



REPÚBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

The Hague, 9 October 2015

Sir,

With reference to the oral proceedings on preliminary objections in the case concerning *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, I have the honour to refer to the questions formulated by Judge Cançado Trindade at the end of the hearing held on 2 October 2015, at 10 a.m.

In that regard, within the time limit indicated by the President, please find enclosed herewith Colombia's written reply to the above-mentioned questions.

Accept, Sir, the assurances of my highest consideration.

CARLOS GUSTAVO ARRIETA PADILLA
Agent of the Republic of Colombia

H.E. PHILIPPE COUVREUR
Registrar
International Court of Justice
The Hague



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International Court of Justice

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

**The Republic of Colombia's response to the questions put to the Parties by
Judge Cañado Trindade at the hearing on 2 October 2015**

At the hearing on 2 October 2015 Judge Cañado Trindade addressed the following questions to both Parties:

In the course of the proceedings along this week, both contending Parties referred to the relevant case law of contemporary international tribunals, in particular in respect of the question of their inherent powers or facultés. Having listened attentively to their oral arguments, I have three questions to address to both Parties, so as to obtain further precisions, at conceptual level, from both of them, in the context of the cas d'espèce.

"First: Do the inherent powers or facultés of contemporary international tribunals ensue from the exercise itself, by each of them, of their international judicial function?

Second: Do the distinct bases of jurisdiction of contemporary international tribunals have an incidence on the extent of their compétence de la compétence?

Third: Do the distinct bases of jurisdiction of contemporary international tribunals condition the operation of the corresponding mechanisms of supervision of compliance with their respective judgments and decisions?"¹

¹ CR 2015/25, p. 47.



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General

1. The questions appropriately invite a response “in the context of the *cas d'espèce*”, that is, in the context of the present proceedings before the International Court of Justice. These proceedings do not concern ‘contemporary international tribunals’ in general or questions of “inherent powers” at a conceptual level.
2. Each court or tribunal is governed by its own particular statutory provisions and rules. This applies in respect of each of the questions asked by Judge Cançado Trindade.

First: Do the inherent powers or *facultés* of contemporary international tribunals ensue from the exercise itself, by each of them, of their international judicial function?

3. In the present proceedings, Nicaragua has raised issues concerning an alleged ‘inherent jurisdiction’ and/or supervision of compliance of the International Court of Justice. In this regard, Colombia recalls the position it has taken, in its Fourth and Fifth Preliminary Objections, on these claims of Nicaragua.² In essence, and as is confirmed by the Court’s case-law, in addition to the powers expressly conferred upon it by the Statute, the International Court has such “inherent powers” as are necessary in the interests of the good administration of justice for the proper conduct of cases over which it has jurisdiction. As stated by Counsel for Colombia, “[t]he expression ‘inherent power’ implies that, in the case that there exists a jurisdiction well established on the basis of the consent of the parties, this includes certain powers necessary for its exercise.”³
4. There is no such thing as an ‘inherent jurisdiction’ enabling the Court to take jurisdiction over new cases, as urged upon the Court by Nicaragua. “The competence to decide on

² CPO, Chapters 5 and 6 (pp. 131-164); CR 2015/22, pp. 59-66 (Treves); CR 2015/24, pp. 32-38 (Treves), pp. 39-40, paras. 5-6 and p. 43, para. 19 (Bundy).

³ « L’expression «*pouvoir inhérent*» implique que, au cas où il existe une compétence bien établie basée sur le consentement des parties, celle-ci comprend certains pouvoirs nécessaires à son exercice. » In : CR 2015/22, p. 60, para. 3 (Treves).



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the merits of a difference is only established on the basis of titles provided for in the Statute.”⁴

5. Thus, in *Nuclear Tests*, the International Court of Justice underlined that inherent powers serve the exercise of jurisdiction on the merits and that this jurisdiction must be clearly established on the basis of consent.⁵

Second: Do the distinct bases of jurisdiction of contemporary international tribunals have an incidence on the extent of their *compétence de la compétence*?

6. The question of *compétence de la compétence* has not been an issue in the present case. It refers to an international court’s or tribunal’s competence to decide upon its own jurisdiction. With respect to the Court, whose powers derive from the Statute, Article 36, paragraph 6, of the Statute provides expressly that in the event of a dispute as to whether the Court has jurisdiction, the matter shall be decided by the decision of the Court. This is an express power, and in and of itself in no way gives rise to an inherent power or jurisdiction. Even if judicial character and general international law may, in the absence

⁴ « La compétence à juger sur le fond d’un différend ne s’établit que sur la base des titres de compétence prévus par le Statut. » CR 2015/22, p. 61, para. 6 (Treves), citing G. Guillaume : « De l’exécution des décisions de la Cour internationale de Justice » (1997), dans *La Cour internationale de Justice à l’aube du XXI^e siècle, Le regard d’un juge*, Pédone, Paris, 2003, p. 179.

⁵ *Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, p. 259, para. 23; *Nuclear Tests (New Zealand v. France)*, Judgment, I.C.J. Reports 1974, p. 463, para. 23: “In this connection, it should be emphasized that the Court possesses an inherent jurisdiction enabling it to take such action as may be required, on the one hand to ensure that the exercise of its jurisdiction over the merits, if and when established, shall not be frustrated, and on the other, to provide for the orderly settlement of all matters in dispute, to ensure the observance of the ‘inherent limitations on the exercise of the judicial function’ of the Court, and to ‘maintain its judicial character’ (Northern Cameroons, Judgment, I.C.J. Reports 1963, at p. 29). Such inherent jurisdiction, on the basis of which the Court is fully empowered to make whatever findings may be necessary for the purposes just indicated, derives from the mere existence of the Court as a judicial organ established by the consent of States, and is conferred upon it in order that its basic judicial functions may be safeguarded.” See also *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Tunisia v. Libyan Arab Jamahiriya)*, Judgment, I. C. J. Reports 1985, p. 192 at pp. 197-198, para. 10 (“The Court does of course have the power to correct, in one of its judgments, any mistakes which might be described as ‘erreurs matérielles’....”)



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of an express provision, be sufficient to establish that a court or tribunal is competent to adjudicate on its own jurisdiction, this would not mean that such considerations give rise to an inherent power or jurisdiction *over the merits* of a case that it does not otherwise have.

Third: Do the distinct bases of jurisdiction of contemporary international tribunals condition the operation of the corresponding mechanisms of supervision of compliance with their respective judgments and decisions?

7. Yes. Insofar as any specific international court or tribunal has a mechanism of supervision of compliance with its judgments and decisions, such a mechanism must be found in the instrument which created it and established its jurisdiction. In the case of the International Court of Justice, the extent to which “mechanisms of supervision of compliance with ... judgments and decisions” exist is exclusively governed by statutory provisions. The Statute does not provide such a mechanism, but the Charter, of which the Statute is an integral part, assigns such competence to the Security Council and provides mechanisms and procedures for giving effect to judgments. The Pact of Bogotá (in particular, Article L), reflects the State Parties’ understanding that the Court is not the venue for matters of supervision of compliance.

9 October 2015

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