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INTERNATIONAL COURT OF JUSTICE

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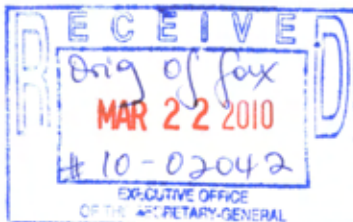
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Le 25 février 2010



Monsieur le Secrétaire général,

/, Me référant au paragraphe 2 de l'article 83 du Règlement de la Cour, j'ai l'honneur de vous faire tenir ci-joint la copie d'une requête à fin d'intervention que le Gouvernement de la République du Costa Rica, invoquant l'article 62 du Statut de la Cour, a déposée le 25 février 2010 au Greffe de la Cour, en l'affaire relative au Différend territorial et maritime (Nicaragua c. Colombie).

Conformément à la disposition susmentionnée du Règlement, je vous ferai tenir dès que possible un exemplaire de la version imprimée de la requête à fin d'intervention ; des exemplaires de ladite requête seront communiqués par le Greffe aux Etats admis à ester devant la Cour.

Veuillez agréer, Monsieur le Secrétaire général, les assurances de ma très haute considération.

Le Greffier de la Cour,

Philippe Couvreur.

Son Excellence
Monsieur Ban Ki-moon
Secrétaire général
Organisation des Nations Unies
New York,
Etats-Unis d'Amérique



INTERNATIONAL COURT OF JUSTICE

**APPLICATION
FOR PERMISSION TO INTERVENE**

BY THE REPUBLIC OF COSTA RICA

25 February 2010

CASE CONCERNING THE TERRITORIAL AND MARITIME
DISPUTE
(NICARAGUA v. COLOMBIA)

COUR INTERNATIONALE DE JUSTICE

**REQUÊTE
À FIN D'INTERVENTION**
DE LA RÉPUBLIQUE DU COSTA RICA

25 Février 2010

AFFAIRE DU DIFFÉREND TERRITORIAL ET MARITIME
(NICARAGUA c. COLOMBIE)

APPLICATION FOR PERMISSION TO INTERVENE

1. As Agent appointed by the Republic of Costa Rica I have the great honour to refer to Article 62 of the Statute of the International Court of Justice and to request the permission of the Court to intervene in the case concerning the *Territorial and Maritime Dispute* between the Republic of Nicaragua and the Republic of Colombia.

2. Article 81 of the Rules of Court specifies that an Application requesting permission to intervene shall set out:

- (a) the interest of a legal nature which the State applying to intervene considers may be affected by the decision in that case;
- (b) the precise object of the intervention;
- (c) any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties to the case.

3. These three points will be the subject of what follows; however, Costa Rica believes that a short, preliminary statement could be useful to place this Application into its context.

I. Preliminary Statements

4. In September 2008, Costa Rica asked to be furnished with all documents pertaining to the case between Nicaragua and Colombia. The Court granted this request and Costa Rica has had the privilege of reviewing the public as well as non-public written proceedings submitted to date.

5. Nicaragua instituted these proceedings against Colombia in December 2001 by filing an Application calling upon the Court, among other things, "to determine the course of the single maritime boundary between the areas of continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Colombia." In April 2003, Nicaragua filed its Memorial requesting the Court to adjudge and declare that, among other things, "the appropriate form of delimitation, within the geographical and legal framework constituted by the mainland coasts of Nicaragua and Colombia, is a single maritime boundary in the form of a median line between these mainland coasts" and that any Colombian islands and cays located on Nicaragua's side of that line be accorded enclaves of 12 and 3 nautical miles respectively.

6. In July 2003, Colombia raised preliminary objections to the jurisdiction of the Court arguing, in part, that "the controversy submitted to it by Nicaragua . . . [was] ended" and therefore beyond the jurisdiction of the Court. More specifically and of direct relevance to this Application, Colombia argued that the 1930 Protocol to the 1928 Barcenas-Esquerria Treaty established the maritime boundary between Nicaragua and Colombia along the meridian 82°W longitude. The Court disagreed that the maritime boundary had been settled. At paragraph 115 of its 13 December 2007 *Preliminary Objections* Judgment, the Court observed that "the terms of the Protocol, in their plain and ordinary meaning, cannot be interpreted as effecting a delimitation of the maritime boundary

between Colombia and Nicaragua.” As a result, at paragraph 142 of the aforementioned judgment, the Court found that it had jurisdiction “to adjudicate upon the dispute concerning the maritime delimitation between the Parties.”

7. Colombia filed its Counter-Memorial in November 2008 requesting the Court to adjudge and declare, among other things, “that the delimitation of the exclusive economic zone and the continental shelf between Nicaragua and Colombia is to be effected by a single maritime boundary, being the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the Parties is measured, as depicted on Figure 9.2 of this Counter-Memorial.”

