

**Forum:** The International Court of Justice

**Issue #22-01:** Question of the delimitation of the continental shelf between Nicaragua and Colombia beyond 200 Nautical miles from the Nicaraguan coast.

**Student Officers:** Claudia S. Tiller and Tobias Hensel

**Position:** Co-Presidents of the International Court of Justice

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*The Republic of Nicaragua brings this application against the Republic of Colombia with regards to delimit the continental shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan coast.*

## I. Introduction

1. The Republic of Nicaragua institutes proceedings against the Colombia with regards to delimit the continental shelf between Nicaragua and Colombia beyond 200 Nautical miles from the Nicaraguan coast. Furthermore, Nicaragua asked the Court to pronounce that she had sovereignty over certain islands and maritime features lying off the Caribbean Coast and also requested a delimitation between the Caribbean mainland coasts of the two nations. Nicaragua had argued for a declaration from the ICJ to describe the boundary of its continental shelf within the aforementioned zone and the overlap between it and Colombia. The entitlement Nicaragua has to a continental shelf includes an area beyond Nicaragua's 200-nautical-mile maritime zone and in part overlaps with the area that lies within 200 nautical miles of Colombia's coast. The overlapped area must be delimited to achieve an equitable result, using a method that will preserve the right of third states.
2. Nicaragua requests that the International Court of Justice displays an exact border between both nations by both applying rules of international law and indicating rights that Nicaragua and Colombia have upon the area, including resources that be used such as but not limited to the tourism and favourable nationality on the island of San Andres.
3. With the concern of the maritime and territorial dispute of Colombia and Nicaragua, it was made clear that the boundary between the continental shelf and economic area of the two nations ranging within the 200 nautical mile limit from the centre of the width of the territorial sea of Nicaragua was defined as such. The argument exists that because the continental shelf that is being disputed is within the 200 nautical mile range of Nicaragua and approximately 750 kilometres away from the Colombian Nation, the island should belong to Nicaragua. However, the President of Colombia, President Juan Manuel Santos, stated that Colombia would "protect national territory down to the last centimetre."

4. Nevertheless, because Nicaragua has not established its continental margin beyond 200 nautical miles from the coast which its territorial sea is measured, the preliminary information submitted to the “commission on the limits of the continental shelf of April 7<sup>th</sup>, 2010 was not accepted.
5. On June 24<sup>th</sup>, 2013, Nicaragua had submitted the last of its information on the Commission on the limits of the Continental Shelf (CLCS), demonstrating that its continental margin would reach more than 200 nautical miles from the previously stated baseline and both is able to cover more than 200 nautical miles from Colombia and overlaps with an area that lies inside the Colombian coast.
6. Neither of the two nations have demonstrated an agreement on maritime boundaries. Furthermore, Colombia has disagreed with the claims of the continental shelves of Nicaragua as well as a formal understanding that any bilateral negotiations has been debarred by Colombia by its rejection to the judgement of the court on November 19<sup>th</sup>, 2012.
7. During this time frame, including now, Colombia is applying its internal law as a pretext for it to breach its international obligations and has therefore considered the inapplicability to Judgement 7.
8. The principal conclusion from the coastal geography of both nations is that the maritime delimitation between both Colombia and Nicaragua requires a delimitation of the overlapping continental shelves that lie between their opposite mainland coasts.
9. Nicaragua and Colombia have not yet agreed upon a maritime boundary between them in the area beyond the 200 nautical mile coast from Nicaragua. Moreover, Colombia has objected to the continental shelf claims in that area. The Protocol of Ratification of the 1928 Treaty stated that “the San Andrés and Providencia Archipelago mentioned in the first clause of the Treaty does not extend west of the 82<sup>nd</sup> degree of longitude west of Greenwich.”
10. For instance, with respect to the maritime features in dispute, the cays of Serranilla and Bajo Nuevo were not mentioned by name in the treaty of 1948. It should be pointed that these features are equal to the other three which are defined by name. If they were thought to be part of the San Andrés Archipelago, they would have been naturally mentioned. On the other hand, if the other three features of Serrana, Quitasueño, and Roncador are themselves completely detached from and located well to the northeast of the islands of San Andrés and Providencia, the two cays of Serranilla and Bajo Nuevo would be even further away and more detached from the three features. The only connection between all these maritime features is that they are located off the main coast of Nicaragua and her continental shelf.
11. The Nicaragua vs. Colombia verdicts is one of the most recent ones set forth by the International Court of Justice that has proven to be very unsettling and controversial. The courtrooms of the ICJ have witnessed the dispute that the Republic of Nicaragua brought on towards the Republic of Colombia for approximately fourteen years now. The importance of this case lies in the potential consequences that could be brought to both the communities of Nicaragua and Colombia, as well as the International Court of Justice itself, and not the fullest extent or as necessarily with the international law used by the ICJ or the case itself. Honourable judges on the case have carefully deliberated it with evidence provided by both parties, however, the conclusions could jeopardise both the relationship between Nicaragua and Colombia as well as placing the economy of the territory into question. The verdict that was supposed to end the dispute over the territory has increased tensions along the 82<sup>nd</sup> meridian as well as causing Colombia to reject the pact of

Bogotá, which in turn gave the ICJ jurisdiction.

