

NICARAGUA V. HONDURAS

A Case Summary for the
Maritime Dispute Resolution Project
Round II



U.S.-ASIA LAW INSTITUTE
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Maritime Dispute Resolution Project

Territorial and Maritime Dispute
between Nicaragua and Honduras
in the Caribbean Sea
(*Nicaragua v. Honduras*)

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A research project of the
U.S.-Asia Law Institute

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Project Overview

This case summary was prepared as part of the U.S.-Asia Law Institute's Maritime Dispute Resolution Project. The institute began the project in 2018 in order to better understand the circumstances in which interstate maritime disputes are successfully resolved and distill lessons for governments.

The two main questions the project seeks to answer are:

- When are international institutional dispute resolution mechanisms effective in resolving maritime disputes?
- What insights can be applied to the maritime disputes in East Asia?

To address these questions, leading international lawyers and legal scholars held workshops to analyze selected disputes from around the world. This and other case studies were prepared for the workshops and are based on the official records.

Citation:

Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nic./Hon.), Judgment, 2007 I.C.J. Rep. 659 (Oct. 8).

Section I – Summary of the Case

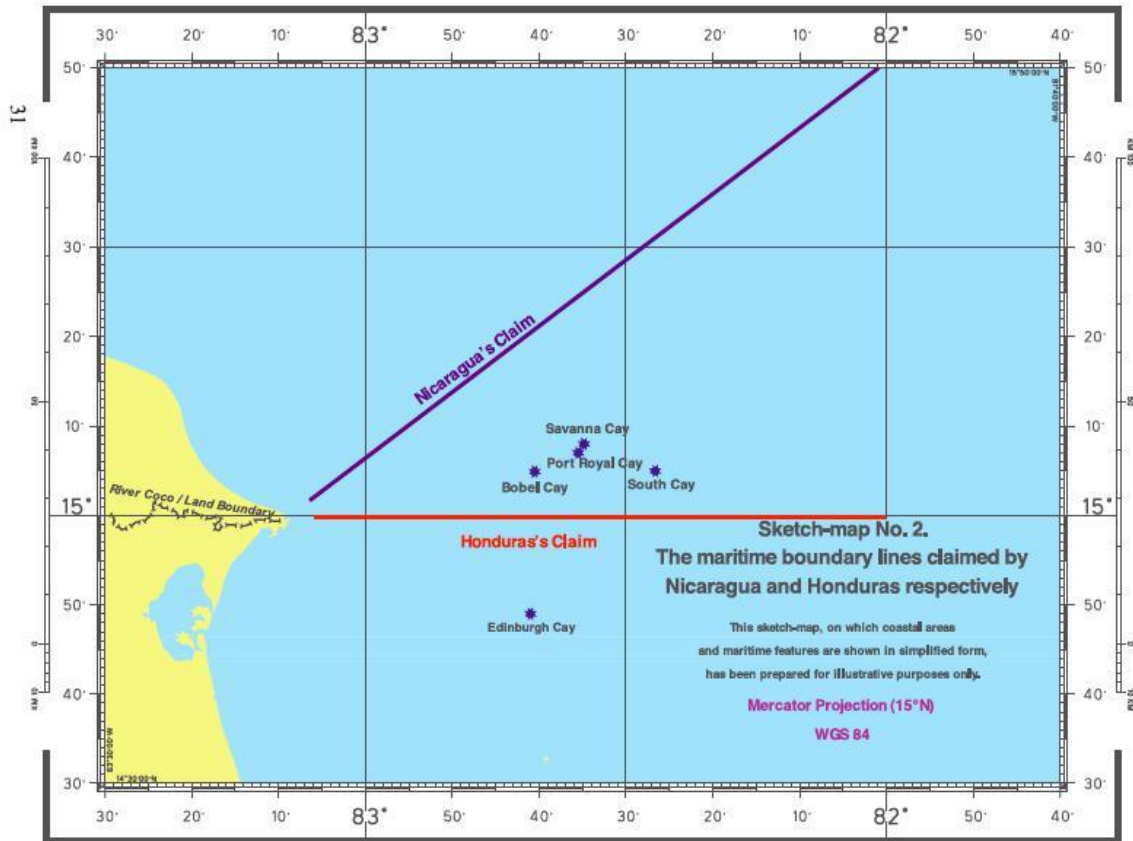
This case concerns a maritime boundary dispute between Nicaragua and Honduras in the Caribbean Sea. Both states were under the rule of Spain until they became independent in 1821. They later separately signed treaties with Spain, which recognized their territories including the adjacent islands that lie along their coasts without identifying them by name.

