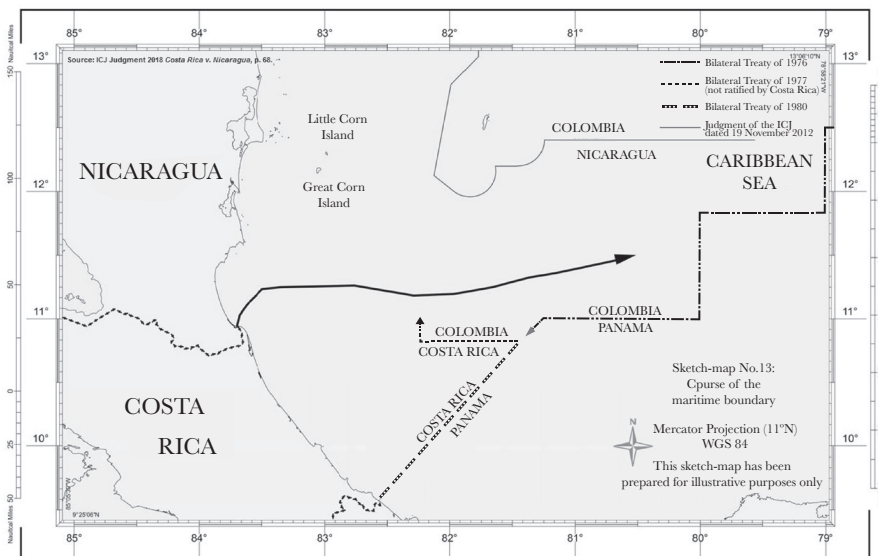
¹⁸⁰ *Ibidem*, para. 156.

¹⁸¹ Maritime Delimitation in the Black Sea (*Romania v. Ukraine*), Judgment, I.C.J. Reports 2009, para. 210.

¹⁸² Memorial of Costa Rica, *op. cit.*, para. 4.47.

¹⁸³ Counter-Memorial of Nicaragua, *op. cit.*, para. 3.137.

¹⁸⁴ Nicaragua indicates as interchangeable-in its Counter-Memorial-the relevant coast ratio as 1:1.03 y 1:1.02 (in favor of Nicaragua).



According to the Court, the constructed equidistance line divided the relevant area in such a way as to allocate 73,968 square kilometers to Nicaragua and 30,873 square kilometers to Costa Rica. This resulted in a ratio of 1:2.4 favoring Nicaragua.¹⁸⁵ As the relevant coast ratio was 1:2.04, such a division of the relevant area did not cause any disproportionate result.

V. FINAL CONCLUSIONS

The main goal of this article was to explain, step-by-step, the full process of the delimitation of maritime boundaries based on the example of *Costa Rica v Nicaragua*, conducted by the International Court of Justice. Therefore, the three-stage methodology reflected in the *Black Sea* case was fully analyzed in conjunction with other case-law and arguments submitted by the parties.

Based on this analysis, it can be concluded that the United Nations Convention on the Law of the Sea lacks one clear delimitation regime. As visible, UNCLOS provides a reader only with a “hint”; stating that an equitable solution should be achieved in the process of a delimitation of maritime boundaries between states. Some rationalize this situation by ‘drafters’ intentions’ to avoid strict (and sometimes controversial) solutions to be in-

¹⁸⁵ Judgment 2018 *Costa Rica v. Nicaragua*, *op. cit.*, para. 165.

cluded in UNCLOS as this could impede many states from ratification of the convention.¹⁸⁶ As a result of such a solution, the delimitation methodology has been evolving over years, being created by state practice and international judicial bodies' jurisprudence rather than *hard law*.

As it was also proven, based on the example of the delimitation between parties in the Caribbean region, the complexity of the disputes is proportional to the number of actors involved (even if they are involved indirectly as, for example, Colombia). On the other hand, the size of the relevant area is inversely proportional to the parties' interests (the smaller the relevant area is, the more pertinent it is for the affected parties). Additionally, the lack of a commonly accepted land boundary between adjacent states will always constitute an obstacle preventing them from achieving an agreement during the delimitation of a maritime boundary.

It should also be realized that the delimitation of maritime boundaries requires not only legal but also specialized, expert knowledge (for example, of cartographers), which would enable verification of an abundance of technical data (such as maps, schemes and tables) submitted by the parties. What is also of extreme importance is the factual situation, requiring field visits and verification of facts by experts on site (as was seen in the example of the precise geographical location of the land boundary between parties in the Caribbean region). Therefore, in this and similar cases, the International Court of Justice (and other international courts and tribunals) appoints experts in the required field (here experts in geography, geology and geomorphology¹⁸⁷) to provide the Court with their specialized opinions. Only then does the application of a proper legal solution become feasible and the assessment of arguments presented by claimants accurate. As both parties present different proposals regarding the delimitation of the maritime boundary between them, the final decision is —as always— left for the best judgment of the Court. However, in this case, the International Court of Justice, in order to provide the parties with an equitable delimitation, needed to first determine their land boundary (especially in the Caribbean region) as adhering to the rule: “the land is the legal source of the power which a State may exercise over territorial extensions to seaward”.¹⁸⁸

¹⁸⁶ Seneadza, Oswald, “The Law and Practice in Maritime Boundary Delimitation: Lessons for the Resolution of Dispute between Cote d'Ivoire and Ghana”, *Commonwealth Law Bulletin*, Abingdon, vol. 37, núm. 2, 2011, p. 300.

¹⁸⁷ By the Court Order as of 16th June 2016, Appointment of experts.

¹⁸⁸ North Sea Continental Shelf (*Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands*), Judgment, I.C.J. Reports 1969, para. 96.

