17 MARS 2016

ARRÊT

QUESTION DE LA DÉLIMITATION DU PLATEAU CONTINENTAL ENTRE LE NICARAGUA ET LA COLOMBIE AU-DELÀ DE 200 MILLES MARINS DE LA CÔTE NICARAGUAYENNE

(NICARAGUA c. COLOMBIE)

EXCEPTIONS PRÉLIMINAIRES

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QUESTION OF THE DELIMITATION OF THE CONTINENTAL SHELF BETWEEN NICARAGUA AND COLOMBIA BEYOND 200 NAUTICAL MILES FROM THE NICARAGUAN COAST

(NICARAGUA *v.* COLOMBIA)

PRELIMINARY OBJECTIONS

17 MARCH 2016

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(NICARAGUA *v.* COLOMBIA)

PRELIMINARY OBJECTIONS

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JUDGMENT

Present: *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.

In the case concerning the question of the delimitation of the continental shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan coast,

between

the Republic of Nicaragua,

represented by

H.E. Mr. Carlos José Argüello Gómez, Ambassador of the Republic of Nicaragua to the Kingdom of the Netherlands,

as Agent and Counsel;

Mr. Vaughan Lowe, Q.C., member of the Bar of England and Wales, Emeritus Professor of International Law, Oxford University, member of the Institut de droit international,

Mr. Alex Oude Elferink, Director, Netherlands Institute for the Law of the Sea, Professor of International Law of the Sea, Utrecht University,

Mr. Alain Pellet, Emeritus Professor at the Université Paris Ouest, Nanterre-La Défense, former member and Chairman of the International Law Commission, member of the Institut de droit international,

Mr. Antonio Remiro Brotóns, Professor of International Law, Universidad Autónoma de Madrid, member of the Institut de droit international,

as Counsel and Advocates;

Mr. César Vega Masís, Deputy Minister for Foreign Affairs, Director of Juridical Affairs, Sovereignty and Territory, Ministry of Foreign Affairs,

Mr. Walner Molina Pérez, Juridical Adviser, Ministry of Foreign Affairs,

Mr. Julio César Saborio, Juridical Adviser, Ministry of Foreign Affairs,

as Counsel;

Mr. Edgardo Sobenes Obregon, Counsellor, Embassy of Nicaragua in the Kingdom of the Netherlands,

Ms Claudia Loza Obregon, First Secretary, Embassy of Nicaragua in the Kingdom of the Netherlands,

Mr. Benjamin Samson, Ph.D. Candidate, Centre de droit international de Nanterre (CEDIN), Université Paris Ouest, Nanterre-La Défense,

Ms Gimena González,

as Assistant Counsel;

Ms Sherly Noguera de Argüello, Consul General of the Republic of Nicaragua,

as Administrator,

and

the Republic of Colombia,

represented by

H.E. Ms María Ángela Holguín Cuéllar, Minister for Foreign Affairs,

Hon. Ms Aury Guerrero Bowie, Governor of the Archipelago of San Andrés, Providencia and Santa Catalina,

H.E. Mr. Francisco Echeverri Lara, Vice Minister of Multilateral Affairs, Ministry of Foreign Affairs,

as National Authorities;

H.E. Mr. Carlos Gustavo Arrieta Padilla, former Judge of the Council of State of Colombia, former Attorney General of Colombia and former Ambassador of Colombia to the Kingdom of the Netherlands,

as Agent;

H.E. Mr. Manuel José Cepeda Espinosa, former President of the Constitutional Court of Colombia, former Permanent Delegate of Colombia to UNESCO and former Ambassador of Colombia to the Swiss Confederation,

as Co-Agent;

Mr. W. Michael Reisman, McDougal Professor of International Law at Yale Law School, member of the Institut de droit international,

Mr. Rodman R. Bundy, former *avocat à la Cour d'appel de Paris*, member of the New York Bar, Eversheds LLP, Singapore,

Sir Michael Wood, K.C.M.G., member of the Bar of England and Wales, member of the International Law Commission,

Mr. Tullio Treves, member of the Institut de droit international, Senior Public International Law Consultant, Curtis, Mallet-Prevost, Colt & Mosle LLP, Milan, Professor, University of Milan,

Mr. Eduardo Valencia-Ospina, member of the International Law Commission, President of the Latin American Society of International Law,

Mr. Matthias Herdegen, Dr. h.c., Professor of International Law, Director of the Institute of International Law at the University of Bonn,

as Counsel and Advocates;

H.E. Mr. Juan José Quintana Aranguren, Ambassador of the Republic of Colombia to the Kingdom of the Netherlands, Permanent Representative of Colombia to the Organisation for the Prohibition of Chemical Weapons, former Permanent Representative of Colombia to the United Nations in Geneva,

H.E. Mr. Andelfo García González, Ambassador of the Republic of Colombia to the Kingdom of Thailand, Professor of International Law, former Deputy Minister for Foreign Affairs,

Ms Andrea Jiménez Herrera, Counsellor, Embassy of the Republic of Colombia in the Kingdom of the Netherlands,

Ms Lucía Solano Ramírez, Second Secretary, Embassy of the Republic of Colombia in the Kingdom of the Netherlands,

Mr. Andrés Villegas Jaramillo, Co-ordinator, Group of Affairs before the ICJ, Ministry of Foreign Affairs,

Mr. Giovanny Andrés Vega Barbosa, Group of Affairs before the ICJ, Ministry of Foreign Affairs,

Ms Ana María Durán López, Group of Affairs before the ICJ, Ministry of Foreign Affairs,

Mr. Camilo Alberto Gómez Niño, Group of Affairs before the ICJ, Ministry of Foreign Affairs,

Mr. Juan David Veloza Chará, Third Secretary, Group of Affairs before the ICJ, Ministry of Foreign Affairs,

as Legal Advisers;

Rear Admiral Luís Hernán Espejo, National Navy of Colombia,

CN William Pedroza, International Affairs Bureau, National Navy of Colombia,

CF Hermann León, National Maritime Authority (DIMAR), National Navy of Colombia,

Mr. Scott Edmonds, Cartographer, International Mapping,

Mr. Thomas Frogh, Cartographer, International Mapping,

as Technical Advisers;

Ms Charis Tan, Advocate and Solicitor, Singapore, member of the New York Bar, Solicitor, England and Wales, Eversheds LLP, Singapore,

Mr. Eran Sthoeger, LL.M., New York University School of Law,

Mr. Renato Raymundo Treves, Associate, Curtis, Mallet-Prevost, Colt & Mosle LLP, Milan,

Mr. Lorenzo Palestini, Ph.D. Candidate, Graduate Institute of International and Development Studies, Geneva,

as Legal Assistants,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 16 September 2013, the Government of the Republic of Nicaragua (hereinafter "Nicaragua") filed with the Registry of the Court an Application instituting proceedings against the Republic of Colombia (hereinafter "Colombia") with regard to a "dispute [which] concerns the delimitation of the boundaries between, on the one hand, the continental shelf of Nicaragua beyond the 200-nautical-mile limit from the baselines from which the breadth of the territorial sea of Nicaragua is measured, and on the other hand, the continental shelf of Colombia".

In its Application, Nicaragua seeks to found the jurisdiction of the Court on Article XXXI of the American Treaty on Pacific Settlement signed on 30 April 1948, officially designated, according to Article LX thereof, as the "Pact of Bogotá" (hereinafter referred to as such).

In addition, Nicaragua contends that the subject-matter of its Application remains within the jurisdiction of the Court established in the case concerning the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia).* In particular, it maintains that the Court, in its Judgment dated

19 November 2012 (hereinafter the "2012 Judgment"), did not definitively determine the question of the delimitation of the continental shelf between Nicaragua and Colombia in the area beyond 200 nautical miles from the Nicaraguan coast, "which question was and remains before the Court".

2. In accordance with Article 40, paragraph 2, of the Statute of the Court, the Registrar immediately communicated the Application to the Government of Colombia; and, under paragraph 3 of that Article, all other States entitled to appear before the Court were notified of the Application.

3. Since the Court included upon the Bench no judge of the nationality of either of the Parties, each Party proceeded to exercise the right conferred upon it by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case. Nicaragua chose Mr. Leonid Skotnikov and Colombia Mr. Charles N. Brower.

4. By an Order of 9 December 2013, the Court fixed 9 December 2014 as the time-limit for the filing of the Memorial of Nicaragua and 9 December 2015 for the filing of the Counter-Memorial of Colombia.

5. On 14 August 2014, before the expiry of the time-limit for the filing of the Memorial of Nicaragua, Colombia, referring to Article 79 of the Rules of Court, raised preliminary objections to the jurisdiction of the Court and to the admissibility of the Application. For its part, Nicaragua, by letter dated 16 September 2014, though expressing its surprise that the said objections were raised four months before the expiry of the time-limit for the filing of its Memorial, requested the Court, in the event that the proceedings on the merits were suspended, to give it a sufficient period of time to present a written statement of its observations and submissions on those objections.

Consequently, by an Order of 19 September 2014, the Court, noting that, by virtue of Article 79, paragraph 5, of the Rules of Court, the proceedings on the merits were suspended, fixed 19 January 2015 as the time-limit for the presentation by Nicaragua of a written statement of its observations and submissions on the preliminary objections raised by Colombia. Nicaragua filed such a statement within the prescribed time-limit. The case thus became ready for hearing in respect of the preliminary objections.

