



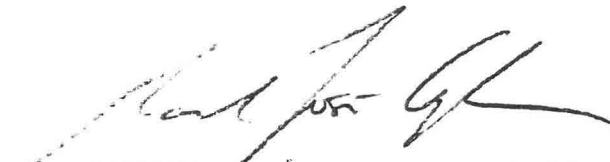
REPÚBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

Bogotá, D.C., 9 September 2021

Sir,

With reference to the case concerning the *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, I have the honour to refer to your letter (No. 155259) dated 1 September 2021, wherein the Republic of Colombia was informed about the Court's decision to authorize the production of a second batch of new documents by Nicaragua in the form of two (2) annexes as per its request of 30 July 2021. In furtherance to our letters dated 16 and 18 August 2021, the Republic of Colombia hereby submits its Comments on Nicaragua's new documents and produces additional documents in support of these Comments, in accordance with Article 56, paragraph 3, of the Rules of the Court.

Accept, Sir, the assurances of my highest consideration.



MANUEL JOSÉ CEPEDA ESPINOSA
Co-Agent of the Republic of Colombia

To His Excellency
Mr. Philippe Gautier
Registrar
International Court of Justice
The Hague



REPÚBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

Bogotá, D.C., 9 September 2021

CERTIFICATION


The undersigned Co-Agent of the Republic of Colombia certifies that the documents in Spanish, listed hereunder and invoked in Colombia's Comments on the documents submitted by Nicaragua on 30 July 2021 in the case concerning the *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, have been translated into English and that those translations are true and accurate. Copies in the original language text of all these documents invoked in Colombia's Comments are submitted to the Court.

LIST OF ANNEXES TRANSLATED INTO ENGLISH

Annex 1 Interview to the Agent of Nicaragua (2 February 2021).

Annex 2 Statements by Nicaraguan scientists and environmentalists in media reports:

- (a) Media report by La Prensa (28 January 2021).
- (b) Media report by EFE Verde (29 January 2021).
- (c) Media report by 100% Noticias (29 January 2021).



MANUEL JOSÉ CEPEDA ESPINOSA
Co-Agent of the Republic of Colombia

**COMMENTS OF THE REPUBLIC OF COLOMBIA TO NICARAGUA’S
ADDITIONAL NEW DOCUMENTS**

9 September 2021

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A. Introduction

1. Concerning the *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)* and, the letter sent by the Registrar on 1 September 2021, the Republic of Colombia was informed about the Court's decision to authorize the production of a second batch of new documents by Nicaragua in the form of two (2) annexes as per its request of 30 July 2021.¹

2. Pursuant to said note and in accordance with Article 56, paragraph 3, of the Rules of the Court, the Republic of Colombia provides its Comments on the said Nicaraguan documents and produces additional documents in support of these Comments.

3. As a preliminary note, Colombia should remark that it is still unclear as to the exceptional circumstances which led to the production of these new documents by Nicaragua at this very late stage and after Colombia's preparation for the hearings is largely complete. Nicaragua gave no reasons, neither in its request of 30 July 2021 nor in its unsolicited comments to Colombia's observations on said request,² as to why those documents were necessary or why they could not be produced at an earlier stage. Also, Colombia was only afforded less than nine days to produce its Comments.

4. Nevertheless, Colombia recalls that it has participated in these proceedings in good faith and in compliance with the provisions of the Court's Statute and the Rules of Court concerning the presentation of pleadings and evidence.

5. Colombia's Comments will be divided into three main Parts (B, C and D). In Part B, Colombia addresses the Court's lack of jurisdiction over the matters

¹ Nicaragua's Note Ref. HOL-EMB-384-2021 of 30 July 2021.

² Nicaragua's Note Ref. HOL-EMB-418-2021 of 17 August 2021.

referred to by the new documents. In Part C, Colombia will explain that it did not violate Nicaragua's sovereign rights and maritime spaces with respect to Nicaragua's new documents. Part D then ends with Colombia's conclusions regarding the assertions advanced by Nicaragua based on its newly filed documents.

B. The Court lacks jurisdiction over the matters referred to in the new documents

6. Nicaragua's second batch of new documents by which it again seeks to supplement its case, consists of nothing more than a diplomatic note from Colombia dated 15 February 2021 (Nicaragua's Annex 3),³ and Nicaragua's reply dated 16 February 2021 (Nicaragua's Annex 4).

