



INTERNATIONAL COURT OF JUSTICE

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Press Release

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Territorial and Maritime Dispute (Nicaragua v. Colombia)

The Court finds that the Application to intervene submitted by Honduras in the case cannot be granted

THE HAGUE, 4 May 2011. The International Court of Justice (ICJ), principal judicial organ of the United Nations, today delivered its Judgment on whether it could grant the Application for permission to intervene filed by Honduras in the case concerning the Territorial and Maritime Dispute (Nicaragua v. Colombia).

In its Judgment, the Court

“By thirteen votes to two,

Finds that the Application for permission to intervene in the proceedings, either as a party or as a non-party, filed by the Republic of Honduras under Article 62 of the Statute of the Court cannot be granted.

IN FAVOUR: President Owada; Vice-President Tomka; Judges Koroma, Al-Khasawneh, Simma, Keith, Sepúlveda-Amor, Bennouna, Cançado Trindade, Yusuf, Xue; Judges ad hoc Cot, Gaja;

AGAINST: Judges Abraham, Donoghue.”

The Judgment of the Court was read by the President of the Court, Judge Hisashi Owada, at a public sitting held at the Peace Palace, The Hague, following another public sitting, at which the President had delivered the Judgment of the Court on whether it could grant another Application to intervene, submitted by Costa Rica.

Procedural history

For the history of the proceedings, see paragraphs 1 to 17 of the Judgment delivered today by the Court and available on its website (www.icj-cij.org), under “Cases”.

The Court's reasoning

After briefly setting out the history of the proceedings, the Court addresses the legal framework of Honduras's request to intervene.

I. LEGAL FRAMEWORK FOR THE INTERVENTION (paras. 20-48)

The Court first recalls that, in its Application for permission to intervene of 10 June 2010, Honduras made clear that it primarily sought to be permitted to intervene in the pending case as a party, and if the Court did not accede to that request, it wished, in the alternative, to be permitted to intervene as a non-party. The Court notes that, whatever the capacity in which a State is seeking to intervene, it must demonstrate that it has an **interest of a legal nature which may be affected** by the decision of the Court in the main case, and must indicate the precise object of its intervention.

The Court states, secondly, that, in contrast to Article 63 of the Statute, Article 62 (on which Honduras bases its request) does not give a third State the right to intervene, and that it is not sufficient for that State to consider that it has an interest of a legal nature which may be affected by the Court's decision in the main proceedings in order to have, *ipso facto*, a right to intervene in those proceedings. The Court adds that the interest of a legal nature to be shown is not limited to the *dispositif* alone of a judgment, but may also relate to the reasons which constitute the necessary steps to the *dispositif*.

Thirdly, the Court observes that the **precise object of the intervention** must be connected with the subject of the main dispute between the Parties. The Court goes on to point out that the written and oral proceedings concerning the application for permission to intervene are not an occasion for the State seeking to intervene, or for the Parties, to discuss questions of substance relating to the main proceedings, and that a State requesting permission to intervene may not, under the cover of intervention, seek to introduce a new case alongside the main proceedings. The Court recalls that, while it is true that a State which has been permitted to intervene as a party may submit claims of its own to the Court for decision, these have to be linked to the subject of the main dispute.

II. EXAMINATION OF HONDURAS'S REQUEST FOR PERMISSION TO INTERVENE (paras. 49-75)

The Court then goes on to **examine Honduras's request** for permission to intervene. The area in which Honduras claims to have an interest of a legal nature to protect is shown in the Judgment on an illustrative sketch-map, a copy of which is appended to this Press Release.

In specifying its interests of a legal nature which may be affected, Honduras in its Application states that the Maritime Delimitation Treaty signed in 1986 between itself and Colombia (hereinafter "the 1986 Treaty") recognizes that the area situated north of the 15th parallel and east of the 82nd meridian involves certain of its legitimate rights and interests of a legal nature. Honduras argues that, when the Court renders its decision in the principal proceedings, it must take full account of those rights and interests, which, it maintains, were not addressed in the Judgment rendered by the Court in 2007 in the case concerning the Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras). Honduras is convinced that without its participation as an intervening State the decision of the Court in the present case between Nicaragua and Colombia may irreversibly affect its legal interests if the Court is eventually to uphold certain claims put forward by Nicaragua. Honduras further argues that the 2007 Judgment did not settle the entire Caribbean Sea boundary between Honduras and Nicaragua, since the Court did not fix the endpoint of its boundary with Nicaragua, nor did it explain that this point would be located on the azimuth of the bisector line marking the boundary.

The Court recalls that Nicaragua and Colombia, the Parties to the main proceedings, hold different positions in relation to Honduras's request. Nicaragua is definitely opposed to the Application by Honduras, either as a party or a non-party. In particular, it considers that Honduras's request fails to identify any interest of a legal nature that may be affected, as required by Article 62 of the Statute, and that it challenges the res judicata of the 2007 Judgment. Colombia, on the other hand, is of the view that Honduras has satisfied the test to intervene as a non-party in the case under Article 62 of the Statute; moreover, it raises no objection to the request of Honduras to intervene as a party.

At this point in its reasoning, the Court examines (paras. 57-75) the interest of a legal nature which Honduras claims that it is seeking to protect by its intervention.