6. Pursuant to the instructions of the Court under Article 43 of the Rules of Court, the Registrar addressed to States parties to the Pact of Bogotá the notifications provided for in Article 63, paragraph 1, of the Statute of the Court. In accordance with the provisions of Article 69, paragraph 3, of the Rules of Court, the Registrar, by letter dated 10 November 2014, moreover addressed to the Organization of American States (hereinafter the "OAS") the notification provided for in Article 34, paragraph 3, of the Statute of the Court, explaining that copies of the preliminary objections filed by Colombia and the written statement to be filed by Nicaragua would be communicated in due course. By letter dated 5 January 2015, and before

having received copies of these pleadings, the Secretary General of the OAS indicated that the Organization did not intend to submit any observations in writing within the meaning of Article 69, paragraph 3, of the Rules of Court. By letter dated 30 January 2015, the Registrar, taking note of the fact that the OAS did not intend to present any such observations, and bearing in mind the confidentiality of the pleadings, advised the Secretary General of the OAS that, unless there was a specific reason why that Organization wished to receive copies of the written proceedings, no copies thereof would be provided.

7. Referring to Article 53, paragraph 1, of the Rules of Court, the Government of the Republic of Chile asked to be furnished with copies of the pleadings and documents annexed in the case. Having ascertained the views of the Parties in accordance with that same provision, the President of the Court decided to grant that request. The Registrar duly communicated that decision to the Government of Chile and to the Parties.

8. Pursuant to Article 53, paragraph 2, of the Rules of Court, the Court, after ascertaining the views of the Parties, decided that copies of the preliminary objections of Colombia and the written observations of Nicaragua would be made accessible to the public on the opening of the oral proceedings.

9. Public hearings on the preliminary objections raised by Colombia were held from Monday 5 October 2015 to Friday 9 October 2015, at which the Court heard the oral arguments and replies of:

For Colombia:	H.E. Mr. Manuel José Cepeda Espinosa, Sir Michael Wood, Mr. Matthias Herdegen, Mr. Rodman R. Bundy, Mr. W. Michael Reisman, Mr. Tullio Treves, H.E. Mr. Carlos Gustavo Arrieta Padilla.
For Nicaragua:	H.E. Mr. Carlos José Argüello Gómez, Mr. Antonio Remiro Brotóns, Mr. Alain Pellet, Mr. Alex Oude Elferink, Mr. Vaughan Lowe.

*

10. In the Application, the following claims were presented by Nicaragua:

> "Nicaragua requests the Court to adjudge and declare:
>
> *First:* The 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.
>
> *Second:* 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 and the use of its resources, pending the delimitation of the maritime boundary between them beyond 200 nautical miles from Nicaragua's coast."

11. In the written pleadings, the following submissions were presented on behalf of the Parties:

On behalf of the Government of Colombia,

in the preliminary objections:

> "The Republic of Colombia requests the Court to adjudge and declare, for the reasons set forth in this Pleading,
>
> 1. That it lacks jurisdiction over the proceedings brought by Nicaragua in its Application of 16 September 2013; or, in the alternative,
>
> 2. That the claims brought against Colombia in the Application of 16 September 2013 are inadmissible."

On behalf of the Government of Nicaragua,

in the written statement of its observations and submissions on the preliminary objections raised by Colombia:

> "For the above reasons, the Republic of Nicaragua requests the Court to adjudge and declare that the Preliminary Objections submitted by the Republic of Colombia, both in respect of the jurisdiction of the Court and of the admissibility of the case, are invalid."

12. At the oral proceedings on the preliminary objections, the following submissions were presented by the Parties:

On behalf of the Government of Colombia,

at the hearing of 7 October 2015:

"For the reasons set forth in [its] written and oral pleadings on preliminary objections, the Republic of Colombia requests the Court to adjudge and declare:

1. That it lacks jurisdiction over the proceedings brought by Nicaragua in its Application of 16 September 2013; or, in the alternative,

2. That the claims brought against Colombia in the Application of 16 September 2013 are inadmissible."

On behalf of the Government of Nicaragua,

at the hearing of 9 October 2015:

"In view of the reasons Nicaragua has presented in its Written Observations and during the hearings, the Republic of Nicaragua requests the Court:

— to reject the preliminary objections of the Republic of Colombia; and

— to proceed with the examination of the merits of the case."

*

* *

I. INTRODUCTION

13. It is recalled that in the present proceedings, Nicaragua seeks to found the Court's jurisdiction on Article XXXI of the Pact of Bogotá. According to this provision, the parties to the Pact recognize the Court's jurisdiction as compulsory in "all disputes of a juridical nature" (see paragraph 19 below).

14. In addition, Nicaragua maintains that the subject-matter of its Application remains within the jurisdiction of the Court, as established in the case concerning the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, because in its 2012 Judgment (*I.C.J. Reports 2012 (II)*, p. 624), the Court did not definitively determine the question — of which it was seised — of the delimitation of the continental shelf between Nicaragua and Colombia in the area beyond 200 nautical miles of the Nicaraguan coast.

15. Colombia has raised five preliminary objections to the jurisdiction of the Court or to the admissibility of Nicaragua's Application. According to the first objection put forward by Colombia, 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 became effective on 27 November 2012. 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 Nicaragua and Colombia in the area beyond 200 nautical miles of the Nicaraguan coast. Colombia contends in its third objection 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*. In its fourth 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. Finally, according to Colombia's fifth objection, Nicaragua's First Request (regarding the delimitation of the continental shelf between the Parties in the area beyond 200 nautical miles from Nicaragua's baselines) and Second Request (regarding the determination of the principles and rules of international law governing the rights and duties of the two States in the relevant area pending the delimitation) in its Application (see paragraph 10 above) are inadmissible. The First Request is, in Colombia's view, inadmissible because the Commission on the Limits of the Continental Shelf (hereinafter the "CLCS") has not made recommendations to Nicaragua with respect to whether, and if so how far, Nicaragua's claimed outer continental shelf extends beyond 200 nautical miles. According to Colombia, the Second Request is inadmissible because, if "the Court decides that it has no jurisdiction over the First Request or that such Request is inadmissible, no delimitation issue will be pending before the Court". Colombia adds that there would be no time-frame within which to apply any decision on the Second Request, as the Court would deal with both Requests simultaneously; consequently, the Second Request is also inadmissible because, even if the Court were able to entertain it, the Court's decision would be without object.

16. In its written observations and final submissions during the oral proceedings, Nicaragua requested the Court to reject Colombia's preliminary objections in their entirety (see paragraphs 11 and 12 above).

17. Since Colombia's second preliminary objection is concerned exclusively with the additional basis for jurisdiction suggested by Nicaragua, the Court will address it after it has considered the first, third and fourth objections. The fifth preliminary objection, which concerns the admissibility of Nicaragua's claims, will be considered last.

II. FIRST PRELIMINARY OBJECTION

18. Colombia's first preliminary objection is that Article XXXI of the Pact of Bogotá cannot provide a basis for the jurisdiction of the Court, because Colombia had given notification of denunciation of the Pact before Nicaragua filed its Application in the present case. According to Colombia, that notification had an immediate effect upon the jurisdiction of the Court under Article XXXI, with the result that the Court lacks jurisdiction in respect of any proceedings instituted after the notification was transmitted.

19. Article XXXI of the Pact of Bogotá provides:

> "In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:
>
> *(a)* [t]he interpretation of a treaty;
>
> *(b)* [a]ny question of international law;
>
> *(c)* [t]he existence of any fact which, if established, would constitute the breach of an international obligation;
>
> *(d)* [t]he nature or extent of the reparation to be made for the breach of an international obligation."

20. Denunciation of the Pact of Bogotá is governed by Article LVI, which reads:

> "The present Treaty shall remain in force indefinitely, but may be denounced upon one year's notice, at the end of which period it shall cease to be in force with respect to the State denouncing it, but shall continue in force for the remaining signatories. The denunciation shall be addressed to the Pan American Union, which shall transmit it to the other Contracting Parties.
>
> The denunciation shall have no effect with respect to pending procedures initiated prior to the transmission of the particular notification."

21. On 27 November 2012, Colombia gave notice of denunciation by means of a diplomatic Note from the Minister for Foreign Affairs to the Secretary General of the OAS as head of the General Secretariat of the OAS (the successor to the Pan American Union). That notice stated that Colombia's denunciation "takes effect as of today with regard to procedures that are initiated after the present notice, in conformity with [the] second paragraph of Article LVI".

22. The Application in the present case 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.

* *

23. Colombia maintains that Article LVI of the Pact of Bogotá should be interpreted in accordance with the customary international law rules on treaty interpretation enshrined in Articles 31 to 33 of the 1969 Vienna Convention on the Law of Treaties (hereinafter, the "Vienna Convention"). Colombia relies, in particular, on the general rule of interpretation in Article 31 of the Vienna Convention, which requires that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". According to Colombia, the application of the general rule of treaty interpretation must lead to the conclusion that procedures initiated after transmission of a notification of denunciation are affected by the denunciation.

24. Colombia contends that the natural implication of the express provision in the second paragraph of Article LVI of the Pact that denunciation shall have no effect on pending procedures initiated *before* the transmission of a notification is that denunciation is effective with regard to procedures initiated *after* that date. Such effect must follow, according to Colombia, from the application to the second paragraph of Article LVI of an *a contrario* interpretation of the kind applied by the Court in its Judgment of 16 April 2013 in the case concerning the *Frontier Dispute (Burkina Faso/Niger)* (*I.C.J. Reports 2013*, pp. 81-82, paras. 87-88). Moreover, to adopt a different interpretation would deny *effet utile* to the second paragraph and thus run counter to the principle that all of the words in a treaty should be given effect. Colombia refutes the suggestion that its interpretation of the second paragraph of Article LVI would deny *effet utile* to the first paragraph of that provision. Even though Colombia accepts that its interpretation would mean that none of the different procedures provided for in Chapters Two to Five of the Pact could be initiated by, or against, a State which had given notification of denunciation during the year that the treaty remained in force in accordance with the first paragraph of Article LVI, it maintains that important substantive obligations contained in the other Chapters of the Pact would nevertheless remain in force during the one-year period, so that the first paragraph of Article LVI would have a clear effect.