7. The subject matter of these notes revolves around a law published days earlier, on 2 February 2021, by which the Nicaraguan National Assembly established the so-called "biosphere reserve of the Nicaraguan Caribbean". This is a matter that is not part of the subject-matter of any dispute between the Parties at the time when Nicaragua filed its Application on 26 November 2013, nor does it have any connection to Nicaragua's initial claims. As the Court noted in its judgment in the case concerning *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, the Court

"cannot take into consideration acts having taken place after the date on which the dispute between the Parties crystallized unless such acts are a normal continuation of prior acts and are not undertaken for the purpose of

³ The Spanish and English versions of Nicaragua's Annex 4 differ from each other. In the Spanish version, Nicaragua's note refers to Colombia's note as "S-DRVE-21-003007". However, in the English version, Nicaragua's note refers to Colombia's note as "S-DVRE-21-003007".

improving the legal position of the Party which relies on them (see the Arbitral Award in the Palena case, 38 International Law Reports (ILR), pp. 79-80)⁴.

8. Nicaragua's promulgation of its biosphere decree occurred well after the dispute between the Parties had crystallized. It is clearly a self-serving effort to portray Nicaragua as an environmentally sensitive country. This cannot be deemed to represent normal continuation of prior acts. As such, it should not be taken into consideration by the Court in the present proceedings.

9. In addition, as explained in Colombia's Counter-Memorial, Rejoinder, and Comments of 16 December 2019, as of 27 November 2013, Colombia was no longer bound by the American Treaty on Pacific Settlement (Pact of Bogotá). Under Articles XXXI and LVI of the Pact of Bogotá, Colombia did not consent to the Court's jurisdiction to rule on any matters that took place *after* it ceased to be bound by the Pact.

10. Therefore, even though Nicaragua's new documents have been incorporated into the case file, it does not follow from that that the Court has jurisdiction over the matters referred to in these documents. Indeed, Colombia considers that the Court lacks jurisdiction over said matters, which took place more than seven years after Colombia ceased to be bound by the Pact of Bogotá.

11. Nevertheless, even if the Court decided that it has jurisdiction over matters referred to in Nicaragua's new documents (*quod non*), they do not prove any violation by Colombia of Nicaragua's sovereign rights and maritime spaces.

⁴ *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 682, para. 135.

C. Colombia did not violate Nicaragua’s sovereign rights and maritime spaces

12. Nicaragua submitted to the Court documents which it considers “*pertinent to its claims that Colombia continues to disrespect Nicaragua’s sovereign rights and spaces in the Caribbean Sea despite the Court’s Judgment of 19 November 2012, and to disrespect the Judgment itself*”.⁵ Yet, nowhere in its letter of 30 July 2021 did Nicaragua explain how a diplomatic note constitutes a violation of its rights, nor did it identify or articulate which sovereign rights were purportedly violated by Colombia with the mere exchange of diplomatic notes.

13. As mentioned, Annexes 3 and 4 to the letter of Nicaragua’s Agent, concern a law published on 2 February 2021, by which the Nicaraguan National Assembly established the so-called “biosphere reserve of the Nicaraguan Caribbean” in areas that overlap the Seaflower Biosphere Reserve – recognized by UNESCO under the Programme of the Man and the Biosphere (MaB) since 2000.⁶

14. It is to be noted that it is precisely Nicaragua who acts in a manner contrary to international law, which is why the matter merited a diplomatic note from Colombia on 15 February 2021 protesting said law (Annex 3). Annex 4 is Nicaragua’s diplomatic note in response to Colombia’s protest.

⁵ Nicaragua’s Note Ref. HOL-EMB-384-2021 of 30 July 2021, p. 1.

⁶ The Seaflower site was officially included in the World Network of Biosphere Reserve by the International Co-ordinating Council of the UNESCO Man and the Biosphere (MAB) Programme in its Sixteenth session, held on November 2000. See: UNESCO Man and the Biosphere (MAB) Programme, Sixteenth session, 6-10 November 2000, Final Report, Document SC.2000/CONF.208/CLD.16, p. 21 at para. 122, available at: (French) https://unesdoc.unesco.org/ark:/48223/pf0000122703_fre; (English) <https://unesdoc.unesco.org/ark:/48223/pf0000122703> (Last visited: 7 September 2021).