On October 7, 1894, the two states concluded a general boundary treaty, the Gámez-Bonilla Treaty. The Mixed Commission established under this treaty fixed the boundary from the Pacific Ocean at the Gulf of Fonseca to the Portillo de Teotecacinte, but it was unable to determine the boundary from that point to the Atlantic coast. Nicaragua and Honduras subsequently submitted their dispute over the remaining portion of the boundary to the King Alfonso XIII of Spain as sole arbitrator. He handed down an arbitral award in 1906 (the 1906 Award), which drew a boundary from the mouth of the River Coco at Cape Gracias a Dios to Portillo de Teotecacinte, generally accepting Honduras' claims. Nicaragua subsequently challenged the validity and binding character of this award. After several failed attempts to settle this dispute and a number of boundary incidents, the two states agreed to submit their dispute to International Court of Justice (ICJ) in 1957. The court found that the 1906 Award was valid and binding and that Nicaragua was under an obligation to give effect to it (the 1960 ICJ Judgment). As they could not thereafter agree on how to implement the 1906 Award, Nicaragua requested the intervention of the Inter-American Peace Committee. The Committee subsequently established a Mixed Commission which completed the demarcation of the boundary line with the placement of boundary markers in 1962.

From 1963 to 1979, Honduras and Nicaragua generally enjoyed friendly relations. However, efforts of bilateral negotiations from 1977 stalled in 1979, when the Sandinista National Liberation Front (FSLN) in Nicaragua ousted the Somoza government. On March 21, 1982, two Nicaraguan coastguard vessels captured four Honduran fishing vessels in the vicinity of the boundary line claimed by Honduras running along 14°59.8' North latitude (the 15th parallel), which resulted in a diplomatic exchange between the two states.¹ Further incidents with fishing vessels continued in the 1980s and 1990s. On August 2, 1986, Honduras concluded a maritime boundary agreement with Colombia, against which Nicaragua protested. Honduras eventually ratified the instrument on December 20, 1999.

On December 8, 1999, Nicaragua instituted proceedings before the ICJ against Honduras in respect of this dispute. The court rendered the present judgment on October 8, 2007.

¹ Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicar. v. Hond.), Judgment, 2007 I.C.J. 659, para. 252 (Oct. 8).



Map 1: Claims of the parties. Source: ICJ Judgment, p. 686.

Section II – Substantive Issues

The court addressed two preliminary matters, admissibility on the claims of the sovereignty over the islands and the critical date, and two major substantive issues, the sovereignty over the islands and maritime delimitation of an Exclusive Economic Zone (EEZ) and continental shelf.

1. Preliminary Matters

(1) Admissibility of Nicaragua's Claim over the Islands

First, the court dealt with the admissibility of Nicaragua's claim over the islands, which was added after the institution of the proceeding. The issue was whether the claim in question can be considered as included in the original claim in substance.² To plot a single maritime boundary line in the present case, it would have had to first determine which state had sovereignty over the islands and rocks in the disputed area.³ Therefore, Nicaragua's claim relating to sovereignty was held as admissible because it was inherent in the original claim relating to the maritime delimitation.⁴

(2) Critical Date

Second, the court decided the critical date, which was defined as "the date on which the dispute between the parties crystallized, unless such acts were a normal continuation of prior acts and were not undertaken for the purpose of improving the legal position of the party which relied on them."⁵

The court found that there existed two interrelated disputes, one concerning the attribution of sovereignty over the islands and another concerning the disputed maritime area.⁶ Regarding the islands, the court held that the critical date when the dispute

² *Id.* para. 110.

³ *Id.* para. 114.

⁴ *Id.* para. 115.

⁵ *Id.* para. 117.

⁶ *Id.* para. 118.

crystallized was in 2001, when Nicaragua first expressly reserved sovereign rights to the islets and rocks in its Memorial of 21 March 2001.⁷ Regarding the maritime area, it found that the critical date was 1982, when two incidents concerning fishing vessels occurred.⁸ The court found that the exchange of letters concerning the maritime boundary negotiation in 1977 “did not mark the point at which the dispute crystallized” because “no claims or counterclaims were articulated” by the two parties.⁹

2. Sovereignty over the Islands

The court then examined the sovereignty over the islands located in the vicinity of the 15th parallel. The parties agreed that (1) in 1821, when the two states became independent, none of the islands adjacent to the states were *terra nullius*; and (2) Bobel Cay, Savanna Cay, Port Royal Cay, and South Cay are all “islands” within the meaning of UNCLOS article 121, although neither state claimed any maritime areas beyond 12 nautical miles (nm).¹⁰

(1) *Uti Possidetis Juris* Principle

First, the court considered whether the dispute could be resolved on the basis of the *uti possidetis juris* principle. Honduras argued that this principle was embedded in the Gámez-Bonilla Treaty and confirmed by the 1906 Award and the 1960 Judgment, and that the

⁷ *Id.* para. 127-129.

