



# INTERNATIONAL COURT OF JUSTICE

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## Press Release

Unofficial

No. 2016/9  
17 March 2016

### **Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)**

**The Court finds that it has jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to entertain the First Request put forward by Nicaragua in its Application, in which it requests the Court to determine “[t]he precise course of the maritime boundary between Nicaragua and Colombia in the areas of the continental shelf which appertain to each of them beyond the boundaries determined by the Court in its Judgment of 19 November 2012”, and that that Request is admissible**

THE HAGUE, 17 March 2016. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today delivered its Judgment on the preliminary objections raised by Colombia in the case concerning Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia).

In its Judgment, which is final and without appeal, the Court

- (1)(a) rejects, unanimously, the first preliminary objection raised by the Republic of Colombia;
  - (b) rejects, by eight votes to eight, by the President’s casting vote, the third preliminary objection raised by the Republic of Colombia;
  - (c) rejects, unanimously, the fourth preliminary objection raised by the Republic of Colombia;
  - (d) finds, unanimously, that there is no ground to rule upon the second preliminary objection raised by the Republic of Colombia;
  - (e) rejects, by eleven votes to five, the fifth preliminary objection raised by the Republic of Colombia in so far as it concerns the First Request put forward by Nicaragua in its Application;
  - (f) upholds, unanimously, the fifth preliminary objection raised by the Republic of Colombia in so far as it concerns the Second Request put forward by Nicaragua in its Application;
- (2)(a) finds, unanimously, that it has jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to entertain the First Request put forward by the Republic of Nicaragua;

(b) finds, by eight votes to eight, by the President's casting vote, that the First Request put forward by the Republic of Nicaragua in its Application is admissible.

### **Reasoning of the Court**

The Court recalls that, in this case, Nicaragua seeks to found the jurisdiction of the Court on Article XXXI of the Pact of Bogotá. In addition, Nicaragua contends that the subject-matter of the Application remains within the jurisdiction of the Court established in the case concerning the Territorial and Maritime Dispute (Nicaragua v. Colombia), since, in its 2012 Judgment, the Court did not definitively determine the question — of which it had been seised — of the delimitation of the continental shelf between Nicaragua and Colombia in the area beyond 200 nautical miles from the Nicaraguan coast.

The Court notes that Colombia raised five preliminary objections to the jurisdiction of the Court. Since the second preliminary objection is concerned exclusively with the additional basis for jurisdiction suggested by Nicaragua, the Court addressed it after considering the first, third and fourth objections. The fifth preliminary objection, which concerns the admissibility of Nicaragua's claims, was considered last.

#### **1. First preliminary objection**

In its first preliminary objection, Colombia contends that the Court lacks jurisdiction ratione temporis under the Pact of Bogotá, because the proceedings were instituted by Nicaragua on 16 September 2013, after Colombia's notice of denunciation of the Pact on 27 November 2012.

The Court recalls that the date at which its jurisdiction has to be established is the date on which the application is filed. Under Article XXXI of the Pact of Bogotá, the Parties recognize as compulsory the jurisdiction of the Court, "so long as the [said] Treaty is in force". The first paragraph of Article LVI provides that, following the denunciation of the Pact by a State party, the Pact shall remain in force between the denouncing State and the other parties for a period of one year following the notification of denunciation. Nicaragua's Application was filed with the Court after Colombia had given notice of denunciation, but before the one-year period referred to in the first paragraph of Article LVI. The only question raised by Colombia's first preliminary objection, therefore, is whether an a contrario interpretation can be applied to the second paragraph of Article LVI, which states that "[t]he denunciation shall have no effect with respect to pending procedures initiated prior to the transmission of the particular notification", so altering what would otherwise have been the effect of the first paragraph as to require the conclusion that the Court lacks jurisdiction in respect of the proceedings, notwithstanding that those proceedings were instituted while the Pact was still in force between Nicaragua and Colombia.

