

INTERNATIONAL COURT OF JUSTICE

**TERRITORIAL AND MARITIME DISPUTE
(NICARAGUA V. COLOMBIA)**



**WRITTEN OBSERVATIONS
OF THE REPUBLIC OF NICARAGUA
ON THE APPLICATION FOR PERMISSION TO INTERVENE
FILED BY THE REPUBLIC OF HONDURAS**

2 SEPTEMBER 2010

WRITTEN OBSERVATIONS OF THE REPUBLIC OF NICARAGUA

1. In accordance with Article 83 of the Rules of Court and within the time limit of 2 September 2010 fixed by the President of Court for this purpose, as communicated to the undersigned Agent by a letter (ref. 136841) from the Registrar dated 10 June 2010, the Republic of Nicaragua (hereinafter: Nicaragua) furnishes these written observations to the Application for permission to intervene in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, filed by the Republic of Honduras (hereinafter: Honduras) on 10 June 2010 referring *inter alia* to Article 62 of the Statute of the Court.
2. Honduras claims the right to intervene in this case either as a party or as a non party based on Article 62 of the Statute of the Court. In either case it must satisfy the requirements of Article 62 and, as will be shown below, Honduras does not prove any legal interest that is at issue for it in the territorial and maritime dispute between Nicaragua and the Republic of Colombia (hereinafter: Colombia).

I. GENERAL OBSERVATIONS

3. The Application filed by Honduras is a blatant attempt to reopen matters between Honduras and Nicaragua that have already been decided by the Court in its 8 October 2007 Judgment in the case concerning *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*. The Judgment in that case, with the full force of *res judicata*, settled the entire Caribbean Sea boundary between Nicaragua and Honduras with the exception of a very small area of under 3 nautical miles in the territorial sea that is not part of the area claimed by Honduras in its present Application to be affected by the proceedings in the case between Nicaragua and Colombia.
4. The Court decided in Section 3 of paragraph 321 (the Operative Clause) of its Judgment of 8 October 2007 that “starting from the point with the co-ordinates 15° 00’ 52” N and 83° 05’ 58” W [that is, a point located under 3 miles from the mainland] the line of the

single maritime boundary shall follow the azimuth 70° 14' 41.25" ... until it reaches the area where the rights of third States may be affected.”

5. Apparently dissatisfied with the boundary fixed by the Court, or at least with a portion of it, Honduras pretends that that boundary is still in dispute. This is plainly reflected in Paragraph 19 of the Application, where Honduras states: “a dispute on delimitation subsists between Honduras and Nicaragua.” (« ...un différend de délimitation perdure entre le Honduras et le Nicaragua. »)
6. According to Honduras’ Application, this “dispute” concerns an area of the Caribbean Sea located north of the 15th parallel and south of the boundary line between Honduras and Nicaragua fixed by the Court on 8 October 2007: “any claim by Nicaragua over the maritime areas located north of the 15th parallel risks jeopardizing the rights and interests of Honduras as a third state.” (« ...toute prétention du Nicaragua sur les espaces maritimes situés au nord du 15^e parallèle risque d’affecter les droits et intérêts du Honduras en tant qu’Etat tiers... »)¹. But the Court has already decided, three years ago, that Honduras has no such “rights and interests”. In its Judgment, the Court determined that the area between the 15th parallel (to the south) and the line of delimitation described in paragraph 321 (3) belonged to Nicaragua, not Honduras.
7. Honduras attempts to manufacture a “dispute” with Nicaragua by misconstruing the Judgment of 8 October 2007. In particular, Honduras finds an endpoint, or “terminus” to the maritime boundary established by the Court where none exists.
8. In the Conclusions (Submissions) of its Application,

“Honduras requests authorization from the Court to intervene as a party in the pending case, with a view to reach a final settlement in the dispute over the boundary line that runs between *the terminus of the boundary fixed by the Judgment of 8 October 2007* and the triple point of the boundary line established by the Treaty on Maritime Delimitation of 1986, as well as a determination of the triple point on the boundary line of the Treaty on maritime delimitation of 1986 between Honduras and Colombia.”