25. Colombia argues that its interpretation of Article LVI is confirmed by the fact that if the parties to the Pact had wanted to provide that denunciation would not affect any procedures initiated during the one-year period of notice, they could easily have said so expressly, namely by adopting a wording similar to provisions in other treaties, such as Article 58, paragraph 2, of the 1950 European Convention on Human Rights, or Article 40, paragraph 2, of the 1972 European Convention on State Immunity. Colombia also observes that the function and language of Article XXXI are very similar to those of Article 36, paragraph 2, of the Statute of the Court and that States generally reserve the right to withdraw their declarations under Article 36, paragraph 2, without notice.

26. Finally, Colombia maintains that its interpretation is "also consistent with the State practice of the parties to the Pact" and the *travaux préparatoires*. With regard to the first argument, it points to the absence of any reaction, including from Nicaragua, to Colombia's notice of denunciation, notwithstanding the clear statement therein that the denunciation was to take effect as of the date of the notice "with regard to procedures . . . initiated after the present notice". It also emphasizes that there was no reaction from other parties to the Pact when El Salvador gave notice of denunciation in 1973, notwithstanding that El Salvador's notification of denunciation stated that

the denunciation "will begin to take effect as of today". With regard to the *travaux préparatoires*, Colombia contends that the first paragraph of Article LVI was taken from Article 9 of the 1929 General Treaty of Inter-American Arbitration (and the parallel provision in Article 16 of the 1929 General Convention of Inter-American Conciliation). Colombia maintains that what became the second paragraph of Article LVI was added as the result of an initiative taken by the United States of America in 1938 which was accepted by the Inter-American Juridical Committee in 1947 and incorporated into the text which was signed in 1948. According to Colombia, this history shows that the parties to the Pact of Bogotá intended to incorporate a provision which limited the effect of the first paragraph of Article LVI.

*

27. Nicaragua contends that the jurisdiction of the Court is determined by Article XXXI of the Pact of Bogotá, according to which Colombia and Nicaragua had each recognized the jurisdiction of the Court "so long as the present Treaty is in force". How long the treaty remains in force is determined by the first paragraph of Article LVI, which provides that the Pact remains in force for a State which has given notification of denunciation for one year from the date of that notification. Since the date on which the jurisdiction of the Court has to be established is that on which the Application is filed, and since Nicaragua's Application was filed less than one year after Colombia gave notification of its denunciation of the Pact, it follows — according to Nicaragua — that the Court has jurisdiction in the present case. Nicaragua maintains that nothing in the second paragraph of Article LVI runs counter to that conclusion and no inference should be drawn from the silence of that paragraph regarding procedures commenced between the transmission of the notification of denunciation and the date on which the treaty is terminated for the denouncing State; in any event, such inference could not prevail over the express language of Article XXXI and the first paragraph of Article LVI.

28. That conclusion is reinforced, in Nicaragua's view, by consideration of the object and purpose of the Pact. Nicaragua recalls that, according to the Court, "[i]t is . . . quite clear from the Pact that the purpose of the American States in drafting it was to reinforce their mutual commitments with regard to judicial settlement" (*Border and Transborder Armed Actions (Nicaragua* v. *Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 89, para. 46). Colombia's interpretation of the second paragraph of Article LVI would, Nicaragua maintains, deprive of all meaning the express provision of Article XXXI that the parties to the Pact accept the jurisdiction of the Court so long as the Pact is in force between them, as well as the express provision of Article LVI that the Pact remains in force for one year after notification of denunciation. According to Nicaragua, it would also render the purpose of the Pact — as defined by the Court — unachievable during the one-year notice period.

29. Nicaragua disputes Colombia's argument that the Colombian interpretation of the second paragraph of Article LVI would still leave important obligations in place during the one-year period of notice. According to Nicaragua, the Colombian interpretation would remove from the effect of the first paragraph of Article LVI all of the procedures for good offices and mediation (Chapter Two of the Pact), investigation and conciliation (Chapter Three), judicial settlement

(Chapter Four) and arbitration (Chapter Five), which together comprise forty-one of the sixty articles of the Pact. Of the remaining provisions, several — such as Article LII on ratification of the Pact and Article LIV on adherence to the Pact — are provisions which have entirely served their purpose and would fulfil no function during the one-year period of notice, while others — such as Articles III to VI — are inextricably linked to the procedures in Chapters Two to Five and impose no obligations independent of those procedures. Colombia's interpretation of Article LVI would thus leave only six of the Pact's sixty articles with any function during the period of one year prescribed by the first paragraph of Article LVI. Nicaragua also notes that the title of Chapter One of the Pact is "General Obligation to Settle Disputes by Pacific Means" and contends that it would be strange to interpret Article LVI of the Pact as maintaining this Chapter in force between a State which had given notice of denunciation and the other parties to the Pact, but not the Chapters containing the very means to which Chapter One refers.

30. Finally, Nicaragua denies that the practice of the parties to the Pact of Bogotá or the *travaux préparatoires* support Colombia's interpretation. So far as practice is concerned, Nicaragua maintains that nothing can be read into the absence of a response to the notices of denunciation by El Salvador and Colombia as there was no obligation on other parties to the Pact to respond. As for the *travaux préparatoires*, they suggest no reason why what became the second paragraph of Article LVI was included or what it was intended to mean. Most importantly, the *travaux préparatoires* contain nothing which suggests that the parties to the Pact intended, by the addition of what became the second paragraph, to restrict the scope of the first paragraph of Article LVI. In Nicaragua's view, the second paragraph of Article LVI, while not necessary, serves a useful purpose in making clear that denunciation does not affect pending procedures.

* *

31. The Court recalls that the date at which its jurisdiction has to be established is the date on which the application is filed with the Court (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, pp. 437-438, paras. 79-80; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 613, para. 26). One consequence of this rule is that "the removal, after an application has been filed, of an element on which the Court's jurisdiction is dependent does not and cannot have any retroactive effect" (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, p. 438, para. 80). Thus, even if the treaty provision by which jurisdiction is conferred on the Court ceases to be in force between the applicant and the respondent, or either party's declaration under Article 36, paragraph 2, of the Statute of the Court expires or is withdrawn, after the application has been filed, that fact does not deprive the Court of jurisdiction. As the Court held, in the *Nottebohm* case:

> "When an Application is filed at a time when the law in force between the parties entails the compulsory jurisdiction of the Court . . . the filing of the Application is merely the condition required to enable the clause of compulsory jurisdiction to produce its effects in respect of the claim advanced in the Application. Once this condition has been satisfied, the Court must deal with the claim; it has jurisdiction to deal with all its aspects, whether they relate to jurisdiction, to admissibility or to the merits. An extrinsic fact such as the subsequent lapse of the Declaration, by reason of the expiry of the period or by denunciation, cannot deprive the Court of the jurisdiction already established." (*Nottebohm (Liechtenstein* v. *Guatemala), Preliminary Objection, Judgment, I.C.J. Reports 1953*, p. 123.)

32. By Article XXXI, the Parties to the Pact of Bogotá 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. It is not disputed that, if these provisions stood alone, they would be sufficient to confer jurisdiction in the present case. The Pact was still in force between Colombia and Nicaragua on the date that the Application was filed and, in accordance with the rule considered in paragraph 31 above, the fact that the Pact subsequently ceased to be in force between them would not affect that jurisdiction. The only question raised by Colombia's first preliminary objection, therefore, is whether the second paragraph of Article LVI so alters 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.

33. That question has to be answered by the application to the relevant provisions of the Pact of Bogotá of the rules on treaty interpretation enshrined in Articles 31 to 33 of the Vienna Convention. Although that Convention is not in force between the Parties and is not, in any event, applicable to treaties concluded before it entered into force, such as the Pact of Bogotá, it is well established that Articles 31 to 33 of the Convention reflect rules of customary international law (*Avena and other Mexican Nationals (Mexico* v. *United States of America), Judgment, I.C.J. Reports 2004 (I)*, p. 48, para. 83; *LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, p. 502, para. 101; *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 812, para. 23; *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, pp. 21-22, para. 41; *Arbitral Award of 31 July 1989 (Guinea-Bissau* v. *Senegal), Judgment, I.C.J. Reports 1991*, p. 70, para. 48). The Parties agree that these rules are applicable. Article 31, which states the general rule of interpretation, requires that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".

34. Colombia's argument regarding the interpretation of the second paragraph of Article LVI is based not upon the ordinary meaning of the terms used in that provision but upon an inference which might be drawn from what that paragraph does not say. That paragraph is silent with regard to procedures initiated after the transmission of the notification of denunciation but before the expiration of the one-year period referred to in the first paragraph of Article LVI. Colombia asks

the Court to draw from that silence the inference that the Court lacks jurisdiction in respect of proceedings initiated after notification of denunciation has been given. According to Colombia, that inference should be drawn even though the Pact remains in force for the State making that denunciation, because the one-year period of notice stipulated by the first paragraph of Article LVI has not yet elapsed. That inference is said to follow from an *a contrario* reading of the provision.

35. An *a contrario* reading of a treaty provision — by which the fact that the provision expressly provides for one category of situations is said to justify the inference that other comparable categories are excluded — has been employed by both the present Court (see, e.g., *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Application by Honduras for Permission to Intervene, Judgment, I.C.J. Reports 2011 (II)*, p. 432, para. 29) and the Permanent Court of International Justice (*S.S. "Wimbledon", Judgment, 1923, P.C.I.J., Series A, No. 1*, pp. 23-24). Such an interpretation is only warranted, however, when it is appropriate in light of the text of all the provisions concerned, their context and the object and purpose of the treaty. Moreover, even where an *a contrario* interpretation is justified, it is important to determine precisely what inference its application requires in any given case.

