



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 the third and fourth counter-claims submitted by Colombia are admissible and fixes time-limits for the filing of further written pleadings

THE HAGUE, 20 November 2017. On 15 November 2017, the International Court of Justice (ICJ), the principal judicial organ of the United Nations, rendered its Order on the admissibility of the counter-claims submitted by Colombia in the case concerning Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia).

On 26 November 2013, Nicaragua instituted proceedings against Colombia on the basis of Article XXXI of the Pact of Bogotá with regard to a dispute concerning “violations of Nicaragua’s sovereign rights and maritime zones declared by the Court’s Judgment of 19 November 2012 [in the case concerning Territorial and Maritime Dispute (Nicaragua v. Colombia)] and the threat of the use of force by Colombia in order to implement these violations”. On 19 December 2014, Colombia raised preliminary objections to the jurisdiction of the Court. By a Judgment dated 17 March 2016, the Court found that it had jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to adjudicate upon the dispute relating to the alleged violations by Colombia of Nicaragua’s rights in the maritime zones which, according to Nicaragua, the Court declared appertain to Nicaragua in its Judgment of 19 November 2012.

In its Counter-Memorial filed on 17 November 2016, Colombia submitted four counter-claims. The first was based on Nicaragua’s alleged breach of a duty of due diligence to protect and preserve the marine environment of the south-western Caribbean Sea; the second related to Nicaragua’s alleged breach of its duty of due diligence to protect the right of the inhabitants of the San Andrés Archipelago to benefit from a healthy, sound and sustainable environment; the third concerned Nicaragua’s alleged infringement of the customary artisanal fishing rights of the local inhabitants of the San Andrés Archipelago to access and exploit their traditional fishing grounds; the fourth related to Nicaragua’s adoption of Decree No. 33-2013 of 19 August 2013, which, according to Colombia, established straight baselines and had the effect of extending Nicaragua’s internal waters and maritime zones beyond what international law permits.

In the operative clause, the Court finds, by fifteen votes to one, that the first and second counter-claims submitted by Colombia are inadmissible as such and do not form part of the current proceedings; by eleven votes to five, that the third counter-claim submitted by Colombia is admissible as such and forms part of the current proceedings; by nine votes to seven, that the fourth counter-claim submitted by Colombia is admissible as such and forms part of the current proceedings. The Court also unanimously directs Nicaragua to submit a Reply and Colombia to

submit a Rejoinder relating to the claims of both Parties in the current proceedings, and fixes the following dates as time-limits for the filing of those pleadings: 15 May 2018 for Nicaragua's Reply and 15 November 2018 for Colombia's Rejoinder.

Reasoning of the Court

In its Order, the Court begins by recalling that under Article 80, paragraph 1, of the Rules of Court, two requirements must be met for it to be able to entertain a counter-claim as such, namely, that the claim in question "comes within the jurisdiction of the Court" and, that it "is directly connected with the subject-matter of the claim of the other party". The Court is free to examine, in the most appropriate sequence, whether those requirements have been met. In the present case, the Court deems it appropriate to begin with the question whether Colombia's counter-claims are directly connected with the subject-matter of Nicaragua's principal claims.

The Court is of the view that there is no connection, either in fact or in law, between Colombia's first two counter-claims and Nicaragua's principal claims. Although the respective claims of the Parties essentially relate to the same geographical area, the nature of the facts underlying them is different, and these facts do not relate to the same factual complex. Furthermore, the legal principles relied upon by the Parties are different and they are not pursuing the same legal aim.

On the other hand, the Court considers that there is a direct connection between Colombia's third counter-claim and Nicaragua's principal claims. It observes in this regard that the Parties agree that the facts underpinning their respective claims relate to the same time period (following the delivery of the 2012 Judgment) and the same geographical area (Nicaragua's EEZ). The Court further notes that those facts are of the same nature in so far as they allege similar types of conduct of the naval forces of one Party (harassment, intimidation, coercive measures) vis-à-vis nationals of the other Party fishing in the same waters. With regard to the legal principles relied upon by the Parties, the Court notes that the respective claims of the Parties concern the scope of the rights and obligations of a coastal State in its EEZ. In addition, the Parties are pursuing the same legal aim by their respective claims since they are both seeking to establish the responsibility of the other by invoking violations of a right to access and exploit marine resources in the same maritime area.