(“Le Honduras sollicite l’autorisation de la Cour d’intervenir en tant que partie dans l’instance pendante pour régler définitivement tant le différend sur la ligne de délimitation entre *le point terminal de la frontière fixée par l’arrêt du 8 octobre 2007* et le triple point sur la ligne frontière du traité de délimitation maritime de 1986 que la

¹ HAI, para. 12.

détermination du point triple sur la ligne frontière du traité de délimitation maritime de 1986 entre le Honduras et la Colombie.)²

9. In the first place, the Judgment of 8 October 2007 did not fix a “terminus” (“point terminal”) of the boundary established by the Court. In fact, the Court deliberately chose not to fix an “endpoint” of this boundary. “The Court will not rule on an issue when in order to do so the rights of a third party that is not before it, have first to be determined (see *Monetary Gold removed from Rome in 1943, Judgment, I.C.J. Reports 1954*, p.19). Accordingly, it is usual in a judicial determination for the precise endpoint to be left undefined in order to refrain from prejudicing the rights of third States.” (para. 312). Thus, in Sketch-map No. 7, which the Court labeled “Course of the maritime boundary line”, the boundary line in the east ended with an arrow pointing to the northeast, in the same direction as the azimuth followed by the boundary line fixed by the Court.
10. Moreover, there can be no boundary line running from the non-existent “terminus” of the boundary fixed by the Judgment of 8 October 2007 to the “triple point” of the boundary described in the Treaty of 1986 between Honduras and Colombia, because the so-called “triple point” is also non-existent. In regard to that treaty, which was amply discussed during the *Nicaragua v. Honduras* case, the Court observed:
11. “The Court places no reliance on the 1986 Treaty to establish an appropriate endpoint for the maritime delimitation between Nicaragua and Honduras. The Court nevertheless observes that any delimitation between Honduras and Nicaragua extending east of the 82nd meridian and north of the 15th parallel (as the bisector described by the Court would do) would not actually prejudice Colombia’s rights because Colombia’s rights under this Treaty do not extend north of the 15th parallel.”³
12. Nevertheless, it is in this precise area – east of the 82nd meridian and north of the 15th parallel – where the Honduran Application claims “rights and interests” that might be affected by the present proceedings, notwithstanding the fact that the Court has already ruled that Honduras has no rights or interests between the bisector and the 15th parallel in this area, and observed that Colombia, likewise, has no rights north of the 15th parallel.

² HAI, para. 36. Emphasis added.

³ 8 October 2007 Judgment, par. 316.

Thus, the Judgment of 8 October 2007 negates the very “rights and interests” that Honduras’ Application to intervene seeks to protect.

13. Article 62 is not a mechanism to reopen cases and void the principle of *res judicata*, whether the Party attempting to do so has or has not an independent basis of jurisdiction as against both Parties to the case.

14. Honduras’ Application concludes with this alternative request:

“Alternatively, Honduras requests the authorization from the Court to intervene as a non-party, so as to protect its rights and inform the Court of the nature of the rights and legal interests that the Republic of Honduras holds in the Caribbean Sea...”

(« A titre subsidiaire, le Honduras sollicite l’autorisation de la Cour d’intervenir en tant que non partie afin de protéger ses droits et d’informer la Cour de la nature des droits et intérêts juridiques de la République du Honduras dans la mer des Caraïbes qui pourraient être mis en cause par la décision de la Cour dans l’instance pendante. »)⁴

15. Informing the Court of “the nature of (its) rights and legal interests...in the Caribbean Sea” – including the part of it on which the Application to intervene is focused -- is exactly what Honduras has already done, during two rounds of written and oral pleadings, which extended over a period of nearly 8 years, in the case of Nicaragua v. Honduras. Honduras cannot truly be interested in informing the Court all over again for the second time. Rather, the Application is a pretext for reopening and again litigating the same issue – the location of its boundary with Nicaragua in the Caribbean Sea – that the Court has already pronounced Judgment on.

II. THE SOLE PURPOSE OF THE APPLICATION FOR PERMISSION TO INTERVENE FROM HONDURAS IS TO CALL INTO QUESTION THE COURT’S DECISION OF 8 OCTOBER 2007

⁴ HAI, para. 36.