36. The second paragraph of Article LVI states that "[t]he denunciation shall have no effect with respect to pending procedures initiated prior to the transmission of the particular notification". However, it is not the denunciation *per se* that is capable of having an effect upon the jurisdiction of the Court under Article XXXI of the Pact, but the termination of the treaty (as between the denouncing State and the other parties) which results from the denunciation. That follows both from the terms of Article XXXI, which provides that the parties to the Pact recognize the jurisdiction of the Court as compulsory *inter se* "so long as the present Treaty is in force", and from the ordinary meaning of the words used in Article LVI. The first paragraph of Article LVI provides that the treaty may be terminated by denunciation, but that termination will occur only after a period of one year from the notification of denunciation. It is, therefore, this first paragraph which determines the effects of denunciation. The second paragraph of Article LVI confirms that procedures instituted before the transmission of the notification of denunciation can continue irrespective of the denunciation and thus that their continuation is ensured irrespective of the provisions of the first paragraph on the effects of denunciation as a whole.

37. Colombia's argument is that if one applies an *a contrario* interpretation to the second paragraph of Article LVI, then it follows from the statement that "denunciation shall have no effect with respect to pending procedures initiated prior to the transmission of the particular notification [of denunciation]" that denunciation does have an effect upon procedures instituted after the transmission of that notification. Colombia maintains that the effect is that any procedures instituted after that date fall altogether outside the treaty. In the case of proceedings at the Court commenced after that date, Colombia maintains that they would, therefore, fall outside the jurisdiction conferred by Article XXXI. However, such an interpretation runs counter to the language of Article XXXI, which provides that the parties to the Pact recognize the jurisdiction of the Court as compulsory "so long as the present Treaty is in force".

The second paragraph of Article LVI is open to a different interpretation, which is compatible with the language of Article XXXI. According to this interpretation, 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 thus within the scope of the jurisdiction conferred by Article XXXI.

38. Moreover, in accordance with the rule of interpretation enshrined in Article 31, paragraph 1, of the Vienna Convention, the text of the second paragraph of Article LVI has to be examined in its context. Colombia admits (see paragraph 28 above) that its reading of the second paragraph has the effect that, during the one-year period which the first paragraph of Article LVI establishes between the notification of denunciation and the termination of the treaty for the denouncing State, none of the procedures for settlement of disputes established by Chapters Two to Five of the Pact could be invoked as between a denouncing State and any other party to the Pact. According to Colombia, only the provisions of the other chapters of the Pact would remain in force between a denouncing State and the other parties, during the one-year period of notice. However, Chapters Two to Five contain all of the provisions of the Pact dealing with the different procedures for the peaceful settlement of disputes and, as the Court will explain, play a central role within the structure of obligations laid down by the Pact. The result of Colombia's proposed interpretation of the second paragraph of Article LVI would be that, during the year following notification of denunciation, most of the Articles of the Pact, containing its most important provisions, would not apply between the denouncing State and the other parties. Such a result is difficult to reconcile with the express terms of the first paragraph of Article LVI, which provides that "the present Treaty" shall remain in force during the one-year period without distinguishing between different parts of the Pact as Colombia seeks to do.

39. It is also necessary to consider whether Colombia's interpretation is consistent with the object and purpose of the Pact of Bogotá. That object and purpose are suggested by the full title of the Pact, namely the American Treaty on Pacific Settlement. The preamble indicates that the Pact was adopted in fulfilment of Article XXIII of the Charter of the OAS. Article XXIII (now Article XXVII) provides that:

> "A special treaty will establish adequate means for the settlement of disputes and will determine pertinent procedures for each peaceful means such that no dispute between American States may remain without definitive settlement within a reasonable period of time."

That emphasis on establishing means for the peaceful settlement of disputes as the object and purpose of the Pact is reinforced by the provisions of Chapter One of the Pact, which is entitled "General Obligation to Settle Disputes by Pacific Means". Article I provides:

> "The High Contracting Parties, solemnly reaffirming their commitments made in earlier international conventions and declarations, as well as in the Charter of the United Nations, agree to refrain from the threat or the use of force, or from any other means of coercion for the settlement of their controversies, and to have recourse at all times to pacific procedures."

Article II provides:

> "The High Contracting Parties recognize the obligation to settle international controversies by regional pacific procedures before referring them to the Security Council of the United Nations.
>
> Consequently, in the event that a controversy arises between two or more signatory States which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the following articles, or, alternatively, such special procedures as, in their opinion, will permit them to arrive at a solution."

Finally, the Court recalls that, in its 1988 Judgment in the *Armed Actions* case, quoted at paragraph 28 above, it held that "the purpose of the American States in drafting [the Pact] was to reinforce their mutual commitments with regard to judicial settlement" (*Border and Transborder Armed Actions (Nicaragua* v. *Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 89, para. 46).

40. These factors make clear that the object and purpose of the Pact is to further the peaceful settlement of disputes through the procedures provided for in the Pact. Although Colombia argues that the reference to "regional . . . procedures" in the first paragraph of Article II is not confined to the procedures set out in the Pact, Article II has to be interpreted as a whole. It is clear from the use of the word "consequently" at the beginning of the second paragraph of Article II that the obligation to resort to regional procedures, which the parties "recognize" in the first paragraph, is to be given effect by employing the procedures laid down in Chapters Two to Five of the Pact. Colombia maintains that its interpretation of the second paragraph of Article LVI would leave Article II — which contains one of the core obligations in the Pact — in effect during the one-year period. The Court observes, however, that Colombia's interpretation would deprive both the denouncing State and, to the extent that they have a controversy with the denouncing State, all other parties of access to the very procedures designed to give effect to that obligation to resort to regional procedures. As the Court has already explained (see paragraph 34 above), that interpretation is said to follow not from the express terms of the second paragraph of Article LVI but from an inference which, according to Colombia, must be drawn from the silence of that paragraph regarding proceedings instituted during the one-year period. The Court sees no basis on which to draw from that silence an inference that would not be consistent with the object and purpose of the Pact of Bogotá.

41. An essential part of Colombia's argument is that its interpretation is necessary to give *effet utile* to the second paragraph of Article LVI. Colombia maintains that if the effect of the second paragraph is confined to ensuring that procedures commenced before the date of transmission of the notification of denunciation can continue after that date, then the provision is superfluous. The rule that events occurring after the date on which an application is filed do not deprive the Court of jurisdiction which existed on that date (see paragraph 31 above) would ensure, in any event, that denunciation of the Pact would not affect procedures already instituted prior to denunciation.

The Court has recognized that, in general, the interpretation of a treaty should seek to give effect to every term in that treaty and that no provision should be interpreted in a way that renders it devoid of purport or effect (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, pp. 125-126, para. 133; *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgments, I.C.J. Reports 1949*, p. 24). There are occasions, however, when the parties to a treaty adopt a provision for the avoidance of doubt even if such a provision is not strictly necessary. For example, Article LVIII of the Pact of Bogotá provides that certain earlier Inter-American treaties shall cease to have effect with respect to parties to the Pact as soon as the Pact comes into force. Article LIX then provides that the provisions of Article LVIII "shall not apply to procedures already initiated or agreed upon" in accordance with any of those earlier treaties. While neither Party made reference to these provisions, if one applies to them the approach suggested by Colombia with regard to Article LVI, then Article LIX must be considered unnecessary. It appears that the parties to the Pact of Bogotá considered that it was desirable to include Article LIX out of an abundance of caution. The fact that the parties to the Pact considered that including Article LIX served a useful purpose even though it was not strictly necessary undermines Colombia's argument that the similar provision in the second paragraph of Article LVI could not have been included for that reason.

42. The Court also considers that, in seeking to determine the meaning of the second paragraph of Article LVI, it should not adopt an interpretation which renders the first paragraph of that Article devoid of purport or effect. The first paragraph provides that the Pact shall remain in force for a period of one year following notification of denunciation. Colombia's interpretation would, however, confine the effect of that provision to Chapters One, Six, Seven, and Eight. Chapter Eight contains the formal provisions on such matters as ratification, entry into force and registration and imposes no obligations during the period following a notification of denunciation. Chapter Seven (entitled "Advisory Opinions") contains only one Article and is purely permissive. Chapter Six also contains one provision, which requires only that before a party resorts to the Security Council regarding the failure of another party to comply with a judgment of the Court or an arbitration award, it shall first propose a Meeting of Consultation of Ministers of Foreign Affairs of the parties.

Chapter One ("General Obligation to Settle Disputes by Pacific Means") contains eight articles which impose important obligations upon the parties but, as has already been shown (see paragraph 40 above), Article II is concerned with the obligation to use the procedures in the Pact (none of which would be available during the one-year period if Colombia's interpretation were accepted), while Articles III to VI have no effect independent of the procedures in Chapters Two to Five. That leaves only three provisions. Article I provides that the Parties,

> "solemnly reaffirming their commitments made in earlier international conventions and declarations, as well as in the Charter of the United Nations, agree to refrain from the threat of the use of force, or from any other means of coercion for the settlement of their controversies, and to have recourse at all times to pacific procedures".

Article VII binds the parties not to exercise diplomatic protection in respect of their nationals when those nationals have had available the means to place their cases before competent domestic courts. Article VIII provides that recourse to pacific means shall not preclude recourse to self-defence in the case of an armed attack.

Colombia's interpretation of the second paragraph of Article LVI would thus confine the application of the first paragraph of Article LVI to these few provisions.

