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International Court of Justice

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YEAR 2010

Public sitting

held on Thursday 14 October 2010, at 3 p.m., at the Peace Palace,

President Owada presiding,

***in the case concerning the* Territorial and Maritime Dispute (Nicaragua *v.* Colombia)**

Application by Costa Rica for permission to intervene

VERBATIM RECORD

ANNÉE 2010

Audience publique

tenue le jeudi 14 octobre 2010, à 15 heures, au Palais de la Paix,

sous la présidence de M. Owada, président,

***en l'affaire du* Différend territorial et maritime (Nicaragua c. Colombie)**

Requête du Costa Rica à fin d'intervention

COMPTE RENDU

Present:	President	Owada
	Vice-President	Tomka
	Judges	Koroma
		Al-Khasawneh
		Simma
		Abraham
		Keith
		Sepúlveda-Amor
		Bennouna
		Skotnikov
		Cançado Trindade
		Yusuf
		Xue
		Donoghue
	Judges *ad hoc*	Cot
		Gaja
	Registrar	Couvreur

Présents : M. Owada, président
M. Tomka, vice-président
MM. Koroma
Al-Khasawneh
Simma
Abraham
Keith
Sepúlveda-Amor
Bennouna
Skotnikov
Cançado Trindade
Yusuf
Mmes Xue
Donoghue, juges
MM. Cot
Gaja, juges *ad hoc*

M. Couvreur, greffier

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The PRESIDENT: Please be seated. The sitting is open. The Court meets today to hear the second round of oral argument of Costa Rica. I shall now give the floor to Mr. Coalter Lathrop. You have the floor.

Mr. LATHROP:

THE STAGES OF INTERVENTION AND HOW THE CLAIMS OF THE PARTIES WOULD AFFECT COSTA RICA'S INTEREST OF A LEGAL NATURE

1. Thank you, Mr. President. Mr. President, distinguished Members of the Court, it is an honour to be before you again today on behalf of the Republic of Costa Rica.

I. The two stages of intervention

2. Mr. President, we are in the application stage of the intervention process. At this stage, the first of two stages in the overall intervention process, Costa Rica must demonstrate convincingly that it has an interest of a legal nature that may be affected by a decision of this Court in this case. Costa Rica submits that it met its burden in its written Application, and exceeded its burden in its oral submissions on Monday. We are here again today to reinforce our points and to respond to the arguments made by the Parties yesterday.

3. It is not our intent at this stage, nor is it the purpose of these oral arguments, to inform the Court of the full extent of Costa Rica's interest. Informing the Court of those interests will occur in the second stage of the intervention process when — if Costa Rica is permitted to intervene — we will draft a Written Statement and make observations during the arguments on the merits. Mr. Reichler confounds these two stages arguing that Costa Rica's "purpose in bringing this Application was to inform the Court of its legal interests. It has done so. Mission accomplished."[1] But, like others before him, Mr. Reichler has spoken too soon. Costa Rica's Application has the purpose, not of informing, but of requesting the permission of the Court to intervene. It will be during the intervention itself that Costa Rica informs the Court of the full extent of its legal interest. To date, in the limited time available to it, Costa Rica has only demonstrated that it has a legal interest that may be affected by the decision in this case. And while this task necessarily entails

[1] CR 2010/13, p. 31, para. 12 (Reichler).

some overlap with arguments that would be made during the next stage of the intervention process, the information provided thus far does not fully comprise, in scope or detail, the information that Costa Rica will provide if allowed to intervene.

4. Costa Rica has not, for example, provided full information regarding the role of islands in delimitation, or the effect of Nicaragua's claim in this case on the 1977 line. Costa Rica has not informed the Court of the delimitation result that would accompany the application of the bisector method or the necessary and appropriate adjustment required to account for Costa Rica's disadvantaged position in the back of a coastal concavity. This is to be left for the next phase of the proceedings.

5. Nevertheless, counsel for Nicaragua suggests that Costa Rica — and this Court — should accept this week's hearings as a substitute for actual intervention. This notion would effectively create a new form of incidental proceedings — a mini-intervention so to speak — that finds no basis in law and has little else to recommend it. Moreover, to deny Costa Rica the opportunity to submit its observations to the Court in the context of oral hearings on the merits would deprive Costa Rica of the ability to respond to new claims by the Parties. As the Agent for Nicaragua said many years ago during the hearings on Nicaragua's request for permission to intervene in *El Salvador/Honduras*,

> "the Submissions of the Parties can be changed after the end of this hearing on intervention and right up to the end of the hearings on the merits. And if this hearing is the only opportunity Nicaragua will be given to defend its rights, then how can Nicaragua express its position if, during the hearings on the merits, Nicaragua will be excluded from participating?"

Costa Rica would ask the same question. If excluded from participating in the hearings on the merits how can Costa Rica defend its interests against new claims that might be advanced by the parties? Costa Rica would be unable to do so, and for that reason, among others, Costa Rica should be allowed to continue to the next stage.