Honduras indicates that the zone containing its interest of a legal nature that may be affected lies within a roughly rectangular area whose south and east lines are identical with the boundary in the 1986 Treaty (see sketch-map). The Court observes that Honduras, in order to demonstrate that it has an interest of legal nature in the present case, contends that it can assert rights relating to oil concessions, naval patrols and fishing activities in that area. In its arguments, Honduras raises a number of issues which, in the Court's view, directly put into question the 2007 Judgment, in which the maritime boundary between Honduras and Nicaragua was delimited.

The Court considers that Honduras's interest of a legal nature relates basically to two issues: whether the 2007 Judgment has settled the entire maritime boundary between Honduras and Nicaragua in the Caribbean Sea and what effect, if any, the decision of the Court in the main proceedings between Nicaragua and Colombia will have on the rights that Honduras enjoys under the 1986 Treaty.

On the first issue, the Court recalls that it has already drawn the definitive maritime boundary line between Nicaragua and Honduras in its 2007 Judgment. On the attached sketch-map, the relevant part of that line is shown by a broken red bisector line traversing the (blue) rectangular area in which Honduras claims to have an interest of a legal nature to protect. The Court emphasizes that its 2007 decision on the maritime boundary in the Caribbean Sea between Honduras and Nicaragua is a final one under the res judicata principle. The Court further observes that Honduras does not suggest that there still exists an unresolved dispute, or evidence that would prove that the bisector line is not the complete and final maritime boundary between Honduras and Nicaragua; even if it had done so in the present proceedings, the matter would not have fallen under Article 62 of the Statute with respect to intervention, but under Article 61 concerning revision. Since Honduras's claims are primarily based on the ground that the reasoning set out in paragraphs 306-319 of the 2007 Judgment does not have the force of res judicata, the Court continues its reasoning by addressing this point (paras. 66-70 of the Judgment). In order to do so, it considers Honduras's request in the specific context of the case.

The Court notes that it is a well-established and generally recognized principle of law that a judgment rendered by a judicial body has binding force between the parties to the dispute. The Court observes that the rights of Honduras over the area north of the bisector line have not been contested either by Nicaragua or by Colombia, and the Court accordingly concludes that in that area there cannot be an interest of a legal nature of Honduras which may be affected by the decision of the Court in the main proceedings. In order to assess whether Honduras has an interest of a legal nature in the area south of the bisector line, the essential issue for the Court to ascertain is to what extent the 2007 Judgment has determined the course of the single maritime boundary between the areas of territorial sea, continental shelf, and exclusive economic zone appertaining respectively to Nicaragua and Honduras. The Court is of the view that the course of the bisector line as determined in point (3) of the operative clause of its 2007 Judgment (paragraph 321) is clear. In point (3) of that operative clause, which indisputably has the force of res judicata, the Court stated that "[f]rom point F, [the boundary] shall continue along the line having the azimuth of 70° 14' 41.25" until it reaches the area where the rights of third States may be affected". The

Court observes that the reasoning contained in paragraphs 306-319 of the 2007 Judgment, which was an essential step leading to the dispositif of that Judgment, is also unequivocal on this point. The Court made a clear determination in these paragraphs that the bisector line would extend beyond the 82nd meridian until it reached the area where the rights of a third State may be affected, and that, until the rights of such third State were ascertained, the endpoint of the bisector line would be left open. Without such reasoning, it might be difficult to understand why the Court did not fix an endpoint in its decision. With this reasoning, concludes the Court, the decision made by it in its 2007 Judgment left no room for any alternative interpretation.

The second issue raised by Honduras in support of its request to intervene concerns the possible effects of the decision of the Court in the main proceedings on its rights under the bilateral treaty of 1986 between Honduras and Colombia. On that point, the Court explains that a bilateral treaty neither confers any rights upon a third State (in the present case, Nicaragua), nor imposes any duties on it. The Court accordingly concludes that it will place no reliance on that treaty in determining the maritime boundary between Nicaragua and Colombia.

The Court concludes its Judgment by finding that Honduras has failed to satisfy the Court that it has an interest of a legal nature that may be affected by the decision of the Court in the main proceedings, and that there is accordingly no need for the Court to consider any further questions that have been put before it in the present proceedings.

Composition of the Court

The Court was composed as follows: President Owada; Vice-President Tomka; Judges Koroma, Al-Khasawneh, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cañado Trindade, Yusuf, Xue, Donoghue; Judges ad hoc Cot, Gaja; Registrar Couvreur.

Judge Al-Khasawneh appends a declaration to the Judgment of the Court; Judge Abraham appends a dissenting opinion to the Judgment of the Court; Judge Keith appends a declaration to the Judgment of the Court; Judges Cañado Trindade and Yusuf append a joint declaration to the Judgment of the Court; Judge Donoghue appends a dissenting opinion to the Judgment of the Court.

Annex: sketch-map

A summary of the Judgment appears in the document entitled: “Summary No. 2011/4”, to which are appended summaries of Judges’ Declarations and Opinions. This press release, the summary of the Judgment and its full text are available on the Court’s website (www.icj-cij.org), under “Cases”.

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