43. Colombia, basing itself on the language employed in other treaties, argues that, had the parties to the Pact of Bogotá wished to provide that proceedings instituted at any time before the expiry of the one-year period stipulated by the first paragraph of Article LVI would be unaffected, they could easily have made express provision to that effect. Conversely, however, had the parties to the Pact intended the result for which Colombia contends, they could easily have made express provision to that effect — but they chose not to do so. The comparison with those other treaties is not, therefore, a persuasive argument in favour of Colombia's interpretation of the second paragraph of Article LVI. Nor is the fact that many declarations made under Article 36, paragraph 2, of the Statute of the Court are terminable without notice. Article 36, paragraph 2, of the Statute and Article XXXI of the Pact of Bogotá both provide for the compulsory jurisdiction of the Court. However, Article 36, paragraph 2, of the Statute confers jurisdiction only between States which have made a declaration recognizing that jurisdiction. In its declaration under Article 36, paragraph 2, a State is free to provide that that declaration may be withdrawn with immediate effect. By contrast, Article XXXI of the Pact of Bogotá is a treaty commitment, not dependent upon unilateral declarations for its implementation (*Border and Transborder Armed Actions (Nicaragua* v. *Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 84, para. 32). The conditions under which a State party to the Pact may withdraw from that commitment are determined by the relevant provisions of the Pact. The fact that many States choose to frame their declarations under Article 36, paragraph 2, in such a way that they may terminate their acceptance of the jurisdiction of the Court with immediate effect thus sheds no light on the interpretation of the provisions of the Pact.

44. The Court has noted Colombia's argument (see paragraph 26 above) regarding the State practice in the form of the denunciation of the Pact by El Salvador in 1973 and Colombia itself in 2012, together with what Colombia describes as the absence of any reaction to the notification of those denunciations.

The two notifications of denunciation are not in the same terms. While El Salvador's notification stated that its denunciation "will begin to take effect as of today", there is no indication of what effect was to follow immediately upon the denunciation. Since the first paragraph of Article LVI requires one year's notice in order to terminate the treaty, any notification of denunciation begins to take effect immediately in the sense that the transmission of that notification causes the one-year period to begin. Accordingly, neither El Salvador's notification, nor the absence of any comment thereon by the other parties to the Pact, sheds any light on the question currently before the Court.

Colombia's own notification of denunciation specified that "[t]he denunciation [of the Pact] takes effect as of today with regard to procedures that are initiated after the present notice, in conformity with the second paragraph of Article LVI". Nevertheless, the Court is unable to read into the absence of any objection on the part of the other parties to the Pact with respect to that notification an agreement, within the meaning of Article 31 (3) *(b)* of the Vienna Convention, regarding Colombia's interpretation of Article LVI. Nor does the Court consider that the absence of any comment by Nicaragua amounted to acquiescence. The fact that Nicaragua commenced proceedings in case concerning *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)* and in the present case within one year of the transmission of Colombia's notification of denunciation reinforces this conclusion.

45. Turning to Colombia's argument regarding the *travaux préparatoires*, the Court considers that the *travaux préparatoires* of the Pact demonstrate that what became the first paragraph of Article LVI was taken over from Article 9 of the 1929 General Treaty of Inter-American Arbitration and Article 16 of the 1929 General Convention of Inter-American Conciliation. The second paragraph of Article LVI originated with a proposal from the United States in 1938 which had no counterpart in the 1929 Treaties. However, the *travaux préparatoires* give no indication as to the precise purpose behind the addition of what became the second paragraph of Article LVI. The Court also notes that, if Colombia's view as to the significance of the second paragraph were correct, then the insertion of the new paragraph would have operated to restrict the effect of the provision which, even before the United States made its proposal, the parties were contemplating carrying over from the 1929 Treaty. Yet there is no indication anywhere in the *travaux préparatoires* that anyone considered that incorporating this new paragraph would bring about such an important change.

46. For all of the foregoing reasons the Court considers that Colombia's interpretation of Article LVI cannot be accepted. 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. The subsequent termination of the Pact as between Nicaragua and Colombia does not affect the jurisdiction which existed on the date that the proceedings were instituted. Colombia's first preliminary objection must therefore be rejected.

III. THIRD PRELIMINARY OBJECTION

47. In its third preliminary objection, Colombia contests the jurisdiction of the Court on the ground that the Court has already adjudicated on Nicaragua's requests in its 2012 Judgment. Colombia therefore argues that the principle of *res judicata* bars the Court from examining Nicaragua's requests.

48. The Court first observes that it is not bound by the characterization of a preliminary objection made by the Party raising it, and may, if necessary, recharacterize such an objection (*Interhandel (Switzerland* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1959*, p. 26). The Court considers that Colombia's third preliminary objection has the characteristics of an objection to admissibility, which "consists in the contention that there exists a legal reason, even when there is jurisdiction, why the Court should decline to hear the case, or more

usually, a specific claim therein" (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, p. 456, para. 120; in the same sense, see *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, p. 177, para. 29). The Court will deal with Colombia's third preliminary objection as an objection to admissibility.

49. The Court will now examine the *res judicata* principle and its application to subparagraph 3 of the operative clause of the 2012 Judgment, in which the Court found "that it cannot uphold the Republic of Nicaragua's claim contained in its final submission I (3)" (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), I.C.J. Reports 2012 (II)*, p. 719). In its final submission I (3), Nicaragua requested the Court to adjudge and declare that:

> "[t]he appropriate form of delimitation, within the geographical and legal framework constituted by the mainland coasts of Nicaragua and Colombia, is a continental shelf boundary dividing by equal parts the overlapping entitlements to a continental shelf of both Parties" (*ibid.*, p. 636, para. 17).

The Court described this submission as a request "to define 'a continental shelf boundary dividing by equal parts the overlapping entitlements to a continental shelf of both Parties'" (*ibid.*, p. 664, para. 106).

50. Colombia considers that Nicaragua's First Request, in its Application of 16 September 2013 instituting the present proceedings, "is no more than a reincarnation of Nicaragua's claim contained in its final submission I (3)" of 2012, in so far as it asks the Court to declare "[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".

51. Colombia adds that the Court, in its 2012 Judgment, decided that the claim by Nicaragua contained in final submission I (3) was admissible, but it did not uphold it on the merits. That fact is said to prevent the Court, by virtue of *res judicata*, from entertaining it in the present case.

52. Colombia argues that the fate of the Second Request contained in the Application of 16 September 2013 is entirely linked to that of the first. In its Second Request, Nicaragua asks the Court to adjudge and declare

> "[t]he 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 and the use of its resources, pending the delimitation of the maritime boundary between them beyond 200 nautical miles from Nicaragua's coast".

53. The question as to the effect of the *res judicata* principle relates to the admissibility of Nicaragua's First Request. The Second Request forms the subject, as such, of the fifth objection by Colombia, so the Court will examine it under that heading.

54. 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, and hence on what falls within the scope of *res judicata* in that decision.

1. The *res judicata* principle

55. The Parties agree that the principle of *res judicata* requires an identity between the parties *(personae)*, the object *(petitum)* and the legal ground *(causa petendi)*. They likewise accept that this principle is reflected in Articles 59 and 60 of the Statute of the Court. These Articles provide, respectively, that "[t]he decision of the Court has no binding force except between the parties and in respect of that particular case", and that "[t]he judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party." As the Court underlined in its Judgment on the preliminary objections in the case concerning the *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria) *(Nigeria* v. *Cameroon)*, "[t]he language and structure of Article 60 reflect the primacy of the principle of *res judicata*" (*I.C.J. Reports 1999 (I),* p. 36, para. 12).

56. For Colombia, there must be an identity between the parties, the object and the legal ground in order for the principle of *res judicata* to apply. Colombia adds that it is not possible for the Court, having found in the operative clause of the 2012 Judgment, which possesses the force of *res judicata*, that it "cannot uphold" Nicaragua's claim for lack of evidence, then to decide in a subsequent judgment to uphold an identical claim.

57. Nicaragua considers that an identity between the *personae*, the *petitum* and the *causa petendi*, though necessary for the application of the *res judicata* principle, is not sufficient. It is also necessary that the question raised in a subsequent case should previously have been disposed of by the Court finally and definitively. Relying on the Judgment rendered on the merits in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*, Nicaragua argues that no force of *res judicata* can be attached to a matter which has not been decided by the Court. Consequently, Nicaragua considers that, in order to determine whether the 2012 Judgment has the force of *res judicata* in respect of the First Request by Nicaragua in the present case, the central question is whether the Court, in that Judgment, made a decision on the delimitation of the continental shelf beyond 200 nautical miles from the Nicaraguan coast.

For Nicaragua, it is not sufficient to demonstrate that, in the case concerning the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, the Parties developed arguments similar to those on which its First Request is founded in these proceedings; it is also necessary to determine what the Court actually decided on the basis of those arguments.

* *

58. The Court recalls that the principle of *res judicata*, as reflected in Articles 59 and 60 of its Statute, is a general principle of law which protects, at the same time, the judicial function of a court or tribunal and the parties to a case which has led to a judgment that is final and without appeal (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), I.C.J. Reports 2007 (I)*, pp. 90-91, para. 116). This principle establishes the finality of the decision adopted in a particular case (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), I.C.J. Reports 2007 (I)*, p. 90, para. 115; *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon), Judgment, I.C.J. Reports 1999 (I)*, p. 36, para. 12; *Corfu Channel (United Kingdom* v. *Albania), Assessment of Amount of Compensation, Judgment, I.C.J. Reports 1949*, p. 248).

59. It is not sufficient, for the application of *res judicata*, to identify the case at issue, characterized by the same parties, object and legal ground; it is also necessary to ascertain the content of the decision, the finality of which is to be guaranteed. The Court cannot be satisfied merely by an identity between requests successively submitted to it by the same Parties; it must determine whether and to what extent the first claim has already been definitively settled.