A. General claim of Honduras

16. Honduras suggests in a number of instances that *only a part* of the maritime boundary between itself and Nicaragua has been established by the judgment of the Court of 8 October 2007 in the *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea*.⁵ In reality, the Judgment of the Court defines the entire maritime boundary. At the same time, Honduras suggests that the Judgment of the Court has fixed a terminus of the maritime boundary between Nicaragua and Honduras.⁶ Honduras does not specify that alleged terminus of the maritime boundary in geographical coordinates. The fact that Honduras observes that the zone in which its legal interests might be affected on the west is limited by the meridian of 82° W⁷ indicates that it considers that the alleged terminus of its maritime boundary is situated at this meridian.
17. The Court deals with the definition of the maritime boundary between Nicaragua and Honduras in paragraphs 306-319 of its judgment of 8 October 2007. In paragraph 314 the Court observes the following about the determination of the endpoint of that boundary:
- “The Court observes that there are three possibilities open to it: it could say nothing about the endpoint of the line, stating only that the line continues until the jurisdiction of a third State is reached; it could decide that the line does not extend beyond the 82nd meridian; or it could indicate that the alleged third-State rights said to exist east of the 82nd meridian do not lie in the area being delimited and thus present no obstacle to deciding that the line continues beyond that meridian.”
18. In paragraph 319 of its judgment the Court makes clear that it chose the third option set out in paragraph 314:
- “The Court may accordingly, without specifying a precise endpoint, delimit the maritime boundary *and state that it extends beyond the 82nd meridian* without affecting third-State rights.”⁸
19. As may be appreciated from the above, the Judgment of the Court of 8 October 2007 in clear terms points out that it does not purport to do either of the things Honduras is alleging. The Judgment does not determine a partial maritime boundary but determines

⁵ See *e.g.* HAI, para. 7.

⁶ HAI, para. 18.

⁷ HAI, para. 17.

⁸ Emphasis provided.

the entire maritime boundary between Nicaragua and Honduras. Secondly, the Judgment of the Court clearly indicates that the undefined terminus of the boundary is located to the east of the 82nd meridian. Even more importantly, the judgment specifies that this undefined terminus is on the azimuth the Court has defined in its Judgment as constituting the maritime boundary between Nicaragua and Honduras. The Judgment of the Court establishes that there cannot be a maritime boundary between Nicaragua and Honduras to the south of this azimuth.

20. Nevertheless, and in the face of the Court's Judgment, Honduras now requests the Court to determine the maritime boundary between Honduras and Nicaragua up to the so-called "triple point" with Colombia, which according to Honduras is located on the maritime boundary between itself and Colombia established by their 1986 Treaty.⁹ The maritime boundary of the 1986 Treaty is wholly situated to the south of the azimuth which constitutes the maritime boundary between Nicaragua and Honduras. The request of Honduras to determine a maritime boundary between Nicaragua and Honduras is thus a blatant violation of the principle of *res judicata*. The Judgment of the Court of 8 October 2007 excludes the possibility of a maritime boundary to the south of the azimuth established by the Court in the zone in which Honduras now claims that its legal interests might be affected.

B. Subject matter is *res judicata*

21. According to Honduras, in paragraph 16 of its Application, the "dispute" "is solely limited to the maritime delimitation within the area circumscribed by the treaty of 1986 [between Honduras and Colombia]." ("... l'intervention qu'il sollicite est limitée à la seule délimitation maritime dans la zone circonscrite par le traité de 1986, ... ») In Paragraph 17, Honduras describes this area as "a rectangle whose point of departure is the intersection of the 82nd meridian and parallel 14°59'08". Heading east, the lower limit follows the parallel to the 80th meridian and the eastern side of the rectangle moves north along this meridian up to the intersection with parallel 16°20'; from there, the northern boundary runs west along that parallel up to its intersection with the 82nd meridian, and the western

⁹ HAI, paras 22 and 23.

side of the rectangle runs along the latter down to the starting point.” (“... un rectangle dont le point de départ est l’intersection du 82^e méridien et du parallèle 14^e 59’08. Se dirigeant vers l’est, la limite inférieure suit ce parallèle jusqu’au 80^e méridien et le côté du rectangle oriental remonte vers le nord le long de ce méridien jusqu’au point d’intersection avec le parallèle 16^e20’; de là, la limite septentrionale se dirige vers l’ouest en suivant ce parallèle jusqu’à son intersection avec le 82^e méridien et le côté occidental du rectangle redescend le long de ce dernier jusqu’au point de départ.)

