

INTERNATIONAL COURT OF JUSTICE

**APPLICA TION
INSTITUTING PROCEEDINGS**

filed in the Registry of the Court on 6 December 2001

**TERRITORIAL AND MARITIME DISPUTE
(NICARAGUA v. COLOMBIA)
COUR INTERNATIONALE DE JUSTICE**

**REQUETE
INTRODUCTIVE D'INSTANCE**

enregistrée au Greffe de la Cour le 6 décembre 2001

**DIFFÉREND TERRITORIAL ET MARITIME
(NICARAGUA c. COLOMBIE) 2001 General List No.
124**

**APPLICATION OF THE REPUBLIC OF
NICARAGUA EMBASSY OF NICARAGUA**

6 December 2001.

To the Registrar to the International Court of Justice, the undersigned being duly authorized by the Republic of Nicaragua and being the Ambassador of the Republic of Nicaragua at The Hague:

1. The Republic of Nicaragua has the honour to submit a dispute to the Court in accordance with Article 36, paragraph 1, and Article 40 of the Statute, and Article 38 of the Rules of Court. The dispute consists of a group of related legal issues subsisting between the Republic of Nicaragua and the Republic of Colombia concerning title to territory and maritime delimitation. In accordance with the provisions of Article 36, paragraph 1, of the Statute, jurisdiction exists by virtue of Article XXXI of the Pact of Bogota. Both the Republic of Nicaragua and the Republic of Colombia are parties to the Pact of Bogota, the former without any pertinent reservation, and the latter with no reservations.

In accordance with the provisions of Article 36, paragraph 2, of the Statute jurisdiction also exists by virtue of the operation of Declaration of the applicant State dated 24 September 1929 and the Declaration of Colombia dated 30 October 1937.

2. The remedies sought by Nicaragua relate, in the first place, to the questions of title to certain islands in the western Caribbean. In 1821, date of Independence from Spain, the Provinces that formed the Captaincy General of Guatemala became the Federation of Central American States and sovereignty over all islands appurtenant to this territory devolved on the newly independent States by virtue of an original title in the Colonial era, confirmed by the principle of ***utipossidetisjuris***. The groups of islands and keys of San Andrés and Providencia pertain to those groups of islands and keys that in 1821 became part of the newly formed Federation of Central American States and, after the dissolution of the Federation in 1838, these islands and keys came to be part of the sovereign territory of Nicaragua. In connection with the issue of title, the Government of Nicaragua considers that the instrument known as the Barcenas-Esguerra Treaty signed in Managua on 24 March 1928 lacked legal validity and consequently cannot provide a basis of Colombian title with respect to the Archipelago of San Andrés.

In so far as they are capable of appropriation, the Government of Nicaragua also claims title in respect of the Roncador, Quitasueno, Serrana and Serranilla keys that lie to the north of the Archipelago of San Andrés and are

situated within the gulf formed by the coasts of Central America and Colombia in the western Caribbean.

3. The questions of the title indicated above have a particular significance in so far as the definitive settlement of such issues of title must constitute a condition precedent to the complete and definitive determination of the maritime areas appertaining to Nicaragua and for any eventual delimitation that might be necessary with those that could appertain to Colombia.

Since 1945 general international law has developed in such a way as to encompass sovereign rights to explore and exploit the resources of the continental shelf together with rights to an exclusive economic zone 200 miles in breadth. The provisions of the 1982 Law of the Sea Convention have recognized and confirmed these legal interests of coastal States.

In conformity with these developments, the Nicaraguan Constitution as early as 1948 affirmed that the national territory included the continental platforms on both the Atlantic and Pacific Oceans. The Decrees of 1958 relating to the exploitation of natural resources and to the exploration and exploitation of petroleum made it clear that the resources of the continental shelf belonged to Nicaragua. In 1965 Nicaragua declared a "national fishing zone" of 200 nautical miles seaward on both the Pacific and Atlantic Oceans.