60. The Court underlined in its Judgment of 26 February 2007, rendered in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*, that "[i]f a matter has not in fact been determined, expressly or by necessary implication, then no force of *res judicata* attaches to it; and a general finding may have to be read in context in order to ascertain whether a particular matter is or is not contained in it" (*I.C.J. Reports 2007 (I)*, p. 95, para. 126).

61. The decision of the Court is contained in the operative clause of the judgment. However, in order to ascertain what is covered by *res judicata*, it may be necessary to determine the meaning of the operative clause by reference to the reasoning set out in the judgment in question. The Court is faced with such a situation in the present case, since the Parties disagree as to the content and scope of the decision that was adopted in subparagraph 3 of the operative clause of the 2012 Judgment.

2. The decision adopted by the Court in its Judgment of 19 November 2012

62. The Parties, in both their written and oral pleadings, have presented divergent readings of the decision adopted in subparagraph 3 of the operative clause of the 2012 Judgment, and of the reasons underpinning it. They draw opposing conclusions as to precisely what that decision covers and which issues the Court has definitively settled.

63. Colombia attempts to show, in essence, that the grounds of Nicaragua's First Request, its *petitum* and *causa petendi*, had already been put forward in the case concerning the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*. Colombia contends that, having tried and failed to meet its burden of proof in that case, Nicaragua is asking for "another chance" in the present proceedings. Colombia further argues that, since the Court did not uphold the arguments made by Nicaragua in its 2012 Judgment, it is barred by the effect of the *res judicata* principle from dealing with Nicaragua's Application in the present case.

64. Colombia contends that, in the written and oral proceedings which preceded the 2012 Judgment, Nicaragua developed arguments identical to those that it puts forward in the present case. Colombia maintains that these arguments had already been presented in the Reply, where Nicaragua had claimed an extended continental shelf on the basis of Article 76 of the United Nations Convention on the Law of the Sea (UNCLOS) by virtue of geological and geomorphological criteria. Colombia adds that, in reliance on the Preliminary Information provided by it to the CLCS, Nicaragua had then proceeded to claim an equal share of the areas in which the continental shelves of the two States overlapped.

65. Colombia stresses that, during the oral proceedings which preceded the 2012 Judgment, it disputed the "tentative data" submitted by Nicaragua, which it contended were incapable of supporting Nicaragua's position. According to Colombia, those data did not satisfy the criteria required by the CLCS, as detailed in its Guidelines.

66. In Colombia's view, Nicaragua had not demonstrated, as it was obliged to do, that its continental margin extended sufficiently far to overlap with the continental shelf that Colombia was entitled to claim up to 200 nautical miles from its mainland coast. Colombia maintains that the Court, having found Nicaragua's claim to be admissible, settled it on the merits in 2012 by deciding not to uphold it. According to Colombia, that decision, whereby the Court effected a full delimitation of the maritime boundary between the Parties, was both expressly and by necessary implication a final one. Hence, when the Court held that it "[was] not in a position to delimit the continental shelf boundary between Nicaragua and Colombia" (paragraph 129 of the 2012 Judgment), what it meant was that its examination of the facts and arguments presented by Nicaragua impelled it to reject the latter's claim.

67. Colombia furthermore cites the reasoning of the 2012 Judgment in order to show that the Court's decision "was the culmination of a process of reasoning".

Colombia points to paragraph 126 of the Judgment, which, in its view, sets out the applicable law and makes it clear that Nicaragua is bound by its obligations under Article 76 of UNCLOS. Colombia further relies on paragraph 129, in which it claims the Court decided that Nicaragua had not established that it had a continental margin extending far enough to overlap with the continental shelf that Colombia was entitled to claim. Colombia concludes from its reading of this part of the reasoning that the Court did indeed settle the question submitted to it in the present case.

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68. For its part, Nicaragua contends that the Court's decision, in subparagraph 3 of the operative clause of the 2012 Judgment, not to uphold its claim did not amount to a rejection of that claim on the merits. The Court expressly refused to rule on the issue because Nicaragua had not completed its submission to the CLCS.

69. Citing the reasoning of the 2012 Judgment, Nicaragua maintains that the Court limited its examination to the question of whether it was "in a position to determine 'a continental shelf boundary dividing by equal parts the overlapping entitlements to a continental shelf of both Parties'" (paragraph 113 of the 2012 Judgment). Nicaragua argues that the Court concluded that it was not in a position to delimit each Party's continental shelf, as a result of its finding in paragraph 127 of the Judgment's reasoning, that Nicaragua had only provided the CLCS with "Preliminary Information". Thus, the Court had not been in a position to delimit, because Nicaragua had failed to establish that its continental margin extended far enough to create an overlap of entitlements of the Parties (paragraph 129 of the 2012 Judgment).

70. Nicaragua considers that, on 24 June 2013, it discharged the procedural obligation imposed upon it under Article 76, paragraph 8, of UNCLOS to provide the CLCS with information on the limits of its continental shelf beyond 200 nautical miles, and that the Court now has all the necessary information to carry out the delimitation and settle the dispute.

71. Nicaragua admits that the phrase "cannot uphold" might appear "ambiguous" from a reading of subparagraph 3 of the operative clause alone, but it contends that such ambiguity is dispelled if one looks at the reasoning of the decision. Moreover, Nicaragua continues, the reasoning is inseparable from the operative clause, for which it provides the necessary underpinning, and must be taken into account in order to determine the scope of the operative clause of the Judgment. It follows from the reasoning of the Judgment that the operative clause takes no position on the delimitation beyond 200 nautical miles. Nicaragua is therefore of the view that the Court is not prevented, in the present case, from entertaining its claim relating to the delimitation of the continental shelf beyond 200 nautical miles.

* *

72. The Court first notes that, although in its 2012 Judgment it declared Nicaragua's submission to be admissible, it did so only in response to the objection to admissibility raised by Colombia that this submission was new and changed the subject-matter of the dispute. However, it does not follow that the Court ruled on the merits of the claim relating to the delimitation of the continental shelf beyond 200 nautical miles from the Nicaraguan coast.

73. The Court must now examine the content and scope of subparagraph 3 of the operative clause of the 2012 Judgment. As a result of the disagreement between the Parties on the matter, the Court must determine the content of the decision adopted by it in response to Nicaragua's request for delimitation of "a continental shelf boundary dividing . . . the overlapping entitlements . . . of both Parties". As the Permanent Court of International Justice stated in the context of a request for interpretation, where there is a "difference of opinion [between the parties] as to whether a particular point has or has not been decided with binding force . . . the Court cannot avoid the duty incumbent upon it of interpreting the judgment in so far as necessary, in order to adjudicate upon such a difference of opinion" (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, pp. 11-12, cited by the Court in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), I.C.J. Reports 2007 (I)*, p. 95, para. 126; see also *Request for Interpretation of the Judgment of 15 June 1962 in the case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand), Judgment, I.C.J. Reports 2013*, p. 296, para. 34). That statement is relevant for the present case.

74. Nicaragua has placed great emphasis upon the fact that, in subparagraph 3 of the operative clause, the Court decides that it "cannot uphold" Nicaragua's claim contained in its final submission I (3). Nicaragua maintains that this decision is quite different from one to "reject" the submission. The Court is not, however, persuaded that the use of that formula leads to the conclusion suggested by Nicaragua. Nor is the Court convinced by Colombia's argument that "cannot uphold" automatically equates to a rejection by the Court of the merits of a claim. The Court will not, therefore, linger over the meaning of the phrase "cannot uphold", taken in isolation, in the way the Parties have done. It will examine this phrase in its context, in order to determine the meaning of the decision not to uphold Nicaragua's request for the Court to delimit the continental shelf between the Parties. In particular, the Court will determine whether subparagraph 3 of the operative clause of its 2012 Judgment 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.

75. In order to do this, the Court will examine subparagraph 3 of the operative clause of the 2012 Judgment in its context, namely by reference to the reasoning which underpins its adoption and accordingly serves to clarify its meaning. As the Permanent Court of International Justice recognized in its Advisory Opinion of 16 May 1925 on the *Polish Postal Service in Danzig*, "all the parts of a judgment concerning the points in dispute explain and complete each other and are to be taken into account in order to determine the precise meaning and scope of the operative portion" (*P.C.I.J., Series B, No. 11*, p. 30). Moreover, "[i]n determining the meaning and scope of the operative clause of the original Judgment, the Court, in accordance with its practice, will have

regard to the reasoning of that Judgment to the extent that it sheds light on the proper interpretation of the operative clause" (*Request for Interpretation of the Judgment of 15 June 1962 in the case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand), Judgment, I.C.J. Reports 2013*, p. 306, para. 68). While that remark was made in the context of a request for interpretation of a judgment under Article 60 of the Statute (something which is not sought in the present case), the requirement that the meaning of the operative part of a judgment be ascertained through an examination of the reasoning on which the operative part is based is of more general application.

76. The reasoning may relate to points debated by the Parties in the course of the proceedings, but the fact that a point was argued by the Parties does not necessarily mean that it was definitively decided by the Court.

77. The Court devoted section IV of its 2012 Judgment to the "[c]onsideration of Nicaragua's claim for delimitation of a continental shelf extending beyond 200 nautical miles". That section consists of paragraphs 113 to 131 of the Judgment.

78. Paragraph 113 defines the question examined by the Court as whether "it [the Court] is in a position to determine 'a continental shelf boundary dividing by equal parts the overlapping entitlements to a continental shelf of both Parties'" (*I.C.J. Reports 2012 (II)*, p. 665, para. 113). In paragraphs 114 to 118, the Court then concludes that the law applicable in the case, which is between a State party to UNCLOS (Nicaragua) and a non-party State (Colombia), is customary international law relating to the definition of the continental shelf, as reflected in Article 76, paragraph 1, of that Convention. The Court indicates that

> "in view of the fact that the Court's task is limited to the examination of whether it is in a position to carry out a continental shelf delimitation as requested by Nicaragua, it does not need to decide whether other provisions of Article 76 of UNCLOS form part of customary international law" (*ibid.*, p. 666, para. 118).