⁸ *Id.* para. 131.

⁹ *Id.* para. 129.

¹⁰ *Id.* para. 137.

principle was applicable not only to their mainland territory but also the maritime area off the coast and the islands in the disputed area.¹¹

It was beyond doubt that this principle was applicable to the question of territorial delimitation between the parties, both former Spanish colonial provinces.¹² The court found that *uti possidetis juris* could in principle apply to offshore possessions and maritime spaces;¹³ however, this rule presupposes that the central colonial authority had previously delimited the territory as between the respective colonial provinces.¹⁴ Thus, in order to apply the *uti possidetis juris* principle to the islands, it would need to be shown that the Spanish Crown had allocated them to one or the other of its colonial provinces.¹⁵ The court found that there was insufficient evidence that Spain had legally assigned the islands to either of the parties before their independence.¹⁶ It also held that there was no evidence of “colonial *effectivité*,” i.e. for each colony, the conduct of the administrative authorities did not demonstrate effective exercise of territorial jurisdiction in the region during the colonial period.¹⁷

¹¹ *Id.* para. 147.

¹² *Id.* para. 153.

¹³ *Id.* para. 156.

¹⁴ *Id.* para. 158.

¹⁵ *Id.*

¹⁶ *Id.* paras. 159-164.

¹⁷ *Id.* para. 165.

Nicaragua claimed its sovereignty on the basis of adjacency, because the independence treaties concluded by Nicaragua and Honduras with Spain referred to adjacency. The court denied the claim, pointing out that adjacency itself cannot grant title. Moreover, the references to adjacency in the treaties of independence referred to mainland coasts rather than to offshore islands, and in this case the islands were closer to the coast of Honduras than to the coast of Nicaragua.¹⁸ The court concluded that neither party had title to these islands by virtue of *uti possidetis*.¹⁹

(2) Post-colonial Effectivité

Second, the court examined whether evidence of post-colonial *effectivité* would determine who held sovereignty over the islands. The matter would have to be decided by examining which of the two states had a superior claim based on the actual exercise or display of authority over the islands, coupled with the necessary sovereign intent.²⁰ A sovereign title may be inferred from the effective exercise of powers appertaining to the authority of the state over a given territory.²¹ Such an exercise must have also have “a certain dimension proportionate to the nature of the case.”²² Sovereignty over minor maritime features, such as the ones in the

¹⁸ *Id.* para. 164.

¹⁹ *Id.* para. 167.

²⁰ *Id.* para. 169.

²¹ *Id.* para. 172.

²² *Id.* para. 173.

present case, may be established on the basis of a relatively modest display of state powers in terms of quality and quantity.²³

Then, the court considered different categories of *effectivité* presented by the parties. It concluded that Honduras' activities – including the application and enforcement of criminal and civil law,²⁴ regulation of immigration,²⁵ regulation of fisheries activities,²⁶ and public works²⁷ – were sufficient to establish *effectivité* evidenced by an “intention and will to act as sovereign” by Honduras. Together these acts constituted “a modest but real display of authority” over the four islands.²⁸ On the other hand, the court did not consider Honduras' legislative and administrative control to be convincing, since the laws cited by Honduras did not reference the four islands and there was no evidence that they were applicable to the islets.²⁹ With regard to Nicaragua, the court found no proof of intention or will to act as sovereign, and no proof of any actual exercise or display of authority over the islands.³⁰

²³ *Id.* para. 174.

²⁴ *Id.* para. 185.

²⁵ *Id.* para. 189.

²⁶ *Id.* para. 196.

²⁷ *Id.* para. 207.

²⁸ *Id.* para. 208.

²⁹ *Id.* para. 181.

³⁰ *Id.* para. 207.

The court found that the cartographic material presented by each party was insufficient on its own to support the respective claims to sovereignty over islands,³¹ stating that none of the maps submitted by the parties was part of a legal instrument in force nor more specifically part of a boundary treaty.³² The court also held that the bilateral treaties involving Colombia, one with Honduras and one with Jamaica, were also not relevant, noting that Nicaragua never acquiesced in any understanding that Honduras had sovereignty over the disputed islands.³³ It also held that the 1988 Free Trade Agreement was not relevant, because the four islands in dispute were not mentioned by name.³⁴

Having examined all of the evidence, the court concluded that Honduras had sovereignty over these islands on the basis of post-colonial *effectivité*.³⁵

3. Maritime Delimitation of EEZ and Continental Shelf

(1) The Principle of *Uti Possidetis Juris*

First, the court considered whether the dispute could be resolved based on the *uti possidetis juris* principle. Honduras maintained that the 15th parallel constituted the line of maritime delimitation because, during the rule of Spanish Crown, Cape Gracias a Dios

³¹ *Id.* para. 219.