22. Honduras argues that this rectangular area cannot be claimed by Colombia by virtue of the treaty of 1986, but that it remains in dispute between Honduras and Nicaragua. Honduras is right about the former, but wrong about the latter.
23. Both of these conclusions are inevitable as can be clearly appreciated on the following sketch maps annexed to this Written Observations.
24. The first is Sketch Map No. 7 (Annex A) from the Court’s October 2007 Judgment, which the Court entitled “Course of the maritime boundary line”. It shows the delimitation line fixed by the Court in precisely the area that Honduras now claims to be in dispute between the two States. As stated in paragraph 320 of the Judgment, and in the Operative Clause (paragraph 321(3)), in this area the boundary follows “the line having the azimuth 70°14’41.25” until it reaches the area where the rights of third States may be affected;”
25. The second sketch map (Annex B) shows the rectangular area where Honduras now claims “a dispute on delimitation subsists” superimposed on Sketch Map No. 7 from the Court’s October 2007 Judgment. This map leaves no doubt that the area in question was in fact delimited by the Court. The part of the rectangle north of the delimitation line belongs to Honduras. The part to the south belongs to Nicaragua. There are no parts of the rectangle that exist outside the area already delimited by the Court in its Judgment. Honduras is foreclosed from making claims south of the delimitation line.
26. Yet Honduras contends in its Application that the purpose of its intervention is precisely to obtain a delimitation of this area. In paragraph 12, Honduras states that “any claim by Nicaragua over the maritime areas located north of the 15th parallel risks jeopardizing the rights and interests of Honduras as a third State. As such, Honduras possesses a real,

current, direct and concrete interest of a legal nature in the delimitation of maritime spaces in the zone located north of the boundary that resulted from the 1986 treaty [between Honduras and Colombia].” (“...toute prétention du Nicaragua sur les espaces maritimes situés au nord du 15^e parallèle risque d’affecter les droits et intérêts du Honduras en tant qu’Etat tiers comme il a été reconnu par la Cour dans son arrêt d’octobre 2007. En tant que tel, le Honduras possède un intérêt d’ordre juridique réel, actuel, direct, concret dans la délimitation des espaces maritimes dans la zone au nord du tracé frontalier résultant du traité de 1986. »)

27. This is the only “legal interest” Honduras identifies as being affected by the current proceedings, and it is the sole basis on which its Application to Intervene is purportedly submitted.
28. But, by virtue of the Court’s Judgment of October 2007, Honduras has no legal interest south of the delimitation line fixed by the Court, including the area bounded by that line in the north and the 15th parallel in the south. To be sure, Honduras has a legal interest in areas lying north of the delimitation line fixed by the Court, but those interests are unaffected by the current proceedings since they are indisputably outside the scope of this case.
29. Accordingly, Honduras’ Application to Intervene fails on two grounds. First, it fails to identify any interest of a legal nature that Honduras might have which may be affected by the Court’s decision in the present case. Second, to the extent that it addresses areas south (i.e., on the Nicaraguan side) of the Honduras/Nicaragua boundary fixed by the Court in October 2007, it seeks to relitigate matters already decided by the Court in prior proceedings and is therefore barred by the principle of *res judicata*.

III. HONDURAS DOES NOT PROVE ANY LEGAL INTEREST THAT IS AT ISSUE FOR IT IN THE TERRITORIAL AND MARITIME DISPUTE BETWEEN NICARAGUA AND COLOMBIA

30. Pursuant to article 81, paragraph 2.a), of the Rules of the Court (which reproduces the terms of article 62 of the Statute), the Application for permission to intervene must specify "the interest of a legal nature which may be affected by the decision in the case". In this case, Honduras does not prove any such interest – as clearly results moreover from the arguments in the preceding sections that point out that the decision of 8 October 2007 determined completely the maritime border between Nicaragua and Honduras subject to the rights of third parties.¹⁰
31. That is sufficient to establish that no legal interest is at issue for Honduras in these proceedings. It is true that "the State that asks to intervene 'must only show that its interest 'may' be affected and not that it will be affected or that it will necessarily be affected' (*Land, Island and Maritime Border Dispute (El Salvador/Honduras)*), decision of 13 September 1990, *I.C.J. Reports 1990*, p. 118, par. 61)"¹¹, but it is still necessary that it might be affected; yet, in this case, the decision of 8 October 2007, which, between Honduras and Nicaragua has the authority of *res judicata*, establishes that such cannot be the case. Then it is only for surplus of law that Nicaragua will submit below some additional remarks on certain aspects of the Honduran Application for permission to intervene.
32. Firstly, Nicaragua wishes to say that it has no objection in principle to a State's seeking to intervene as a party in the main proceeding, as Honduras says it wishes to do¹². But, as indicated above, whether it intervenes as a party or as a non party to the proceedings does not change in any way its obligation to show that a legal interest is at issue for it.