The Court notes that it is not the denunciation per se that is capable of having an effect upon the jurisdiction of the Court under Article XXXI, but the termination of the treaty (as between the denouncing State and the other parties) which results from the denunciation. Thus, an interpretation of the second paragraph of Article LVI which is compatible with Article XXXI is that, whereas proceedings instituted before transmission of notification of denunciation can continue in any event and are thus not subject to the first paragraph of Article LVI, the effect of denunciation on proceedings instituted after that date is governed by the first paragraph. Since the latter provides that denunciation terminates the treaty for the denouncing State only after a period of one year has elapsed, proceedings instituted during that year are instituted while the Pact is still in force. They are thus within the scope of the jurisdiction conferred by Article XXXI.

Taking Article LVI as a whole, and in light of its context and the object and purpose of the Pact, the Court concludes that Article XXXI (which confers jurisdiction on the Court) remained in force between the Parties on the date that the Application in the present case was filed. Colombia's first preliminary objection must therefore be rejected.

## **2. Third preliminary objection**

In its third preliminary objection, Colombia contends that the issues raised in Nicaragua's Application of 16 September 2013 were "explicitly decided" by the Court in its 2012 Judgment; the Court therefore lacks jurisdiction because Nicaragua's claim is barred by the principle of res judicata.

The Court notes that the question of the effect of res judicata relates to the admissibility of Nicaragua's First Request, whereby it asks the Court to determine "[t]he precise course of the maritime boundary between Nicaragua and Colombia in the areas of the continental shelf which appertain to each of them beyond the boundaries determined by the Court in its Judgment of 19 November 2012".

The Court takes the view that even if their views converge on the elements that constitute the principle of res judicata, the Parties disagree on the meaning of the decision adopted by the Court in subparagraph 3 of the operative clause of its 2012 Judgment, where it finds "that it cannot uphold the Republic of Nicaragua's claim contained in its final submission I (3)". The latter claim invited the Court to define a continental shelf boundary (beyond 200 nautical miles from the Nicaraguan coast) dividing by equal parts what Nicaragua maintained were the overlapping entitlements to a continental shelf of both Parties. The Court must determine whether subparagraph 3 of the operative clause must be understood as a straightforward dismissal of Nicaragua's request for lack of evidence, as Colombia claims, or a refusal to rule on the request because a procedural and institutional requirement had not been fulfilled, as Nicaragua argues.

The Court finds that an examination of subparagraph 3 of the operative clause of the 2012 Judgment indicates that it did not take a decision on whether or not Nicaragua had an entitlement to a continental shelf beyond 200 nautical miles from its coast. The Judgment says nothing about the maritime areas located to the east of the line lying 200 nautical miles from the islands fringing the Nicaraguan coast, beyond which the Court did not continue its delimitation exercise, and to the west of the line lying 200 nautical miles from Colombia's mainland. Yet, the Court was, as regards these areas, faced with competing claims by the Parties concerning the continental shelf. While the Court decided, in subparagraph 3 of the operative clause of the 2012 Judgment, that Nicaragua's claim could not be upheld, it did so because the latter had yet to discharge its obligation, under paragraph 8 of Article 76 of the United Nations Convention on the Law of the Sea (hereinafter "UNCLOS"), to deposit with the Commission on the Limits of the Continental Shelf (hereinafter the "CLCS") the "final" information on the limits of its continental shelf beyond 200 nautical miles required by that provision. The Court recalls that, in its Application of 16 September 2013, Nicaragua states that on 24 June 2013 it provided the CLCS with that "final" information. Accordingly, the condition imposed by the Court in its 2012 Judgment in order for it to be able to examine the claim of Nicaragua contained in final submission I (3) has been fulfilled in the present case. The Court concludes that it is not precluded by the res judicata principle from ruling on the Application submitted by Nicaragua on 16 September 2013. In light of the foregoing, the Court finds that Colombia's third preliminary objection must be rejected.

### **3. Fourth preliminary objection**

In its fourth preliminary objection, Colombia submits that Nicaragua's Application is an attempt to appeal and revise the Court's 2012 Judgment, and, as such, the Court has no jurisdiction to entertain the Application.

The Court is of the view that Nicaragua does not request the Court to revise the 2012 Judgment, nor does it frame its Application as an "appeal". Accordingly, the Court finds that the fourth preliminary objection is not founded and must be rejected.