³² *Id.* para. 218.

³³ *Id.* para. 225.

³⁴ *Id.* para. 226.

³⁵ *Id.* para. 227.

marked the separation of the respective maritime jurisdiction of the colonial provinces of Honduras and Nicaragua.³⁶

The court observed that this principle might in certain circumstances, such as in connection with historic bays and territorial seas, play a role in a maritime delimitation.³⁷ However, in the present case, were the court to accept Honduras's claim, it found that no persuasive case had been made as to why the maritime boundary should then extend from Cape Gracias a Dios along the 15th parallel. Honduras merely asserted that Spanish Crown tended to use parallels and meridians to draw jurisdictional divisions, without presenting any evidence that the colonial Power did so in this particular case.³⁸

The court further observed that Nicaragua and Honduras as new independent states were entitled by virtue of the *uti possidetis juris* principle to such mainland and insular territories and territorial seas which constituted their provinces at independence. The court, however, had already found that it was not possible to determine sovereignty over the islands in question on the basis of the *uti possidetis juris* principle. Nor had it been shown that the Spanish Crown divided its maritime jurisdiction between the colonial provinces of Nicaragua and Honduras even within the limits of the territorial sea. Although it might have been accepted that all states gained their independence with an entitlement to a territorial sea, that legal fact did not determine where the maritime boundary between adjacent seas of neighboring states would ultimately run.

³⁶ *Id.* para. 229.

³⁷ *Id.* para. 232.

³⁸ *Id.*

The court also noted that the 1906 Award, which indeed was based on the *uti possidetis juris* principle, did not deal with the maritime delimitation.³⁹

In conclusion, the court held that the *uti possidetis juris* principle did not provide a basis for a maritime division along the 15th parallel.⁴⁰

(2) The Existence of a Tacit Agreement

Second, the court examined whether a tacit agreement existed. Honduras pointed to a variety of elements that came into existence both before and after the Sandinista revolution in 1979, and that it argued demonstrated the existence of a *de facto* boundary based on tacit agreement at the 15th parallel. It referred to, among others, (1) oil concession practices including Coco Marina, a joint venture oil well straddling the 15th parallel,⁴¹ (2) fishing activities,⁴² (3) Honduran naval patrols,⁴³ and (4) the practice of third parties as the evidence of the existence of a tacit agreement.⁴⁴

Nicaragua denied that it ever accepted or recognized the 15th parallel as the maritime boundary with Honduras.⁴⁵

³⁹ *Id.* para. 236.

⁴⁰ *Id.* para. 235.

⁴¹ *Id.* paras. 237-9.

⁴² *Id.* para. 240.

⁴³ *Id.* para. 241.

⁴⁴ *Id.* para. 242.

⁴⁵ *Id.* para. 247.

The court held that evidence of a tacit legal agreement must be compelling.⁴⁶ A *de facto* line might in certain circumstances correspond to the existence of an agreed legal boundary or might be more in the nature of a provisional line or of a line for a specific, limited purpose, such as sharing a scarce resource. Even if there had been a provisional line found convenient for a period of time, this is to be distinguished from an international boundary.⁴⁷

The court noted that, at times, the 15th parallel appeared to have had some relevance in the conduct of the parties. However, these events, spanning only short periods, were insufficient for the court to conclude that there was a legally established international maritime boundary between the two states.⁴⁸ It concluded that there was no tacit agreement in effect.

(3) Delimitation of the Maritime Boundary

a. The Method of Delimitation

Both parties asked the court to draw a single maritime boundary in the territorial sea, EEZ, and continental shelf. The parties were in agreement that the UNCLOS was in force between them in this dispute.

The determination of a single boundary for different rights can only be carried out by applying a criterion or combination of criteria that does not give preferential treatment to one of these rights to the detriment of another, while at the same time being equally suitable

⁴⁶ *Id.* para. 253.