**(1) The content of the diplomatic correspondence concerning the
“biosphere reserve of the Nicaraguan Caribbean”**

15. Colombia’s diplomatic note contains nine (9) paragraphs, the first and last being protocolary. The remaining seven (7) merit the following comments.

Paragraph 2:

16. Paragraph 2 reads: *“The Government of Colombia presents its energetic protest against this unilateral act by Nicaragua. The aforementioned law issued by the Nicaraguan legislative body (at the request of President Daniel Ortega for urgent proceedings), deliberately ignores the existence and achievements in terms of environmental protection of the Seaflower Biosphere Reserve, declared as such since 2000 by the UNESCO - specialized agency of the United Nations (UN). The declaration of the Nicaraguan reserve does not comply with the strict requirements and procedures set forth in the framework of international bodies for the recognition of areas and places of special interest and environmental protection. This Nicaraguan decision is not enforceable against third States such as Colombia.”*

Colombian comments on paragraph 2:

17. Nicaragua ignores the existence of an internationally recognized biosphere reserve – the Seaflower Biosphere Reserve. It does so through the enactment of law No. 1059 and in its reply to Colombia’s diplomatic note. This was further confirmed by the Agent of Nicaragua in a press interview dated 2 February 2021 in which he declared that *“[t]he Seaflower Reserve ... no longer exists as such”*.⁷ Nicaragua clearly – and unilaterally – disregards environmental efforts recognized

⁷ Colombia’s Annex 1.

by the international community, in this case, by UNESCO, with respect to a biosphere reserve which clearly exists.

18. As a result, Nicaragua undermines the efforts undertaken by Colombia and the international community to ensure the protection of the marine environment of the Southwestern Caribbean Sea. Nicaragua's law contains no details as to how it will be implemented or what regulations will be put into effect to protect the Nicaraguan biosphere reserve. In fact, as of the date of this writing and from the publicly available information in Nicaragua's Official Gazette (*La Gaceta - Diario Oficial*), Nicaragua's law has not been followed-up by any substantial and concrete measures to protect the environment as a consequence of its enactment.

19. It is clear, therefore, that besides being a self-serving act which has been undertaken solely for the purposes of litigation, the objective Nicaragua seeks with its law is far from environmental protection. In reality, it is a façade with no implementing legislation and regulations which actually leaves such an important ecosystem at the mercy of economic interests.

20. This has been pointed out by Nicaragua's own scientific and environmental community who have stated that the law constitutes a legal framework designed to avail hydrocarbon exploitation in the area. This, together with the timing of the enactment of the Nicaraguan law – which allowed no studies to be conducted as required by Nicaraguan regulation on the matter – and Nicaragua's negative record concerning the protection of the environment in its already existing biosphere reserves, is what prompted Colombia to protest the law.⁸

⁸ Colombia's Annexes 2(a); 2(b); and 2(c).

Paragraph 3:

21. Paragraph 3 reads: *“In addition to the above, under the pretext of an environmental protection measure, Nicaragua unilaterally assumes attributions that do not correspond to it according to international law, among them, that of determining the extension of the territorial seas of several islands of the Archipelago of San Andres, Providencia, and Santa Catalina, and that of ignoring the effects acknowledged to them by international law.”*

Colombia’s comments on paragraph 3:

22. Nicaragua unilaterally purports to establish the breadth of the territorial seas of several Colombian islands – a prerogative that does not belong to Nicaragua under international law – and to ignore the effects recognized to them by international law.

23. For instance, it unilaterally determines the 12-nautical-mile arcs of territorial sea around Quitasueño and Serrana. Nicaragua’s awareness of its wrongdoing is reflected on the fact that in its reply to Colombia’s note, Nicaragua had to go out of its way to acknowledge this situation by stating that it was *“limiting itself to reflecting indicatively such areas...”*⁹

Paragraph 4:

24. Paragraph 4 reads: *“In addition, Nicaragua improperly attributes powers to itself, violating international law and affecting the rights of Colombia in the Archipelago and its inhabitants - including its Raizal community.”*

⁹ Nicaragua’s Annex 4, para. 4.

