



INTERNATIONAL COURT OF JUSTICE

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Press Release

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Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)

The Court finds that it has jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to adjudicate upon the dispute regarding the alleged violations by Colombia of Nicaragua's rights in the maritime zones which, according to Nicaragua, the Court declared in its 2012 Judgment appertain to Nicaragua

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 Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (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 fifteen votes to one, the second preliminary objection raised by the Republic of Colombia in so far as it concerns the existence of a dispute regarding the alleged violations by Colombia of Nicaragua's rights in the maritime zones which, according to Nicaragua, the Court declared in its 2012 Judgment appertain to Nicaragua;
 - (c) upholds, unanimously, the second preliminary objection raised by the Republic of Colombia in so far as it concerns the existence of a dispute regarding alleged violations by Colombia of its obligation not to use force or threaten to use force;
 - (d) rejects, by fifteen votes to one, the third preliminary objection raised by the Republic of Colombia;
 - (e) finds, unanimously, that there is no ground to rule upon the fourth preliminary objection raised by the Republic of Colombia;
 - (f) rejects, by fifteen votes to one, the fifth preliminary objection raised by the Republic of Colombia;
- (2) finds, by fourteen votes to two, that it has jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to adjudicate upon the dispute between the Republic of Nicaragua and the Republic of Colombia referred to in subparagraph 1 (b) above.

Reasoning of the Court

The Court recalls that Nicaragua seeks to found the Court's jurisdiction in this case on Article XXXI of the Pact of Bogotá. Alternatively, Nicaragua maintains that the Court has an inherent jurisdiction to entertain disputes regarding non-compliance with its judgments and that, in the present proceedings, such an inherent jurisdiction exists, given that the current dispute arises from non-compliance by Colombia with the Court's Judgment of 19 November 2012 in the case concerning Territorial and Maritime Dispute (Nicaragua v. Colombia) (hereinafter the "2012 Judgment").

Colombia has raised five preliminary objections to the jurisdiction of the Court.

I. First preliminary objection

In its first preliminary objection, Colombia argues that the Court lacks jurisdiction ratione temporis under the Pact of Bogotá, because the proceedings were instituted by Nicaragua on 26 November 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. By Article XXXI of the Pact of Bogotá, the Parties recognize as compulsory the jurisdiction of the Court, "so long as the present 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 submitted to the Court after the transmission of Colombia's notification of denunciation but before the one-year period referred to in the first paragraph of Article LVI had elapsed. Therefore, the only question raised by Colombia's first preliminary objection is whether the second paragraph of Article LVI, which stipulates that "[t]he denunciation shall have no effect with respect to pending procedures initiated prior to the transmission of the particular notification", may be subject to an a contrario reading, countering 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 observes 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. One 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 first paragraph 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, therefore, 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 (conferring jurisdiction upon 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. Second preliminary objection

In its second objection, Colombia argues that, even if the Court does not uphold the first objection, the Court does not have jurisdiction under the Pact of Bogotá, because there was no dispute between the Parties as at 26 November 2013, the date when the Application was filed.

The Court notes that the existence of a dispute between the parties is a condition of the Court's jurisdiction. It adds that, in principle, the critical date for determining the existence of a dispute is the date on which the application is submitted to the Court. It recalls that Nicaragua makes two distinct claims — one that Colombia has violated Nicaragua's sovereign rights in its maritime zones, and the other that Colombia has breached its obligation not to use or threaten to use force. The Court examines these two claims separately in order to determine, with respect to each of them, whether there existed a dispute at the date of filing of the Application.