⁴⁷ *Id.*

⁴⁸ *Id.* para. 256.

to the division of each of them.⁴⁹ For the delimitation of territorial seas, article 15 of the UNCLOS provides the equidistance/special circumstances approach.⁵⁰ For EEZ and the continental shelf, article 74(1) and 83(1) provides that they are to be delimited by agreement on the basis of international law to achieve an equitable solution.⁵¹ As to the plotting of a single maritime boundary, the court had on various occasions made it clear that, when a line covering several zones of coincident jurisdictions was to be determined, the so-called equitable principles/relevant circumstances method might usefully be applied.⁵² The equidistance method does not automatically have priority over other methods of delimitation and, in particular circumstances, there may be factors that make its application inappropriate.⁵³

In the present case, neither party had, as its primary argument, called for a provisional equidistance line as the most suitable method of delimitation.⁵⁴ The court looked at the geographical and geological circumstances, such that a pair of base points identified on either bank would assume a considerable dominance in constructing an equidistance line. In addition, the sediment deposited at sea had caused the delta and coastline to exhibit a very active morpho-dynamism, which might render any equidistance

⁴⁹ *Id.* para. 265

⁵⁰ *Id.* paras. 267-269.

⁵¹ *Id.* para. 270.

⁵² *Id.* para. 271.

⁵³ *Id.* para. 272.

⁵⁴ *Id.* para. 275.

line that was set today arbitrary and unreasonable in the near future.⁵⁵ The court concluded that it was impossible to construct a provisional equidistance line for the single maritime boundary delimiting maritime areas off the parties' mainland coasts,⁵⁶ and the court found itself within the exception provided for by article 15 of the UNCLOS in which it cannot apply the equidistance principle.⁵⁷ The court therefore considered whether the bisector of the angle created by lines representing the relevant mainland coasts could be a basis for the delimitation.⁵⁸ The use of a bisector had proved to be a viable substitute method in certain circumstances where equidistance is not possible or appropriate. The justification for the application of the bisector method in maritime delimitation lies in the configuration of and relationship between the relevant coastal fronts and the maritime areas to be delimited. In the present case, the equidistance method approximated the relationship between two parties' relevant coasts by taking account of the relationship between designated pairs of base points.⁵⁹ Considering the geographical configuration of the coast and the geomorphological features of the area where the endpoint of the land boundary was located, the court adopted the bisector line as a provisional boundary.⁶⁰

⁵⁵ *Id.* para. 277.

⁵⁶ *Id.* para. 280.

⁵⁷ *Id.* para. 281.

⁵⁸ *Id.* para. 283.

⁵⁹ *Id.* para. 289.

⁶⁰ *Id.* para. 292.

b. Relevant Coasts

In determining the relevant coasts, the court considered whether its selection of basepoints would avoid the problem of cutting off Honduran territory, while providing a coast of sufficient length to reflect the coastal configuration in the disputed area.⁶¹

c. Delimitation around the Islands

The court then examined the territorial sea surrounding the islands. Honduras argued that these islands should be recognized as having a full 12 nautical mile (nm) territorial sea, except where this would overlap with the territorial sea of Nicaragua. Nicaragua did not dispute that these islands could generate a territorial sea of up to 12 nm. However, it argued that their size and “instability” would serve as “equitable criteria” justifying their being enclaved within only a 3 nm territorial sea, because a full 12 nm territorial sea would result in giving a disproportionate amount of the maritime area in dispute to Honduras.⁶²

Drawing a provisional equidistance line for this territorial sea delimitation between the opposite-facing islands did not present the problems that an equidistance line from the mainland would. The parties provided the court with coordinates for the four islands in dispute north of the 15th parallel and for Edinburgh Cay to the south. Delimitation of this relatively small area could be satisfactorily accomplished by drawing a provisional equidistance line, using co-ordinates for the above islands as the base points for their territorial seas, in the overlapping areas between the territorial seas of cays. The court did not consider there to be any legally

⁶¹ *Id.* para. 298.

⁶² *Id.* para. 300.

relevant special circumstances in this area that would warrant adjusting this provisional line.⁶³

