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Research report

Forum: The International Court of Justice
Issue: Territorial and Maritime Dispute (Nicaragua v. Colombia)
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Introduction

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The International Court of Justice is one of the six main organs of the United Nations, located in the Hague, Netherlands. It was established in 1945 by the United Nations Charter. Its main function is to resolve inter-state (state v. state) disputes through international law. The court is made up of 15 judges selected by the UN General Assembly and Security Council. The Judges should be nationals of different states and serve nine-year terms. The ICJ does not prosecute individuals and only deals with states as a whole. The UN organ that prosecutes individuals is the International Criminal Court (ICC).

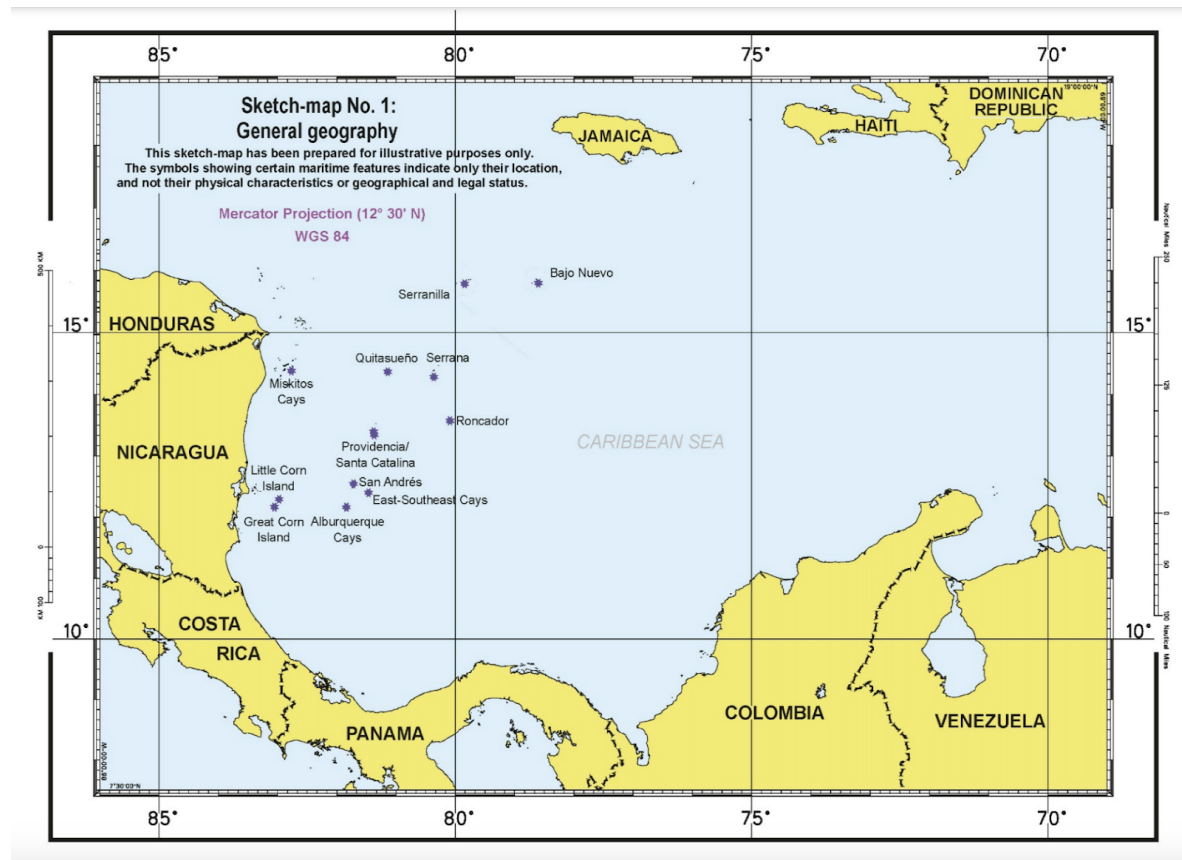


Image 1:(Pomson)

The case entitled Territorial and Maritime Dispute (Nicaragua v. Colombia) was filed by Nicaragua against Colombia for the alleged excessive maritime claims of Colombia. Nicaragua argued that they infringed the State's territorial waters and seabed resources. Furthermore, the State challenged Colombia's sovereignty over San Andres, Providencia and Santa Catalina Islands, arguing that the historical titles were insufficient to justify their claim over these territories. Additionally, Nicaragua argued that Colombia violated their right to navigate and fish in the disputed area by imposing restrictions on the State's fishing vessels. The case, in which the Court has a contentious jurisdiction, shall be explored and expanded upon in the following report.

