

# NICARAGUA V. COLUMBIA

A Case Summary for the  
Maritime Dispute Resolution Project



U.S.-ASIA LAW INSTITUTE  
NEW YORK UNIVERSITY SCHOOL OF LAW



Maritime Dispute Resolution Project

Territorial and Maritime Dispute  
(*Nicaragua v. Colombia*)

Case Summary by Julian Ku\*



A research project of the  
U.S.-Asia Law Institute

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## Project Overview

This case summary was prepared as part of the U.S.-Asia Law Institute's Maritime Dispute Resolution Project. The institute began the project in 2018 in order to better understand the circumstances in which interstate maritime disputes are successfully resolved and distill lessons for governments.

The two main questions the project seeks to answer are:

- When are international institutional dispute resolution mechanisms effective in resolving maritime disputes?
- What insights can be applied to the maritime disputes in East Asia?

To address these questions, leading international lawyers and legal scholars held workshops to analyze selected disputes from around the world. This and other case studies were prepared for the workshops and are based on the official records.

Citation:

Territorial and Maritime Dispute, Nicaragua v Colombia, Judgment, ICJ GL No 124, ICGJ 436 (ICJ 2012), 19th November 2012, International Court of Justice [ICJ]

### **Sections I and II – Summary of the Case and Procedural History**

In 2001, Nicaragua filed an application at the International Court of Justice (ICJ) in an attempt to resolve a longstanding complex territorial, maritime boundary, and continental shelf delimitation dispute with Colombia. Nicaragua sought an ICJ ruling holding that Nicaragua had sovereignty over certain islands in the western Caribbean Sea, and that it was entitled to a certain maritime boundary vis-à-vis Colombia based upon sovereignty and taking into account the United Nations Convention on the Law of the Sea (UNCLOS).

#### **Historical Background**

This dispute goes back to the early twentieth century when Nicaragua, Colombia, and the United States all claimed sovereignty over various islands and land features in the southwestern Caribbean Sea north of Colombia and east of Nicaragua. In 1928, Nicaragua and Colombia agreed by treaty to resolve some of these sovereignty disputes. In exchange for Colombia recognizing Nicaraguan sovereignty over the Mosquito Coast and certain nearby islands and land features, Nicaragua recognized “the full and entire sovereignty of the Republic of Colombia over the islands of San Andrés, Providencia and Santa Catalina and over the other islands, islets and reefs forming part of the San Andrés Archipelago.” The treaty went on, however, to exclude three nearby land features (Roncador, Quitasueño and Serrana) because

the sovereignty over those features was disputed at that time between Colombia and the United States.<sup>1</sup>

The dispute did not flare again until 1969, when Nicaragua granted oil concessions to explore near the three land features under dispute between Colombia and the United States (Roncador, Quitasueño and Serrana). Colombia protested Nicaragua's claims, but Nicaragua continued to assert sovereignty over Roncador, Quitasueño and Serrana and also served notice that it claimed an extended continental shelf beyond 200 nautical miles from its mainland coast by virtue of its sovereign rights over those disputed land features.

In 1972, the United States and Colombia entered into a treaty whereby the United States renounced "any and all claims to sovereignty over Quita Sueño, Roncador and Serrana". Moreover, the United States affirmed in a subsequent exchange of notes that Quitasueño was a low-tide elevation over which no sovereignty could be exercised. Colombia asserted that it was now the sole legal claimant, but Nicaragua continued to protest.

In 1979, the new Sandinista government in Nicaragua declared that the 1928 Treaty was null and void because, among other reasons, the Nicaraguan government at that time had been imposed by U.S. military forces. Colombia rejected this declaration and the dispute continued to simmer between the two countries for another two decades until Nicaragua finally brought the dispute to the ICJ in 2001.

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<sup>1</sup>Treaty concerning Territorial Questions at Issue between Colombia and Nicaragua, signed at Managua on 24 March 1928.