VI. SUMMARY OF THE PARTIES' AND THE COURT'S POSITIONS				
	<i>Subject</i>	<i>Costa Rica's Position</i>	<i>Nicaragua's Position</i>	<i>Court's position</i>
1	Jurisdiction	The International Court of Justice	The International Court of Justice	The International Court of Justice
2	Litis	Delimitation of a single maritime boundary in the Caribbean Sea and the Pacific Ocean.	Delimitation of a single maritime boundary in the Caribbean Sea and the Pacific Ocean.	Delimitation of a single maritime boundary in the Caribbean Sea and the Pacific Ocean.
PART A - DELIMITATION IN THE PACIFIC				
1	Relevant Coast	Costa Rica's coast from Punta Zacate to the Osa Peninsula and all Nicaragua's Pacific coast.	Costa Rica's coast from Punta Zacate, but only until Punta Guiones and Nicaragua's coast between Punta la Flor on the Bay of Salinas and the Corinto point.	Costa Rica's coast from Punta Zacate to Cabo Blanco and from Punta Herradura to Punta Salsipuedes. Nicaragua's entire Pacific coast.
2	Baselines (straight-line method)	Costa Rica - 415 km; Nicaragua - 300 km.	Costa Rica - 144 km; Nicaragua - 238 km.	Costa Rica - 416.4 km; Nicaragua - 292.7 km.
3	Relevant coast ratio	1:1.4 (in favor of Costa Rica).	1:1.65 (in favor of Nicaragua).	1:1.42 (in favor of Costa Rica).
4	Total relevant area	Approx. 202 800 km ²	Approx. 102 770 km ²	Approx. 164 500 km ²
5	Starting point	The mid-point of the closing line across the Salinas Bay.	The mid-point of the closing line across the Salinas Bay.	The mid-point of the closing line across the Salinas Bay.
6	Allocated relevant areas	Costa Rica's share: 130,700 km ² . Nicaragua's share: 72 100 km ² .	Nicaragua's share: 66,840 km ² . Costa Rica's share 35,930 km ² .	Nicaragua's share: 71,500 km ² . Costa Rica's share 93,000 km ² .
7	Allocation ratio	1:1.8 (in favor of Costa Rica)	1:1.86 (in favor of Nicaragua)	1:1.30 (in favor of Costa Rica)
8	Proportionality Test (relevant coast ratio to allocation ratio)	1:1.4 (in favor of Costa Rica) to 1:1.8 (favoring Costa Rica)	1:1.65 (in favor of Nicaragua) to 1:1.86 (favoring Nicaragua)	1:1.42 (in favor of Costa Rica) to 1:1.30 (in favor of Costa Rica)

PART B - DELIMITATION IN THE CARIBBEAN				
	<i>Subject</i>	<i>Costa Rica's Position</i>	<i>Nicaragua's Position</i>	<i>Court's position</i>
1	Relevant Coast	The entire Costa Rican Caribbean coast and Nicaragua's coast south of Punta de Perlas.	The entire Costa Rican Caribbean coast and Nicaragua's coast south from Coconut Point (further north than Punta de Perlas, as was indicated by Costa Rica).	The entire Costa Rican Caribbean coast and Nicaragua's coast up to Punta Gorda (N).
2	Facio-Fernández Treaty, 1977	Not in force, "impractical and ineffective".	In force, "fixed and limited Costa Rica's interests in the maritime spaces of the Caribbean Sea".	Cannot be considered with regard to any other State other than Colombia.
3	Matter of Islands	Nicaragua's islands such as: Cayos de Perlas and the Corn Islands should be ignored.	Nicaragua's islands such as: Cayos de Perlas and the Corn Islands generate maritime entitlements.	Nicaragua's islands such as: the Corn Islands generate maritime entitlements.
4	Baselines (straight-line method)	Costa Rica - 195 km; Nicaragua - 165 km.	Costa Rica - 193 km; Nicaragua - 198 km.	-
5	Relevant coast ratio (straight-line method)	1:1.2 (in favor of Costa Rica)	1:1.03 / 1:1.02 (in favor of Nicaragua)	-
6	Baselines (measured by natural configuration)	Costa Rica - 225 km; Nicaragua - 215 km	Costa Rica - 221 km; Nicaragua - 246 km.	Costa Rica - 228.8 km; Nicaragua - 456.8 km
7	Relevant coast ratio (measured by natural configuration)	Slightly more than 1:1 (favoring Costa Rica)	1:1.11 (favoring Nicaragua)	1:2.04 (favoring Nicaragua)
8	Total relevant area	Approx. 104,700 km ²	Approx. 80,750 km ²	Approx. 104,841 km ²
9	Starting Point	Different geographical location.	Different geographical location.	As described in the para. 86 of the Judgment.

10	Allocated relevant areas	Costa Rica's share: 49,200 km ² . Nicaragua's share: 55,500 km ² .	Costa Rica's share: 22,840 km ² . Nicaragua's share: 23,860 km ² .	Costa Rica's share: 30,873 km ² . Nicaragua's share: 73,968 km ² .
11	Allocation ratio	1:1.1 (favoring Nicaragua)	1:1.04 (favoring Nicaragua)	1:1.2.4 (favoring Nicaragua)
12	Proportionality Test (relevant coast ratio to allocation ratio)	Measured by straight lines – 1:1.2 (in favor of Costa Rica) / Measured by natural configuration almost 1:1 to 1:1.1 (in favor of Nicaragua)	Measured by straight lines – 1: 1.03 / 1:1.02 (in favor of Nicaragua) / Measured by natural configuration almost 1:1.11 (in favor of Nicaragua) to 1:1.04 (in favor of Nicaragua)	Measured by natural configuration 1:2.04 (favoring Nicaragua) to 1:1.2.4 (favoring Nicaragua).

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