



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

**ARGUED: 24 November 2024**

**DECIDED: 24 November 2024**

1 This Dissenting Opinion is written and signed by Justice West of Ecuador.

## 2 Jurisdiction

3 I believe in solidarity with the Majority that the Court has the jurisdiction to decide this case  
4 under several treaties and laws. First, Article 36 of the Statute of the Court states that the Court has  
5 jurisdiction over issues talked about in the matters of the United Nations Charter, treaties, and conven-  
6 tions; Article 36 also states that the Court has jurisdiction over issues submitted to it by parties. The  
7 dispute has arisen from questions regarding the Barcenas-Esguerra Treaty of 1928, which is a ratified  
8 treaty, providing the Court jurisdiction to offer an opinion. Furthermore, the 1948 Pact of Bogota gives  
9 States the ability to submit questions to the Court if no agreement about whether the controversy is  
10 domestic or not can be reached by the parties. Both Nicaragua and Colombia are signatories of the  
11 Pact of Bogota, giving the Court legitimate jurisdiction. Next, the United Nations Convention on the Law  
12 of the Sea (UNCLOS) of 1982 in Article 287 says that States can choose how to settle disputes, including  
13 the ICJ; thus, the Court has jurisdiction in this case. Finally, Article 288 of UNCLOS states that any Court  
14 that has an issue referred to it under Article 287 has jurisdiction if the question is to interpret the appli-  
15 cation of an international agreement related to the Convention. As this case is a maritime dispute, it  
16 directly relates to UNCLOS, thereby giving the ICJ jurisdiction.

## 17 Invalidity of Treaty

18 Article 52 of the Vienna Convention on the Law of Treaties of 1969 states that a treaty is void if “its  
19 conclusion has been procured by the threat or use of force in violation of the principles of international  
20 law embodied in the Charter of the United Nations.” In 1928, the Esguerra-Barcenas Treaty was signed  
21 and ratified while Nicaragua was under occupation by the United States (U.S.). The Court thoroughly  
22 inquired into whether Nicaragua could have said no to the treaty under occupation by the United States  
23 (U.S.), and the finding was that it could not reject the treaty during the occupation of Nicaragua by  
24 the U.S. Nicaragua proved that the United States of America held control of Nicaragua at the time  
25 economically, militarily, and politically. Since Nicaragua was controlled by the US at that time, the  
26 1928 Treaty would be void because there was use of force. While Nicaragua has acted as though  
27 the Esguerra-Barcenas Treaty was valid, they were coerced into it and are bringing a claim now. The  
28 fact that they acted as though it was valid does not mean the treaty was created legitimately. While  
29 Nicaragua may have acted in agreement with the treaty, I still cannot agree that the 1928 Treaty is  
30 valid because it was created illegitimately under force. The Vienna Convention on the Law of Treaties  
31 of 1969 is very clear that treaties made under threat or use of force are void, thus I cannot agree that  
32 the Esguerra-Barcenas Treaty is valid under international law.

## 33 Legal Application

34 Having explained the lack of validity of the 1928 Esguerra-Barcenas Treaty I cannot, however,  
35 accept some arguments made by Nicaragua that they should have control of the San Andres Archipelago.

36 Those islands should be under the control of Colombia for several reasons. First, the people on the is-  
37 lands of the archipelago typically consider themselves Colombian. Nicaragua claimed that the people  
38 living on the islands consider themselves to be citizens of Nicaragua. However, the evidence presented  
39 by Nicaragua of this is insufficient. The Court recognized that most citizens consider themselves to be  
40 Colombian. Next, Nicaragua claimed Colombia has harmed the islands and mistreated the people.  
41 However, there is sufficient evidence of a rich tourism industry with a lot of economic activity and a  
42 diverse ecosystem. Colombia has not harmed the people or islands through their control, and evi-  
43 dence shows the islands under Colombian control are thriving. Thus, I cannot accept the historical  
44 and cultural arguments from Nicaragua, and assert that it is important for those islands to remain  
45 under Colombian control primarily because the people there consider themselves Nicaraguan. Since  
46 and as Colombia has controlled these islands for so long and has caused them to profit, Colombia  
47 has a right to the San Andres Archipelago because of the Acquisition of Territory by Prescription prin-  
48 ciple. There are several conditions which must be met to justify the use of this principle in application  
49 to Colombia, which Colombia has fulfilled. First, titre de souverain, meaning a State must act with in-  
50 tention and authority to control an area without recognizing authority from another country to control  
51 the same territory. Colombia has done this. Second, the possession of the islands must be peaceful  
52 and uninterrupted, meaning the former sovereign cannot object to the State's control. Colombia has  
53 been in control of the islands since the colonial occupation, meeting its requirements. Finally, to meet  
54 this principle, the State must have control of the territory for a long period of time. As previously men-  
55 tioned, Colombia has had control of the islands since the birth of the nation, satisfying this requirement.  
56 Therefore, Colombia has a right to control these islands under the Acquisition of Territory by Prescrip-  
57 tion principle. Furthermore, if the Treaty were to be judged invalid, Colombia could claim even more  
58 islands than the San Andres Archipelago to follow in line with their natural continental shelf and the  
59 right to boundaries up to 200 nautical miles under Customary International Law. Consequently, I be-  
60 lieve the 1928 Treaty to be invalid, I recognize that Colombia is asking for less than what it could be  
61 entitled to and believe the agreement is fair for the parties involved.

Signed By

Katelyn West

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Justice Katey West