

**DISPUTE CONCERNING
ALLEGED VIOLATIONS OF SOVEREIGN RIGHTS AND
MARITIME SPACES IN THE CARIBBEAN SEA
(NICARAGUA V. COLOMBIA)**

**WRITTEN STATEMENT OF THE REPUBLIC OF NICARAGUA
TO THE PRELIMINARY OBJECTIONS OF
THE REPUBLIC OF COLOMBIA**

ANNEXES

LIST OF ANNEXES

ANNEX No.	DOCUMENTS	PAGE
1.	Juan Carlos Puig, “El Tratado Interamericano de Asistencia Recíproca y el Régimen Internacional Contemporáneo”, Organización de los Estados Americanos, Secretaria General Washington, D.C., Anuario Jurídico Interamericano, 1983 (Excerpts).	83
2.	Opinion of the Inter-American Juridical Committee on the American Treaty on Pacific Settlement (Pact of Bogotá), Organization of American States, Doc. OEA /Ser.G., CP/Doc. 1603/85, 03 September 1985 (Excerpts).	87
3.	President Juan Manuel Santos, Complaint against articles XXXI and L of the Pact of Bogotá, Constitutional Court, D-9907, 12 September 2013 (Excerpts).	91
MEDIA REPORTS		
4.	“The Minister of Foreign Affairs Explains in Detail the Strategy against Nicaragua”, <i>El Tiempo</i> , Colombia, 15 September 2013. (http://www.eltiempo.com/archivo/documento/CMS-13064198).	95
5.	“Government of Colombia will not implement ICJ judgment until the rights of Colombians have been restored “, <i>El Salvador Noticias.net</i> , 03 December 2012. (http://www.elsalvadornoticias.net/2012/12/03/gobierno-de-colombia-no-aplicara-fallo-cij-mientras-no-se-restablezcan-derechos-de-colombianos/).	101
6.	“Santos does not close the door to the dialogue with Ortega”, <i>Semana</i> , 09 September 2013. (http://www.semana.com/nacion/articulo/el-fallo-de-la-haya-no-es-aplicable-santos/357107-3).	105
7.	“Colombia Will Challenge Maritime Border With Nicaragua”, <i>ABC NEWS</i> , 10 September 2013. (http://abcnews.go.com/ABC_Univision/colombia-challenge-maritime-border-nicaragua/story?id=20217370).	111

8. “Colombia responds to a proposal for dialogue”, *La Prensa*, Nicaragua, 10 September 2013. 117

(<http://www.laprensa.com.ni/2013/09/10/politica/161912-colombia-responde-a-propuesta-de-dialogo>).
9. “It is Possible to Negotiate with Nicaragua in The Hague’: Carlos Gustavo Arrieta”, *El Tiempo*, Colombia, 22 November 2014. 121

(<http://www.eltiempo.com/politica/gobierno/carlos-arrieta-dice-que-es-posible-negociar-con-nicaragua-en-la-haya/14870462>).

ANNEX 1

Juan Carlos Puig, “El Tratado Interamericano de Asistencia Recíproca y el Régimen Internacional Contemporáneo”, Organización de los Estados Americanos, Secretaria General Washington, D.C., Anuario Jurídico Interamericano

1983

(Excerpts)

“In fact, the historical method proves, without a doubt, that the term was due to a typing error when preparing the final text for signature. Indeed, the real terms approved were: “in the opinion of one of them”, which were already in the Draft prepared by the Interamerican Juridical Committee that formed the basis for discussion at the Ninth International Conference.

[...]

There is therefore no doubt that the real intention of the States participating in the Conference of Bogotá was to maintain the criterion of the reference made to “one of the parties” of the controversy, which is only logic in view that such states in the same Conference held this approach for the Charter. Why would the same delegations attending the Conference adopt different approaches to the same subject? Thus, recourse to the principle of “plain meaning” (this time limited to some of the official versions) results in interpretations that do not reflect the real will of the parties and completely change the sense of the Treaty that was approved.”