4. The problem of title over these small islands and keys has been compounded by the assertion of Colombia that the title it claims gives it sovereignty over an immense part of the Caribbean Sea appertaining to Nicaragua. The Treaty of 1928, which Nicaragua does not accept as valid was not, in any case, a treaty of delimitation. Its object was a mutual recognition of sovereignty over certain continental and island territories. In contradiction with this intention and meaning of the Treaty, Colombia has in recent years attempted the unilateral conversion of this invalid instrument into a treaty of delimitation of areas, which before the Second World War were universally considered high seas.

The extent of Colombia's ambition in this respect can be appreciated by looking at the most recent official Colombian map, which was duly protested by Nicaragua when it was sued in 1995. By looking at this map one can appreciate the total disproportion and inequity of the self-serving attribution of maritime spaces. The Colombian objective would deprive

Nicaragua of the continental shelf and of the exclusive economic zone which undoubtedly appertain to Nicaragua to the north, south and east of the 82 meridian and the islands of Providencia and San Andrés.

5. Based on her alleged sovereignty over these islands and keys, with a total land area of 44 square kilometres and an overall coastal length that is under 20 kilometres, Colombia claims dominion over more than 50,000 square kilometres of maritime spaces that appertain to Nicaragua, irrespective of how the issue of sovereignty over these small islands and reefs is finally decided. In fact, the maritime spaces of Nicaragua in the Caribbean Sea have been more than halved by the Colombian claim that is being backed by the Colombian navy, greatly more powerful than that of Nicaragua. Nicaraguan fishing vessels or vessels licensed by Nicaragua are intercepted and captured by Colombian patrol boats in areas as close as 70 miles off the Nicaraguan coast.

This situation is seriously imperilling the livelihood of the Nicaraguan people, particularly those of the Caribbean coast that traditionally have had a great dependence on the natural resources of the sea. This use and threat of use of force by Colombia has in fact largely stopped Nicaraguan vessels from seeking the resources of the Caribbean to the east of the 82 meridian since the Nicaraguan naval forces have no possibility of defending these vessels against the greatly more powerful Colombian navy. For these reasons, few Nicaraguan vessels brave the waters east of the 82 meridian.

Those that do run the very high risk of being captured, as happened on 7 July 1993 to a Honduran fishing boat licensed to fish in Nicaragua waters. This boat, the *Sheena McZI*, was captured and taken by the Colombian navy. On 19 February 1999, another Honduran fishing boat licensed to fish in Nicaragua waters, the *Capitan Elo*, was captured by the Colombian navy, at latitude 14°20'00"N longitude 82°00' 00" W and taken to San Andrés.

The Colombian navy has also made incursions to the west of meridian 82 in pursuit of vessels or simply to intimidate the fishing boats. For example, on 26 April 1994, the Colombian frigate *Antioquia* boarded the fishing boat *Esmeralda* at latitude 12°30'00"N longitude 82°05'00" W and threatened to take it to San Andrés. On 10 February 1999, the Colombian coastguard No. 116 made incursions in Nicaraguan waters at latitude 14°35'N and longitude 82°05'00" W. The latest incursion took place a few weeks ago, on 27 October 2001, when Colombian naval forces captured, at latitude 14°35' 00"

N and longitude 82° 15' 00" W, a fishing vessel bearing the Nicaraguan flag, the *Danny Jr.*, that was subsequently taken to San Andrés.