### Procedural History

The 2001 application initiated a process that lasted more than 10 years. The first six years of the proceeding were focused on Colombia's preliminary objections to ICJ's jurisdiction and to the admissibility of Nicaragua's claims. Although both Colombia and Nicaragua were parties to the American Treaty on Pacific Settlement (the "Pact of Bogota") – and were thus legally committed to resolve disputes in the ICJ – Colombia argued that Article VI of the Pact excluded from the ICJ's jurisdiction any disputes that had already been settled by agreement, such as all of the matters resolved by the 1928 Treaty. Colombia also argued that Nicaragua's attempt to separately ground jurisdiction under the general compulsory jurisdiction of the ICJ Statute was inapplicable.

The ICJ resolved those objections in a 2007 decision when it ruled that the 1928 Treaty was valid, and that this treaty has resolved the sovereignty question over three islands specifically named in the treaty: San Andrés, Providencia and Santa Catalina. Thus, it agreed with Colombia that sovereignty questions over those three islands fell outside the Court's jurisdiction. But it rejected Colombia's further objection to jurisdiction over Nicaragua's other sovereignty claims as well as Colombia's claim that the ICJ should not resolve related maritime delimitations as well. Thus, the ICJ retained jurisdiction over Nicaragua's sovereign claims to Albuquerque Cays, East-Southeast Cays, Roncador, Serrana, Quitasueño, Serranilla and Bajo Nuevo and Nicaragua's related maritime claims.

The parties were delayed from litigating the merits of their dispute by an attempted intervention into the case by Costa Rica and Honduras. Both interventions were supported by Colombia but opposed by Nicaragua. In two separate rulings in 2011, the ICJ rejected both applications for intervention. It was thus not until

November 2012, eleven years after Nicaragua's original application, that the ICJ issued a final judgment on the merits in the case.

### Summary of the Merits

The Court's judgment on the merits can be roughly divided into two sections: sovereignty and maritime boundaries.<sup>2</sup> It is fair to say that the ICJ agreed almost entirely with Colombia on matters of sovereignty. This did not, however, prevent it from awarding Nicaragua a favorable maritime boundary that later sparked outrage and pushback from Colombia.

The Court first found that all of the disputed land features, save one, qualified as an "island" under international law and were therefore capable of sovereign appropriation. It then relied on the doctrine of *effectivites* to establish that Colombia had sovereignty over all of the relevant islands.

However, the Court then turned to the two countries' competing maritime delimitations. The Court first rejected Nicaragua's proposed delimitation of its extended continental shelf as none of the information it was provided showed that Nicaragua's shelf extended far enough to overlap with Colombia's 200 nm coast. It also rejected Colombia's proposed delimitation, which was based on a simple equidistant line between the Nicaraguan coastline and the Colombian islands. Rather, the Court adjusted the maritime boundary to take into account various circumstances relevant to the achievement of an equitable solution including the disparity in the lengths of the relevant coasts (with Nicaragua having a much longer

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<sup>2</sup>The Judgment also considered and rejected the admissibility of Nicaragua's attempt to add an extended continental shelf claim. See Judgment, para. 104-112.



coastline) and the overall geographical context. Taking these two factors into account, the Court adjusted Colombia's proposed boundary line to favor Nicaragua in a substantial way.

### **Section III – Summary of Key Substantive Issues**

The very long and procedurally complex decision in *Nicaragua v. Colombia* reviewed a whole host of important legal issues. This section will focus on the key substantive legal questions addressed by the Court: sovereignty and legal doctrines needed to establish territorial sovereignty, the admissibility of a proposed delimitation on an extended continental shelf, and the way in which international law guides a court in delimiting a maritime boundary.

#### **A. Sovereignty**

As a preliminary matter, the Court first considered which, if any, of the disputed land features were capable of sovereign appropriation. Citing general international law, the Court stated that islands are capable of appropriation, but that low-tide elevations (features that are above water only at low tide) cannot sustain sovereign rights. The Parties agreed, however, that almost all of the disputed maritime features were islands, and thus capable of sovereign appropriation.<sup>3</sup> On the other hand, the Court ruled that only one of numerous land features at Quitasueño satisfied the “above water at high tide” requirement. Thus, most of the land features in

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<sup>3</sup> Alburquerque Cays, East-Southeast Cays, Roncador, Serrana, Serranilla and Bajo Nuevo

Quitassueño could not be appropriated by any sovereign and could not generate any sovereign rights.

