



Territorial and Maritime Dispute (Nicaragua v. Colombia; Honduras and Costa Rica)

ARGUED: 24 November 2024

DECIDED: 24 November 2024

1 This Dissenting opinion was signed and agreed to by Vice President Escobedo of Guyana, Jus-
2 tice Wasinger of Poland, Justice Hartman of Malta, and Justice Houston of Malta.

3 Summary of Arguments

4 Nicaragua approached the International Court of Justice presenting a case alleging their right
5 to certain island territories and maritime features. Their argument centers around the foreign influence
6 the United States imposed on their nation due to the 1928 Treaty of Barcenas- Esquerria, which created
7 an environment of coercion. As such, they allege the treaty is invalid. From 1926 until 1933, the United
8 States (U.S.) Military occupied Nicaragua. Prior to their occupation, the U.S. participated in reoccurring
9 landings and naval bombings. The United State's occupation coincided with the US's guerrilla warfare
10 campaign commonly cited as the Banana Wars. These conflicts fostered the state of coercion and
11 force that resulted in the 1928 Barcenas-Esquerria Treaty and served as an explicit example of the his-
12 torical and ongoing colonization of the region. The US's occupation included the deployment of the
13 military to suppress dissenters until its withdrawal in 1933. The United States occupation's end did not
14 signal the end of American colonial involvement. The Somoza Dynasty, which came to power shortly
15 after the United States withdrew troops, was established with strong backing from the United States
16 government essentially continuing the legacy of American control over Nicaragua's political and eco-
17 nomic system. The Somoza Dynasty maintained power until 1979 acting as a dictatorship. Shortly after
18 the Somoza Dynasty lost power, the United States intervened by placing an embargo on the United
19 States barring all trade between the countries severely impacting Nicaragua's economy. The con-
20 tinual occupation and foreign influence by the United States made it impossible for the state to rea-
21 sonably contest the 1928 treaty until now due to the political and economical stability of the nation.
22 Additionally, Nicaragua makes a claim that the island is terrorized given their proximity to the nation.
23 The islands of San Andres, Providencia, and Santa Catalina are located closer to Nicaragua coastline
24 than to Columbia's. Nicaragua asks the Court to affirm the sovereignty of the disputed island territories
25 and maritime features.

26 The Republic of Colombia asserts that the principles of *Uti Possidetis Juris* lay the groundwork
27 for their claim to the archipelago. Colombia contests that Nicaragua maintains sovereignty over the
28 Mosquito Coast and the Corn Lands per the 1928 Barcenas-Esquerria Treaty which also decrees the
29 archipelago to the Republic of Colombia. A substantial portion of the Republic of Colombia's argument
30 revolved around Nicaragua's timing of their application to the Court. They further claim that Nicaragua
31 abandoned their claim to the archipelago during the 1930 Protocol, which served as a provision to the
32 1928 Barcenas-Esquerria Treaty. The Republic of Colombia requested that the Court deny Nicaragua's
33 application.

34 Costa Rica appeared in front of the Court neither supporting nor refuting either side's claims.
35 They sought the court's formal recommendation to encourage Nicaragua to ratify the currently unrat-
36 ified 1979 Limits in the Seas No. 84 Treaty. Costa Rica also presented the Court with concern about the
37 possible economic implications of nullifying the 1928 Barcenas-Esquerria Treaty. Their interest in the

38 case revolved around protecting their maritime borders and economic interests.

39 Honduras appeared offering its opinion regarding the 1928 Barcenas-Esguerra Treaty. Hon-
40 duras maintained the treaty is valid, and thus, Colombia should retain its exclusive right to commercial
41 maritime ventures west of the 82nd Meridian, as well as proprietorship of the Roncador, Quitasueo, and
42 Serrano Banks.

43 Summary of Facts

44 Colombia emphasizes the roots of the San Andres archipelago lie in the Spanish Colonial Era
45 characterized by the Viceroyalty of New Granada; however, the recognition the archipelago's colonist
46 history underpins the belief of the dissent that the 1928 Barcenas-Esguerra was entered under duress.
47 Proceeding Spanish colonial rule, the San Andres archipelago was first settled by English Puritans then
48 later Dutch and French settlers. In 1786, the islands were formally granted to the Spanish Crown where
49 eventually becoming Colombia in 1822. Colombia's historical analysis relies on erasing the existing
50 Raizal people who are indigenous to the region; indigenous communities belonging to the island had
51 existed long before the colonial transfers of power underpinning the acquisition of the islands by Colom-
52 bia.