II. The effect of the Parties' claims on Costa Rica's interest of a legal nature

6. Mr. President, Colombia and Nicaragua alike continue to argue their claims against each other as if the Court were being asked to choose between the two options presented: option A Nicaragua's line dividing overlapping continental margins; option B Colombia's median line

between opposite islands. This perspective does not reflect the role of the Court itself in determining the location of the boundary between the Parties. However, because Costa Rica is not concerned with the east-west location of the Court's boundary, it will take the Parties' positions at face value. Nonetheless the east-west location of the boundary works in tandem with the southern endpoint of the boundary and changes the ways in which the Court's delimitation decision may affect Costa Rica legal interests.

7. This interaction can be illustrated by examining more closely the Parties' claims against each other. As counsel for Colombia noted in reference to Costa Rica's presentation on Monday: Costa Rica "focused very largely on Nicaragua's claim"[2]. As a matter of balance and fairness we will turn back to Colombia's claim for a moment. As Costa Rica wrote in its Application: "The boundary claimed by Colombia in this case is situated *west* of the [1977 line] . . . and, thereby encompasses area that would go to Costa Rica under the terms of their 1977 agreement."[3] This assertion can be illustrated using Colombia's map from tab 16 of yesterday's folder. Despite Mr. Crawford's attempt to allay Costa Rica's concerns with assurances that "this is quite normal"[4], from Costa Rica's perspective Colombia's claim encroaches in a significant way on Costa Rican interests as illustrated on the map now on the screen. If Colombia's boundary claim were to prevail and be adopted by the Court in its delimitation decision, that delimitation decision would affect Costa Rica's legal interest. It would also have an impact on the location of Costa Rica's tripoint with Colombia and Nicaragua at the northern end of the 1977 line. According to the terms of the Treaty, the westward extent of Colombia's interests end there and Costa Rica's begin.

8. Speaking of tripoints, counsel for both Parties focused a great deal of attention on Costa Rica's other tripoint at the eastern end of the 1977 line — the tripoint between Costa Rica, Colombia and Panama. Both Parties provided maps of this tripoint but the map now on the screen is map PSR 7 from Nicaragua's folder. Counsel for Colombia went into some depth describing the trilateral relationship formed and strengthened by mutually reinforcing bilateral relationships among these three States. As a treaty partner in two of the three treaties, Costa Rica endorses the

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[2]CR 2010/14, p. 31, para. 4 (Crawford).

[3]Application for permission to intervene by the Republic of Costa Rica, p. 5, para. 20.

[4]CR 2010/14, p. 35, para. 19 (Crawford).

views expressed by Colombia with respect to this tripoint. What is surprising is that counsel for Nicaragua also seems to endorse the view that a tripoint exists here among those three States[5]. Apparently this was part of an attempt to lock Costa Rica behind the line it agreed with Colombia, even if Colombia should no longer be the State on the other side.

9. This line of argument indicates that Nicaragua has no appreciation of the actual impact of its claims in this case — if they were to prevail — the impact that the claim would have on the bilateral and trilateral relationships existing in this area. As of now, the interests of Costa Rica, Colombia, and Panama meet at the tripoint circled in black on Nicaragua's map. Nicaraguan interests are not present in the vicinity of this point as far as Costa Rica, Colombia, and, presumably, Panama are concerned. Nicaragua thinks otherwise as indicated by its claims to boundary lines and maritime area in this case. On the screen we will illustrate the effect those claims have on these existing relationships. The bilateral and trilateral relationships with Colombia are eliminated by Nicaragua's presence. But Nicaragua does not simply take Colombia's place. Instead, new boundary relationships would necessarily be formed. One would be a new trilateral relationship among Costa Rica, Nicaragua and Panama, location to be determined. Another would be a bilateral relationship between Costa Rica and Nicaragua. Although Costa Rica has provided some indication of its perspective on the line dividing their respective maritime areas, Nicaragua has not. Here Costa Rica has used an arrow to indicate the continuation of the Costa Rica-Panama boundary toward areas in which Nicaragua appears to claim an interest.

10. Speaking of arrows, counsel for both Parties also spent a good deal of time discussing the meaning to be given to arrows at the end of maritime boundaries. Both Parties seemed to reach the general conclusion that the mere presence of an arrow at the end of a boundary line renders that line harmless to third States[6]. But before we are lulled into a false sense of security we should recall that arrows, traditionally used as weapons are, in fact, quite sharp. In order to better understand the role of arrows, a distinction must be drawn between the two types of arrow one might find at the end of a maritime boundary: arrows that point and arrows that pierce. The former are helpful. They show us a direction in which to go. The latter are harmful. They injure, or — in

[5]CR 2010/13, pp. 38-39, paras. 33-35 (Reichler).

[6]*Ibid.*, pp. 34-35, paras. 20-22 (Reichler); CR 2010/14, p. 35, paras. 18-19 (Crawford).

the language of the Statute — affect interests. They are difficult to remove and they tend to leave a scar. The difference between them can only be detected if the interests of a third State in the vicinity of the arrow are known: pointing arrows depart from a point safely outside the area of third State interests; piercing arrows do not. The Court, in the past, has been very careful to use only pointing arrows. But in order to avoid accidental piercing when the intention was only to point, the Court must have full information about the extent of third State interests. That information can only be reliably provided by the third State itself, and in the context of intervention, only at the second stage of the intervention process.