ANNEX 2

Opinion of the Inter-American Juridical Committee on the American Treaty on Pacific Settlement (Pact of Bogotá), Organization of American States, Doc. OEA /Ser.G., CP/Doc. 1603/85

03 September 1985

(Excerpts)

“Also reviewed was the text of Paragraph 2, Article II concerning the discrepancy in the sense that the Pact refers to the situation that where any controversy between two or more States, which “in the opinion of the Parties” cannot be settled through direct negotiations, the Parties agree to make use of the procedures established in the Treaty. By contrast, Article 25 of the OAS Charter provides that in any such situation, in the matter of any dispute no longer capable of being settled through the usual diplomatic means, the “opinion of one of them” would be sufficient to have recourse to any of the diplomatic means provided in the Pact.

The Rapporteur took the opportunity to elaborate on his information on the subject, citing an explanatory note in Dr. Juan Carlos Puig’s study entitled “The Inter-American Treaty of Reciprocal Assistance and the Contemporary International Regime”, published in the 1983 Law Yearbook of the Organization of American States, page 173, pursuant to which, and the documentation cited therein, the change which was introduced in the Spanish version of the Pact of Bogotá would have been the result of a typing error. The note added that the French text, which is equally authentic, in contrast follows the text of the Organization’s Charter. It was verified that the French text in actuality follows that in the 1947 draft of the Legal Commission and that in Article 25 of the OAS Charter.”

ANNEX 3

President Juan Manuel Santos, Complaint against articles XXXI and L
of the Pact of Bogotá, Constitutional Court, D-9907

12 September 2013

(Excerpts)

“As it is publicly known, the International Court of Justice issued two judgments in the dispute between Nicaragua and Colombia, which create a contradiction with the Constitution at least in three elements: (i) they do not recognize the border at Meridian 82 and therefore modify the borders of Colombia through a means prohibited by the Charter; (ii) they transfer to Nicaragua the rights of Colombia over maritime areas that only Colombia can regulate through a treaty based on reciprocity and equity; and (iii) they draw a new maritime border between the two States without the consent of the Colombian people through their representatives in the exercise of their sovereignty and right to self-determination.

This modification of the maritime boundaries of the State of Colombia, with the consequent curtailment of rights for Colombia, and the allocation of the maritime areas of the Archipelago without following the procedure which the Constitution provides to change existing boundaries, is prohibited by Article 101 of the Constitution in accordance with Articles 3 and 9 of the Charter.

[...]

In effect, although the borders of Colombia with other States cannot be altered by a judicial decision rendered by the International Court of Justice, which does not represent the people of Colombia, or constitutes an expression of self-determination of the Colombians, nor is it one of the means set forth in Article 101 for fixing or modifying the borders of Colombia”

[...]

“This shows, as already indicated, that the res judicata of the ICJ judgments does not bind the parties in a dispute in the event that they decide to a contractual solution different from that set forth in the judgment of the ICJ...”

ANNEX 4

“The Minister of Foreign Affairs Explains in Detail the Strategy
against Nicaragua”, *El Tiempo*, Colombia

15 September 2013

EL TIEMPO

The Minister of Foreign Affairs Explains in Detail the Strategy against Nicaragua

María A. Holguín Speaks of the Four Pillars of the Defense of National Sovereignty in The Caribbean.

The Minister of Foreign Affairs, María Holguín, explained to EL TIEMPO the scope of the “comprehensive strategy” to defend Colombia’s sovereignty in the Caribbean Sea. She said that the Government does not disavow the ruling by The Hague Court – whereby this court acknowledged major rights to Nicaragua over those waters - , but rather that the country “faces a legal impairment” to apply it. (Also read: *Crece el malestar regional por las pretensiones de los nicaragüenses*)

How will the four points of the strategy be applied?