### **4. Second preliminary objection**

In its second objection, Colombia argues that the Court does not possess "continuing jurisdiction" because it fully dealt with Nicaragua's claims in the Territorial and Maritime Dispute case with regard to the delimitation of the continental shelf between the two States in the area beyond 200 nautical miles of the Nicaraguan coast.

The Court recalls that it has already held that Article XXXI confers jurisdiction upon it in respect of the present proceedings. It is therefore unnecessary to consider whether an additional basis of jurisdiction exists. Consequently, there is no ground for the Court to rule upon the second preliminary objection raised by Colombia.

### **5. Fifth preliminary objection**

The Court notes Colombia's contention, on the hypothesis that the four other objections raised by it were to be rejected, that neither of the two requests put forward in Nicaragua's Application is admissible.

The Court observes that the First Request, regarding the course of the maritime boundary between Nicaragua and Colombia in the areas of the continental shelf which appertain to each of them beyond the boundaries determined by the Court in its Judgment of 19 November 2012, is, in Colombia's view, inadmissible due to the fact that Nicaragua has not secured the requisite recommendation on the establishment of the outer limits of its continental shelf from the CLCS. The Court has already established that Nicaragua was under an obligation to submit information on the limits of the continental shelf it claims beyond 200 nautical miles to the CLCS. It must now determine whether a recommendation made by the CLCS is a prerequisite in order for the Court to be able to entertain the Application filed by Nicaragua in 2013. The Court notes that the procedure before the CLCS relates to the delineation of the outer limits of the continental shelf, and hence to the determination of the extent of the sea-bed under national jurisdiction. It is distinct from the delimitation of the continental shelf, which is governed by Article 83 of UNCLOS and effected by agreement between the States concerned, or by recourse to dispute resolution procedures. The Court accordingly considers that, since the delimitation of the continental shelf beyond 200 nautical miles can be undertaken independently of a recommendation from the CLCS, the latter is not a prerequisite that needs to be satisfied by a State party to UNCLOS before it can ask the Court to settle a dispute with another State over such a delimitation. The Court concludes that the preliminary objection to the admissibility of Nicaragua's First Request must be rejected.

The Court notes that Nicaragua's Second Request, asking it to establish the principles and rules of international law that determine the rights and duties of the two States in relation to the area of overlapping continental shelf claims, pending the delimitation of the maritime boundary between them beyond 200 nautical miles from Nicaragua's coast, is, in Colombia's view, inadmissible because, if it were to be granted, the decision of the Court would be inapplicable and

would concern a non-existent dispute. The Court observes that this Request does not relate to an actual dispute between the Parties; nor does it specify what exactly the Court is being asked to decide. The Court accordingly finds that the preliminary objection to the admissibility of Nicaragua's Second Request must be upheld.

#### Composition of the Court

The Court was composed as follows: President Abraham; Vice-President Yusuf; Judges Owada, Tomka, Bennouna, Cançado Trindade, Greenwood, Xue, Donoghue, Gaja, Sebutinde, Bhandari, Robinson, Gevorgian; Judges ad hoc Brower, Skotnikov; Registrar Couvreur.

Vice-President YUSUF, Judges CANÇADO TRINDADE, XUE, GAJA, BHANDARI, ROBINSON and Judge ad hoc BROWER append a joint dissenting opinion to the Judgment of the Court; Judges OWADA and GREENWOOD append separate opinions to the Judgment of the Court; Judge DONOGHUE appends a dissenting opinion to the Judgment of the Court; Judges GAJA, BHANDARI, ROBINSON and Judge ad hoc BROWER append declarations to the Judgment of the Court.

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A summary of the Judgment appears in the document "Summary No. 2016/2". This press release, the summary, and the full text of the Judgment can be found on the Court's website ([www.icj-cij.org](http://www.icj-cij.org)) under the heading "Cases".

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Note: The Court's press releases do not constitute official documents.

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The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the "World Court", it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the

Security Council), the International Criminal Court (ICC, the first permanent international criminal court, established by treaty, which does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an international judicial body with an independent legal personality, established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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