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Definitions of key terms

Continental shelf

The land surface that extends underneath the water body from the coast (see image 2)

Nautical Mile

Unit of measurement respective to distance along the earth's surface, slightly longer than one mile on land.

Exclusive Economic Zone (EEZ)

The area of sea under which the nation has jurisdiction over resources, exploration and other marine practices.

Maritime Delimitation

The procedure in which the rights of two or more nations over an international water body are evaluated.

Archipelago

group of islands

Delineation

The act of establishing clear lines (boundaries) as a means of dividing something.

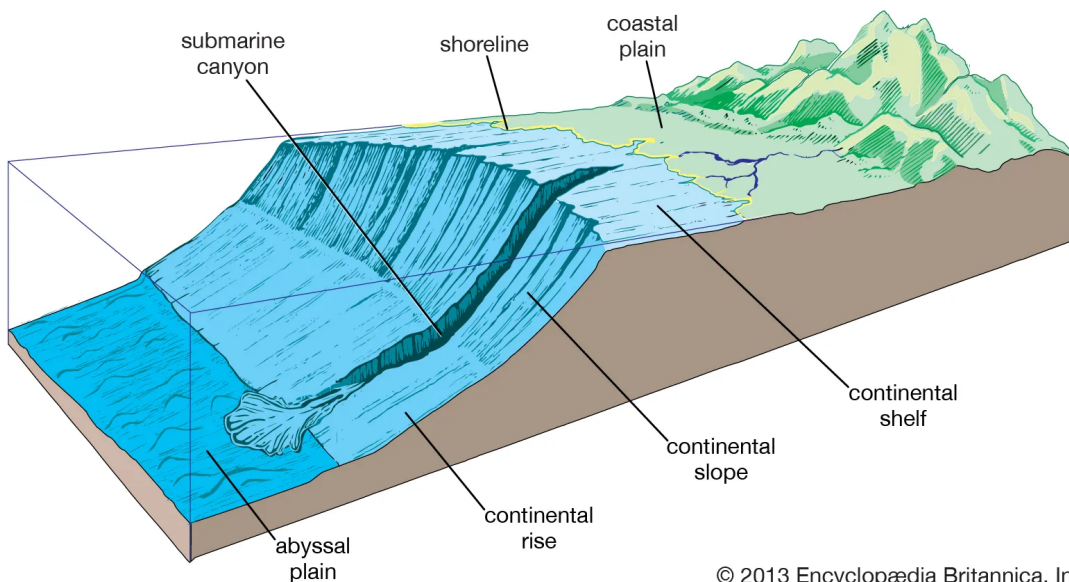


Image 2:
(Editor)

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General overview

Historical context

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The historical roots of the dispute date back to the colonial era. The islands of San Andrés, Providencia and Santa Catalina (also known as the San Andres Archipelago) were first claimed by Spain in the 16th century as a part of their broad colonial empire. They were later incorporated into what was known as the Viceroyalty of New Grenada which became the modern-day Colombia.

In the 19th century, after the Central American Nations were decolonised, new states emerged including Nicaragua. Nicaragua quickly began to dispute the newly formed Republic of Colombia's sovereignty over the islands, claiming them as its own. Regardless of this dispute, Colombia maintained its control over the territory. While Colombia had control over the territory, Nicaragua's claims were never fully extinguished. In 1858, both parties signed the "Treaty of Limits". Although the treaty aimed to assert the shared border between the two countries, the treaty contained vague and ambiguous language, leaving the possibility for interpretation and future disputes.