11. But enough of tripoints and arrows, allow me to turn to an issue that clearly confused counsel for Nicaragua and see if we can straighten things out: that is, the relationship between Costa Rica's area of interest and the 1977 line. Counsel for Nicaragua mockingly attributed to Costa Rica the idea that "Nicaragua brought Costa Rica's newly-expanded maritime claim upon itself by protesting the treaty with Colombia which contains a more modest claim"[7]. This is, in fact, only half wrong. In an attempt at sarcasm, counsel accidentally stumbled over a partial truth. But a better formulation would be that Costa Rica's area of legal interest only extends beyond the 1977 line because Nicaragua's claim in this case — if it were to prevail even in part — would disrupt existing boundary relationships in the region and eliminate the very purpose for which the 1977 line was negotiated and agreed.

12. Continuing on that same point, counsel for Colombia noted that Costa Rica's minimum area of legal interest contains areas that "are closer to San Andrés and the other Colombian features than they are to Costa Rica"[8]. Counsel continued, acknowledging that while Costa Rica can claim these areas against Nicaragua "which is even further away", to do so "stands in acute tension with the long-standing position of Costa Rica as to the maritime entitlements of Colombia's islands"[9]. There is most certainly a tension here, however, to be clear, it was not created by Costa Rica, but by Nicaragua. And it will not be resolved by Costa Rica, but by the Court when it renders a delimitation decision in this case. If Nicaragua's claims prevail in this case, it is indisputable that

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[7]CR 2010/13, p. 41, para. 41 (Reichler).

[8]CR 2010/14, p. 36, para. 21 (Crawford).

[9]*Ibid.*

Colombia would no longer be Costa Rica's neighbour in this part of the Caribbean, effectively extinguishing the essential basis of the legal instrument concluded by Colombia and Costa Rica. This is not an outcome that Costa Rica has pursued or that Costa Rica desires. To the contrary, as Costa Rica has said in its Application and throughout these proceedings, and as the Parties themselves have reiterated several times, Costa Rica has acted consistently with its agreement and has refrained from conduct that would defeat the object and purpose of that agreement. Despite these efforts and through no fault of its own, Costa Rica is now caught in the middle of a dispute between Nicaragua and Colombia that could well result in the disruption and, possibly, outright elimination of a long-standing maritime boundary relationship with Colombia.

13. Counsel for Nicaragua discussed the 1977 line at great length apparently in order to demonstrate that Costa Rica has obligations vis-à-vis Colombia related to the 1977 line and the treaty from which that line arose. Costa Rica does not contest this. But counsel's merely unnecessary argument on this point transforms into a wholly inaccurate argument when he asserts that "Costa Rica in effect asks the Court to ignore that treaty"[10] on the basis that the treaty remains unratified by Costa Rica. This is simply wrong. Costa Rica does not ask the Court to ignore the treaty between Costa Rica and Colombia as it pertains to the boundary relationship with Colombia. Instead, Costa Rica simply states a fundamental principle of international law which dictates that the bilateral treaty between Costa Rica and Colombia created no rights or obligations for Nicaragua. As such there is nothing for the Court to ignore as it considers the extent of Costa Rica's area of interest should Nicaragua's claim prevail in this case. Nicaragua knows this general rule of treaty law and admits as much saying "[o]f course Nicaragua derives no rights or obligations from the bilateral Treaty between Costa Rica and Colombia"[11].

14. Even so, Nicaragua still hopes to derive some benefit from the 1977 line arguing that "Costa Rica . . . did not consider the areas beyond the 1977 Treaty line as appertaining to itself, and therefore any decision by the Court in regard to those areas could not affect its legal interests"[12]. Nicaragua is wrong again. Nicaragua's claim against Colombia in this case, if it were to prevail,

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[10]CR 2010/13, p. 38, para. 30 (Reichler).

[11]*Ibid.*, p. 40, para. 39 (Reichler).

[12]*Ibid.*, p. 37, para. 29 (Reichler).

would create a vacuum in the areas of the south-western Caribbean now under Colombian jurisdiction. Costa Rica is not precluded in any way from filling that vacuum to the fullest extent possible in accordance with principles of international law.

15. Mr. President, I have focused on Colombia's boundary claim in this case and the manner in which it might affect Costa Rica's interest of a legal nature. And I have just explained the impact that Nicaragua's claim to maritime area would have on existing boundary relationships, in particular the relationship between Costa Rica and Colombia. I will now demonstrate how Nicaragua's boundary claim in this case might also affect Costa Rica's legal interest.

16. Nicaragua makes a claim to a boundary line in its Reply that is now shown on the screen. This line represents the outer or easternmost limit of Nicaragua's claim against Colombia to maritime area. Nicaragua's argument that this line somehow stands alone delinked from any area is convoluted, bizarre, and ultimately incorrect. Clearly the maritime area claimed by Nicaragua in the Caribbean Sea is limited on the east by this line and on the west by Nicaragua's coast. But we are left to wonder about the southern limit of the area. The location of that limit will indicate the extent of the overlap between Costa Rica's area of interest and Nicaragua's claimed area in this case.