First point: the petition of the law that incorporates the Pact of Bogotá was filed before the Constitutional Court. President Santos has said we cannot ignore the Constitution or the spirit of the constituent when specifying how the limits are changed.

Second point: the declaration of a Comprehensive Contiguous Zone seeks to clarify this zone, which international law grants to all countries with a shoreline. Jurisdiction, customs control, environmental and immigration control is exercised there. This strengthens the unity of the archipelago in the following manner: the 24 miles of Quitasueño that adjoin with the 24 of Providence; and those of Roncador with those of Serrana.

Third point: we ratify the protection of Seaflower Reserve, wherein Colombia has advanced fishing activities for centuries. Here is a key point: this area was declared by UNESCO as a World Biosphere Reserve, which reaffirms its great ecological value to the archipelago.

Fourth point: contain the expansionism of Nicaragua, prompting recognition of an extended continental shelf east of the Archipelago of San Andrés to extend its jurisdiction to a point just 100 miles from Cartagena. We will face these expansionist ambitions with all the determination.

How and when would you hold a dialogue with Nicaragua to undersign a boundary treaty?

Colombia is open to the dialogue with Nicaragua in order to agree a treaty to establish the limits and a legal regime that contributes to security and stability in the region. The Government has stated that it expects the sentence of the Constitutional Court before undertaking any action.

Would that treaty imply that Colombia will give up sea in the Caribbean to Nicaragua?

Again, before considering the details of a treaty, the government will be attentive to the pronouncement of the Court. In principle, the parameters for Colombia will materialize in the negotiation.

Did Colombia ever legally establish Meridian 82 as the boundary in the Caribbean?

At least since 1969 Colombia granted the meridian the value of a delimitation line with Nicaragua. This position was undermined by the International Court of Justice (ICJ, based in The Hague) in its 2007 judgment on preliminary objections.

If there is a treaty, would Colombia have to forget this zone as the boundary line?

The treaty would reflect the willingness of the two States and would establish the limits.

Why has Colombia not resorted to The Hague yet?

This has been the subject of study by expert lawyers consulted, who have provided elements on possible courses of action that the Government has assessed. The Government has expressed itself on this, as it reserves the right to make use of the resources available before this Court.

Why was this revealed ten months after the ruling?

This is a delicate matter. It was necessary to do something studied and judicious. We received reviews and theses from several international and national lawyers before deciding on the way forward.

What are the legal grounds of the announced decrees?

None other than the fact that our Constitutions prevent us from applying this ruling; and in relation to the declaration of a Comprehensive Contiguous Zone, I

reiterate that we are merely establishing through a decree what international law acknowledges for countries with a shoreline, which is also contemplated in our Constitution.

Does a decree of national character and scope have the legal force to curtail international justice?

At no time is there repudiation of the Court. We are only saying that Colombia faces a legal impairment in the application of the ruling. President Santos said that a treaty could be a way forward, just as we expect the Constitutional Court to also provide us with a way forward.

Did you already inform The Hague of Colombia's stance?

Last Friday a delegate from Colombia met with the Vice President of the Court and the Secretary General, to explain the reasons why there are difficulties in applying the ruling, situation that is not alien to the Court as that of Colombia not it is the only case.

How do the interests of Colombia, Panamá and Costa Rica articulate to resort jointly before the United Nations?

In that the three are affected by Nicaragua's new claims as these pass over several countries. The right of one cannot override [the right] of the others.

Does Colombia now have a comprehensive continental shelf that deters Nicaragua from arriving at Colombian coasts?

Colombia's [continental] shelf is united and constitutes a continuous and comprehensive platform, [reason] for which we deem that the validity of Nicaragua's claim is impossible.

Santos Goes to the Island

President Juan Manuel Santos will be in San Andres on Wednesday to explain to the islanders the scope of the strategy he designed to defend [our] sovereignty.