d. Starting-point and Endpoint of the Maritime Boundary

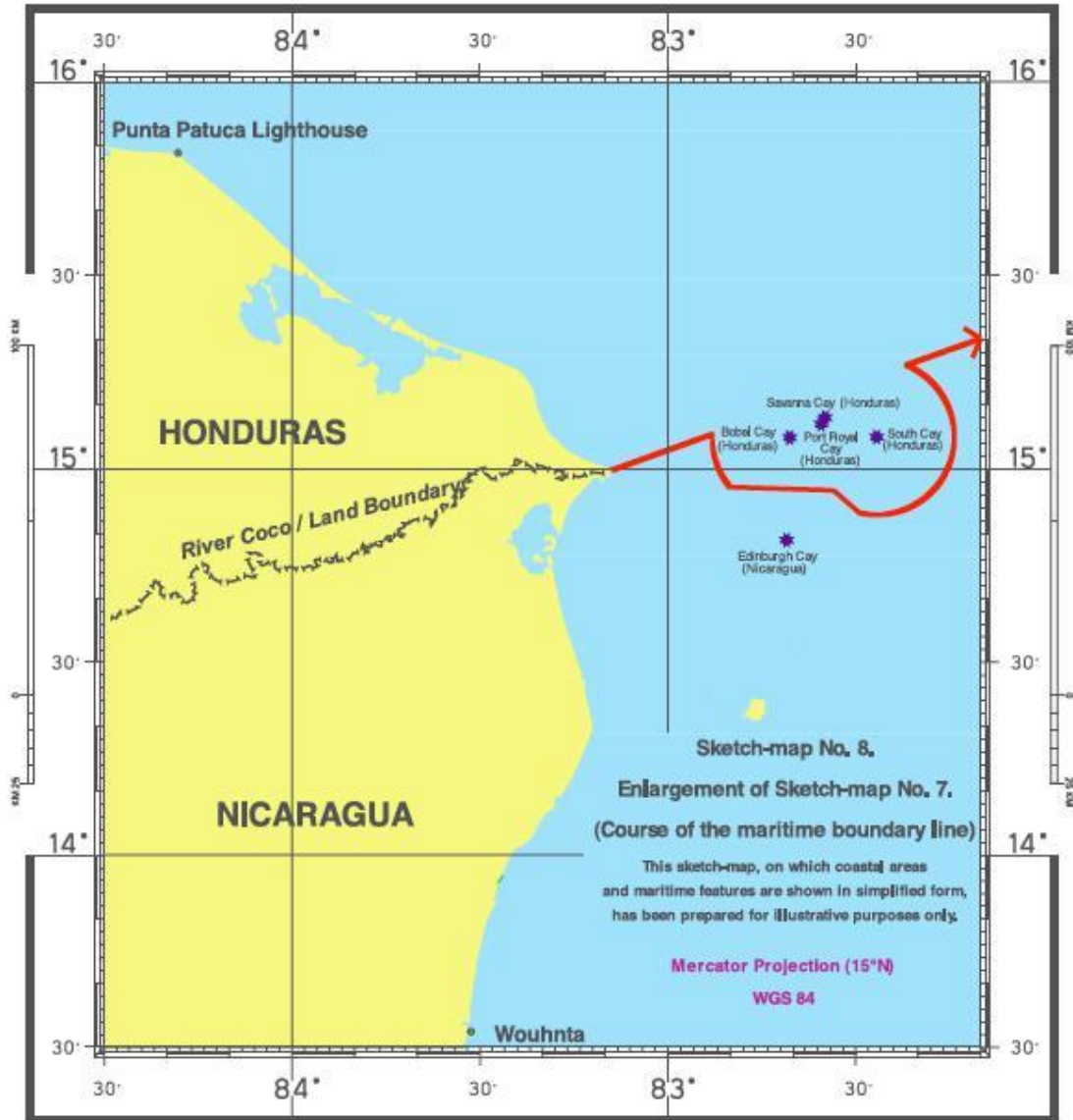
The parties agreed that the maritime boundary should begin 3 nm seaward of the mouth of the River Coco due to the instability of the coasts. However, they disagreed as to the beginning point from which the distance should be measured and as to the direction of the measurement. The court held that the starting point should be the point fixed by the Mixed Commission in 1962.

The court held that it could not definitely establish the endpoint of the delimitation due to the existence of other states' interests in the region. As to the 1986 Treaty between Honduras and Colombia, the court observed that the bisector line it had constructed ran north of the boundary set in that instrument, and would therefore not interfere with the boundary claimed by Colombia vis-à-vis Nicaragua. Another possible source of third-state interests was the joint jurisdictional regime established by Jamaica and Colombia in an area south of Rosalind Bank near the 80th meridian pursuant to their 1993 bilateral treaty on maritime delimitation. The court stated that it would not draw a delimitation line that would intersect with this line because of the possible prejudice to the rights of both parties to that treaty.⁶⁴ Finally, the court declared that the boundary line should continue along the same azimuth until it reached the area where the rights of third parties might be affected, and not beyond 200 nm from the coastal baselines of either party.

⁶³ *Id.* para. 304.

⁶⁴ *Id.* paras. 316-317.

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Map 2: The final delimitation. Source: ICJ Judgment, p.762.

Section III – Implementation of the Court’s Decision

1. Implementation

The parties agreed to abide by the court’s judgment and have continued cooperation for maintenance of the friendly relations.⁶⁵ The author of this case summary is not aware of any cross-border incidents between the two states in the Caribbean Sea after this settlement. (In March 2013, there was an occurrence near their Pacific boundary in the Gulf of Fonseca, where an armed Nicaraguan naval vessel tried to exclude Honduran fishing boat in disputed waters.⁶⁶)

According to the United Nations Division for Ocean Affairs and the Law of the Sea (DOALOS) database on national legislation, neither state has enacted implementing legislation and neither has concluded a maritime boundary treaty reflecting this judgment.⁶⁷ The boundary line is reflected in Nicaragua’s illustrative map of its baselines, published in 2018.⁶⁸

⁶⁵ For the background of the negotiation, see OAS Peace Fund, Honduras and Nicaragua, at <https://www.oas.org/sap/peacefund/hondurasandnicaragua/>.