This left the Court, however, with the problem of determining sovereignty over the islands that it held could be appropriated. It tackled this problem by considering three different theories of how sovereignty could be determined: the Treaty of 1928, *uti posseditis juris*, and *effectivités*.

The Court turned first to the 1928 Treaty, which grants Colombia sovereignty over “San Andrés, Providencia and Santa Catalina and over the other islands, islets and reefs forming part of the San Andrés Archipelago”. The Court had previously rejected Nicaragua’s claim that the treaty was void, so its terms should be binding on both parties, including Nicaragua. The question for the Court, therefore, was what constitutes the “San Andrés Archipelago.” The Court held that neither the 1930 Protocol to the 1928 Treaty nor historical material revealed what features the parties believed formed part of the San Andrés Archipelago. Thus, the 1928 Treaty was inconclusive as to the question of sovereignty.

The led the parties, and the Court, to consider other accepted legal doctrines for establishing territorial sovereignty. The first of these theories, *uti possidetis juris*, holds that newly independent states inherit the territories and boundaries of their former colonial provinces. The Court again held that the historical record failed to establish whether the features in question belonged to either Nicaragua or Colombia during the Spanish colonial period or when the two countries became independent.

With neither the treaty nor *uti possidetis juris* resolving the questions before it, the Court turned to the doctrine of *effectivités* or effective occupation. This doctrine holds that a state may acquire sovereignty by taking acts manifesting a display of authority on a

particular territory. Colombia submitted numerous pieces of evidence supporting its claim of *effectivités* over the relevant islands including: public administration and legislation, regulation of economic activities, public works, law enforcement, naval visits, and even consular representation. These and other acts convinced the Court that Colombia had acted like the sovereign over the disputed land features. Moreover, the Court found that Colombia's sovereign acts had been public and that Nicaragua had not objected in any way until 1969 when the dispute with Colombia first arose.

For these reasons, the Court found that Colombia enjoyed sovereignty over the islands at Albuquerque Cays, East-Southeast Cays, Roncador, Serrana, Serranilla and Bajo Nuevo.

### B. Continental Shelf

The Court also considered whether it should consider Nicaragua's request that it delimit a maritime boundary between the extended continental shelf of Nicaragua and Colombia's continental shelf. The Court noted that Nicaragua sought to apply the provisions of UNCLOS related to delimitation of a continental shelf, even though Colombia was not a state party to UNCLOS. The Court avoided whether the cited UNCLOS provisions constituted customary international law by noting that UNCLOS itself required Nicaragua to submit any claim of an extended continental shelf to the Commission on the Limits of Continental Shelf (CLCS). Nicaragua had conceded that it made no such submission to the CLCS, and this failure deprived the Court of sufficient information to delimit a maritime boundary in the manner sought by Nicaragua. Moreover, the Court ruled that Nicaragua had failed to provide enough information to show that the proposed continental shelf actually overlapped with Colombia's 200 nm zone.

### C. Maritime Boundary Delimitation

Having resolved the sovereignty dispute and rejected the admissibility of Nicaragua's extended continental shelf submission and proposed maritime delimitation, the Court then went ahead to consider what the proper maritime boundary should be. The Court considered, but then rejected, Colombia's proposed delimitation that was based on a simple median line between the Nicaraguan coastline and the coastline of the relevant Colombian islands. Because there is an overlap between Nicaragua and Colombia's claimed maritime entitlements, the Court found that there was enough of a dispute to justify its intervention.

The Court determined that customary international law applied to the delimitation and that this customary law was reflected in Article 74, 83, and 121 of UNCLOS. In this way, the Court circumvented the fact that Colombia was not a party to UNCLOS.