With regard to Nicaragua's first claim, the Court pays particular attention to the opposing views expressed by the two States in the declarations and statements made by their senior officials on the question of their respective rights in the maritime areas covered by the 2012 Judgment; the incidents at sea involving Colombian vessels or aircraft alleged to have taken place in those areas; and the Parties' divergent positions on the implications, in terms of the extent of their maritime spaces, of Colombia's Decree on the establishment of an "Integral Contiguous Zone". The Court notes in this connection that Colombia does not rebut Nicaragua's allegation that it continued exercising jurisdiction in the maritime spaces that Nicaragua claimed as its own on the basis of the 2012 Judgment. The Court concludes from this examination that, at the time Nicaragua filed its Application, there existed a dispute concerning the alleged violations by Colombia of Nicaragua's rights in the maritime zones which, according to Nicaragua, the Court declared in its 2012 Judgment appertain to Nicaragua.

In respect of Nicaragua's second claim, the Court observes that nothing in the evidence suggests that Nicaragua had indicated that Colombia had violated its obligations under Article 2, paragraph 4, of the Charter of the United Nations or under customary international law regarding the threat or use of force.

In light of the foregoing considerations, the Court concludes that Colombia's second preliminary objection must be rejected with regard to Nicaragua's first claim and upheld with regard to its second claim.

3. Third preliminary objection

Colombia contends in its third objection that the Court does not have jurisdiction under the Pact of Bogotá, because, at the time of the filing of the Application, the Parties were not of the opinion that the purported controversy "[could not] be settled by direct negotiations through the usual diplomatic channels", as is required, in Colombia's view, by Article II of the Pact of Bogotá, before resorting to the dispute resolution procedures of the Pact.

The Court considers whether the evidence provided demonstrates that, at the date of Nicaragua's filing of the Application, neither of the Parties could plausibly maintain that the dispute between them could be settled by direct negotiations. It notes that while, through various communications between the Heads of State of the two countries since the delivery of the 2012 Judgment, each Party had indicated that it was open to dialogue to address some issues raised by Colombia as a result of the Judgment, the subject-matter for negotiation was different from the subject-matter of the dispute. Moreover, there is nothing in the case file to indicate that the Parties had contemplated or were in a position to hold negotiations to settle the dispute in question.

Given the above considerations, the Court concludes that, at the date on which Nicaragua filed its Application, the condition set out in Article II was met. Therefore, Colombia's third preliminary objection must be rejected.

4. Fourth preliminary objection

In its fourth objection, Colombia refutes Nicaragua's assertion that the Court has an "inherent jurisdiction" enabling it to pronounce itself on the alleged non-compliance with a previous judgment.

The Court notes that the "inherent jurisdiction" claimed by Nicaragua is an alternative ground that it invokes for the establishment of the Court's jurisdiction in the present case. However, since the Court has founded its jurisdiction on the basis of Article XXXI of the Pact of Bogotá, it considers that there is no need to deal with this "inherent jurisdiction" claim. Consequently, there is no ground for the Court to rule upon Colombia's fourth preliminary objection.

5. Fifth preliminary objection

According to Colombia's fifth preliminary objection, the Court has no jurisdiction with regard to compliance with a prior judgment.

The Court notes that this objection rests on the premise that the Court is being asked to enforce its 2012 Judgment. However, while that Judgment is undoubtedly relevant to this dispute, in that it determines the maritime boundary between the Parties, in the present case, Nicaragua asks the Court to adjudge and declare that Colombia has breached its obligation not to violate Nicaragua's maritime zones which, according to Nicaragua, the Court declared in its 2012 Judgment appertain to Nicaragua. Nicaragua does not seek to enforce the 2012 Judgment as such. Colombia's fifth preliminary objection must therefore be rejected.

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 Daudet, Caron; Registrar Couvreur.

Judge CANÇADO TRINDADE appends a separate opinion to the Judgment of the Court; Judge BHANDARI appends a declaration to the Judgment of the Court; Judge ad hoc CARON appends a dissenting opinion to the Judgment of the Court.

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A summary of the Judgment appears in the document "Summary No. 2016/1". This press release, the summary of the Judgment and its full text can be found on the Court's website (www.icj-cij.org), under the heading "Cases".

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

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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