53 Nicaragua filed a case with the International Court of Justice in 2001 concerning Colombia's
54 sovereignty over maritime boundaries and a portion of islands. Historical records indicate that the
55 U.S. pressure played a decisive role in Nicaragua's acceptance of the treaty terms. The Republic of
56 Colombia asserts that the 1930 protocol marks the final chance for Nicaragua to lay claim to the
57 archipelago despite its occupation by the US. We heard the argument that the "Gap in time indicates
58 Nicaragua's agency and disproves arguments of duress." This disregards the destabilization prevent-
59 ing Nicaragua from bringing claims before the ICJ; also, recognizing the fact that the Somoza "dynasty"
60 held power from 1936-1979 and Sandinista National Liberation Front overthrew Somoza family during
61 the Nicaraguan Revolution (1961-1990), this is a reasonable time frame within 11 years of establishing a
62 non oppressive regime.

63 Summary of Jurisdiction:

64 When considering the jurisdiction of the Court over this matter, the American Treaty on Pacific
65 Settlement (i.e., hereinafter "Pact of Bogota") explicitly grants judicial authority. Referring to Article XXI
66 of the Pact of Bogota, it highlights Article 36, paragraph 2, of the Statute of the International Court of
67 Justice and recognizes the jurisdiction of the Court as "compulsory ipso facto." Meaning, the Pact of
68 Bogota recognizes the mandatory jurisdiction of the Court in circumstances that involve the following:

69 "(a) The interpretation of a treaty; (b) Any question of international law; (c) the existence of
70 any fact which, if established, would constitute the breach of an international obligation; [and] (d) The
71 nature or extent of the reparation to be made for the breach of an international obligation."

72 Given the automatic deferral to the Court in matters relating to the aforementioned, the circum-
73 stances of this case are applicable and within the jurisdiction of the Court as the parties are requesting
74 we evaluate the validity of the Pact of Bogota.

75 Moreover, Article XXXII clearly states that when parties fail to reach an agreement that:

76 "lead[s] to a solution, and the said parties have not agreed upon an arbitral procedure, either
77 of them shall be entitled to have recourse to the [ICJ]...[per] Article 40 of the Statute thereof, The Court
78 shall have compulsory jurisdiction in accordance with Article 36, paragraph 1, of the said Statute."

79 Recognizing Nicaragua has been unsuccessful in reaching consensus with Colombia, and thereby
80 Costa Rica and Honduras, and agreeing to an arbitral procedure, the Court is obligated to intervene in
81 this matter.

82 When considering the interpretation of Article VI of the Pact of Bogota, it is to the understanding
83 of the dissenting opinion that it has been misinterpreted to prohibit *any* retroactive consideration of
84 previous treaties. While Article VI does limit the application of the investigative procedures," it assumes
85 the "arrangement between parties..." was done so lawfully and in adherence to international law; how-
86 ever, the following legal analysis regarding Vienna Convention (1969) underscores the Court's agency
87 to address this matter.

88 Legal Analysis

89 Nicaragua faced coercion and legal duress under United States occupation. This caused po-
90 litical turmoil because of the oppressive leadership backed by the U.S.. Economic turmoil also ensued
91 due to US President Ronald Reagan placing an embargo against Nicaragua. Now that Nicaragua is
92 no longer under U.S. occupation, this allows for a *truly* equitable negotiation between Nicaragua and
93 neighboring countries. Additionally, the Vienna Convention (1969), specifically Articles 51 and 52, states
94 that any treaty signed under threat is unlawful and any conclusion drawn from threat of force is in vi-
95 olation of principles of international law. It is in the spirit of the United Nations Charter to reconcile
96 colonialism. Costa Rica is not party to the proposed 1979 Limits in the Seas No. 84; ratified by only
97 Colombia therefore, it is not legally binding. The economic interest at the behest of colonialism su-
98 persedes any arguments emphasizing economic merit; ethical imperative (and legal obligations as
99 aforementioned) to recognize the imperialist history of Nicaragua and the economic ties made in colo-
100 nial interests.

101 Conclusion

102 The 1928 Barcenas-Esguerra Treaty proved invalid due to the fact Nicaragua was under foreign
103 influence by the United States. Thus, Nicaragua has title to the outlined island territories and maritime
104 features. We would recommend that currently uncontested islands remain uncontested. The Court
105 would look favorably upon the parties attempting to reach an amicable solution given the absence of
106 a foreign influence in present day- Nicaragua. The Court reaffirms the potential of multistate solutions
107 through negotiation. If we were to uphold the 1928 Barcenas-Esguerra Treaty, we would essentially
108 uphold the structure of colonization something this court in good conscience can not do.

Signed By



Justice Annie Wasinger



Justice Ayleen Escobedo



Justice Levi (Rhiannon) Hartman



Justice Aliyah Houston