Colombian comments on paragraph 4:

25. As recognized by international courts and tribunals, and as explained by Colombia in its written pleadings, there is an inextricable connection between environmental protection and the well-being of human communities. When the environment of vulnerable communities – such as the Raizales and other inhabitants of the Archipelago – is at stake, States need to be even more diligent with respect to the need to protect the environment of these communities.¹⁰

26. As the Inter-American Court of Human Rights noted through an Advisory Opinion in 2017, that there is “*an undeniable relationship between the protection of the environment and the realization of other human rights, since the environmental degradation and the adverse effects of climate change affect the effective enjoyment of human rights*”.¹¹ The Court therefore stressed the duty of States to respect this relationship, including the obligation to prevent significant environmental damage, within or outside of their territory.

27. Consequently, Nicaragua’s law, which as mentioned is absent of any real intent to protect the environment, and which seeks to undermine internationally recognized efforts as those achieved by the Seaflower Biosphere Reserve, jeopardizes the Raizales and other communities which inhabit the Archipelago of San Andrés, Providencia, and Santa Catalina. Colombia’s protest on this matter must be understood as to address the obligation of States – in particular, States parties to the American Convention on Human Rights such as Colombia and Nicaragua – to act with respect for the protection of the environment as it relates to the rights of the aforementioned human communities.

¹⁰ Colombia Counter-Memorial, Ch. 3, Section C(3); and Colombia Rejoinder, Ch. 2, Section D(4)(b).

¹¹ Inter-American Court of Human Rights. Advisory Opinion OC-23/17 of 15 November 2017, para. 47; Colombia Rejoinder, Ch. 2, Section D(4)(b).

Paragraph 5:

28. Paragraph 5 reads: “*Likewise, Colombia rejects that Nicaragua classifies portions of the Caribbean Sea as if they were part of its territory by using the expression ‘Nicaraguan Caribbean’ in the naming of the law, which is manifestly contrary to international law.*”

Colombian comments on paragraph 5:

29. Nicaragua qualifies portions of the Caribbean Sea as if they were part of its territory, as is evident in the title of the law and in its reply to Colombia’s protest, where Nicaragua declares that “*the waters on which the Nicaraguan Caribbean Biosphere Reserve is found are indisputably part of [Nicaragua’s] Caribbean territory*” (emphasis added).¹² Such an allegation again shows how Nicaragua’s conception of its rights over maritime spaces is contrary to international law. Nicaragua simply assumes that it has full and unfettered sovereignty beyond its 12 nautical-mile territorial sea, not just the limited sovereign rights and jurisdiction that international law allocates to coastal States.¹³

30. Given Nicaragua’s misguided conception of the law of the sea in a manner contrary to international law, it should come as no surprise that Colombia raised a protest.

Paragraph 6:

31. Paragraph 6 reads: “*Finally, the Nicaraguan declaration represents one more attempt to generate facts with a view to the eventual opening of the hearings*

¹² Nicaragua’s Annex 4, para. 3.

¹³ This has already been noted by Colombia in its written pleadings (see: Colombia Counter-Memorial, Ch. 3; Colombia Rejoinder, Ch. 1; and Colombia’s Comments of 16 December 2019, para. 82).

in the oral stage of the process on the Alleged Violations of Sovereign Rights and Maritime Spaces (Nicaragua vs. Colombia), currently in progress before the International Court of Justice. The foregoing, surely with the objective of pretending before the Court compliance with and respect for the standards on human rights and the environment, despite the fact that it is already widely known by the international community that Nicaragua is a systematic offender in these matters.”

Colombian comments on paragraph 6:

32. Prior to this year, Nicaragua never considered it necessary to enact such a law and even attempted to detach the present proceedings from any environmental connotation. Nicaragua has asserted that “[n]either the so-called ‘special characteristics’ of the relevant part of the Caribbean Sea ... nor the rights and duties of the Parties with respect to the preservation and protection of the environment ... are relevant to the present case.”¹⁴

33. Given this position, it is evident that Nicaragua’s enactment of law No. 1059 and its biosphere reserve is *post-facto* and self-serving attempt shortly before the opening of the hearings aimed to portray itself as an environmentally responsible State. Nicaragua’s past conduct belie any notion that Nicaragua has been sensitive to environmental matters.