17. Nicaragua tells us that "[i]t expresses no opinion as to the location of any lateral delimitation lines with Costa Rica"[13], and yet it depicts half a dozen areas throughout its written pleadings the southern limits of which are being added to the map now in rapid succession. What should Costa Rica make of all this? First, if any of the lines shown on the screen represents, even roughly, the southern limit of Nicaragua's claimed area, then that area encroaches on Costa Rica's entitlements and a delimitation in this case that reached as far south as any of these lines would affect Costa Rica's interest. This includes even the most northerly of these possible limits: the line connecting the Costa Rica-Nicaragua land boundary terminus with the southern endpoint of Nicaragua's boundary claim in its Reply. Second, if none of these lines represent the southern limit of Nicaragua's claimed area, then what is that limit? Costa Rica is left to guess. And, if the issue

[13]CR 2010/13, p. 32, para. 16 (Reichler).

is not clarified before the close of oral submissions, the Court will be left to guess as well. Costa Rica's rights and interests are at stake here and guessing will not suffice.

18. Costa Rica has shown the Court the possible outcomes if either of the Parties' boundary claims were adopted wholesale and without modification by this Court in its delimitation decision. Both boundary claims would affect Costa Rica's legal interest. As stated on Monday, Costa Rica believes that the boundary delimited in this case is likely to be located somewhere between those claims within the area in dispute between the Parties. That area, along with Costa Rica's minimum area of interest is shown on the map now on the screen. When the Court delimits the boundary between the Parties somewhere within the disputed area, Costa Rica hopes that the line will end well short of the area in which Costa Rica has an interest of a legal nature in the exercise of its sovereign rights and jurisdiction. From that endpoint, located safely beyond Costa Rica's area of interest, an arrow could be used to indicate the further continuation of the boundary toward Costa Rica's area. To be certain that this arrow will point and not pierce, the Court must first be aware of the full extent of that area and only Costa Rica can provide the necessary information.

III. Conclusions

19. Mr. President, Costa Rica's argument in this stage of the intervention is still quite simple: Costa Rica's area of interest overlaps with the area in dispute between the Parties to this case and, therefore, a delimitation decision in this case may affect Costa Rica's interest. Costa Rica is in the middle of a dispute between its neighbours Nicaragua and Colombia. The link between Costa Rica's interest and the dispute in this case is further demonstrated by the fact that all three of Costa Rica's bilateral boundary relationships in the Caribbean could be affected by the outcome in this case. Moreover, the Court will not have failed to notice that many — many — of yesterday's arguments — ostensibly on Costa Rica's Application to intervene — could well have been made by the Parties against each other at the merits phase of the main case. Costa Rica's interests and the delimitation in this case are inextricably linked. There can be no question that Costa Rica has an interest of a legal nature that may be affected by the delimitation decision in this case and for that reason Costa Rica should be allowed to intervene in order to inform the Court of the full extent of those interests and thereby to protect those interests.

20. Mr. President, distinguished Members of the Court, this concludes my presentation. If you would now give the floor to my colleague, Sergio Ugalde.

The PRESIDENT: I thank Mr. Coalter Lathrop for his presentation. I now invite Mr. Sergio Ugalde to take the floor.

Mr. UGALDE:

THE LEGAL NATURE OF COSTA RICA'S INTEREST THAT MAY BE AFFECTED BY THE DECISION IN THIS CASE, THE TRUE CRITERIA FOR STATUTORY INTERVENTION, AND THE IMPORTANCE OF INFORMING THE COURT OF COSTA RICA'S LEGAL INTEREST THROUGH INTERVENTION

1. Mr. President, distinguished Members of the Court, it is a great honour to stand before you to deliver my second and final presentation of these proceedings on behalf of Costa Rica. Generally speaking, opposition can be an easy task; it only requires to say "no". The more "no" is said, the easier the task of opposition becomes. Yesterday, in its persistent challenge to Costa Rica's request to be allowed to intervene in the present case, we witnessed a little bit of that from Nicaragua.

2. Of the great volume of statements made yesterday, I will, in the interest of time, extract the arguments that merit attention because they are relevant to the discussion of our purpose here.

I. The legal nature of Costa Rica's interest

3. Regardless of the stringent and groundless opposition offered by Nicaragua to Costa Rica's request to intervene, Costa Rica has demonstrated, beyond any shred of doubt, the existence of an interest of a legal nature in the Caribbean Sea which is also part of the subject-matter of the present dispute. Costa Rica has also categorically established that, as a result of the submissions of the Parties, a decision of the Court in this case may affect those interests, as the Court's delimitation decision must take place within the area of the subject-matter of the dispute, and therefore, may potentially reach the area of Costa Rica's legal interest.

4. Nevertheless, Nicaragua contends, in its Written Observations, that Costa Rica supports its Application on the basis of a "thesis — that 'nearness' of a delimitation constitutes grounds for intervention under article 62"[14]. However, Nicaragua's true argument — as revealed yesterday by Nicaragua's distinguished counsel — seems to be that, because a Chamber of the Court denied Nicaragua itself the right to intervene on matters related to the delimitation inside and outside the Gulf of Fonseca, the Court must deny Costa Rica's Application to intervene in this case.

5. These two cases are entirely different, both factually and legally, and — as I hardly need to recall — the Court has consistently reaffirmed that it looks at each case it hears independently. In the *El Salvador/Honduras* case, the Chamber found that Nicaragua could not intervene, on the aspects related to delimitation, because it did not show how the decision of the Court could affect Nicaragua's rights and interests[15].