## II. Nicaragua

12. Overall, Nicaragua has an economy that is much more in need for the influx that Colombia is experiencing due to the high frequency of tourist endeavours to the islands based off the shore of Nicaragua.

13. While comparing the economic freedoms that both countries experience, to this day, Colombia (although still being considered repressed) still does offer a more open market than Nicaragua, hence reiterating the need for Nicaragua to redefine the delimitation of the continental shelf.

14. Furthermore, the argument exists that because the continental shelf that is being disputed is within the 200 nautical mile range of Nicaragua and approximately 750 kilometres away from the Colombian Nation, it should in any case be presumed to belong to Nicaragua. The argument may be biased, however, this does not make it unconventional, as this has been the subject to much scrutiny such as the Falkland Islands of the coast of Argentina belonging to the British Empire.

15. On the continental shelf of Nicaragua, there are a few islands and several cays in the sovereignty over which is in the dispute between the two nations. The three islands identified in the 1928 treaty as part of the “Archipelago of San Andrés” are San Andrés, Santa Catalina, and Providencia. It is Nicaragua’s position that believes they should be enclaved within a 12-nautical-mile radius and should be considered on her continental shelf. It requests that if any other minor feature is proven by Colombia to be part of this Archipelago, it should be enclaved within a 3-nautical-mile radius, with accordance to its physical and geographical characteristics. This does not affect the mainland of both Nicaragua and Colombia.

16. Nicaragua requests the Court to determine the precise course of the boundary of the continental shelf with accordance and principles of international law. These rules of international law should determine the rights and duties of the two states with relations to the area of overlapping continental shelf. It also requests the Court to indicate the duties of the two nations with regards to the area of overlapping claims and the use of its resources pending the precise delimitation of the boundary line.

17. The main grounds on which Nicaragua’s claim is based are as follows: 1.) Nicaragua is entitled under UNCLOS and under customary international law to a continental shelf extending throughout its continental margin, 2.) That entitlement to a continental shelf includes an area beyond Nicaragua’s 200-nautical-mile maritime zone and in part overlaps with the area that lies within 200 nautical miles of Colombia’s coast, 3.) The overlapped area must be delimited to achieve an equitable result, using a method that will preserve the right of third states. During the period *prior* to the drawing of the definite boundary beyond 200 nautical miles from Nicaragua’s coast, each party must conduct itself in relation to the area of the overlapping continental shifts, and they must use its resources in a manner to avoid causing harm and the interests of others.

18. Nicaragua has accepted the conditions under the jurisdictions but has not implied that she has changed or renounced her historical claim that the 1928 treaty was imposed on Nicaragua and lacks any moral or legal authority. Nicaragua will continue to reserve her position on all these issues as long as it is legally permissible in the present circumstances.

### III. Colombia

#### i. San Andrés

19. San Andrés is an island located about 750 kilometres northwest of Colombia and 381 kilometres from Nicaragua.
20. Two-thirds of the population consider themselves Colombian with the other third being either natives or other, adding up to an approximate population of 75,000 men, women, and children.
21. The economy currently depends on the influx of tourists visiting the Island after a declaration in 1954 for the Archipelago to become a duty-free zone, no longer having to rely on the fishing industry as much as it had to before.
22. Because of this, most of the population in San Andrés believes itself to be a part of Colombia.
23. However, with the overwhelming tourist attraction, its economy would benefit Nicaragua much more than Colombia.

#### *A display of San Andrés in relation to Nicaragua and Colombia*



#### ii. Colombia

24. Colombian President Juan Manuel Santos announced, following the decision that the court would settle a longstanding territorial dispute between the two nations, that the country would no longer participate in court proceedings and confirmed that it would “protect national territory down to the last centimetre.”
25. In Colombia’s view, all banks and cays located “East of the 82<sup>nd</sup> meridian of longitude West” are part of a large San Andrés Archipelago that blocks most of the maritime areas generated by Nicaragua’s mainland.
26. Colombia ignores Nicaragua’s mainland coast: The dominant geographical feature of the Western Caribbean that is the main focus of the proceeding. Colombia chooses to ignore the two mainland coasts and artificially compares the islands, insignificant cays, and insignificant rocks, situated on either side of the 82<sup>nd</sup> meridian. Moreover, she focuses on the approach with the delimitation on the islands, cays, and rocks, that lie east of that meridian. This is what she claims as part of an inflated

San Andrés Archipelago.