10 It is contrary to common sense to say that "any claim from Nicaragua to the maritime spaces located to the north of the 15th parallel risks affecting the rights and interests of Honduras as a third-party State as was recognized by the Court in its decision of October 2007" (HAI, par. 12): Honduras is not a third party but rather a party to the dispute resolved by that decision. For the same reason, it cannot be accepted that "Honduras is part [of the] third-party States" ["..... Le Honduras fait partie de ces États tiers."] (HAI, par. 6) that is discussed in Nicaragua's submissions in this lawsuit since the maritime border between the two countries was completely and definitively set by the decision of 2007 – subject to the rights of true third-party States.

11HAI, par. 25.

12HAI, par. 24, par. 30, or par. 36.

33. Similarly, the fact that "in late 2008, Honduras told the parties to the proceeding and the Courts of its intent to file an application for permission to intervene"¹³ cannot help to establish that such Application is admissible and well founded.
34. Moreover and primarily, the geographic description of the area in which Honduras intends to protect its rights¹⁴ does not prove the existence of a risk that those rights (alleged or real) may be called into question by this case. Indeed, this area, as established above, is entirely outside the areas in dispute between the parties. The rights that Honduras is seeking to protect are not included in the area in dispute and are not at all at risk of being affected by the Court's decision in this case.
35. As to Honduras's insistence on wanting to "inform the Court of the nature of Honduras's rights that are at issue in the pending case" ("...informer la Cour de la nature des droits du Honduras qui sont en cause dans l'instance pendante.")¹⁵ it should be noted that:
- a. as Nicaragua has shown above, Honduras cannot invoke any right that might be affected – therefore it cannot, very obviously, "inform" the Court of any such rights; and,
 - b. in any event, the Court has been fully informed of the situation in the region in which Honduras claims to have rights and it decided on the consequences to draw from that in the 2007 decision, while stating therein that the rights of Colombia were not concerned. The Court was informed of all the alleged rights of Honduras in the Caribbean in the Nicaragua v. Honduras case.

IV. ADDITIONAL OBSERVATIONS

36. Honduras has annexed (Annex 1) to its Application a Joint Statement by the Presidents of Nicaragua and Honduras of 9 April 2010. The evident purpose of this document was to find solutions to the maritime questions both in the Gulf of Fonseca (on the side of the

¹³ HAI, par. 13 – footnotes omitted.

¹⁴ HAI, par. 17.

¹⁵ HAI, par. 23 and par. 33 ("secondly...").

Pacific Ocean) and in the small area located in the territorial sea in the Caribbean that was left without delimitation by the 8 October 2007 Judgment of the Court. The Joint Statement specifically calls for the reinstallation of the “Commissions of Limits of both nations...in order to conclude in short time the process of delimitation of the area (that is, the small area within the territorial sea of the Parties) which in compliance with section IV of the Operative Clause of the judgment dated October eight of two thousand seven, was left to negotiations by both Countries...”¹⁶

37. If anything, this document highlights that as late as April 2010 there was no other question of delimitation pending between the Parties. The mandate of the Commissions of Limits was only for the small area indicated within the territorial sea and there was no indication of any questions pending in areas beyond the territorial sea that are the purported object of Honduras’ Application.
38. Finally, Nicaragua respectfully wishes to put on record the following information. After the coup d’État in Honduras of June 2009 that forcefully deposed the legitimate Government of that State, Nicaragua as well as the majority of States in the world repudiated the coup. At present there are many States, particularly in Latin America, as well as International Organizations such as the Organization of American States, that have not recognized the legitimacy of the Governments of Honduras that took power subsequent to the coup. Nicaragua is one of those States. This notwithstanding, Nicaragua is participating in these proceedings, as it has done in other proceedings involving its sovereign interests, in the understanding that it does not imply any change of its position.

