



INTERNATIONAL COURT OF JUSTICE

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Press Release

Unofficial

No. 2007/30

13 December 2007

Territorial and Maritime Dispute

(Nicaragua v. Colombia)

Preliminary Objections

The Court finds that the 1928 Treaty between Colombia and Nicaragua settled the matter of sovereignty over the islands of San Andrés, Providencia and Santa Catalina, that there is no extant legal dispute between the Parties on that question, and that the Court thus cannot have jurisdiction over the question; the Court further finds that it has jurisdiction to adjudicate upon the dispute concerning sovereignty over the other maritime features claimed by the Parties and upon the dispute concerning the maritime delimitation between the Parties

THE HAGUE, 13 December 2007. 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 Territorial and Maritime Dispute (Nicaragua v. Colombia).

In its Judgment, the Court

(1) As regards the first preliminary objection to jurisdiction raised by the Republic of Colombia on the basis of Articles VI and XXXIV of the Pact of Bogotá:

(a) By thirteen votes to four,

Upholds the objection to its jurisdiction in so far as it concerns sovereignty over the islands of San Andrés, Providencia and Santa Catalina;

(b) Unanimously,

Rejects the objection to its jurisdiction in so far as it concerns sovereignty over the other maritime features in dispute between the Parties;

(c) Unanimously,

Rejects the objection to its jurisdiction in so far as it concerns the maritime delimitation between the Parties;

(2) As regards the second preliminary objection to jurisdiction raised by the Republic of Colombia relating to the declarations made by the Parties recognizing the compulsory jurisdiction of the Court:

(a) By fourteen votes to three,

Upholds the objection to its jurisdiction in so far as it concerns sovereignty over the islands of San Andrés, Providencia and Santa Catalina;

(b) By sixteen votes to one,

Finds that it is not necessary to examine the objection to its jurisdiction in so far as it concerns sovereignty over the other maritime features in dispute between the Parties and the maritime delimitation between the Parties;

(3) As regards the jurisdiction of the Court,

(a) Unanimously,

Finds that it has jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to adjudicate upon the dispute concerning sovereignty over the maritime features claimed by the Parties other than the islands of San Andrés, Providencia and Santa Catalina;

(b) Unanimously,

Finds that it has jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to adjudicate upon the dispute concerning the maritime delimitation between the Parties.

Reasoning of the Court

— The 1928 Treaty

The Court notes that in 1928 Colombia and Nicaragua signed a Treaty in which Colombia recognized Nicaragua's sovereignty over the Mosquito Coast, as well as over the Corn Islands. In the same Treaty, Nicaragua recognized Colombia's sovereignty over the islands of San Andrés, Providencia, Santa Catalina, and the other maritime features that form part of the Archipelago of San Andrés. The Treaty mentioned that it did not apply to Roncador, Quitasueño and Serrana, "sovereignty over which [was] in dispute between Colombia and the United States of America". A Protocol of Exchange of Ratifications signed in 1930 provided that the San Andrés and Providencia Archipelago mentioned in the 1928 Treaty did "not extend west of the 82nd degree of longitude west of Greenwich" (82nd meridian).

— The subject-matter of the dispute

The Court observes that Nicaragua and Colombia have presented different views about whether there is an extant dispute between them and, if so, the subject-matter of that dispute. Nicaragua argues that the dispute concerns inter alia the validity of the 1928 Treaty, the interpretation of the 1928 Treaty as regards the geographical scope of the San Andrés Archipelago, the sovereignty over the maritime features in the disputed area, and the maritime delimitation between the two countries. Nicaragua also asserts that the question whether the 1928 Treaty has settled all questions between the Parties is "the very object of the dispute". Colombia contends that the matters in issue have already been settled by the 1928 Treaty and 1930 Protocol, and that there is thus no extant dispute over which the Court could have jurisdiction.

After consideration of the arguments of the Parties, the Court finds that the question whether the 1928 Treaty and the 1930 Protocol settled the matters in dispute between the Parties does not form the subject-matter of the dispute, but is a preliminary question to legal issues in dispute between the Parties concerning title to territory and maritime delimitation. It concludes that the issues which constitute the subject-matter of the dispute on the merits are, first, sovereignty over territory (namely the islands and other maritime features claimed by the Parties) and, second, the course of the maritime boundary between the Parties.

— The bases of jurisdiction

Nicaragua based the jurisdiction of the Court on the provisions of Article XXXI of the Pact of Bogotá as well as on the optional clause declarations made by the Parties. Colombia raised preliminary objections to both bases of jurisdiction invoked by Nicaragua.

— First preliminary objection

Examining the preliminary objection relating to its jurisdiction under the Pact of Bogotá, the Court recalls that Colombia claims that the matters raised by Nicaragua were settled by the 1928 Treaty and 1930 Protocol and that, pursuant to Articles VI and XXXIV of the Pact, the Court is without jurisdiction to hear the controversy submitted to it and should declare the controversy ended. Article VI of the Pact provides that recourse to the Court is not possible for “matters already settled by arrangement between the Parties, or by arbitral award or by decision of an international court, or which are governed by agreements or treaties in force on the date of conclusion” of the Pact in 1948. Article XXXIV provides that “if the Court . . . declares itself to be without jurisdiction to hear the controversy, such controversy shall be declared ended”. For its part, Nicaragua contends that the 1928 Treaty and its 1930 Protocol did not settle the matters in issue within the meaning of Article VI of the Pact because the Treaty is invalid (Nicaragua argues that it was concluded, first, in manifest violation of its Constitution in force in 1928 and, second, at a time when Nicaragua was occupied by the United States and was precluded from rejecting the conclusion of treaties that the United States demanded it to conclude).