27. The only two Colombian features in the Archipelago that resemble some significance are the islands of Providencia and San Andrés. However, they have a combined coast that faces the Nicaraguan mainland of approximately 21 kilometres. So, their combined coastal length is less than 5% of Nicaragua's 450 kilometres coastline. It can be argued that it makes sense Colombia chooses to ignore the latter.
28. The Republic of Colombia also refuses to face the truth that the continental shelf of Nicaragua extends beyond 200 nautical miles. Colombia ignores the available facts that demonstrate, with no doubt, that the outer edge of Nicaragua's continental margin extends beyond 200 nautical miles and therefore, as a consequence, Nicaragua is entitled to this continental shelf. Colombia has attempted to deny this entitlement in contradiction of Article 76 of the 1982 Law of the Sea Convention.

#### **IV. Nicaragua-Colombia Relations**

29. The Republic of Nicaragua has claimed the territory being debated upon with relations to historical events. The events began in 1821 when the independence of Spain was imminent and allowed provinces that had formed the Captaincy General of Guatemala to become the Federation of Central American States. Nicaragua also claims sovereignty by the legal international principle 'uti possidetis juris,' signifying that parties can retain possession of what they acquired by force. It is stated that "The islands of San Andrés and Providencia pertain to those groups of islands and cays that in 1821 became part of the newly formed Federation of Central American States and, after the dissolution of the federation in 1838... came to be part of the sovereignty territory of Nicaragua."
30. On March 24, 1928, Colombia and Nicaragua signed the Esguerra-Bárcenas Treaty, which set the 82<sup>nd</sup> meridian west as a division for islands and territorial waters. At this time, the United States had occupied Nicaragua. Under the terms of this treaty, Colombia's sovereignty over the San Andrés, Santa Catalina, and Providencia Archipelago was recognised by Nicaragua.
31. The Pact of Bogotá is signed on April 30, 1948, by the independent republics of America. The purpose of the pact was to enforce obligations on the signatories to settle disputes through peaceful means. It also required these independent states to deplete dispute-settlement mechanisms before placing them in the hands of and before the United Nations Security Council (UNSC). It is also one of the pacts that confer jurisdiction on the International Court of Justice (ICJ). Later on, Nicaragua uses Article 31 of the pact to challenge its maritime borders with Colombia.
32. The Junta of National Reconstruction ruled Nicaragua from July 1979 to January 1985. It declared that the Esguerra-Bárcenas Treaty was invalid, and it claimed that the San Andrés and Providencia Archipelago was Nicaraguan.
33. Honduras ratifies a treaty with Colombia on November 30<sup>th</sup>, 1999, which resulted in a delimitation of borders in the Caribbean Sea. Nicaragua claimed that in this delimitation, the treaty took approximately 130,000 kilometres of area of continental platform that rightfully belonged to Nicaragua.