The Court then made some preliminary determinations necessary to make a maritime delimitation. First, it identified the relevant coasts of the Parties for this dispute. The Court determined that the relevant coasts are the entire Nicaraguan coast, and that the baseline for Nicaragua's exclusive economic zone (EEZ) is measured from the islands fringing its coast. For Colombia, the relevant coasts are the entitlements that overlap with Nicaragua's and this is solely those islands facing the Nicaraguan mainland. The entire coastlines of these islands, and not just their west-facing coasts, are taken into account. This still leaves the Nicaraguan coast at 531 km and the Colombian coast at merely 65. This favors Nicaragua at a ratio of 8.2 to 1.

The Court then defined the relevant maritime area where the two Parties' potential entitlements overlap. Such a relevant area is merely approximate, but it is necessary to limit the scope of the



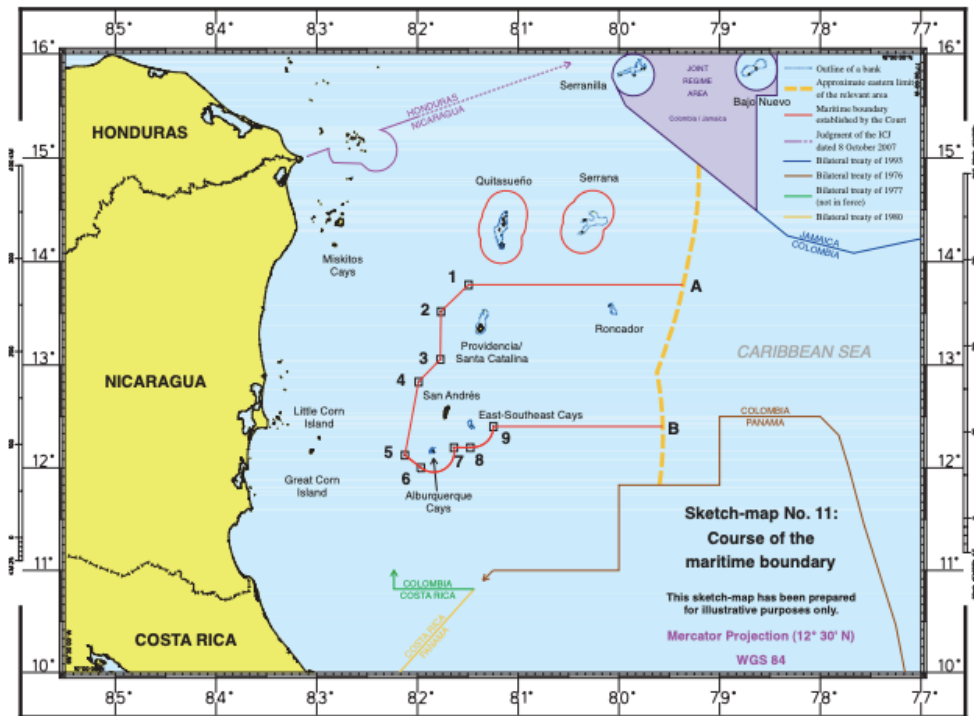
delimitation. In this case, the Court naturally included the area up to 200 nm east of Nicaragua's baselines. But the Court also excluded the areas to the north and south which had been the subject of separate bilateral agreements between Colombia and Panama, Jamaica, and Costa Rica respectively. It also excluded areas settled by a 2007 ICJ judgment on the Nicaragua-Honduras maritime border.

Finally, the Court considered what maritime entitlements could be generated by the relevant land features. Its analysis of these matters tracked its initial determination as to which features could be appropriated by sovereigns in the first place. Those features determined to be "islands" generated maritime claims to a 12 nm territorial sea, as well as a continental shelf and EEZ. The sole land features at Quitasueño that stayed above water at high tide, QS 32, was found to be a "rock" and limited to a 12 nm territorial sea only. The Court did not litigate this question (which was the subject of great debate in the 2016 UNCLOS South China Sea tribunal ruling) and simply found that neither party had suggested QS 32 could support human habitation or economic life. This meant that the land features that could be appropriated were "rocks" rather than "islands." The Court did not provide further analysis though, since this issue was not disputed between the parties.