⁶⁶ TOM LANSFORD, POLITICAL HANDBOOK OF THE WORLD 2016-2017 634 (2017).

⁶⁷ For Nicaragua, see <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/NIC.html>; and for Honduras, see <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/HND.html>.

⁶⁸ U.N. Office of Legal Affairs, Div. for Ocean Affairs and the Law of the Sea, Mar. Zone Notification No. 141, Ref. M.Z.N.141.2018.LOS (Dec. 18,

The following points are notable regarding this mutual acceptance of the judgment.

2. The Significance of the Judgment

This case represents a generally successful example of boundary dispute settlement through adjudication. Several considerations can be noted that may have contributed to the mutual acceptance of this judgment.

(1) Sovereignty over the Islands

The court favored Honduras regarding the sovereignty of four islands. There seem to be two reasons Nicaragua accepted this decision. First, the judgment shows that there was not a strong case for the existence of Nicaragua's post-colonial *effectivités* over the islands, but there was significant evidence on Honduras's side. Second, the impact of the islands on the maritime delimitation was minimal, as both parties agreed that they did not generate maritime claims beyond 12 nm. The fact that Nicaragua did not have a strong case and that both parties agreed to what effect the islands should be given may have encouraged Nicaragua to accept the decision.

(2) The Method of Maritime Delimitation

After the court denied both the applicability of the principle of *uti possidetis juris* and the existence of a tacit agreement between the parties, it proceeded with delimitation based on equitable principles. Three points are at odds with the three-step approach (which was of course not formulated at the time of the decision).

2018), available at https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/MAPS/NIC_MZN141_2018_00ill.jpg.

First, the court drew a bisector line as a provisional line, considering the geographical features of the coasts and the unstable coastline. Second, the court did not designate the relevant area to calculate the proportionality, presumably because it would not make much sense to do so, given the geography involved.⁶⁹ Lastly, the court awarded some areas south of the 15th parallel to Honduras, which it never claimed.

Drawing a provisional equidistance line and calculating proportionality would have been a complicated operation and, from the geographical configuration, the result would not have differed significantly. By adopting these methods, the court seems to have avoided unnecessary technical complexity.

(3) Natural Resources

The court did not consider fishery activities or the existence of hydrocarbon concessions to be relevant factors to shift the provisional line. However, the following points are notable.

First, the major oil fields such as Gorda Bank and Turquesa Bank were generally not affected by the boundary line held by the court. Coco Marina straddles the line, as it did the 15th parallel.

Second, the area was known to be rich in lobster and shrimp and fishery exports were substantial for both states. In particular, it was reported to be Nicaragua's second most important source of foreign currency at the time. There seemed to be no bilateral fisheries agreement between the two parties, but both countries

⁶⁹ ALEX G. OUDE ELFERINK, *Relevant Coasts and Relevant Area*, in MAR. BOUNDARY DELIMITATION: THE CASE LAW: IS IT CONSISTENT AND PREDICTABLE? 173-199 (Alex G. Oude Elferink, Tore Henriksen, & Signe Veierud Busch eds., 2018).

participate in various regional and international arrangements related to aquaculture.⁷⁰ Therefore, as far as the author was able to determine, the delimited line did not affect the states' resource interests in a significant manner.

(4) The Existence of Third State Interests

The court was aware that the decision would potentially affect the interests of Colombia and Jamaica on the eastern end of the boundary. Nicaragua had also brought a case against Colombia in 2001, which was ongoing at the time of this judgment.⁷¹ The court concluded that extending the maritime boundary beyond the 82nd meridian would not affect third-state rights, and in no case could the line be interpreted as extending more than 200 nm from the baseline. While it was criticized, this part of the judgment may be one of the reasons why the judgment was accepted by the parties.⁷²

In summary, the judgment was carefully designed not to harm the core interests of either party.

⁷⁰ For Honduras, see *National Aquaculture Legislation Overview: Honduras*, FAO FISHERIES AND AQUACULTURE DEPARTMENT (Jul. 22, 2020), http://www.fao.org/fishery/legalframework/nalo_honduras/en; for Nicaragua, see *id.*, *National Aquaculture Legislation Overview: Nicaragua*, http://www.fao.org/fishery/countrysector/naso_nicaragua/en.