34. Nicaragua presents a formal claim to the International Court of Justice (ICJ) on December 1<sup>st</sup>, 2001, declaring that they disputed the agreement. They asked the court to rule over maritime borders, claiming territory east of longitude 82, including the archipelago of San Andrés. In substance, Nicaragua asked the International Court of Justice to adjudge and declare that Nicaragua had authority over the certain islands and the Archipelago, along with maritime features lying off her Caribbean coast. It was in considerable measure based off Nicaragua's claim that "the Esguerra-Bárcenas Treaty signed in Managua [Nicaragua] on 24 March 1928 was not legally valid and, in particular, did not provide a legal basis for Colombian claims to San Andrés and Providencia." On July 17<sup>th</sup>, 2002, Colombia opposed Nicaragua on calling international oil companies to explore and take care of waters that were under "their maritime territory."
34. Colombia published a map that affected the "sovereignty and national integrity" of Nicaragua and, in response, Nicaragua protested against Colombia. Norman Caldera, the Nicaraguan minister of foreign affairs, confirms that Nicaragua had submitted their preliminary objections to the International Court of Justice on April 28, 2003. Colombia then submitted their preliminary objections the following July 21<sup>st</sup> which included a request that the Court adjudge the controversy ended. Later that year, Enrique Bolaños, the Nicaraguan president, declared that Colombia would accept the International Court of Justice's resolution, and Nicaragua appealed to these claims. However, Colombia then claimed that the ICJ was not competent over the demand and Nicaragua retaliated by saying that it was wrong for Colombia to say that the ICJ had no jurisdiction over the case.
35. Animosity continued to grow when Colombian president Álvaro Uribe chose to parade the Colombian military in the San Andrés Island to celebrate the independence of Colombia on July 20<sup>th</sup>, 2007. Daniel Ortega, president of Nicaragua, then disqualified the presence of the Colombian military on the island.
36. In December of 2007, it was asked of the Colombian government by President Ortega of Nicaragua to accept the resolution set forth by the ICJ and reiterated for a peaceful solution to the conflict. Furthermore, it was declared by President Ortega that the Nicaraguan army would be prepared for any event and accused Colombia for having an expansionist political view in the Caribbean. The Colombian government only responded by stating it had sovereignty over the Archipelago for over 200 years and confirmed that it would wait for the resolution set by the ICJ. It claimed that their government and posture in the conflict was strictly judicial and not about force. On the 13<sup>th</sup> of December, the International Court of Justice recognised the full sovereignty of Colombia over the three islands of San Andrés, Santa Catalina, and Providencia, but did not fully disclose the question of the maritime boundary in the meridian 82. The ICJ stated that the Esguerra-Bárcenas Treaty had already established sovereignty of Colombia over the Archipelago. It said "that the 1928 treaty was valid and in force at the date of the conclusion of the Pact of Bogotá in 1948," and "that the matter of the sovereignty over the islands of San Andrés, Providencia, and Santa Catalina has been settled by the 1948 treaty." It was also left questionable the sovereignty of either Nicaragua or Colombia over the keys of Serrana, Roncador, Bajo Nuevo, Quitasueño, and Serranilla. Nicaragua, however, would continue to reserve her position on these issues to the full extent that it is legally permissible.
37. One day later, on the 14<sup>th</sup> of December, President Ortega stirred controversy when he made remarks over the Colombian government's involvement with a Humanitarian exchange process with the FARC



guerrilla in undergoing processes involving exchanging hostages for prisoners.

## V. Basis for Court's Jurisdiction

38. The basis for this court's Jurisdiction is supported by Article XXXI in the American Treaty of Pacific Settlement written on the 30th of April 1948 reading:

“In conformity with Article 36, paragraph 2, of the statute of the International Court of Justice (ICJ), the High Contracting Parties declare that they recognise, in relation to any other American State, the jurisdiction of the Court as compulsory ipso facto (see key terms), without the necessity of any special agreement so long as the present treaty is in force, in all disputes of a juridical nature that arise among them concerning:

- a) the interpretation of a treaty;
- b) any question of international law;
- c) the existence of any fact which, if established, would constitute the breach of an international obligation;
- d) the nature or extent of the reparation to be made for the breach of an international obligation.”

However, even though both Colombia and Nicaragua are a part of this pact of Bogotá, no reservation in force has stemmed from either Nation. On the 27th of November 2012, Colombia stated that they denounced the pact of Bogotá, and keeping into account the Article LVI of this pact, this denunciation will only take hold a year after, hence forcing Colombia to remain in the pact until 27th of November 2013. Furthermore, Nicaragua expresses the subject kept matter of the application stated above still remains within the jurisdiction of the ICJ as established in the also current case concerning the Territorial and Maritime Dispute also between Nicaragua and Colombia submitted on the 6th of December 2001.

39. The legalities that Nicaragua relies upon as per request 11 are as follows displayed on the United Nations website:

- “a) Nicaragua is entitled under UNCLOS and under customary international law to a continental shelf extending throughout its continental margin,
- b) That entitlement to a continental shelf extending throughout its continental margin exists ipso facto (see key terms) and ab initio (see key terms),
- c) That continental margin includes an area beyond Nicaragua's 200-nautical mile maritime zone and in part overlaps with the area that lies within 200 nautical miles of Colombia's coast,
- d) The area of overlap must be delimited so as to achieve an equitable result, using a method that will preserve the rights of third states,
- e) During the period prior to the drawing of the definitive boundary beyond 200 nautical miles from Nicaragua's coast, each Party must conduct itself in relation to the area of overlapping continental shelf claims and the use of its resources in such a manner as to avoid causing harm to the interests of

the other. That duty flows

- (i) from the duty of good faith under general international law, and
- (ii) more specifically from the duties of good faith and due regard for the interests of other States, owed by States in the exercise of rights in the sea areas beyond their territorial sea, and
- (iii) from the duties of good faith and cooperation owed by States before the ICJ.” -International Court of Justice No. 154

40. The Decision that Nicaragua has requested the ICJ to declare and judge is as follows: The exact maritime boundary in between Nicaragua and Colombia should be specifically displayed in the area of the continental shelf as determined by the ICJ on the 19th of November 2012. Secondly, which of the two nations have the right to appertain the resources and other such as economic advantages in the overlapping continental shelf depending on the delimitation of the maritime boundary 200 nautical miles from the coast of Nicaragua.



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