The Court considers that there is a direct connection between Colombia's fourth counter-claim relating to Nicaragua's decree of 19 August 2013, which establishes straight baselines, and Nicaragua's principal claims regarding Colombia's decree of 9 September 2013 establishing an "Integral Contiguous Zone". It first observes that the facts relied upon by the Parties in their respective claims — i.e. the adoption of domestic legal instruments fixing the limits or the extent of their respective maritime zones — relate to the same time period. The Court notes, above all, that both Parties complain about the provisions of domestic law adopted by each Party with regard to the delineation of their respective maritime spaces in the same geographical area. It further observes that Nicaragua seeks the respect of its rights in the EEZ. However, the limits of Nicaragua's EEZ depend on its baselines, which are challenged in Colombia's fourth counter-claim. Furthermore, the Court notes that, in their respective claims, the Parties allege violations of the sovereign rights they each claim to possess on the basis of customary international rules relating to the limits, régime and spatial extent of the EEZ and contiguous zone, in particular in situations where these zones overlap between States with opposite coasts. In addition, the Parties are pursuing the same legal aim by their respective claims, since each is seeking a declaration that the other Party's decree is in violation of international law.

The Court then examines whether Colombia's third and fourth counter-claims meet the requirement of jurisdiction contained in Article 80, paragraph 1, of the Rules of Court.

The Court begins by recalling that in its Judgment on preliminary objections of 17 March 2016, it recognized that it had jurisdiction on the basis of Article XXXI of the Pact of Bogotá to entertain the principal claims of Nicaragua. This title of jurisdiction has since elapsed following Colombia's denunciation of the Pact after the filing of the Application. However, Colombia submitted its third and fourth counter-claims under the same title of jurisdiction. The Court observes in this regard that once it has established jurisdiction to entertain a case, it has jurisdiction to deal with all its phases; the subsequent lapse of the title cannot deprive the Court of its jurisdiction. It adds that although the object of the counter-claims is to submit new claims to the Court, they are, at the same time, linked to the principal claims, and their purpose is to react to them in the same proceedings in respect of which they are incidental. Consequently, the lapse of the jurisdictional title invoked by an applicant in support of its claims subsequent to the filing of the application does not deprive the Court of its jurisdiction to entertain counter-claims filed on the same jurisdictional basis. It follows that the termination of the Pact of Bogotá as between the Parties did not, *per se*, deprive the Court of its jurisdiction to entertain those counter-claims.

The Court then considers whether the conditions set out in the Pact have been met, i.e. whether a dispute exists between the Parties with regard to the subject-matter of the counter-claims and whether, in accordance with the requirement set out in Article II of the Pact of Bogotá, the matters presented by Colombia in its counter-claims could not "in the opinion of the Parties . . . be settled by direct negotiations".

The Court is of the view that these conditions are met with respect to the third and fourth counter-claims.

With regard to the third counter-claim, the Court notes that the Parties hold opposing views on the scope of their respective rights and duties in Nicaragua's EEZ and that Nicaragua was aware that its views were positively opposed by Colombia. Therefore, it appears that a dispute does exist between the Parties regarding the alleged violation by Nicaragua of the rights at issue claimed by Colombia. With regard to the condition set out in Article II of the Pact of Bogotá, the Court observes that, although following the 2012 Judgment the Parties have made general statements on issues relating to fishing activities of the inhabitants of the San Andrés Archipelago, they have never initiated direct negotiations in order to resolve these issues. This shows that the Parties did not consider that there was a possibility of finding a resolution of their dispute regarding the question of respect for traditional fishing rights through the usual diplomatic channels by direct negotiations.

With respect to the fourth counter-claim, the Court notes that the Parties hold opposing views on the question of the delineation of their respective maritime spaces in the south-western part of the Caribbean Sea, following the Court's 2012 Judgment. Therefore, it appears that there is a dispute between the Parties on this matter. With regard to the condition set out in Article II of the Pact of Bogotá, the Court observes that Nicaragua's adoption of the decree of 19 August 2013 and Colombia's rejection of it by means of a diplomatic Note of protest from its Minister for Foreign Affairs dated 1 November 2013 show that it would, in any event, no longer have been useful for the Parties to engage in direct negotiations on this matter through the usual diplomatic channels.

The Court concludes that it has jurisdiction to entertain Colombia's third and fourth counter-claims.

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.

Vice-President YUSUF appends a declaration to the Order of the Court; Judges TOMKA, GAJA, SEBUTINDE, GEVORGIAN and Judge ad hoc DAUDET append a joint opinion to the Order of the Court; Judge CANÇADO TRINDADE appends a declaration to the Order of the Court; Judges GREENWOOD and DONOGHUE append separate opinions to the Order of the Court; Judge ad hoc CARON appends a dissenting opinion to the Order of the Court.

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A summary of the Order appears in the document entitled “Summary No. 2017/3”, to which summaries of the opinions and declarations are annexed. This press release, the summary and the full text of the Order are available 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), the Mechanism for International Criminal Tribunals (MICT, mandated to take over residual functions from the ICTY, as well as from the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania), the Kosovo Specialist

Chambers and Specialist Prosecutor's Office (an ad hoc judicial institution which has its seat in The Hague), 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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