79. Paragraphs 119 to 121 summarize Nicaragua's arguments regarding the criteria for determining the existence of a continental shelf and the procedural conditions, laid down in Article 76, paragraph 8, of UNCLOS, for a State to be able to establish the outer limits of the continental shelf beyond 200 nautical miles and the steps which Nicaragua had taken to that end (*I.C.J. Reports 2012 (II)*, pp. 666-667).

80. Paragraphs 122 to 124 set out Colombia's arguments opposing Nicaragua's request for delimitation of the continental shelf (*I.C.J. Reports 2012 (II)*, pp. 667-668). Colombia contended that Nicaragua's rights to an extended shelf "ha[d] never been recognized or even submitted to the Commission" (para. 122), and that "the information provided to the Court [by Nicaragua] . . . based on the 'Preliminary Information' submitted by Nicaragua to the Commission, [was] 'woefully deficient'" *(ibid.)*. Colombia emphasized that "the 'Preliminary Information' [did] not fulfil the requirements for the Commission to make recommendations" *(ibid.)*. It added that, in any event, Nicaragua could not rely on Article 76 in order to encroach on other States' 200-mile limits, particularly when it "[had] not followed the procedures of the Convention" (para. 124).

81. In paragraphs 126 and 127 respectively, the Court points out that the fact that Colombia is not a party to UNCLOS "does not relieve Nicaragua of its obligations under Article 76 of that Convention", and it observes that, at the time of the 2012 Judgment, Nicaragua had only submitted to the CLCS "Preliminary Information", which, by its own admission, "falls short of meeting the requirements" under paragraph 8 of Article 76 of UNCLOS (*I.C.J. Reports 2012 (II)*, p. 669).

82. At the close of this section of its reasoning, the Court reaches the following conclusion at paragraph 129:

> "However, since Nicaragua, in the present proceedings, has not established that it has a continental margin that extends far enough to overlap with Colombia's 200-nautical-mile entitlement to the continental shelf, measured from Colombia's mainland coast, the Court is not in a position to delimit the continental shelf boundary between Nicaragua and Colombia, as requested by Nicaragua, even using the general formulation proposed by it." (*I.C.J. Reports 2012 (II)*, p. 669.)

This paragraph must be read in the light of those preceding it in the reasoning of the 2012 Judgment. Three features of that reasoning stand out. First, although the Parties made extensive submissions regarding the geological and geomorphological evidence of an extension of the continental shelf beyond 200 nautical miles submitted by Nicaragua, the Judgment contains no analysis by the Court of that evidence. Secondly, the Court considered (see paragraph 78 above) that, in view of the limited nature of the task before it, there was no need to consider whether the provisions of Article 76 of UNCLOS which lay down the criteria which a State must meet if it is to establish continental shelf limits more than 200 nautical miles from its coast reflected customary international law, which it had already determined was the applicable law in the case. The Court did not, therefore, consider it necessary to decide the substantive legal standards which Nicaragua had to meet if it was to prove vis-à-vis Colombia that it had an entitlement to a continental shelf beyond 200 nautical miles from its coast. Thirdly, what the Court did emphasize was the obligation on Nicaragua, as a party to UNCLOS, to submit information on the limits of the continental shelf it claims beyond 200 nautical miles, in accordance with Article 76, paragraph 8, of UNCLOS, to the CLCS. It is because, at the time of the 2012 Judgment, Nicaragua had not yet submitted such information that the Court concluded, in paragraph 129, that "Nicaragua, in the present proceedings, has not established that it has a continental margin that extends far enough to overlap with Colombia's 200-nautical-mile entitlement to the continental shelf, measured from Colombia's mainland coast".

83. The conclusions of the Court in paragraph 129 can only be understood in the light of those features of its reasoning. They indicate that the Court did not take a decision on whether or not Nicaragua had an entitlement to a continental shelf beyond 200 nautical miles from its coast. That is confirmed by the language of paragraph 129 itself. The first sentence of that paragraph states that

> "Nicaragua, in the present proceedings, has not established that it has a continental margin that extends far enough to overlap with Colombia's 200-nautical-mile entitlement to the continental shelf, measured from Colombia's mainland coast".

Not only does the reference to "the present proceedings" seem to contemplate the possibility of future proceedings, but the Court there speaks only of a continental margin which overlaps with the 200-nautical-mile entitlement from the Colombian mainland. 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: Nicaragua, on the one hand, claimed an extended continental shelf in these areas, and Colombia, on the other, maintained that it had rights in the same areas generated by the islands over which it claimed sovereignty, and that the Court indeed declared to be under its sovereignty.

84. It therefore follows that 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 UNCLOS, to deposit with the CLCS the information on the limits of its continental shelf beyond 200 nautical miles required by that provision and by Article 4 of Annex II of UNCLOS.

3. Application of the *res judicata* principle in the case

85. The Court has clarified the content and scope of subparagraph 3 of the operative clause of the 2012 Judgment, taking into account the differing views expressed by the Parties on the subject. It has found that delimitation of the continental shelf beyond 200 nautical miles from the Nicaraguan coast was conditional on the submission by Nicaragua of information on the limits of its continental shelf beyond 200 nautical miles, provided for in paragraph 8 of Article 76 of UNCLOS, to the CLCS. The Court thus did not settle the question of delimitation in 2012 because it was not, at that time, in a position to do so.

86. The Court recalls that, in its Application, Nicaragua states that on 24 June 2013 it provided the CLCS with "final" information. This statement has not been contested by Colombia.

87. The Court accordingly considers that the condition imposed by it 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.

88. 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.

IV. FOURTH PRELIMINARY OBJECTION

89. Colombia bases its fourth preliminary objection on the assertion that, in its 2012 Judgment, the Court rejected Nicaragua's request for delimitation of the continental shelf between the Parties beyond 200 nautical miles, and fixed the boundary between each Party's maritime spaces. According to Colombia, that decision was "final and without appeal" pursuant to Article 60 of the Statute, so that, through its Application of 16 September 2013, Nicaragua was seeking to "appeal" the previous Judgment, or to have it revised.

90. 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.

V. SECOND PRELIMINARY OBJECTION

91. Colombia's second preliminary objection concerns Nicaragua's argument that, independent of the applicability of Article XXXI of the Pact of Bogotá between Colombia and Nicaragua, the Court possesses continuing jurisdiction over the subject-matter of the Application. According to Nicaragua, this continuing jurisdiction is based on the Court's jurisdiction in the case concerning the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, given that the Court, in its 2012 Judgment, did not definitively determine the question of the delimitation of the continental shelf between Nicaragua and Colombia in the area beyond 200 nautical miles from the Nicaraguan coast, so that this question remains pending.

92. Colombia denies that any such continuing jurisdiction exists in the present case. In Colombia's view, unless the Court expressly reserves its jurisdiction, which it did not do in the 2012 Judgment, there is no basis on which the Court can exercise continuing jurisdiction once it has delivered its judgment on the merits. According to Colombia, the Statute provides only two procedures by which the Court can act, without an independent basis of jurisdiction, in respect of matters which have previously been the subject of a judgment of the Court in a case between the same parties: requests under Article 60 of the Statute for interpretation of the earlier judgment and requests under Article 61 for revision of the earlier judgment. Since the present case falls within neither Article 60, nor Article 61, Colombia contends that the Court lacks jurisdiction on the additional basis advanced by Nicaragua.

93. Nicaragua rejects Colombia's analysis. According to Nicaragua, the Court has an obligation to exercise to the full its jurisdiction in any case properly submitted to it. The Court declined, in its 2012 Judgment, to exercise its jurisdiction in respect of the part of Nicaragua's case that is the subject of the current proceedings for reasons which, according to Nicaragua, no longer appertain. Nicaragua maintains that the Court must now exercise the jurisdiction which it possessed at the time of the 2012 Judgment. Accordingly, Nicaragua argues that the Court possesses continuing jurisdiction over the issues raised by its present Application, irrespective of whether it expressly reserved that jurisdiction in its earlier judgment. Nicaragua maintains that this basis of jurisdiction is additional to the jurisdiction conferred by Article XXXI of the Pact of Bogotá.

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94. The Court recalls that it has already held (see paragraphs 46, 88 and 90, above) that Article XXXI confers jurisdiction upon it in respect of the present proceedings since Nicaragua's Application was filed before the Pact of Bogotá ceased to be in force between Nicaragua and Colombia. 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 the Republic of Colombia.

VI. FIFTH PRELIMINARY OBJECTION

95. Colombia contends, in the alternative, 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. Colombia considers that the First Request is 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, and that the Second Request is inadmissible because, if it were to be granted, the decision of the Court would be inapplicable and would concern a non-existent dispute.

96. The Court will examine in turn the question of the admissibility of each of those two requests.

1. The preliminary objection to the admissibility of Nicaragua's First Request

97. In its First Request, Nicaragua 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". Colombia maintains that "the [Court] cannot consider the Application by Nicaragua because the CLCS has not ascertained that the conditions for determining the extension of the outer edge of Nicaragua's continental shelf beyond the 200-nautical-mile line are satisfied and, consequently, has not made a recommendation".

98. Citing Article 76, paragraph 1, of UNCLOS, Colombia argues that there is a distinction between a coastal State's entitlement to the continental shelf up to a distance of 200 nautical miles from the baselines, which exists automatically, *ipso jure*, and its entitlement to the shelf beyond 200 nautical miles, as far as the outer edge of the continental margin, which is subject to the conditions set out in paragraphs 4, 5 and 6 of that Article.