8. Nicaragua filed its Reply in September 2009. In the Reply Nicaragua put forward a modified request asking that the Court adjudge and declare that “the appropriate form of delimitation, within the geographical and legal framework constituted by the mainland coasts of Nicaragua and Colombia, is a continental shelf boundary”, situated entirely beyond 200 nautical miles from Nicaragua and further east than the boundary requested in Nicaragua’s Memorial. Nicaragua’s request that the Court enclave any Colombian islands and cays located on Nicaragua’s side of that line remained largely unmodified from the Memorial.

9. In the process of making and supporting their submissions on the maritime boundary between them, the parties have put forward arguments that demonstrate that the prolongation of their maritime boundary will eventually run into maritime zones in which third States have rights and interests. As Nicaragua’s adjacent neighbor to the south, Costa Rica is one of those third States. It is evident that neither party has properly informed the Court of the nature or extent of third State interests in the area.

10. It is in this context that Costa Rica comes before the Court. Costa Rica wishes to make clear to the Court that it has no intention of intervening in those aspects of the proceedings that relate to the territorial dispute between Nicaragua and Colombia. It is only the maritime boundary aspect of the case with which Costa Rica is concerned, and only that part of the maritime boundary that might affect Costa Rica’s legal rights and interests. It is the purpose of Costa Rica’s intervention to inform the Court of Costa Rica’s legal rights and interests so that these may remain unaffected as the Court delimits the maritime boundary between Nicaragua and Colombia, the parties to the case before it. Costa Rica does not seek to become a party to the case.

II. The Criteria of Article 81 of the Rules of Court

A. The interest of a legal nature which Costa Rica considers may be affected by a decision regarding the maritime boundary between Nicaragua and Colombia

11. The interest of a legal nature which Costa Rica considers may be affected by the decision of the Court is Costa Rica’s interest in the exercise of its sovereign rights and jurisdiction in the maritime area in the Caribbean Sea to which it is entitled under international law by virtue of its coast facing on that sea. In their maritime boundary claims against each other the parties to this case encompass, to a greater or lesser extent, maritime areas to which Costa Rica is entitled.

12. It should be stated at the outset that Costa Rica's maritime area in the Caribbean Sea is not fully delimited. Costa Rica is party to a ratified maritime boundary agreement with Panama delimiting their respective areas in the Caribbean Sea with an equidistant line extending from the land boundary terminus separating their adjacent mainland coasts. Costa Rica has not agreed a maritime boundary with Nicaragua, although Costa Rica and Nicaragua have engaged in negotiations to this end. It is Costa Rica's hope that these negotiations will resume soon. With Colombia, Costa Rica has negotiated and signed a maritime boundary agreement – the 1977 Facio-Fernández Treaty. Costa Rica's Legislative Assembly has not ratified this agreement and the agreement has not entered into force. Costa Rica has, in good faith, refrained from acts which would defeat the object and purpose of this agreement.

13. The 1977 agreement between Costa Rica and Colombia, defining the limit separating their maritime areas in the Caribbean Sea, is predicated on the notion that the negotiating States have overlapping maritime entitlements the division of which requires agreement. This notion arises, in Costa Rica's view, from two basic assumptions: first, that Colombia has an agreed maritime boundary with Nicaragua along the meridian 82°W longitude leaving Colombia free to negotiate maritime limits with its other neighbors in the area east of 82°W; and second, that Colombian insular territory in the southwestern Caribbean Sea is entitled to full weight, or effect, in a delimitation. Based on the decision in the preliminary objections phase of the case between Colombia and Nicaragua, the first of these assumptions appears to be incorrect. The second assumption is now in question in the merits phase of this case. Costa Rica wishes to make clear that it does not take a position here, on the validity of any of these assumptions, but simply notes that the Court's ruling on the maritime boundary between Nicaragua and Colombia could affect these assumptions and, in practical terms, render the 1977 agreement between Costa Rica and Colombia without purpose. Finally, it should be emphasized that, *vis-à-vis* Nicaragua, the 1977 agreement does not preclude Costa Rica from claiming rights and interests in the area north and east of the line defined in the agreement, which, depending on the delimitation decision in the instant case, Costa Rica intends to assert.

14. Pursuant to Article 6 of the 1949 Costa Rican Constitution,¹ Costa Rica claims a territorial sea, exclusive economic zone, and continental shelf. In the absence of agreement, Costa Rica's maritime zones extend seaward and laterally to the maximum extent allowable in accordance with principles of international law. Applying the relevant principles of international law to the concave configuration of Costa Rica's Caribbean coast, this equates – at a minimum – to lateral equidistant boundaries drawn from the mainland coasts of Costa Rica and its adjacent neighbors in conjunction with a

¹ Constitution of the Republic of Costa Rica, 1949

Article 6. The State exercises complete and exclusive sovereignty over the airspace above its territory, its territorial waters for a distance of 12 miles from the low-water line along its coasts, its continental shelf and its insular sill, in accordance with the principles of international law.