6. Contrary to the findings in that case, where Nicaragua — in the Chamber's words — "failed" to show the Court how a delimitation could in any way affect its interests, Costa Rica has presented all the relevant facts and graphics indicating, clearly and convincingly, how the delimitation between Nicaragua and Colombia — in general and in particular — may affect its legal interests in the Caribbean Sea. Costa Rica has illustrated how the maritime areas bounded by the to-be-awarded boundary line, that is, the subject-matter of this case on which Costa Rica seeks to intervene, could intrude into the maritime interests and rights of Costa Rica. Therefore, clearly this is not a case of "nearness", as argued by Nicaragua, but one in which a decision of the Court, not taking into consideration the legal interests of Costa Rica, may result in serious prejudice of those interests.

7. Nicaragua's counsel portrayed Costa Rica's interest in the Caribbean Sea as "*de fait*", and not *"d'ordre juridique"*[16]. As Professor Christine Chinkin has observed, "it is hard to think of a clearer example of an interest of a legal nature" than the "desire to protect [a State's] 'sovereign rights'"[17]. This is exactly the nature of the rights Costa Rica desires to protect through intervention

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[14]Written Observations of Nicaragua, p. 4, para. 11.

[15]See *Land, Island, and Maritime Dispute (El Salvador/ Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, p. 123, para. 74, p. 128, para. 84.

[16]CR 2010/13, p. 24, para. 20 (Remiro).

[17]Christine Chinkin, *Third Parties in International Law*, 1993, p. 161.

in this case. Furthermore, the subsequent presentation by Nicaragua seemed to accept the existence of a Costa Rican legal interest in the Caribbean, suggesting, however, that they are not as extensive as Costa Rica has described them to be, but these were not denied in its existence[18].

II. The criteria for statutory intervention

8. Mr. President, counsel for Nicaragua also gave us an insightful overview of the procedure of intervention. Among the conclusions that merit attention is the fact that we are engaged in the process of what is called "statutory intervention", which, as has been constantly referenced by all Parties, is derived from the Statute and the Rules of Court. The significance of this is that a country wishing to intervene is only asked to fulfil the requirements established therein, and is not called to fulfil any other particular requirement.

9. Yet, in the opinion of Nicaragua's counsel, it is necessary that, for an intervention to flourish, the interest of a legal nature must be "their own, precise, direct and actual". What, exactly, is the legal source of these new requirements? We do not know, because no explanation whatsoever was given to us. And we certainly cannot find them in the Statute or Rules of the Court, despite the rightly affirmed "statutory" character of intervention. Rather, they seem to be the by-product of Nicaragua's attempt to disqualify Costa Rica's Application by creating a new set of requirements that are not grounded in law. Thus, once the impression is created that there are requirements that have not been met by Costa Rica in its Application, the Court is asked to dismiss the same. Notwithstanding the fact that an application need only fulfil the actual requirements laid down by the Statute and the Rules of Court, Costa Rica has, if anything, shown the Court that its interests of a legal nature are its own, are precise, are directly connected to the principal ongoing case, and are actual, in the sense that they are intrinsically connected to the outcome of the decision of this Court in the instant case.

10. Nicaragua's counsel also argued that intervention has another characteristic, which is: that it should not be easily accepted by the Court. In underpinning this view with citations from the Court's jurisprudence, we came to see, at certain length, the great importance that Nicaragua gives to Court's decisions on the applications to intervene of Malta, in the *Tunisia/Libya* case, and of

[18]See CR 2010/13, pp. 36-41, paras. 27-41 (Reichler).

Italy, in the *Libya/Malta* case. We learned how, in the latter case, the Court apparently gave Italy everything it had asked for, despite not allowing the intervention to proceed. Though appreciative of this history, we could not see what relevance this has to the facts for the case before us. Apparently Nicaragua considers that those cases reflect the alleged position of the Court that intervention should be seriously restricted, indeed to the extent that no intervention should ever be allowed to proceed, either because a country has made too general a statement about its legal interests, which therefore should be considered insufficiently "precise, direct, or actual"; or because, on the other hand, an application meeting these new criteria renders intervention itself unnecessary. And Nicaragua's apparent reforms of the system of intervention do not stop there. If, perchance, an application successfully navigates the twin pitfalls of generality and particularity, it should nevertheless be denied as constituting a "new dispute", or, even further, as seeking not to protect legal interests but to "extort from the Court a decision of rights", as it was put by Nicaragua's esteemed counsel[19].

11. These views also connect to another point, which Nicaragua seems to find highly relevant, namely: that the Court has rejected all intervention requests subject to opposition from at least one party. All, of course, except its own in the *El Salvador/Honduras* case. Nicaragua considers that objection alone should be sufficient to deny an intervention request. Counsel for Nicaragua goes as far as to suggest that the intervention of Equatorial Guinea was not rejected by the Court only because it was not opposed. It also seems to attach less importance to that intervention on the basis that the Court authorized intervention through an Order, rather than a judgment. Frankly, I fail to see what the way the Court chose to render that decision has to do with anything, but one thing is certain: it cannot be suggested that Equatorial Guinea's intervention is reduced in significance or validity because it was not opposed. That intervention is as good as any other that the Court has allowed or may allow in the future.

[19]CR 2010/13, p. 21, para. 9 (Remiro).

