



EMBASSY OF NICARAGUA
THE HAGUE

APPLICATION OF THE REPUBLIC OF NICARAGUA INSTITUTING
PROCEEDINGS AGAINST THE REPUBLIC OF COLOMBIA

16 September 2013

**To the Registrar
International Court of Justice**

The undersigned being duly authorized by the Republic of Nicaragua and being the Ambassador of the Republic of Nicaragua at The Hague:

1. The Republic of Nicaragua ('Nicaragua') has the honour to submit to the Court, in accordance with Articles 36 and 40 of the Statute of the Court and Article 38 of the Rules of Court, this Application instituting proceedings against the Republic of Colombia ('Colombia') in respect of the dispute described below.

I. SUBJECT OF THE DISPUTE

2. The dispute 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. Nicaragua requests the Court to: (1) determine the precise course of the boundary of the continental shelf between Nicaragua and Colombia in accordance with the principles and rules of international law, and (2) indicate the rights and duties of the two States in relation to the area of overlapping claims and the use of its resources pending the precise delimitation of the line of the boundary.

II. THE FACTS

3. The single maritime boundary between the continental shelf and the exclusive economic zones of Nicaragua and of Colombia within the 200-nautical-mile limit from the baselines from which the breadth of the territorial sea of Nicaragua is measured was defined by the Court in paragraph 251 of its Judgment of 19 November 2012 in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*.



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4. In that case Nicaragua had sought a declaration from the Court describing the course of the boundary of its continental shelf throughout the area of the overlap between its continental shelf entitlement and that of Colombia.¹ Although Nicaragua submitted its Preliminary Information to the Commission on the Limits of the Continental Shelf on 7 April 2010, the Court considered that Nicaragua had not then established that it has a continental margin that extends beyond 200 nautical miles from the baselines from which its territorial sea is measured, and that it was therefore not then in a position to delimit the continental shelf as requested by Nicaragua.² The Court delimited only that part of Nicaragua's continental shelf and exclusive economic zone that lies within 200 nautical miles of the Nicaraguan coast.³
5. Nicaragua submitted its final information to the Commission on the Limits of the Continental Shelf on 24 June 2013. Nicaragua's submission to the Commission demonstrates that Nicaragua's continental margin extends more than 200 nautical miles from the baselines from which the breadth of the territorial sea of Nicaragua is measured, and both (i) traverses an area that lies more than 200 nautical miles from Colombia and also (ii) partly overlaps with an area that lies within 200 nautical miles of Colombia's coast.⁴
6. Nicaragua and Colombia have not agreed upon a maritime boundary between them in the area beyond 200 nautical miles from the coast of Nicaragua. Further, Colombia has objected to continental shelf claims in that area.⁵
7. Additionally, any possibility for a bilateral negotiation has been precluded by Colombia's reaction to the Court's Judgement of 19 November 2012, which has been widely publicized and is well known to the international community⁶. Currently,

¹ Judgment of 19 November 2012 in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, paragraphs 17, 128.

² Judgment of 19 November 2012 in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, paragraph 129.

³ Judgment of 19 November 2012 in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, paragraphs 136, 237, 251.

⁴ See Nicaragua's Executive Summary available at http://www.un.org/depts/los/clcs_new/submissions_files/submission_nic_66_2013.htm

⁵ In a paper annexed to a note verbale dated 29 April 2013 from the Permanent Mission of Colombia to the United Nations addressed to the Secretary-General (UN Doc. A/67/852, 2 May 2013), Colombia asserted: "Under customary international law, the Republic of Colombia exercises, ipso facto et ab initio and by virtue of its sovereignty over its land, sovereign rights over its continental shelf in the Caribbean Sea and in the Pacific Ocean. The Republic of Colombia shall never accept that its enjoyment and exercise of these sovereign rights in any way has been or can be affected by a unilateral act or omission of another State. Any attempt to affect those rights, including but not limited to the submission of preliminary or definitive documentation to the Commission on the Limits of the Continental Shelf, shall be (or should be deemed to be) objected to by the Republic of Colombia. The Republic of Colombia shall take all steps required to ensure its continued enjoyment and exercise of these sovereign rights, consistent with international law."