Although a treaty was signed, aiming to define the borders of both nations, the states continued to assert their respective claims over the territory containing the islands and its surrounding waters, through diplomatic negotiations and exchange of notes. This period in the late 19th century expanding to the early 20th century still failed to reach a mutually satisfactory resolution. Although Nicaragua still held its claims in the 20th Century, Colombia still maintained control over the territory.

The Barceñas-Esguerra Treaty (also known as the Treaty of Bogota) was signed in 1928 which aimed to resolve the dispute. The treaty recognised Colombia's sovereignty over the Archipelago and its established maritime boundaries. Nicaragua later argued that this treaty was neither effective nor fair, particularly in terms of the delineation of maritime boundaries.

By the late 20th century, the dispute had dramatically escalated with Nicaragua challenging the Treaty, arguing that the treaty did not account for the changes in international law regarding maritime boundaries, claiming it did not properly address marital delimitations and the rights to the waters surrounding the island. These claims were fueled by Nicaragua's desire to have access to the potential valuable seabed resources that the state believed it had a right to access.

As this dispute could not be resolved through bilateral negotiations, Nicaragua filed an application to the Court in 2001, requesting to revise the treaty signed in 1928.

Geographical Context

The San Andrés Archipelago is located on the Northwestern part of the Caribbean Sea and consists of several islands with San Andres, Providencia and Santa Catalina being the most significant. The Archipelago is located 775 kilometres northwest of Colombia and approximately 200 kilometres east of Nicaragua's coast. The biggest island in the Archipelago is San Andres which is also the administrative centre.

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The territory's geographical features are characterised by coral reefs, white beaches and clear water. The tropical climate of the territory is significant in terms of tourism and other economic activities based on the islands' geography.

The dispute mainly arose due to the maritime zones surrounding the islands. These zones include the exclusive economic zone of Nicaragua (EEZ) of Nicaragua (Art. 7 of Law on Maritime Areas of Nicaragua, Law No. 420) which extends 200 nautical miles from the baseline, the territorial sea which extends 12 nautical miles from the baseline of the islands (Art. 3) and the continental shelf which may extend beyond the EEZ giving rights to exploration and exploitation of resources which lie under the seabed.

The key dispute is centred around how to draw or in better terms, demarcate the maritime boundaries between the states of Nicaragua and Colombia. According to the argument of the Government of Nicaragua, the maritime zones established by the treaty of 1928 do not reflect modern international law and equitable maritime delimitation.

The significance of the territory mainly comes from its potential for geotourism and strategic placement in the Caribbean Sea. The archipelago itself is rich in marine and terrestrial ecosystems. This geotourism boosts the economy as it supports local businesses as well as increases employment. Furthermore, the location of the islands lies near important trade routes used for international trade and shipping making it carry a significant geopolitical importance. The waters of the islands are also rich in marine resources in terms of fishing as well as oil and gas reserves making it have an economic value.

Jurisdiction and the law of the sea

The court has jurisdiction over the case as both states are parties to the ICJ Statute as article 35 of the statute states that [The Court shall be open to the states parties to the Statute]. As all UN members are parties to the statute the court does have jurisdiction *ratione personae* or jurisdiction over the states. According to the Statute, in article 36 (1 a. And b.) , the Court also bears the right to interpret a treaty as well as any question on international law. In this case, the court can interpret the Treaty of 1928 to its liking.

In the case of Nicaragua v. Colombia, the main legal framework the Court can follow is the United Nations Convention on the Law of the Sea (UNCLOS). The UNCLOS provides a basis for the Court to follow guidelines before reaching a decision on the grounds of delimitation of maritime zones, marine life conservation and regulating the use of marine resources. Although Colombia is not a party to the UNCLOS, as the state has given the International Court of Justice the jurisdiction to settle the dispute, the Court by all means can use the framework of UNCLOS to reach a decision as both parties have signed other relevant treaties and agreements. Furthermore, Colombia is also bound by Customary International Law (which will be referred to as CIL from this point on) and other treaties governing maritime disputes. In this case, the ICJ relies on CIL and can use the UNCLOS as a reference point even if one of the parties is not a signatory to the convention (UNCLOS, Part XV., Article 287(Appendix 1))

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Timeline of Key Events

16th Century - The San Andres Archipelago was claimed as a part of Spain's colonial empire by Spain.