12. Furthermore, when the Court has accepted or rejected an intervention, it has not done so because the parties have or have not opposed it; rather, it has done so because it has considered that the circumstances of the particular case, the applicable law and the facts or information known to it, warrant permission to intervene.

13. Mr. President, intervention under Article 62, in the form recognized to exist by this Court, is not an inconvenient procedure, loosely placed in the Statute of the Court, created with the purpose of allowing third countries to interfere in judicial cases. Article 62 is as much a norm as any other from the Statute, and it is intended to be used as a legal means to protect the legal interests of third States by ensuring that justice is carried out in the fairest of ways, and that a State, any State, is heard when the circumstances of a case are such that a decision may affect, even if only indirectly, the legal interests of that State. To allow or to impede intervention merely on the basis of judicial policy, because of a desire either to encourage countries to queue up to intervene, or alternatively, to dissuade countries from intervening at all, as seems to be what Nicaragua suggests, is wrong and defies everything international law stands for.

14. Mr. President, Nicaragua also endeavoured yesterday to disqualify Costa Rica's intervention on the basis of Costa Rica's alleged malicious motive to take advantage of its sister republics, parties to this case. Thus, Nicaragua would have us believe that Costa Rica first plotted with Colombia, back in 1977, to strip maritime areas in the Caribbean Sea out of Nicaragua's hands[20]. As counsel for Colombia rightly pointed out yesterday, it should be noted that Nicaragua did not protest that agreement. Furthermore, according to Nicaragua, in a later stage, and only because Costa Rica secretly felt short-changed by its 1977 agreement with Colombia, it is seizing the opportunity opened by Nicaragua to strip back from Colombia areas it felt it lost in the 1977 negotiation. As Nicaragua was saying this, it was simultaneously acknowledging — over, and over, and over again — that Costa Rica has, indeed, fully respected the 1977 agreement with Colombia for its entire duration. It made quite a point out of this, and even went so far as to say "It is undisputed that Costa Rica has complied with the 1977 Treaty ever since it was executed, including to this day."[21] However, despite this acknowledgment, it continued to challenge Costa

[20]CR 2010/13, p. 41, para. 42 (Reichler).

[21]*Ibid.*, p. 39, para. 37 (Reichler).

Rica's motives, by reading between the lines of Costa Rica's three decades of assurances and practice of recognition to Colombia, to find a secret plot to do exactly the contrary. Counsel for Nicaragua even took it upon himself to warn this Court of this plot, stating that

> "After 33 years of maintaining a consistent and public view of its legal interests, and conducting itself in strict accordance with that view in all respects, the Court should treat with some caution Costa Rica's sudden effort to throw the entire historical and geographical record out the window in order to claim a new, expanded set of interests in regard to Nicaragua alone."[22]

Why is Costa Rica's conduct of strict compliance with the 1977 agreement evidence of throwing the historical and geographical record out the window, particularly in regards to Nicaragua? Obviously there is no relationship between one thing and the other, but it does indeed sound impressively ominous.

15. When Costa Rica affirmed that it had not ratified the 1977 Treaty with Colombia, out of deference to Nicaragua, that also seems to trouble Nicaragua, which apparently objects to Costa Rica's display of good neighbourliness. The fact of the matter is that the treaty has not been ratified yet, not because Costa Rica expects or wishes for a specific outcome in this case, as suggested by Nicaragua, but, first, because the dispute over the San Andrés archipelago between Nicaragua and Colombia caused the treaty to be withdrawn from the Costa Rican legislature, as reflected in Charney and Alexander[23], which was only partially quoted by Nicaragua yesterday, and second, because after finding out that Nicaragua's submissions in this case truly may affect Costa Rica's legal interests, it understood that a ratification of that treaty would need to wait a decision by this Court. Nicaragua's story line, much of which is devoted to impugning Costa Rica's reasons for protecting its legal interests in this case, does share an attribute with the works of Sir Arthur Conan Doyle: they are both as riveting as they are extraordinarily fictitious. Can we still feel assured that Costa Rica's interests are duly protected after what we have witnessed yesterday? Obviously not.

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[22]CR 2010/13., p. 40, para. 38 (Reichler).

[23]American Society of International Law, *International Maritime Boundaries*, Vol. I, J.I. Charney & L.M. Alexander (eds.), 1996, p. 465.

16. Mr. President, it appears that we came to learn only now, at this hearing, that Nicaragua filed the instant case merely to ask the Court to find "that the line dividing the continental shelf of Nicaragua from the continental shelf of Colombia lies where Nicaragua has placed it"[24]. That is, Nicaragua is asking the Court to only posit a line, somewhere in the middle of the Caribbean Sea, floating idly and completely disembodied from any maritime entitlements west of that line. This strange submission, if it is correct, has the effect of apparently leaving the waters west of that line to Colombia. This argument would seem to be confirmed by Nicaragua's counsel's half-hour lecture on the 1977 agreement between Costa Rica and Colombia, and how the waters east and north of that boundary line appertain to Colombia. To make the point even clearer, counsel for Nicaragua accused Costa Rica of making false arguments, when Costa Rica commented that the Nicaraguan line implied the recognition of the maritime areas bounded by that line[25]. So, the conclusion would have to be that Nicaragua wants the line but not the water.