Having reviewed the arguments of the Parties, the Court first notes that it is not in the interest of the good administration of justice for it to limit itself at the present juncture to stating merely that there is a disagreement between the Parties as to whether the 1928 Treaty and 1930 Protocol settled the matters which are the subject of the controversy, leaving every aspect thereof to be resolved on the merits. It goes on to consider whether the 1928 Treaty was in force between the Parties when the Pact of Bogotá was concluded in 1948. It notes that, for more than 50 years, Nicaragua has treated the 1928 Treaty as valid and never contended that it was not bound by the Treaty, even after the withdrawal of the last United States troops at the beginning of 1933. At no time in those 50 years did Nicaragua contend that the Treaty was invalid for whatever reason, including that it had been concluded in violation of its Constitution or under foreign coercion. On the contrary, Nicaragua has, in significant ways, acted as if the 1928 Treaty was valid. The Court thus concludes that the 1928 Treaty was valid and in force on the date of the conclusion of the Pact of Bogotá.

The Court then turns to the question whether the Treaty and its Protocol settled the matters in dispute between the Parties and consequently whether the Court has jurisdiction under the Pact.

With respect to the question of its jurisdiction as regards the issue of sovereignty over the islands of the San Andrés Archipelago named in the 1928 Treaty (San Andrés, Providencia and Santa Catalina), the Court finds that the question has been settled by the Treaty within the meaning of Article VI of the Pact of Bogotá. The Court thus upholds the first Colombian preliminary objection in this respect.

As regards the question of the scope and composition of the rest of the San Andrés Archipelago, the Court considers that the 1928 Treaty fails to provide answers as to which other maritime features form part of the Archipelago. The Court thus finds that the issue has not been settled within the meaning of Article VI of the Pact and that it has jurisdiction to adjudicate upon it. It accordingly rejects the first Colombian preliminary objection in this respect.

As to the question of its jurisdiction concerning the matter of sovereignty over Roncador, Quitasueño and Serrana, the Court observes that the terms of the 1928 Treaty make it clear that the Treaty does not apply to these three maritime features. The Court thus has jurisdiction over the issue and rejects the first Colombian preliminary objection in this respect.

With reference to the question of its jurisdiction as regards the issue of the maritime delimitation, the Court concludes that the 1928 Treaty and the 1930 Protocol did not effect a general delimitation of the maritime boundary between Colombia and Nicaragua. Since this dispute has not been settled within the meaning of Article VI of the Pact, the Court has jurisdiction to adjudicate upon it. It thus rejects the first Colombian preliminary objection in this respect.

— Second preliminary objection

The Court notes that Nicaragua has also invoked the optional clause declarations made by the Parties as a basis of the Court's jurisdiction. In its second preliminary objection, Colombia asserts that the Court has no jurisdiction on this basis. It argues that it had withdrawn its declaration by the date of the filing of Nicaragua's Application and that even if its declaration were found to be in force at that time, the alleged dispute would fall outside the scope of the declaration as a result of a reservation which excluded disputes arising out of facts prior to 6 January 1932. Nicaragua denies Colombia's arguments in this respect.

The Court initially notes that the question of whether the optional clause declarations can provide a distinct and sufficient basis of jurisdiction in the present case only arises in respect of that part of the dispute relating to sovereignty over the three islands named in the 1928 Treaty: San Andrés, Providencia and Santa Catalina. This is because the Court has concluded earlier that it had jurisdiction under the Pact of Bogotá to deal with all the other aspects of the dispute. Consequently, no purpose is served by examining whether, in relation to those aspects, the declarations could also provide a basis of jurisdiction.

The Court observes that Article 36, paragraph 2, of the Statute expressly requires that in order for it to have jurisdiction on the basis of optional clause declarations, there must exist a "legal dispute" between the Parties. Given the Court's finding that there is no extant legal dispute between the Parties on the question of the sovereignty over the three islands, the Court cannot have jurisdiction over this question either under the Pact of Bogotá or on the basis of the optional clause declarations. In light of the foregoing, the Court finds that no practical purpose would be served by proceeding further with the other matters raised in Colombia's second preliminary objection. It upholds the second preliminary objection raised by Colombia relating to jurisdiction under the optional clause declarations in so far as it concerns the Court's jurisdiction with regard to the three islands.

In conclusion, the Court finds that it has jurisdiction under the Pact of Bogotá to adjudicate upon the dispute concerning sovereignty over the maritime features claimed by the Parties other than San Andrés, Providencia and Santa Catalina; and upon the dispute concerning the maritime delimitation between the Parties.

Composition of the Court

The Court was composed as follows: President Higgins; Vice-President Al-Khasawneh; Judges Ranjeva, Shi, Koroma, Parra-Aranguren, Buergenthal, Owada, Simma, Tomka, Abraham, Keith, Sepúlveda-Amor, Bennouna and Skotnikov; Judges ad hoc Fortier and Gaja; Registrar Couvreur.

Vice-President Al-Khasawneh appends a dissenting opinion to the Judgment of the Court; Judge Ranjeva appends a separate opinion; Judges Parra-Aranguren, Simma and Tomka append declarations; Judge Abraham appends a separate opinion; Judge Keith appends a declaration; Judge Bennouna appends a dissenting opinion; Judge ad hoc Gaja appends a declaration.

A summary of the Judgment appears in the document “Summary No. 2007/5”, to which summaries of the declarations and opinions are annexed. In addition, this press release, the summary and the full text of the Judgment can be found on the Court’s website (www.icj-cij.org), in the “Press Room” and “Cases” sections.

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