⁶ See BBC News, Colombia pulls out of International Court over Nicaragua, available at <http://www.bbc.co.uk/news/world-latin-america-20533659>; see also, MercoPress, Colombia rejects Court of Justice ruling on Caribbean islands disputed with Nicaragua, available at <http://en.mercopress.com/2012/11/21/colombia-rejects-court-of-justice-ruling-on-caribbean-islands-disputed-with-nicaragua>



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Colombia is using its internal law as a vain pretext to breach its international obligations and has declared the “inapplicability” of the judgement⁷. Furthermore the Government of Colombia has recently requested the Colombian Constitutional Court to declare the unconstitutionality of the Pact of Bogota⁸. Such an atmosphere, and Colombia’s denunciation of the Pact of Bogota (which is the jurisdictional basis on which the Court decided the case), have constrained Nicaragua into taking action upon this matter rather sooner than later in the form of the present application.

III. THE JURISDICTION OF THE COURT

8. The jurisdiction of the Court in this case is based on Article XXXI of the American Treaty on Pacific Settlement (Pact of Bogotá) of 30 April 1948. This provision reads as follows:

“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) the interpretation of a treaty;
- (b) any question of international law;
- (c) the existence of any fact which, if established, would constitute the breach of an international obligation;
- (d) the nature or extent of the reparation to be made for the breach of an international obligation.”

9. Both Nicaragua and Colombia are Parties to the Pact of Bogotá. No reservation in force at the present date has been made by either Nicaragua or Colombia under the Pact. On 27 November 2012, Colombia gave notice that it denounced as of that date the Pact of Bogotá; and in accordance with Article LVI of the Pact, that denunciation will take effect after one year, so that the Pact remains in force for Colombia until 27 November 2013.

10. In addition, Nicaragua submits that the subject-matter of the present Application remains within the jurisdiction of the Court established in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, of which the Court was seised by the Application dated 6 December 2001, submitted by Nicaragua, in as much as the Court did not in its Judgment dated 19 November 2012 definitively

⁷ See Colombia Reports, World Court ruling on maritime borders unenforceable in Colombia: Vice President, available at <http://colombiareports.co/hague-judgment-unenforceable-colombia-vice-president/>; see also ABC News, Colombia will challenge maritime border with Nicaragua, available at http://abcnews.go.com/ABC_Univision/colombia-challenge-maritime-border-nicaragua/story?id=20217370

⁸ See El Colombiano, Santos filed a suit for unconstitutionality against the Pact of Bogota, available at http://www.elcolombiano.com/BancoConocimiento/S/santos_radico_demanda_contra_el_pacto_de_bogota_ante_la_corte_constitucional/santos_radico_demanda_contra_el_pacto_de_bogota_ante_la_corte_constitucional.asp



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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 in that case.

IV. THE LEGAL GROUND FOR NICARAGUA'S REQUEST.

11. The main grounds on which Nicaragua's claim is based are as follows:

- a. Nicaragua is entitled under UNCLOS and under customary international law to a continental shelf extending throughout its continental margin.
- b. That entitlement to a continental shelf extending throughout its continental margin exists *ipso facto* and *ab initio*.
- c. That continental margin includes an area beyond Nicaragua's 200 nautical mile maritime zone and in part overlaps with the area that lies within 200 nautical miles of Colombia's coast.
- d. The area of overlap must be delimited so as to achieve an equitable result, using a method that will preserve the rights of third states.
- e. During the period prior to the drawing of the definitive boundary beyond 200 nautical miles from Nicaragua's coast, each Party must conduct itself in relation to the area of overlapping continental shelf claims and the use of its resources in such a manner as to avoid causing harm to the interests of the other. That duty flows (i) from the duty of good faith under general international law, and (ii) more specifically from the duties of good faith and due regard for the interests of other States, owed by States in the exercise of rights in sea areas beyond their territorial sea, and (iii) from the duties of good faith and co-operation owed by States before the Court.

V. DECISION REQUESTED

12. 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.



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13. Nicaragua reserves the right to amend and/or supplement this Application and its legal basis.
14. Pursuant to Article 31 of the Statute of the Court and Article 35, paragraph 1 of its Rules, the Republic of Nicaragua will exercise the power conferred by Article 31 of the Statute and choose a person to sit as judge *ad hoc* and will so inform the Court in due course.
15. The Government of Nicaragua has designated the undersigned as its Agent for the purposes of these proceedings. All communications relating to this case should be sent to the Office of the Agent of the Republic of Nicaragua, Statenlaan 52, 2582 GP, The Hague.

Respectfully submitted,

Carlos J. ARGÜELLO GOMEZ,
Ambassador of the Republic of Nicaragua
Agent of the Republic of Nicaragua