17. However, at the same time Nicaragua complains that Costa Rica discriminates against it, because if Colombia is the State to whom the waters beyond the limits of the 1977 line pertain, Costa Rica has no legal interests in those maritime areas; but, if the waters beyond those limits were to fall on Nicaragua, Costa Rica claims legal interests in that area. Beyond the oddness of these arguments, what exactly is Nicaragua complaining about? Have we not been informed that Nicaragua's claimed delimitation line does not bind any maritime area west of that line? And that as a result, since Nicaragua is not Costa Rica's neighbour there, because it does not claim those waters, Costa Rica cannot have a contingent interest in that area. And yet, despite the clear contradiction, we hear complaints about discrimination if Nicaragua comes to be Costa Rica's north-eastern neighbour. So, it seems that Nicaragua does indeed claim those areas; otherwise it could not be accusing Costa Rica of discrimination. Therefore, the falsity does not lie in Costa Rica's arguments.

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[24]CR 2010/13, p. 32, para. 14 (Reichler).

[25]*Ibid.*, p. 33, para. 18 (Reichler).

III. The issue of information

18. Mr. President, I would like now to refer to the issue of information. In light of my observations thus far, it is clear that Costa Rica may well face new theories, incomplete information or new submissions throughout the remainder of this case. It is thus equally clear that, in order to properly protect its legal interests from what has already been asserted, and from what might be asserted in the upcoming phase of this case, Costa Rica must make use of the procedure of intervention for that purpose.

19. The informational importance is further emphasized by what we have seen thus far. Counsel for Nicaragua, and also for Colombia, to a lesser degree, have said all manner of things about Costa Rica's legal interest. It is true, and even proper, that the parties may express their views on a third State's application to intervene. What is less proper, however, is to have third State legal interests qualified, or disqualified, enlarged or diminished, as the views of the parties on their respective claims against each other dictate. I would have to say that the legitimate determination of a third State's legal interest falls on that third State, which best understands its interests, how they may be affected by foreign circumstances, and what the best way to protect them is. And it is for the Court, and only for the Court, to decide if the third State's legal interest falls within the scope of Article 62, thus warranting the acceptance of the request to intervene. Costa Rica's interest of a legal nature stems out of Costa Rica's true and good-faith understanding of what its rights and interests are according to international law, and as a result has been framed as such. Those are the rights and interests that are at stake here, not the ones that have been presented by the Parties in their respective arguments.

20. Finally, if there can be any doubt about the importance of the procedure of intervention, as the most effective means to inform the Court of the relevant facts, in order to render an informed and complete decision in complex disputes — like the present one —, where legal interests of third States are in play, it is quite appropriate to recall Professor Shabtai Rosenne's views on this very question. He said:

> "Protection for a third State can only be assured if the Court is in full possession of the relevant facts and information *as that third State sees them* and as the principal parties can contest them in adversarial proceedings. The procedure of requesting

> permission to intervene, which assumes an adversarial character almost from its initiation, is one of the methods by which the Court is supplied with these facts and information, and can assess their impact on the bilateral case originally brought before it. Article 59 is manifestly insufficient for this purpose."[26]

21. Mr. President, with these judicious words I come to the conclusion of my presentation. I thank you and the distinguished Members of the Court for lending me your kind attention.

22. Mr. President, if it pleases the Court, I would ask you to call on Ambassador Edgar Ugalde, for Costa Rica's closing statement.

The PRESIDENT: I thank Mr. Sergio Ugalde for his presentation. Maintenant, j'invite M. l'ambassadeur Edgar Ugalde Alvarez, agent du Costa Rica à prendre la parole.

M. UGALDE ALVAREZ :

CONCLUSIONS

1. Monsieur le président, distingués membres de la Cour : nous avons atteint la fin de cette audience et nous sommes satisfaits car le Costa Rica a démontré clairement à cette honorable Cour, l'existence d'intérêts d'ordre juridique qui peuvent être mis en cause par la décision de la Cour dans cette affaire.

2. Le Costa Rica a rempli pleinement les exigences de l'article 81 du Règlement de la Cour. La demande d'autorisation d'intervenir a été déposée dans les délais fixés par la Cour, plus de six semaines avant la clôture de la procédure écrite. Le Costa Rica a indiqué avec précision l'objet de son intervention, tel qu'établi par la Cour. En conséquence, la Cour a été informée des intérêts d'ordre juridique qui pouvaient être affectés par la décision dans cette affaire.

3. A l'appui de sa requête à fin d'intervention, le Costa Rica a exposé ses arguments et présenté des graphiques sur les zones géographiques dans la mer des Caraïbes qui prouvent, en vertu du droit international, l'existence d'intérêts d'ordre juridique dans ladite mer. Nous avons aussi démontré comment une décision de cette honorable Cour pourrait avoir une incidence directe dans ses intérêts. Le Costa Rica a aussi précisé que ces régions géographiques font partie du litige entre les Républiques du Nicaragua et la Colombie devant cette Cour.

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[26]Shabtai Rosenne, *The Law and Practice of the International Court, 1920-2005*, Vol. III, 2006, pp. 1596-1597; emphasis added.