1803 - The territories were later incorporated into the Viceroyalty of New Grenada created by King Felipe IV

1822 - The Republic of Gran Colombia (a state made up of modern-day Colombia, mainland Ecuador, Panama and Venezuela) gains independence and the inhabitants of islands voluntarily adhere to the republic. The United Province of Central America (composed of 5 states: Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) did not recognise the occupation of the islands and claimed sovereignty over them

1841 - The UPCA dissolves due to civil war. The state of Nicaragua continues to dispute with the newly emerged Republic of New Granada (Modern-day Colombia and Panama)

1903 - Panama secedes from Colombia, creating its modern-day borders

1912 - Colombia establishes local administration in the islands

1928 - The Esguerra-Barcenas treaty is signed and later ratified in 1930

1980 - The revolutionary Sandinista government takes power in Nicaragua and enacts a constitutional reform, renouncing the treaty of 1928

6 December 2001 - Nicaragua files the application instituting proceedings to the ICJ over the maritime dispute

Note to judges

As the Jury, a neutral front must be maintained up until the case (conference). For this reason, this research report must be the only source you consider related to this case, aside from procedural documents. As a Jury, your most effective tool is questions. As a basis for the questions, the statements verbally said by advocates or witnesses, the evidence shown, and international legal frameworks can be referred to.

Appendix 1

Some of the relevant articles of the UNCLOS in this dispute are listed below;

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- **Article 2: The Legal Status of the Territorial Sea** - This article defines the sovereignty of coastal states over their territorial sea more specified in **Article 3** which sets a limit of 12 nautical miles to the territorial sea.
 - **Article 15: Delimitation of the Territorial Sea between states opposite or adjacent coasts** - This article focuses on how the states opposite or adjacent to another should delimit their territorial seas, specifically focusing on the principle of equidistance unless discussed otherwise by the states
 - **Article 74: Delimitation of the EEZ** - This article gives an outline of how the states should delimitate the EEZ with the basis of international law
 - **Article 121: Regime of Islands** - This article covers the maritime entitlements of the islands in an archipelago in the dispute as well as whether certain islands could generate an EEZ or a continental shelf.
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- **Article 287:** (1) A court or tribunal provided for in article 287 to which an application is made in respect of a dispute referred to in article 297 shall determine at the request of a party, or may determine *proprio motu*, whether the claim constitutes an abuse of legal process or whether *prima facie* it is well founded. If the court or tribunal determines that the claim constitutes an abuse of legal process or is *prima facie* unfounded, it shall take no further action in the case.

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Appendix 2

The Barcenas-Esguerra Treaty (1928)

As mentioned in the historical context, the Treaty of Bogota, signed on 24 March 1928 had the purpose of settling the territorial dispute between Nicaragua and Colombia, more specifically over the islands of San Andres, Providencia and Santa Catalina.

The translated key provisions of the Treaty of 1928 taken from the Counter-Memorial of Colombia (Page 249) are as follows:

- **Article 1** - In the first paragraph of the first article of the treaty, Nicaragua recognises Colombia's sovereignty over the islands of San Andres, Providencia and Santa Catalina and all the other islands that make up the San Andres Archipelago. Furthermore, Colombia recognised Nicaragua's sovereignty over the Mosquito Coast between the Cape Gracias a Dios and the San Juan River, and over the Mangle Grande and Mangle Chico islands, in the Atlantic Ocean (Great Corn Island and Little Corn Island)
- **Article 2** - This article established that the treaty well-defined the territories between the two states, stating that they were mutually acknowledged

The treaty was recognised internationally and intended to settle the territorial dispute between the two states. Nicaragua questioned the treaty's validity and argued that it was signed under duress or in other words claimed that they were coerced into accepting the treaty, stating that due to this reason, it was not applicable to be considered while settling the dispute.

Useful sources

[The San Andrés Archipelago: Colombia's Caribbean Paradise | LAC Geo](#)

[7079.pdf \(icj-cij.org\)](#) (Application of proceeding by Nicaragua)

[13870.pdf \(icj-cij.org\)](#) (Memorial of Nicaragua)

[New Title \(icj-cij.org\)](#) (Counter-memorial of Colombia)

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