⁷¹ The maritime delimitation of EEZ and continental shelf was done in 2012; and the delimitation of continental shelf beyond 200 nm is still pending.

⁷² Coalter G. Lathrop, *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, 102 Am. J. Int'l. L. 113 (2008) (criticizing the decision on the basis that “[o]n its face, the court’s decision appears to complicate the boundary relationship between Honduras and Colombia by establishing an area of Nicaraguan jurisdiction north of some part of the 1986 Colombia-Honduras boundary”).

3. External Factors of the Dispute

(1) Confidence Building Measures through the Organization of American States

The acceptance of the judgment may be partly attributed to efforts by the Organization of American States (OAS) to settle the dispute.⁷³ In December 1999, the OAS Permanent Council convened a special session at the request of the two parties to address tensions that had arisen due to the maritime boundary dispute.⁷⁴ While the two agreed to send the maritime delimitation case to the ICJ, they also signed a series of confidence-building measures, working with the OAS envoy on matters such as maintaining communications between the two countries' armed forces, restricting military activities along the border, and conducting combined patrols in the Caribbean Sea.⁷⁵

When tensions resurfaced in late February 2001, OAS held a meeting between the two states in March 2001, which led to the adoption of a Technical Verification Agreement. An Agreement for an OAS International Verification Mission was adopted in June 2001, which charged the OAS Mission to verify (1) the number and location of military and police posts along the land border, as well as the number of personnel assigned to each post, and (2) that the

⁷³ See *Honduras-Nicaragua Situation*, ORGANIZATION OF AMERICAN STATES (Jul. 22, 2020), <http://www.summit-americas.org/asg/Honduras-Nicaragua/Default.htm>.

⁷⁴ O.A.S. PERMANENT COUNCIL, *Support for the Governments of Honduras and Nicaragua*, O.A.S. Doc. OEA/Ser.G CP/RES. 757 (1216/99) (Dec. 7, 1999), https://www.oas.org/sap/peacefund/resolutions/Resolution_757_Honduras_and_Nicaragua_English.pdf.

⁷⁵ *Id.*

military and police posts in the Caribbean Sea were being kept at the same level as on September 1, 1999. The mission was completed by the end of the year, and the report was published in 2002.⁷⁶ The two states also signed an Agreement for a Bi-national Border Development Plan and an Agreement on Police Cooperation and Military Movement Notification in 2001.

(2) Economic Relations between the Two Parties

Both Nicaragua and Honduras are among the poorest countries in the region. When the maritime disputes arose in the 1980s, Nicaragua imposed a 35% tariff on products from Honduras.⁷⁷ However, the states later chose to economically cooperate in the 2000s, and adopted the Central America Free Trade Agreement (CAFTA), the regional free trade agreement, in 2005. The close economic relations between the two parties is likely a factor that encouraged them not to dispute the boundary line after the judgment.

Section IV – Conclusion

As examined in the previous section, a carefully designed judgment that did not harm the core interests of either party and improvement of political and economic relations through confidence building measures seem to be the factors that made this

⁷⁶ O.A.S. GENERAL SECRETARIAT, *Technical Report of the OAS International Verification Mission to Honduras and Nicaragua*, O.A.S. Doc. OEA/Ser.G, CP/doc.3540/02 rev. 1 (Jan. 23, 2002), <http://www.summit-americas.org/asg/Honduras-Nicaragua/VerificationMissionReport-ENG.htm>.

⁷⁷ UNITED NATIONS & ECON. COMM'N FOR LATIN AM. AND THE CARIBBEAN, *LATIN AMERICA AND THE CARIBBEAN IN THE WORLD ECONOMY (2001-2002)* 171 (2002).

case a successful example of boundary dispute settlement through adjudication.

For future research, the perspectives of international relations theory and regional and domestic political studies may be useful in further analyzing this case. The following points may be worthy of exploring.

Why did the change of government in Nicaragua affect the delimitation negotiation in 1979?

Why did the Chamorro government of Nicaragua from 1990 to 1997 withdraw its ICJ claim on boundary and transborder armed actions?⁷⁸

Why did relations stall again after Alemán took office in 1997?

What was the effect of a separate delimitation agreement concluded between Honduras and Columbia in 1986, despite a protest from Nicaragua, and of ratifying that agreement in 1999?

The maritime boundary disputes in this region are quite complex, and it is necessary to apply a wide angle lens to fully understand the nature of these disputes.

⁷⁸ Border and Transborder Armed Actions (Nicar. v. Hond.), Discontinuance Order, 1992 I.C.J. 222 (May 27). Nicaragua instituted the case on July 28, 1986.



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