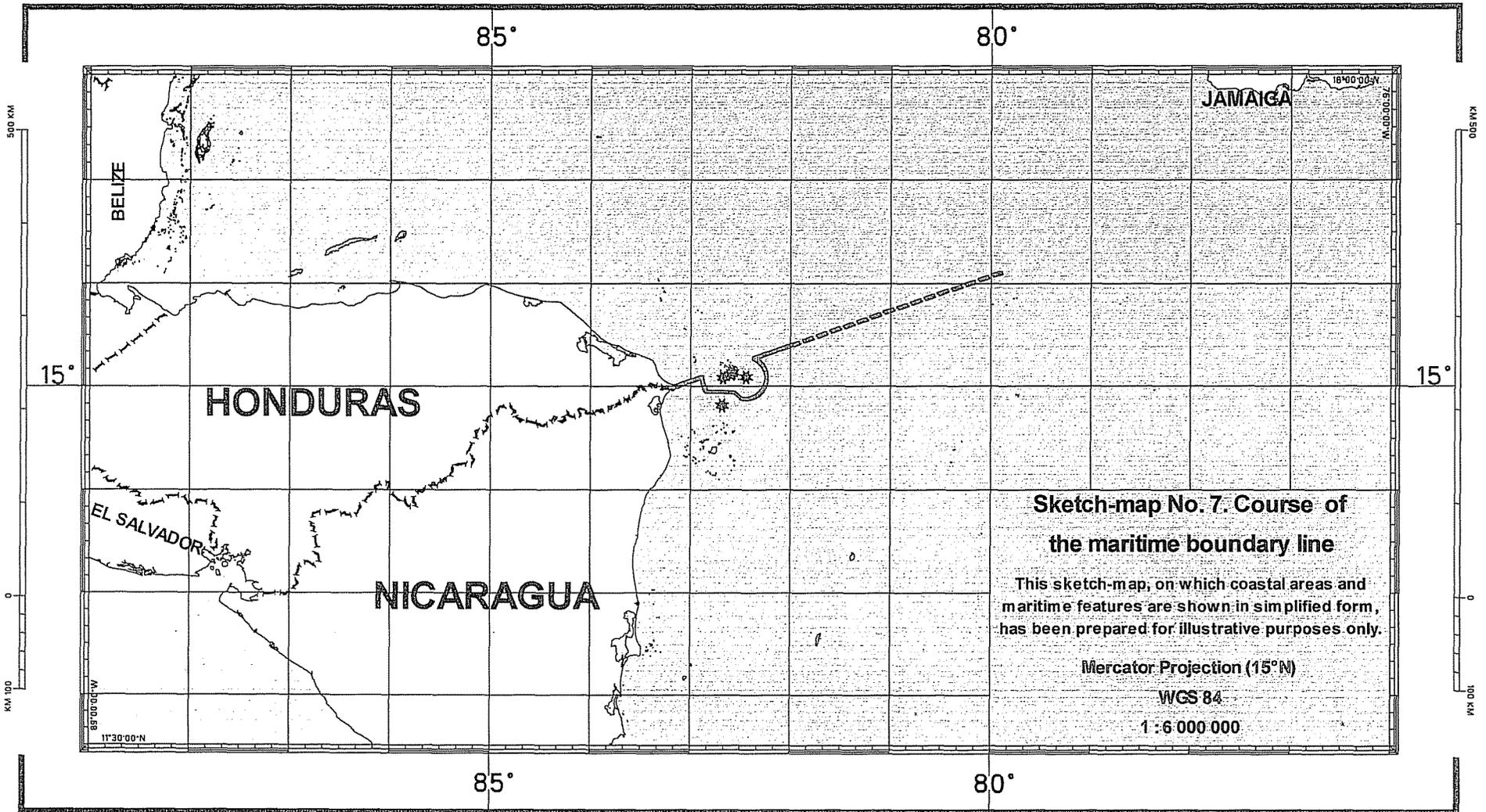
¹⁶ “Finds that the Parties must negotiate in good faith with a view to agreeing on the course of the delimitation line of that portion of the territorial sea located between the endpoint of the land boundary as established by the 1906 Arbitral Award and the starting-point of the single maritime boundary determined by the Court to be located at the point with the co-ordinates 15° 00’ 52” N and 83° 05’ 58” W.” (Text of section IV of the Operative Clause – paragraph 321 - of the judgment dated October eight of two thousand seven).

V. SUBMISSIONS

39. ON THESE GROUNDS, the Republic of Nicaragua submits that the Application for permission to intervene filed by Honduras does not comply with the Statute and Rules of Court and therefore: (1) opposes the granting of such permission, and (2) requests that the Court dismiss the Application for permission to intervene filed by Honduras.