6. Diplomatic negotiations have failed. The last real attempt at the highest level occurred on 6 September 1995, on occasion of the IX Meeting of Heads of States and Governments of the Group of Rio in Quito, Ecuador. At that meeting, the President of Colombia, His Excellency Mr. Ernesto Samper, declared that he was instructing his Minister of Foreign Affairs to meet with his Nicaraguan counterpart before the end of that month of September in order to discuss the bilateral issues that separated their countries. In the words of President Samper, these issues included "possible differences that existed on the subject of frontiers" (*posibles diferencias que existen en materia de limites*). This meeting was cancelled at the request of Colombian Minister of Foreign Affairs, who stated on 12 September 1995 that Colombia would never discuss with Nicaragua the Caribbean possessions because "this was a matter that had been totally decided by an international treaty". Five days later, the Minister of Defence of Colombia, accompanied by high-ranking members of the Colombian military, members of Government and Congress, presided over a so-called act of sovereignty that consisted of a naval demonstration on the 82 meridian at the altitude of parallel 12. On 6 August 1996 the Minister of Foreign Affairs of Colombia asserted that the question of sovereignty over Providencia and San Andrés "is not subject to discussions" and on the 14th of that same month reiterated "that there was nothing to talk about" in this affair.

7. A new Government was elected in Nicaragua in November of 1996. Several attempts were subsequently made with the view of trying to resolve this issue bilaterally without any results. On 30 November 1999 Colombia ratified a treaty it had signed with Honduras on 2 August 1986. This treaty had been denounced by Nicaragua since its signature in 1986 as a violation of her territorial sovereignty and rights. This event made evident that there was no possibility of a bilateral agreement between Nicaragua and Colombia on the territorial issues that divided them. For this reason, when this ratification took place the President of Nicaragua, Dr. Arnoldo Aleman Lacayo, immediately protested and made a public announcement that Nicaragua would file a case before the International Court of Justice in order to resolve the territorial matters in dispute with both parties to that Treaty. As is well known by the Court, Nicaragua brought an Application against Honduras on 8 December 1999 and has kept the issue with Colombia pending up to this moment. Apart from the difficulties entailed for a small

and poor country to face two major cases before the Court, the issues in dispute with Colombia are of a more diverse nature than those with Honduras. For this reason, in spite of the presidential announcement of immediate proceedings against Colombia, other fruitless attempts were made to try to reach an agreement on some of the issues in dispute. The Minister of Foreign Affairs of Nicaragua met on several occasions with his Colombian counterpart and was not able to reach an agreement on even holding discussions on the issues involved.

8. It is against this background that the Government of Nicaragua has decided to ask the Court for assistance in removing the legal uncertainties which still exist in this area of the Caribbean and thus to enhance the legal security of those seeking to go about their lawful business in the region. Accordingly, the Court is asked to adjudge and declare:

First, that the Republic of Nicaragua has sovereignty over the islands of Providencia, San Andrés and Santa Catalina and all the appurtenant islands and keys, and also over the Roncador, Serrana, Serranilla and Quitasueno keys (in so far as they are capable of appropriation);

Second, in the light of the determinations concerning title requested above, the Court is asked further to determine the course of the single maritime boundary between the areas of continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Colombia, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary.

9. Whilst the principal purpose of this Application is to obtain declarations concerning title and the determination of maritime boundaries, the Government of Nicaragua reserves the right to claim compensation for elements of unjust enrichment consequent upon Colombian possession of the Islands of San Andrés and Providencia as well as the keys and maritime spaces up to the 82 meridian, in the absence of lawful title. The Government of Nicaragua also reserves the right to claim compensation for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua.

10. The Government of Nicaragua, further, reserves the rights to supplement or to amend the present Application.

The Government of Nicaragua has designated the undersigned as its Agent for the purposes of these proceedings. All communications relating to this case should be sent to the Office of the Agent of the Republic of Nicaragua, Laan Copes van Cattenburch 84, 2585 GD The Hague.

Respectfully submitted,

(Signed) Carlos J. ARGUELLGOMEZ,

Backgrounds:

The origin of this conflict is in the history, for that reason is necessary to go back to the colonial periods and analyze carefully the dispositions of the final days during the Spanish Monarchy and their lands on Latin American territories, and with that information you should acknowledge the consequences of those acts during that time.

