

Court/Tribunal: International Court of Justice
Case: Territorial and Maritime Dispute (*Nicaragua v. Colombia*)

December 13, 2007 (questions of subject-matter and jurisdiction)

The International Court of Justice (“ICJ”) is currently hearing the case of *Nicaragua v. Colombia* regarding a territorial and maritime dispute over islands off the coast of Central America. On December 6, 2001, Nicaragua instituted proceedings against Colombia asserting title to several coastal reefs and disputing the maritime delimitation of the reefs. On December 13, 2007, Colombia filed its Preliminary Objections to Nicaragua's Application with the ICJ.

On March 24, 1928, Colombia and Nicaragua agreed to the “Treaty concerning Territorial Questions at Issue between Colombia and Nicaragua” (“the Treaty”). The 1928 Treaty was ratified by what is known as the “1930 Protocol” and signed by both parties on May 5, 1930. The Treaty required Colombia and Nicaragua to recognize the sovereignty of the other over various islands, islets, and reefs in the Caribbean. The Treaty, however, did not apply to the reefs of Roncador, Quitasueno, and Serrana. Instead, the Treaty indicated that the sovereignty over these reefs was in dispute between Colombia and the United States of America.

The ICJ noted that the core of the dispute is the maritime delimitation and the lack of a single maritime boundary regarding the several reefs at issue. The ICJ found that the issue of title is not the subject-matter of the dispute but rather a necessary prerequisite for the definitive determination of the maritime areas. That is, even if the case were limited to a maritime delimitation, it still would be necessary for the Court to first resolve the question of territorial title over the maritime features in the disputed area. The ICJ concluded that two questions constituted the subject-matter of the dispute: the sovereignty of territory (specifically the ones claimed in the current case) and the maritime boundary between the parties.

Colombia’s first preliminary objection was that the ICJ did not have jurisdiction under Article XXXI of the Pact of Bogota (“Pact”) to hear Nicaragua’s claims. Article XXXI declares that the ICJ will have jurisdiction over all disputes arising from the interpretation of a treaty; any question of international law; the existence of any fact, which if established, would constitute the breach of an international obligation; or the nature or extent of the reparation to be made for the breach of an international obligation.

Colombia argued that the matters raised by Nicaragua were settled by the Treaty and the 1930 Protocol. Nicaragua, conversely, argued that the Treaty did not settle the dispute between the two countries, because the Treaty was invalid or, in the alternative, it did not cover the matters now in dispute between the parties.

The Court held that the Treaty was valid, because Nicaragua did not call into question the validity of the treaty in 1969 when Colombia began asserting claims over the islands in question. Accordingly, Nicaragua could not do so retroactively. The Court,

nonetheless, also concluded that the Treaty strictly defined the boundaries of the pieces of land declared in the Treaty but did not clearly define a general delimitation of the three reefs in question. The Court thereby found that it did have jurisdiction under Article XXXI of the Pact to hear Nicaragua's claims and rejected Columbia's first preliminary objection.

In its second preliminary objection, Colombia asserted that Nicaragua's invocation of the declarations made by the Parties under Article 36 of the Statute of the Permanent Court of International Justice as acceptances of jurisdiction of the present Court were invalid. Instead, Colombia argued that the jurisdiction under the Pact is governing and exclusive.

The Court disagreed. It concluded that the Pact and Article 36 represent two distinct bases of the Court's jurisdiction which are not mutually exclusive. In fact, the Court declared that the purpose of Article 36 was to allow states multiple avenues of access to the Court. Accordingly, the Court could find jurisdiction properly under either the Pact or Article 36. The Court's rejection of Columbia's first preliminary objection that it did not have jurisdiction under the Pact thereby negated Columbia's second objection.

The Court's final determination regarding Nicaragua's claims has not yet been issued.

For more information on this case, visit the ICJ's pending cases page at: <http://www.icj-cij.org/docket/index.php?p1=3&p2=1&code=nicol&case=124&k=e2>.

Written by: David Pustilnik