DANIELVALERO, Political Editorial - Publication eltiempo.com, Political Section, Date of Publication: September 15, 2013- Author DANIEL VALERO

<http://www.eltiempo.com/archivo/documento/CMS-13064198>

ANNEX 5

“Government of Colombia will not implement ICJ judgment until the rights of Colombians have been restored “, *El Salvador Noticias.net*

03 December 2012

[Home](#) > [Mundo](#) > Government of Colombia will not apply the ruling by the ICJ as long as the rights of Colombians are not restituted

Government of Colombia will not implement ICJ judgment until the rights of Colombians have been restored

By [El Salvador Noticias.net](#) on December 3, 2012



The President of the Republic, Juan Manuel Santos, stated that in a meeting he held with his Nicaraguan counterpart, Daniel Ortega, he told him: “Look, President Ortega, let’s manage this like two civilized countries”.

The President reiterated that the Government of Colombia is not going to implement this ruling until "we see that the Colombia rights which have been violated are restored and are guaranteed for the future".

Considering that problems are solved in dialogue, the Colombian Head of State said to President Ortega that he has an obligation to safeguard the rights of the San Andres community.

"The right of the raizales, the right of fishing - including not only artisanal fishing but also industrial - environmental rights, rights in respect of security”, he said.

He announced that as result of this meeting with the Nicaraguan President, the two governments will manage the matter of the ruling by the Court in The Hague with forethought and discretion.

“We are going to manage this with prudence, with discretion, no insults by the news media. If there is a problem, we will call each other”, he stated.

On the other hand, President Santos welcomed the initiative by the Green Party to summon all of the green movements of the world to protect Seaflower Biosphere Reserve, declared as such by UNESCO and is located in the San Andres and Providencia Archipelago.

“It is a truly beautiful thing. I don’t know how many of you know it and have dived there. It is something truly spectacular. We cannot squander this right, which UNESCO said was a World Heritage. The world cannot afford that luxury. For this reason, I welcome the initiative to move all green parties, all green NGOs, so that it remains as biosphere reserve”, concluded the Head of State.

<http://www.elsalvadornoticias.net/2012/12/03/gobierno-de-colombia-no-aplicara-fallo-cij-mientras-no-se-restablezcan-derechos-de-colombianos/>

ANNEX 6

“Santos does not close the door to the dialogue with Ortega”, *Semana*

09 September 2013

Semana

Nación | 2013/09/09 00:00

Santos does not close the door to the dialogue with Ortega

After advising that the ruling is inapplicable, the only path for the Government will be a direct negotiation with Nicaragua.



Daniel Ortega and Juan Manuel Santos - *Photo: private file*

After the speech on Monday night in which President Juan Manuel Santos revealed the four points of the political and legal strategy to defend the Archipelago of San Andrés, the main conclusion is that the Santos government opens the door to a dialogue with his Nicaraguan counterpart, Daniel Ortega. The purpose is to negotiate a new boundary treaty between the two countries.

This follows the decision of the Colombian President to warn that the Constitution, in its Article 101, states that "the limits given in the manner provided by this Constitution may only be amended by virtue of a treaty approved by Congress, duly ratified by the President of the Republic".

The president made it clear that the ruling of the International Court of Justice can only be applied when a treaty to protect the rights of Colombians is agreed, agreement to be approved by Congress.

This announcement closes the doors to the scope of the ruling so that they may be applicable in the near future, but opens them up to a negotiation with the government of Managua.

Daniel Ortega himself had proposed to Colombia the creation of a binational commission in order to reach agreements to implement the ruling and to jointly coordinate fishing operations, joint anti-drug patrolling operations and joint administration of the Seaflower Biosphere Reserve in the Caribbean Sea, having as basis the limits set by the Court in The Hague.

But the position of Colombia is another because, as interpreted by the internationalist Enrique Gaviria Liévano, the treaty will not be reduced to a transcription of the scope of the ruling by The Hague, as President Santos rejected the decision and reaffirmed the outrage produced by new limits set by the international tribunal.