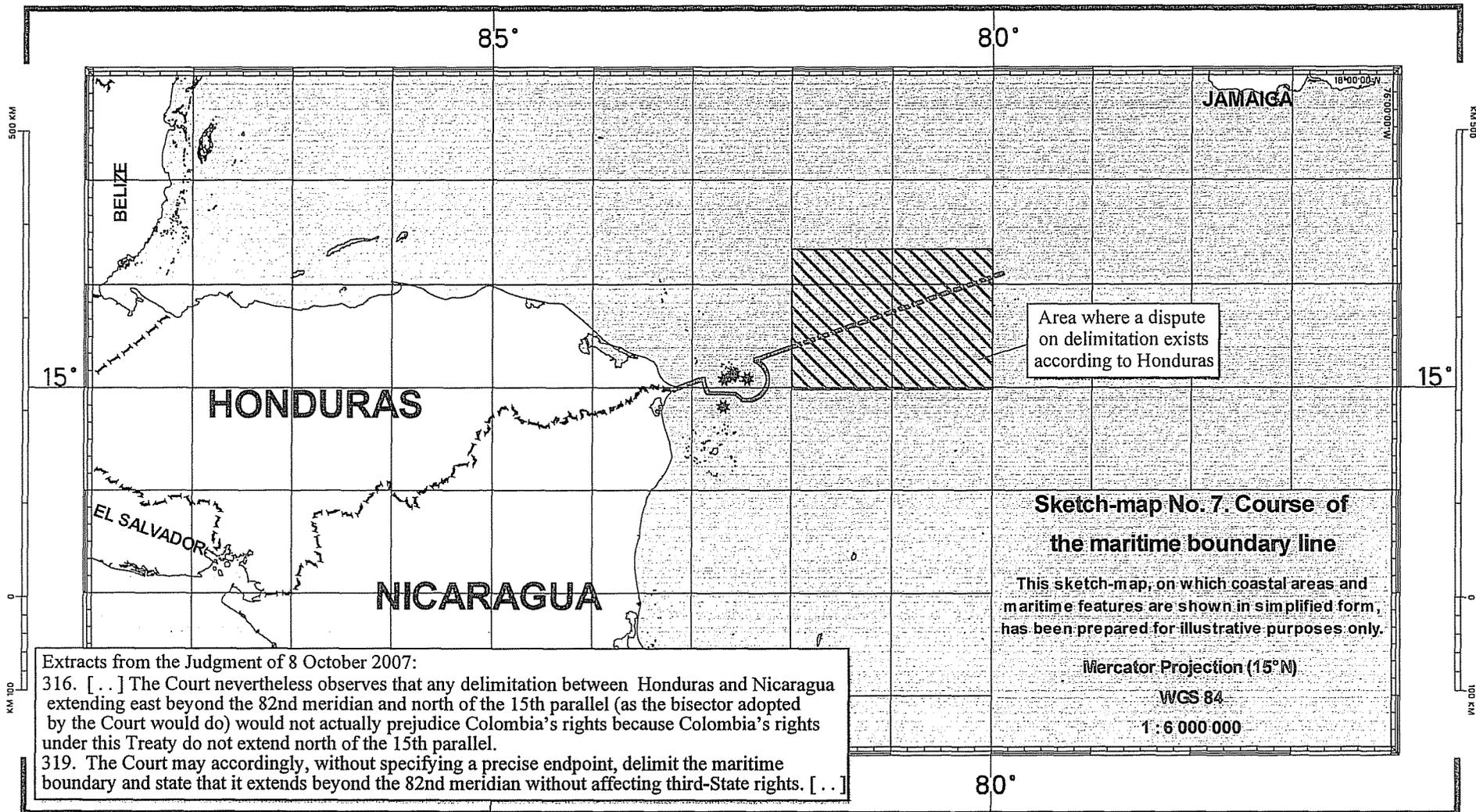
Carlos Argüello Gómez

Agent of the Republic of Nicaragua



Extract from the Judgment of 8 October 2007:
 Operative clause: "From point F, it shall continue along the line having the azimuth of 70° 14' 41.25" until it reaches the area where the rights of third States may be affected;"

Sketchmap 7 from ICJ Judgment in
 Nicaragua vs Honduras (2007)



Sketchmap 7 from ICJ Judgment in Nicaragua vs Honduras (2007) showing Honduras' "Area where a dispute on delimitation exists"