Furthermore, it exercises special jurisdiction over the seas adjacent to its territory for an extent of 200 miles from the aforesaid line, in order to protect, conserve and utilize on an exclusive basis all natural resources and riches existing in the waters, soil and sub-soil of those zones, in conformity with the aforesaid principles.

200-nautical mile outer limit for Costa Rica's exclusive economic zone and continental shelf in the Caribbean Sea. Within the area thus delineated, notwithstanding the interests of other States, Costa Rica claims the sovereign rights and jurisdiction which pertain to it under international law. It is these legal rights and interests which Costa Rica seeks to protect.

15. Both Nicaragua and Colombia, in their boundary claims against each other, claim maritime area to which Costa Rica is entitled.

16. In both the Memorial and Reply Nicaragua has shown a "delimitation area" the southern limit of which cuts across Costa Rica's maritime area starting at their shared land boundary terminus and proceeding south of east toward Panama and Colombia. (See Memorial Figure 1 and Reply Figure 3-1.) Costa Rica understands that these figures are not meant to show the maritime area claimed by Nicaragua, but instead are meant to show the area in which the delimitation should occur according to Nicaragua. Nonetheless, it is Costa Rica's position that the delimitation between Nicaragua and Colombia should occur only in areas beyond those to which Costa Rica is entitled.

17. Of more concern are Nicaragua's depictions of the areas of continental shelf and exclusive economic zone to which it claims an actual or potential entitlement. At Reply Figure 3-10, Nicaragua shows its area of continental shelf entitlement with a southern limit trending eastward from the land boundary terminus with Costa Rica and, again, cutting across area to which Costa Rica is entitled. The depictions of Nicaragua's area of "potential EEZ entitlement" showing an even more aggressive southern limit can be found at Reply Figures 4-5, 6-5, 6-9, 6-10, and 6-11. Here too Nicaragua appears to claim maritime area that overlaps significantly with Costa Rica's area of maritime entitlement.

18. The actual boundary lines claimed by Nicaragua are also of concern to Costa Rica. Nicaragua makes two different boundary claims against Colombia both of which end in the south at points that are closer to Costa Rica than to Nicaragua. The first claim, made in Nicaragua's Memorial and depicted at Figure 1 of the Memorial, was to "a single maritime boundary in the form of a median line between [the] mainland coasts [of Nicaragua and Colombia]." Colombia has shown at Counter-Memorial Figure 7.1 that Nicaragua's "median line" lies *beyond* 200 nautical miles from the mainland coasts of either party to this case. What Colombia does not show is that the southern portion of Nicaragua's median line lies *within* 200 nautical miles of Costa Rica. In its Reply, Nicaragua modified its boundary claim against Colombia moving the new line far to the east of its original median line and beyond any area to which Costa Rica claims an entitlement. (See Reply Figure 3-11.) However, Nicaragua's claim to a boundary line implies entitlement to the area bounded by that line. Costa Rica is concerned that the area claimed on the basis of Nicaragua's line overlaps significantly with Costa Rica's maritime area not least because the southernmost point of this new claim line is still closer to Costa Rica than to Nicaragua. It should be emphasized that Costa Rica has never been informed of any of the claims Nicaragua is now making and which clearly infringe upon the legal rights and interests of Costa Rica.

19. Lastly, it will be clear to the Court that Nicaragua's boundary position as against Colombia has – among many other effects – the effect of eliminating any maritime boundary relationship between Costa Rica and Colombia in the Caribbean Sea.

20. Colombia also has made a boundary claim that prejudices Costa Rica's legal rights and interests. (See Counter-Memorial Figure 9.2.) In its Counter-Memorial Colombia makes multiple references to the rights and interests of third states in the area but ultimately puts forward a boundary claim against Nicaragua that is situated in maritime areas to which Costa Rica is entitled. The boundary claimed by Colombia in this case is situated *west* of the line of longitude agreed to separate Costa Rican and Colombian maritime areas and, thereby, encompasses area that would go to Costa Rica under the terms of their 1977 agreement. In addition, the southern end of the Colombian median line, despite assurances to the contrary, extends into areas to which Costa Rica is entitled in a potential delimitation with Nicaragua. Colombia recognized the underlying problem here, writing at paragraph 9.34 of its Counter-Memorial: "There is a question how far the median line should be prolonged to the south given the potential interests of third States in the region. To avoid any possible prejudice to such rights, as may exist, Colombia has placed an arrow at the end of the line" Considering the transgression represented by Colombia's median line, including that Colombia's southern arrow penetrates Costa Rica's maritime area, Colombia's assurances ring hollow.