Even Senator Juan Lozano, a member of the Committee on International Affairs of the Senate, said that the Colombian Congress would not approve any treaty in which the maritime borders of Colombia correspond to those fixed by the Hague Court in its judgment of November 2012. Therefore, he warns that any negotiations between Colombia and Nicaragua will be complex.

Moreover, the decision of President Santos to issue a decree linking the continental shelf of Colombia in Cartagena to the San Andres Archipelago could constitute a "bold and innovative" decision, according to experts, which in practice could suppose contempt of the scope of the ruling.

With the decree, Santos legally reaffirmed that the continental shelf of San Andrés, which extends eastward into 200 nautical miles, joins the continental shelf that the Colombian Caribbean coast has and that extends to the northwest and toward San Andrés by at least 200 miles. This means, according to the president, that Colombia has a continuous and integrated continental shelf from San Andrés to Cartagena.

It may be contempt to the extent that most of the sea taken by the Court in The Hague is concentrated south of San Andrés, so the decision to join the two continental shelves may constitute a contempt of the scope of the ruling.

However, international law experts, like Carlos Gustavo Arrieta, consider the figure of the comprehensive contiguous zone allows for recognition of up to 24 miles around the islands. Whereas the former president of the Constitutional Court, Juan Carlos Henao, argues that President Santos said he is obliged to honor and respect the Constitution, which only sets forth that the boundary limits can be modified by treaty, and the ruling of The Hague is not. "He would be wrong in developing the consequences of ruling without seeking the regulatory adjustment to reform the limits".

These are the first reactions to an issue that will be on the agenda of President Santos up to the end of his mandate and possibly at the beginning of the next [term].

<http://www.semana.com/nacion/articulo/el-fallo-de-la-haya-no-es-aplicable-santos/357107-3>

ANNEX 7

“Colombia Will Challenge Maritime Border With Nicaragua”, *ABC
NEWS*

10 September 2013

Colombia Will Challenge Maritime Border With Nicaragua

Sept. 10, 2013

By SANTIAGO WILLS



For decades Colombia administered all the area to the east of the 82nd meridian and to the south of parallel 15th. A decision by the International Court of Justice now grants to Nicaragua all of the areas in light blue. [map by Caracol Noticias] Manuel Rueda/Fusion

The Colombian government has announced it will not abide by the International Court of Justice's ruling over a maritime border dispute with Nicaragua.

Colombian President Juan Manuel Santos said on Monday that the court's decision is "not applicable" unless a new treaty is negotiated between the two nations, and that Colombia will work to stop Nicaragua's "expansionist spirits."

"Colombians are still outraged by the ruling of The Hague's International Court of Justice, which pretends to give Nicaragua a significant portion of [our] historic and economic rights in the Caribbean," Santos said.

"We will subscribe a letter of protest along with other neighboring nations [Jamaica, Costa Rica, and Panama] that I will personally deliver to the United Nations' Secretary General," Santos added.

The president's words were met with general enthusiasm in Colombia, where politicians from both sides of the aisle praised what they interpreted as a bold and necessary stance to defend the country's sovereignty.

"That's the president Santos many Colombians were asking for," Senator Roy Barreras said shortly after Santos' speech. "A president that commits to firm and important decisions."

In Nicaragua, the Colombian government's announcement was received with wariness and skepticism.

Norman Miranda, an expert in international law, told *El Nuevo Diario*, a Nicaraguan newspaper, that Santos was overreaching with his speech, and that he was trying to involve other countries even though the ICJ's decision did not affect any other nations.

"The court maintained the rights of Jamaica, Panama, and Costa Rica," Miranda said. "They are not threatened, as president [Santos] wants to make everyone believe they are."