4. Malgré les efforts intenses du Nicaragua de miner la valeur des intérêts du Costa Rica dans la zone soumise à la décision de la Cour, les éléments de preuve solides, juridiques et de fait présentés par mon pays nous mènent à une seule conclusion possible : les Parties dans ce cas ont, bel et bien, demandé à la Cour de prendre une décision par rapport aux zones maritimes costa-riciennes. Par conséquent, il est évident qu'il y a un intérêt juridique légitime du Costa Rica et que celui-ci peut être mis en cause par la décision de la Cour dans cette affaire.

5. En outre, mon pays a démontré comment une décision de la Cour, sans tenir compte des intérêts juridiques du Costa Rica, est susceptible d'affecter, directement ou indirectement, lesdits intérêts, avec des conséquences irréparables, qui ne pourraient pas être surmontées en présentant un nouveau cas devant la Cour. Egalement nous avons examiné la façon dont l'article 59 du Statut de la Cour, par la nature même de la règle, ne fournit pas la protection nécessaire pour prévenir les effets négatifs pour le Costa Rica.

6. Par conséquent, pour mon pays, il est indispensable d'utiliser la procédure indiquée à l'article 62 du Statut pour assurer la pleine protection de ses droits, face aux effets, même indirects, d'un arrêt de cette honorable Cour, à la suite de réclamations de la Colombie comme du Nicaragua.

7. Monsieur le président, le peuple du Costa Rica a été éduqué dans la paix, et a toujours été guidé par le respect du droit international, ainsi que de l'utilisation des mécanismes pour la résolution pacifique des différends entre Etats, en vertu des instruments internationaux. Aujourd'hui, nous réaffirmons cette conviction devant la Cour internationale de Justice. La demande du Costa Rica répond uniquement à sa volonté de protéger adéquatement ses droits et intérêts conférés par le droit international.

Le PRESIDENT : Monsieur l'ambassadeur. Excusez-moi, il n'y a pas de traduction.

M. UGALDE ALVAREZ : Je m'excuse. Merci beaucoup. Je répète avec votre permission.

8. En aucune façon, le Costa Rica ne cherche, par le biais de cette requête, à «se présenter comme partie — non pas au différend qui oppose le Nicaragua à la Colombie — mais à un différend entre lui-même et le Nicaragua concernant la délimitation maritime entre les deux pays», ainsi que l'a exprimé le professeur Remiro Brotons, ni «ignore the 1977 treaty» avec la Colombie,

comme il a été suggéré par le conseil M. Paul Reichler[27]. Nous invitons sincèrement la République du Nicaragua à retourner à la table des négociations dans le but de définir les limites maritimes dans un esprit de bon voisinage et de fraternité propre à deux nations sœurs.

9. D'autre part, le Costa Rica n'a, en aucun cas, donné raison pour qu'on puisse interpréter ses arguments oraux ou écrits, comme un moyen d'ignorer ses obligations internationales, en particulier le traité de 1977 avec la République de la Colombie. Pour étayer cette affirmation, l'éminent agent de la République de la Colombie a dit : «The Treaty has been complied with good faith by both countries since the date of its conclusion in 1977.»[28] On se demande qui interprète le mieux les motivations du Costa Rica dans cette affaire : les conseils du Nicaragua ou l'agent de la Colombie ?

10. Mon pays est optimiste ; nous sommes sûrs que cette honorable Cour a été convaincue du bien-fondé de notre demande, des faits dont elle s'inspire et de la pleine conformité avec les dispositions du Statut et le Règlement de la Cour.

11. Par conséquent, Monsieur le président, au nom de mon pays, je demande respectueusement à la Cour d'octroyer le droit d'intervenir à la République du Costa Rica, afin d'informer la Cour sur ses intérêts d'ordre juridique qui pourraient être affectés par la décision dans cette affaire, selon l'article 62 du Statut.

12. Au nom de la République du Costa Rica, je souhaite énoncer à nouveau les mesures que mon gouvernement sollicite à la Cour dans le cadre de la présente requête à fin d'intervention.

13. Nous demandons l'application des dispositions de l'article 85 du Règlement, à savoir :

— Paragraphe 1 : «L'Etat intervenant reçoit copie des pièces de procédure et des documents annexés et a le droit de présenter une déclaration écrite dans un délai fixé par la Cour.»

— Paragraphe 3 **:** «L'Etat intervenant a le droit de présenter au cours de la procédure orale des observations sur l'objet de l'intervention.»

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[27] CR 2010/13, p. 21-22, par. 11 (Remiro) ; *ibid.*, p. 38, par. 30 (Reichler).

[28] CR 2010/14, p. 12, par. 14 (Londoño).

14. Monsieur le président, Mesdames et Messieurs les juges, permettez-moi de remercier les traducteurs pour l'excellent travail accompli, ainsi que le personnel du secrétariat pour l'aimable coopération et les facilités offertes. Je remercie également les membres distingués de cette Cour et vous, Monsieur le président, pour l'attention généreuse accordée au Costa Rica. Bon après-midi.

Le PRESIDENT : Je vous remercie, Monsieur l'ambassadeur Ugalde Alvarez pour vos conclusions comme agent du Costa Rica.

The Court will meet again tomorrow at 3 p.m. to hear the second round of oral argument of Nicaragua and Colombia.

The sitting is adjourned.

The Court rose at 3.55 p.m.