These determinations led the Court to the most controversial part of its opinion. The Court plotted a boundary line that took into account the circumstances, but which strongly favored Nicaragua because of its earlier decision not to solely follow an equidistant line and to use a "weighted baseline" in order to credit Nicaragua's longer coastline. The Court held that "every point of [the maritime boundary line] will be defined by a constant ratio of its distances from the nearest points of the baselines from which the breadth of the territorial sea of each state is measured." This process favored Nicaragua by a 3 to 1 margin, which the Court noted was much less

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than the actual 8 to 1 difference in coastline length. The result of the Court's ruling was to award Nicaragua a larger exclusive economic zone than Colombia had anticipated. As the map below shows, the Court gave much greater weight to Nicaragua's coastline when allocating the maritime space.<sup>4</sup>



Source: ICJ Judgment.

<sup>4</sup> Nienke Grossman, International Decisions: Territorial and Maritime Dispute (Nicaragua v. Colombia), [https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1281&context=all\\_fac](https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1281&context=all_fac)

### **Section IV – Implementation of the Tribunal’s Decision**

Although the ruling awarded territorial sovereignty to Colombia over the disputed islands, the award’s finding that Nicaragua was entitled to a larger proportion of the maritime space around those islands led to a firestorm of criticism in Colombia.<sup>5</sup> While the Nicaraguan government declared its acceptance of the ruling, the then-president of Colombia immediately rejected the ICJ’s ruling and refused to abide by it. Nonetheless, Nicaragua began increasing its activities in the disputed territory by approving exploratory oil drillings and dispatching commercial ships to confirm its claim to control of the ICJ-awarded maritime space.

The Colombian government has continued to refuse to comply with the ICJ’s ruling. It has continued to enforce its laws in the zone the ICJ has declared belongs to Nicaragua’s EEZ. The president of Colombia also sought guidance from the Constitutional Court of Colombia, which ruled in 2014 that although the ICJ’s judgment was binding as a matter of international law, the Pact of Bogota itself was unconstitutional. Moreover, the Constitutional Court ruled that no modification of Colombia’s boundaries could be done without an international agreement approved by Colombia’s legislature.<sup>6</sup>

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<sup>5</sup> Santiago Wills, Territorial dispute prompts Colombia and Nicaragua to beef up navies, August 19, 2013. [https://abcnews.go.com/ABC\\_Univision/ABC\\_Univision/territorial-dispute-prompts-colombia-nicaragua-beef-navies/story?id=20000089](https://abcnews.go.com/ABC_Univision/ABC_Univision/territorial-dispute-prompts-colombia-nicaragua-beef-navies/story?id=20000089)

<sup>6</sup> Making and Unsettling the Maritime Order in the South West Caribbean Nicaragua, Colombia, and the ICJ Lucas Solimano, <https://www.iilj.org/wp->

### Section V – Conclusions

Jurisprudentially, however, the Court’s use of an “equiratio” line may be relevant in future delimitations that depart from the traditional equidistance line approach. Its brief discussion of the distinction between a low-tide elevation and an island presaged later discussions in the South China Sea arbitral award. Unlike the South China Sea arbitration, however the Court’s application of this distinction was not disputed in this case.

Although the heart of the ICJ’s 2012 decision was unanimous, as a legal matter, its overall impact on the actions of the states-parties remains uncertain. For now, Colombia continues to spurn the ICJ’s ruling and has even withdrawn from the Pact of Bogota.<sup>7</sup> The two countries continue to remain at loggerheads and no obvious resolution is in sight. While direct military conflict between Colombia and Nicaragua has been avoided, the ICJ’s decision cannot be said to have “resolved” the dispute between the two countries. While legally uncontroversial from most perspectives, the ICJ’s decision to follow an “equiratio” approach in delimiting maritime boundaries has failed to win the acceptance of Colombia, leaving the efficacy of this effort at international judicial dispute resolution in grave doubt.

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<sup>7</sup> Caitlin Trent, “Colombia denounces Pact of Bogota: President Santos”, November 28, 2012, <https://colombiareports.com/colombia-denounces-pact-of-bogota-santos/>





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