The Colombian government is treading a thin line in order not to completely dismiss the International Court of Justice's jurisdiction, a move that might set a dangerous precedent. The legal strategy to do that, which was put together in the past few months by local and international law firms, consists in highlighting a newly found contradiction between the Pact of Bogota, a document that guarantees the international court's jurisdiction in the country, and the Colombian Constitution.

"At no time are we disregarding the jurisdiction of the court at The Hague," Foreign Minister María Ángela Holguín told Caracol Radio on Tuesday. "We're not disregarding the ruling either. We're saying that our constitution does not permit its applicability." Santos said that it is going to sue the Pact of Bogota at the country's Constitutional Court, and that in the meantime the government will try to secure a new treaty with Nicaragua that satisfies both countries.

"We want to talk with Nicaragua about a treaty," Holguín said. "We [want to know] what Daniel Ortega thinks about this."

Nicaraguan President Daniel Ortega said on Tuesday that he wants Colombia to abide by the International Court's ruling and that the government's stance is nothing less than offensive.

“The court’s decisions are obligatory,” Ortega said. “They are not subject to discussion. It’s disrespectful to the court. It is as if we decided not to abide by the ruling because we didn’t receive 100 percent of what we asked, which in this case was the San Andrés archipelago.” The maritime dispute between the two nations has prompted a small naval arms race in the past few months.

There have been talks of war, but both countries’ armies have said they don’t want a confrontation.

“Nicaragua wants peace,” Ortega said. “We have no expansionist aims...we only want what the court at The Hague granted us in its ruling.

http://abcnews.go.com/ABC_Univision/colombia-challenge-maritime-border-nicaragua/story?id=20217370

ANNEX 8

“Colombia responds to a proposal for dialogue”, *La Prensa*,
Nicaragua,

10 September 2013

La Prensa
Colombia Responds to Proposal for dialogue



Colombian Minister of Foreign Affairs, Maria Angela Holguín

Minister of Foreign Affairs Denies that Colombia wishes to disavow the Ruling

César Úbeda

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Colombia responded to a proposal for a bilateral dialogue recently offered by the unconstitutional President, Daniel Ortega to see the applicability of the ruling by The Hague issued on November 19, 2012.

“We would like to speak with Nicaragua on a path toward a treaty, to know how President (Daniel) Ortega sees” this possibility, said the Minister of Foreign Affairs, Maria Angela Holguin to Radio Caracol.

Ortega proposed a dialogue with Colombia during his speech in celebration of the XXXIV anniversary of the Nicaraguan Army.

Ortega suggested a working commission between both countries and to work on a treaty that would respect the ruling of the International Court of Justice of The Hague.

The Colombian Minister explained that this instrument should contain “a series of agreements in themes of fishing and security. Our doors are undoubtedly open to speak with Nicaragua”, she said.

On Monday, in a speech on radio and television, Santos assured that the new maritime delimitation with Nicaragua established by the International Court of Justice (ICJ) in 2012 is inapplicable as long as there is no treaty between the two

countries, in a new gesture that rejects the verdict. “The ruling by the International Court of Justice is not applicable until a treaty is agreed that protects the rights of the Colombians, treaty that must be approved pursuant to the provisions set forth in our Constitution”, said the President.

Santos explained that the Colombian Magna Carta sets forth that the treaties that modify the boundaries or limits of the country “must always be approved by Congress”.

The Minister of Foreign Affairs assured that such stance does not mean that Colombia is disrespecting the ruling – the result of a claim by Nicaragua – or disavowing the jurisdiction of the ICJ.

“We are not saying at any time that we do not acknowledge the jurisdiction (of the ICJ). We are saying that the ruling as such, which modifies the limits, we cannot apply it because it goes against our Constitution”, she expressed.

<http://www.laprensa.com.ni/2013/09/10/politica/161912-colombia-responde-a-propuesta-de-dialogo>

ANNEX 9

“It is Possible to Negotiate with Nicaragua in The Hague’: Carlos
Gustavo Arrieta”, *El Tiempo*, Colombia

22 November 2014

'It is Possible to Negotiate with Nicaragua in The Hague': Carlos Gustavo Arrieta

The Colombian Proxy before The Hague says there is Bilateral Willingness.