21. It will be clear to the Court that Nicaragua and Colombia are not in the best position to protect Costa Rica's legal rights and interests. And, while Article 59 of the Statute of the Court provides that "the decision of the Court has no binding force except between the parties and in respect of that particular case," the Court will appreciate that it would be difficult for a small, non-militarized country like Costa Rica to implement this legal principle in practice.

22. Thus, the interests of a legal nature of Costa Rica which could be affected by a decision in this case are the sovereign rights and jurisdiction accorded to Costa Rica under international law and claimed pursuant to Costa Rica's Constitution. As demonstrated, these interests are clearly prejudiced by the arguments of the parties made to date and which may be made – in their current or modified forms – in future written and oral proceedings in this case. It is the purpose of this intervention to present and to show to the Court Costa Rica's legal rights and interests and, as appropriate, to state its views on how the maritime boundary claims of Nicaragua and Colombia may affect those legal rights and interests.

B. The precise object of Costa Rica's intervention

23. The object of Costa Rica's intervention is twofold.

First, generally, to protect the legal rights and interests of Costa Rica in the Caribbean Sea by all legal means available and, therefore, to make use of the procedure established for this purpose by Article 62 of the Statute of the Court.

Second, to inform the Court of the nature of Costa Rica's legal rights and interests that could be affected by the Court's maritime delimitation decision in this case. As the Chamber of the Court said in the case concerning the *Land, Island and Maritime Frontier Dispute*:

So far as the object of Nicaragua's intervention is "to inform the Court of the nature of the legal rights of Nicaragua which are in issue in the dispute", it cannot be said that this object is not a proper one: it seems indeed to accord with the function of intervention. (*I.C.J. Reports 1990, p. 130, para. 90*)

24. Thus, Costa Rica's intervention would have the limited purpose of informing the Court of the nature of Costa Rica's legal rights and interests and of seeking to ensure that the Court's decision regarding the maritime boundary between Nicaragua and Colombia does not affect those rights and interests.

C. The basis of jurisdiction which Costa Rica claims exists as between Costa Rica and the parties to the case

25. Costa Rica does not seek to become a party to the case between Nicaragua and Colombia, but seeks to intervene as a non-party under Article 62 of the Statute of the Court. In similar circumstances the Court has permitted non-party intervention in the absence of a valid jurisdictional link between the would-be intervener and the parties to the case.

26. The Court, in response to Nicaragua's request to intervene in the case concerning the *Land, Island and Maritime Frontier Dispute*, observed:

It thus follows also from the juridical nature and from the purposes of intervention that the existence of a valid link of jurisdiction between the would-be intervener and the parties is not a requirement for the success of the application. On the contrary, the procedure of intervention is to ensure that a State with possibly affected interests may be permitted to intervene even though there is no jurisdictional link and it therefore cannot become a party. (*I.C.J. Reports 1990, p. 135, para. 100*)

In that case the Court concluded that "the absence of a jurisdictional link . . . is no bar to permission being given for intervention." (*I.C.J. Reports 1990, p. 135, para. 101*)

27. In a later case the Court granted Equatorial Guinea permission to intervene as a non-party in the case concerning the *Land and Maritime Boundary Between Cameroon and Nigeria*, despite the lack of a valid jurisdictional link between Equatorial Guinea and the parties to that case.

28. Costa Rica has made a declaration under Article 36, paragraph 2, of the Statute of the Court recognizing the jurisdiction of the Court as compulsory in relation to any other State accepting the same obligation. Costa Rica's declaration was deposited on 20 February 1973, and has remained valid since then.

29. Costa Rica is a party to the Pact of Bogotá. Costa Rica deposited its instrument of ratification without reservations in May of 1949.

30. Nonetheless, a valid jurisdictional link is not required for a non-party intervention. Costa Rica is entitled to request permission to intervene solely on the basis of Article 62

of the Statute of the Court, and it does so solely for the limited purposes specified in paragraph 24 above.

III. CONCLUSION

31. On the basis of the foregoing observations, Costa Rica respectfully requests permission to intervene in the present proceedings between Nicaragua and Colombia for the object and purpose herein stated, and to participate in those proceedings in accordance with Article 85 of the Rules of Court.

32. The Government of the Republic of Costa Rica has appointed as Agent for the purposes of the present Application the undersigned. It is requested that all communications of this case be notified to the Agent at the following address:

Embassy of the Republic of Costa Rica
Laan Copes van Cattenburch 46,
2585 GB The Hague,
Kingdom of the Netherlands

25 February 2010

Respectfully,



Edgar Ugalde-Alvarez
Deputy Minister of Foreign Affairs and Worship
Agent