1. The island change seven times of owner for its geographical condition located in the center of the maritime routes in South America, rich in gold and silver, and the belongings of the Spanish Monarchy.
2. The Island origins started with Military and Commercial bases, that were incited with political and economic struggles with England and Netherland against the Spanish Empire, making the Caribbean an international scenario of conflict between the most important European countries.
3. The first serious try of colonization was made by the English during the middles of the XVIII century, therefore the English were direct launched by England, however they fail in the matter.
4. The struggle for the possession of the island continue until 1783, year were the conflict for the independence ceased,

since the most powerful European countries (Spain, England and France) signed in the US, called the Versaille's treaty, making the first administrative occupation into the Spanish Islands.

5. Even thou the Versaille's treaty was signed, the inconvenience with the island persisted by the different interventions of pirates in the island, for that reason the fortification boarder and the Indians defense, was release an order of the king, for the purpose of making depend of the military and administrative characters in the Costa de Mosquito as well in the San Andres Island.
6. During 1806-1807, the island were invaded again by the English; this situation affected temporally the exercises of the Spanish sovereignty.
7. On June 23rd 1822, the members of the island proclaim their addition to the recent constitution of Cucuta and in 21st of July, the cabildo of San Andres do it as well, on that matter they get incorporated into the territories of LA GRAN COLOMBIA as part of the six canton of the Cartagena providence.
8. The United Providence of Central America and the Republic of LA GRAN COLOMBIA in 1825, by the sign of the Gual-Molina treaty, were they compromised to adopt the principles of the *Utis Possidetis Juris* (agreement to the possession law) of 1810, which means that both parts acknowledge their states limits, according to the Political and Administrative division that keep the Spanish Monarchy during the independence.

9. The 4th of December of 1847, the republic of Nicaragua remit a diplomatic note to the government of LA NUEVA GRANADA (before called LA GRAN COLOMBIA), for the compliance of the Gual-Molina treaty in 1825.
10. During the rest of the years, the government of LA NUEVA GRANADA, negotiate with the government of Costa Rica about a treaty that defines their limits, were each nation recognize the sovereignty of Colombia with the archipelago of San Andres y Providencia and rest of islets that are part of it.
11. During the XX century started the protest made by Colombia to Nicaragua. In those diplomatic notes of August 19th and September 25th of 1913, Colombia claim the consideration of the lease of the Mangle Island (Chico and Grande) for 99 year to the US, by the consolidation of the Chamorro-Weitzel treaty, on this matter cutting half the sovereignty and the rights of the Colombian nation in the zone, since those islands were considered part of Colombia in the way of the archipelago of San Andres y Providencia.
12. With the purpose of end the disputes and the agreement of the parties is celebrated the Esguerra-Barcenas treaty the 24th of March of 1928 between Nicaragua and Colombia.
13. The 4th of February of 1980, the National Reconstruction board declare invalid the Esguerra-Barcenas treaty, since the country at that moment was occupy by the US Military Forces, fact that could pressure Nicaragua to sign and ratify the same treaty.
14. The Colombian government through his chancellor declined the petitions of Nicaragua, then elaborate a complete response with argument, document that will be known after as the White Book of Colombia.

15. Finally the 6th of December of 2001, Nicaragua establish formally their sue against Colombia to the ICJ, asking basically the following:
- a. Declare the sovereignty to Nicaragua of the Providence Islands, San Andres, Santa Catalina, and all the annex of the islands and keys, as well as the keys of Roncador, Serrana, Serranilla and Quitasueño;
 - b. Determine the course of the unique frontier between the areas of the continental platforms and the exclusive economic zones of Colombia and Nicaragua;
 - c. That Nicaragua reserve the right to claim any economic compensation for the unjust enrichment and by following possession of Colombia for the San Andres' islands, Providence, the keys and any maritime space till the 82 Greenwich meridian and for the Colombian interference with the Nicaraguan fishing embarkations authorized for that country.