99. Colombia recognizes that, in accordance with Article 76, it is for the coastal State, as a party to UNCLOS, to establish the outer limits of its continental shelf beyond 200 nautical miles. It nonetheless considers that, in order to do so, the latter must follow the procedure prescribed in paragraph 8 of the same Article. In particular, the relevant coastal State requires a recommendation of the CLCS in order to establish, on the basis thereof, a "final and binding" outer limit.

100. Thus, in Colombia's view, Nicaragua, as a party to UNCLOS, needs to obtain a recommendation from the CLCS if it wishes to claim an entitlement to a continental shelf beyond 200 nautical miles. Colombia adds that, in the present case, Nicaragua "requests a continental shelf delimitation between opposite coasts, which cannot be done without first identifying the extent, or limit, of each State's shelf entitlement". The absence of a recommendation from the CLCS must therefore result in the inadmissibility of the First Request contained in the Application of 16 September 2013.

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101. Nicaragua responds that a coastal State has inherent rights over the continental shelf, which exist *ipso facto* and *ab initio*, and that its own rights over its continental shelf vest in it automatically, *ipso jure*, by operation of law. Furthermore, the CLCS is concerned only with the precise location of the outer limits of the continental shelf; it does not grant or recognize the rights of a coastal State over its shelf and is not empowered to delimit boundaries in the shelf.

102. According to Nicaragua, the role of the CLCS is to protect the common heritage of mankind against possible encroachments by coastal States. It adds that, even though the role of the CLCS is to protect the international community from excessive claims, its recommendations are not binding on the submitting State. If that State disagrees with the recommendations, it can make a revised or new submission.

103. Furthermore, Nicaragua considers that State practice shows that States have concluded delimitation agreements on the continental shelf beyond 200 nautical miles in the absence of recommendations from the CLCS. In certain cases, they are said to have concluded such agreements without even having submitted information to the CLCS. Nicaragua accordingly argues that an international court or tribunal would equally be in a position to settle a delimitation dispute regarding the extended continental shelf before the CLCS has issued its recommendations.

104. Nicaragua adds that, in the event of a dispute over its extended continental shelf beyond 200 nautical miles, the CLCS, in accordance with its own rules and established practice, would not address a recommendation to Nicaragua. And if the Court were to refuse to act because the CLCS had not issued such a recommendation, the result would be an impasse, as had been pointed out by the International Tribunal for the Law of the Sea in its Judgment of 14 March 2012 in the *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*.

* *

105. The Court has already established (see paragraph 82) that Nicaragua was under an obligation, pursuant to paragraph 8 of Article 76 of UNCLOS, to submit information on the limits of the continental shelf it claims beyond 200 nautical miles to the CLCS. The Court held, in its 2012 Judgment, that Nicaragua had to submit such information as a prerequisite for the delimitation of the continental shelf beyond 200 nautical miles by the Court.

106. The Court must now determine whether a recommendation made by the CLCS, pursuant to Article 76, paragraph 8, of UNCLOS, is a prerequisite in order for the Court to be able to entertain the Application filed by Nicaragua in 2013.

107. The Court notes that Nicaragua, as a State party to UNCLOS, is under an obligation to communicate to the CLCS the information on the limits of its continental shelf beyond 200 nautical miles, which is provided for in paragraph 8 of Article 76 of UNCLOS, whereas the making of a recommendation, following examination of that information, is a prerogative of the CLCS.

108. When the CLCS addresses its recommendations on questions concerning the outer limits of its continental shelf to coastal States, those States establish, on that basis, limits which, pursuant to paragraph 8 of Article 76 of UNCLOS, are "final and binding" upon the States parties to that instrument.

109. The Court furthermore emphasizes that this procedure enables the CLCS to perform its main role, which consists of ensuring that the continental shelf of a coastal State does not extend beyond the limits provided for in paragraphs 4, 5 and 6 of Article 76 of UNCLOS and thus preventing the continental shelf from encroaching on the "Area and its resources", which are "the common heritage of mankind" (UNCLOS, Article 136).

110. Because the role of the CLCS relates only to the delineation of the outer limits of the continental shelf, and not delimitation, Article 76 of UNCLOS states in paragraph 10 that "[t]he provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts".

111. Indeed, Article 76 of UNCLOS, which contains the definition of the continental shelf, makes provision, in view of the technical complexity of determining the outer edge of the continental margin and of the outer limits of the continental shelf, for a Commission whose function, pursuant to Annex II of UNCLOS establishing the statute of the CLCS, is "to consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles, and to make recommendations in accordance with Article 76 [of UNCLOS]" (Article 3, paragraph 1 *(a)* of Annex II of UNCLOS).

112. 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.

113. Notwithstanding the fact that UNCLOS distinguishes between the establishment of the outer limits of the continental shelf and its delimitation between States with adjacent or opposite coasts, it is possible that the two operations may impact upon one another. The CLCS has, in its internal rules (Article 46 and Annex 1), established procedures, in accordance with Article 9 of Annex II to UNCLOS, to ensure that its actions do not prejudice matters relating to delimitation.

114. 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.

115. In light of the foregoing, the Court finds that the preliminary objection to the admissibility of Nicaragua's First Request must be rejected.

2. The preliminary objection to the admissibility of Nicaragua's Second Request

116. In its Second Request, Nicaragua asks the Court to determine

> "[t]he 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 and the use of its resources, pending the delimitation of the maritime boundary between them beyond 200 nautical miles from Nicaragua's coast".

117. Colombia contends that Nicaragua's Second Request invites the Court to make a ruling pending its decision on the First Request, and that, since the Court would have to rule on both requests simultaneously, it could not accept the Second Request, because it would be without object.

118. Colombia is also of the view that Nicaragua's Second Request is a disguised request for provisional measures and that it should therefore be dismissed.

119. Finally, Colombia argues that there is no dispute between the Parties concerning a hypothetical legal régime to be applied pending the decision on the maritime boundary beyond 200 nautical miles of Nicaragua's coast.

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120. Nicaragua considers that the relevance of the Second Request depends on the Court's decision on the merits in respect of the question of the delimitation of the continental shelf beyond 200 nautical miles from Nicaragua's coast between the Parties. It maintains that arguments as to the content of the duties of restraint and co-operation that may be incumbent on the Parties are a matter for the merits stage, and not for preliminary objections.

121. Nicaragua disagrees with Colombia that its Second Request is a disguised request for provisional measures. It asserts that there is indeed a dispute between the Parties, since Colombia denies that Nicaragua has any legal rights — or even any claims — beyond 200 nautical miles from its coast. According to Nicaragua, its Second Request is an issue which is subsumed within the dispute that is the subject-matter of this case.

* *

122. The Court notes that, in its Second Request, Nicaragua invites it to determine the principles and rules of international law governing a situation that will be clarified and settled only at the merits stage of the case.

123. However, it is not for the Court to determine the applicable law with regard to a hypothetical situation. It recalls that its function is "to state the law, but it may pronounce judgment only in connection with concrete cases where there exists at the time of the adjudication an actual controversy involving a conflict of legal interests between the parties" (*Northern Cameroons (Cameroon* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963*, pp. 33-34).

124. This is not the case, at this stage of the proceedings, in respect of Nicaragua's Second Request. This Request does not relate to an actual dispute between the Parties, that is, "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons" (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11), nor does it specify what exactly the Court is being asked to decide.

125. Accordingly, the Court finds that the preliminary objection to the admissibility of Nicaragua's Second Request must be upheld.

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126. For these reasons,

THE COURT,

(1) *(a)* Unanimously,

Rejects the first preliminary objection raised by the Republic of Colombia;

(b) By eight votes to eight, by the President's casting vote,

Rejects the third preliminary objection raised by the Republic of Colombia;

IN FAVOUR: *President* Abraham; *Judges* Owada, Tomka, Bennouna, Greenwood, Sebutinde, Gevorgian; *Judge* ad hoc Skotnikov;

AGAINST: *Vice-President* Yusuf; *Judges* Cançado Trindade, Xue, Donoghue, Gaja, Bhandari, Robinson; *Judge* ad hoc Brower;

(c) Unanimously,

Rejects the fourth preliminary objection raised by the Republic of Colombia;

(d) Unanimously,

Finds that there is no ground to rule upon the second preliminary objection raised by the Republic of Colombia;

(e) By eleven votes to five,

Rejects 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;

IN FAVOUR: *President* Abraham; *Judges* Owada, Tomka, Bennouna, Greenwood, Donoghue, Gaja, Sebutinde, Gevorgian; *Judges* ad hoc Brower, Skotnikov;

AGAINST: *Vice-President* Yusuf; *Judges* Cançado Trindade, Xue, Bhandari, Robinson;

(f) Unanimously,

Upholds 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)* Unanimously,

Finds 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) By eight votes to eight, by the President's casting vote,

Finds that the First Request put forward by the Republic of Nicaragua in its Application is admissible.

IN FAVOUR: *President* Abraham; *Judges* Owada, Tomka, Bennouna, Greenwood, Sebutinde, Gevorgian; *Judge* ad hoc Skotnikov;

AGAINST: *Vice-President* Yusuf; *Judges* Cançado Trindade, Xue, Donoghue, Gaja, Bhandari, Robinson; *Judge* ad hoc Brower.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this seventeenth day of March, two thousand and sixteen, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Nicaragua and the Government of the Republic of Colombia, respectively.

(Signed) Ronny ABRAHAM,
President.

(Signed) Philippe COUVREUR,
Registrar.

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.

(Initialled) R. A.

(Initialled) Ph. C.