By: EL TIEMPO |

11:14 p.m. | November 22, 2014



Photo: Abel Cárdenas / EL TIEMPO

Carlos Gustavo Arrieta, Proxy of Colombia before The Hague for two litigations faced by the country in that international court -

The Colombian Proxy before the International Court of Justice in The Hague, Carlos Gustavo Arrieta, assured that an eventual treaty with Nicaragua could not only include the definition of the limits between the two countries, but also all of the subjects of common interest.

After two years of the ruling of the international tribunal that stripped Colombia of its economic rights of the Caribbean Sea, Arrieta told EL TIEMPO that even the new claims of the Central American country against Colombia could be eventually settled "amicably" in an agreement of this type.

What does it mean that President Santos expressly spoke of a treaty with Nicaragua?

To me, it seems a very important step. Since the ruling was issued, the President had stated that the solution to any problem with Nicaragua involved a treaty of trustworthiness. In addition, it reflects several things.

Like what?

It is an application of what the Constitutional Court said. That high tribunal was clear about how to integrate international law with domestic [law], which was through a treaty that gathers the provisions of the ruling.

Should the treaty with Nicaragua exceed the concept of inapplicability of the ruling coined Colombia?

The issue of inapplicability is not gratuitous; the Government did not have another alternative. This is a country that by virtue of the Constitution is dualist on matters of boundaries, namely, it acknowledges the existence of international and domestic law, but it does not automatically acknowledge that international law applies preferentially over domestic [law] on matters of boundaries. After the ruling by The Hague, it inevitably had to conflict with Colombian legislation and for this reason, the ruling is inapplicable.

Namely, that the treaty itself would exceed the concept...

Of course; it is the way to make the ruling applicable.

Would it be an opportunity for the parties, beyond the ruling, to find coincidences?

Of course, a treaty with Nicaragua is a marvelous opportunity to overcome innumerable problems that the two countries could have, and we are speaking not only of boundaries, but also about many other issues.

Hypothetically, what elements could it include?

Many, but it is a political decision of the governments as to how much they would want to include in it. It would definitely have to create some type of confirmation of the archipelago and ensure its survival.

What other elements?

It must have aspects related to the protection of the raizal culture and the rights to fishing and navigation of the communities in all zones, without any type of limitation; and with the protection of the Seaflower Reserve.

Should that treaty put an end to the other claims of Nicaragua?

Those are political decisions, but of course. A treaty may include everything that the countries want; the only thing it cannot do is to affect the rights of the other States or infringe the provisions of international law.

How is the lawsuit with Nicaragua going in The Hague?

All right; there are two processes: a claim of Nicaragua for extended continental shelf beyond 200 miles, almost to Cartagena, and another for alleged breach by Colombia of the previous decision.

By virtue of a treaty, would it proceed for the parties to reach an agreement about these claims?

Of course it would proceed. Countries can settle disputes before The Hague up to the moment of the ruling itself and afterwards; at any given time, when Colombia and Nicaragua want to settle those issues in litigation, they can do so.

There are those who say that Colombia does not have a defense strategy...

Yes there is one and from the beginning. There are very clear leading threads. It is well-thought out strategy in which many people have participated. Obviously, no one can tell a country that things will turn out perfectly, it will always depend on a third person, who is a judge, but I believe that it has been thought out very carefully.

Is there an atmosphere between the parties?

“If one takes a look, Nicaragua has expressed that it wants to negotiate on several occasions, and President Santos has also said it, namely that the two countries have stated their willingness to reach an agreement”. -

EL TIEMPO

<http://www.eltiempo.com/politica/gobierno/carlos-arrieta-dice-que-es-posible-negociar-con-nicaragua-en-la-haya/14870462>