

IN THE INTERNATIONAL COURT OF JUSTICE

THE REPUBLIC OF NICARAGUA

APPLICANT

V.

THE REPUBLIC OF COLOMBIA

RESPONDENT

MEMORIAL OF THE REPUBLIC OF COLOMBIA

COMES NOW the Republic of Colombia and for their Memorial to the Court states the following:

STATEMENT OF JURISDICTION

1. According to the 1928 Barceñas-Esguerra Treaty and the 1930 Protocol that followed, The Republic of Colombia and the Republic of Nicaragua agreed upon who had sovereignty over the islands disputed in this case; therefore the court does not have jurisdiction because this situation was previously resolved and agreed on by both parties.
2. According to the Pact of Bogotá, “The aforesaid procedures, furthermore, may not be applied to matter already settled by arrangement between the parties, or by arbitral award or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty.” The Barceñas-Esguerra Treaty is still in force and was never cited in Article VLIII as one to cease to be enforced.

STATEMENT OF LAW:

1. In accordance with the 1928 Barceñas-Esguerra Treaty, the Republic of Colombia maintains the sovereignty and full dominion over the islands of San Andrés, Providencia, Santa Catalina and all other islands, islets and keys which form part of said San Andrés archipelago.
2. In accordance with 1930 Protocol, referring to the 1928 treaty, the Republic of Colombia maintains control of the eastern side of the 82°W Meridian while Nicaragua maintains the western side. All of the islands, islets and cays including in the 1928 treaty are on the eastern side of the 82°W Meridian.
3. Article 51 and Article 52 of the Vienna Convention 1969 on the Law of Treaties, which states “the expression of a State's consent to be bound by a treaty which has been

procured by the coercion of its representative through acts of threats directed against him shall be without any legal effect” and “A treaty is void if its conclusion have been procured by the threat of use of force in violation of the principles of international law embodied in the Charter of the United Nations.”

- a. The Republic of Nicaragua never appealed to say that they were coerced into the Barcenas-Esguerra Treaty by the United States of America, signifying the validity of the 1928/1930 Treaty.
4. Article 56 of the 1969 Vienna Convention on the Law of Treaties states “a treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:
- a. it is established that the parties intended to admit the possibility of denunciation or withdrawal; or
 - b. a right of denunciation or withdrawal may be implied by the nature of the treaty.”

STATEMENT OF FACT:

The San Andres archipelago is located approximately 480 miles north of the mainland of the Republic of Colombia. This archipelago was considered part of the Viceroyalty of New Granada, the precursor to the modern Republic of Colombia during colonial times. There has been a Colombian claim to these islands, made official with the ratification of the Barcenas-Esguerra Treaty. At this time, the Republic of Nicaragua claims to have been influenced by the United States during the ratification of this treaty, however these claims are untrue, and attempt to disrupt decades of Colombian sovereignty over the aforementioned territories.

The ensuing disagreement is subject to previous longstanding treaties, namely the 1928/1930 Barcenas-Esguerra Treaty which delineated the archipelago and surrounding territories in two parts, along the 82°W Meridian. This provision was put forth into discussion by the Republic of Nicaragua as an important piece to their ratification of the 1928 Treaty. This provision was subsequently agreed upon, and has been adhered to for decades, until the claims by the Republic of Nicaragua have created the situation in which our nations currently find themselves.

ARGUMENTS

1. The principle of *Uti Possidetis Juris*, asserts that states who emerge from colonization, or external influence, inherit the administrative borders they hold at the time of independence. This would signify that the Republic of Nicaragua, when no longer under influence from the United States of America, would retain the borders pursuant to the agreement previously signed between the Republics of Colombia and Nicaragua. This

same principle applies to the Republic of Colombia in regard to the fact that the archipelago was a territory of the Viceroyalty of New Granada during the Spanish Colonial Era. Thus according to *Uti Possidetis Juris*, the Republic of Colombia would also retain the archipelago from its colonial history.

2. The 1928 Barcenas-Esguerra Treaty and following ratification of the aforementioned document sets forth provisions in which the Republic of Colombia is the sovereign over the archipelago, and the Republic of Nicaragua controls the Mosquito Coast and the Corn Islands. This agreement has not been disputed until this case, and remains a binding document on both parties.
3. The 1930 Protocol regarding the 1928 Barcenas-Esguerra Treaty was a provision in which neither country would claim any territory on opposing sides of the 82°W Meridian. As such, the Republic of Nicaragua would control to the west of the meridian, and the Republic of Colombia to the east. This would coincide with the land agreements between the two states regarding the archipelago and surrounding islands. By agreeing to this treaty, the Republic of Nicaragua abandoned its claims to the archipelago, while also eliminating future ability to claim these territories.
4. The Republic of Nicaragua has never filed that they were coerced under the use of force in accordance with the Vienna Convention of 1969 for the Barcenas-Esguerra Treaty. As such, the Barcenas-Esguerra Treaty is still enforceable. At no point of the 32 years after this treaty has the Republic of Nicaragua stated that they did not agree and adhere to the treaty.

SUMMARY AND REQUESTS

Reiterating the fact that Nicaragua has made no prior attempts to nullify the Barcenas-Esguerra Treaty and has had a longstanding acknowledgement of the 1928 Treaty and the 1930 Protocol as valid, the Republic of Colombia requests, if it may please the Court, to deny the Republic of Nicaragua's application, and to allow the continuation of the Barcenas-Esguerra Treaty due to its continued validity and the enduring sovereignty of the Republic of Colombia over the San Andres Archipelago.