34. In fact, the evidence on the record shows precisely the opposite of what Nicaragua now intends to establish. Colombia has documented several instances where Nicaraguan fishermen have been observed using destructive and illegal fishing practices in the biosphere region or causing marine pollution within the extremely sensitive Seaflower Biosphere Reserve area.¹⁵

¹⁴ Nicaragua Reply, para. 1.12.

¹⁵ Colombia Counter-Memorial, Ch. 8.

35. Conversely, Nicaragua has not produced a single piece of evidence that it ever tried to stop or prevent such practices. Law No. 1059 appears to be one more example of *lex simulata* by Nicaragua, that is, a law that is apparently operable but one that is never intended to be applied, and which simulates compliance with international obligations on environmental protection without any concrete actions demonstrating such compliance.

Paragraph 7:

36. Paragraph 7 reads: “*Let this be the opportunity to reiterate that Colombia will spare no effort in defending the highest interests of the Nation before international bodies, including the rights of Colombians, among them, those of the Raizal population and all the inhabitants of the Archipelago*”.

Colombian comments on paragraph 7:

37. As any other State, Colombia is entitled to resort to any legitimate means within international law to defend its interests and rights, as well as those of its citizens, including the Raizal people and the inhabitants of the Archipelago.

38. The proceedings before the International Court of Justice are one such means, and in the present proceedings Colombia has brought before the Court, through its counterclaims, the existence, relevance and need of protection for the traditional fishing rights and environmental habitat of the Raizales.

Paragraph 8:

39. Paragraph 8 reads: *“The Government of Colombia avails itself of the opportunity to reiterate its willingness to advance an open dialogue with the Southwestern Caribbean States in order to continue adopting the best standards for the protection and conservation of maritime spaces and resources of the Seaflower Biosphere Reserve established within the framework of UNESCO.*

Colombian comments on paragraph 8:

40. The effective protection of the environment of the Southwestern Caribbean imposes the need for cooperation between States. Such a commitment is contained, for instance, in the Cartagena Convention to which both Colombia and Nicaragua are Parties. Article 4(1) of the Convention establishes that:

“[t]he Contracting Parties shall, individually or jointly, take all appropriate measures in conformity with international law and in accordance with this Convention and those of its protocols in force to which they are parties to prevent, reduce and control pollution of the Convention area and to ensure sound environmental management, using for this purpose the best practicable means at their disposal and in accordance with their capabilities”.

41. Moreover, in the above-mentioned Advisory Opinion of 2017, the Inter-American Court of Human Rights noted that:

“[w]ith the purpose of respecting and guaranteeing the rights of life and integrity of the people under their jurisdiction, States have the obligation to

cooperate, in good faith, for the protection against significant transboundary harm caused to the environment.”¹⁶

42. Colombia, has always sought to engage with other States and UNESCO, approaching environmental matters under the premise that ecosystems are interrelated units which are better protected through collaborative, concerted and cooperative measures. Colombia’s willingness to cooperate in this sense has consistently been demonstrated; paragraph 8 of its diplomatic note is no more than a further expression of such a will. To the contrary, Nicaragua disregards both the Cartagena Convention and the rulings of Inter-American Court of Human Rights – both of which it consistently fails to acknowledge in its written pleadings in this case and in law No. 1059.

D. Conclusions

43. In conclusion, the Republic of Colombia reiterates its concern for the attempts by Nicaragua to manufacture situations for the purpose of artificially improving its case against Colombia. This is a concern which Colombia has raised on several occasions to Nicaragua by diplomatic means, including in the diplomatic note that Colombia sent to Nicaragua on 15 February 2021.¹⁷

44. Nicaragua’s law, which is absent of any real intent to protect the environment, ignores the existence of and undermines the efforts achieved by an internationally recognized biosphere reserve – the Seaflower Biosphere Reserve.

¹⁶ Inter-American Court of Human Rights. Advisory Opinion OC-23/17 of 15 November 2017, para. 244(7); Colombia Rejoinder, para. 2.105.

¹⁷ See for example: Colombia’s comments of 16 December 2019 to Nicaragua’s new documents, Annex 5, para. 7.

45. Colombia reiterates as well that Nicaragua ignores international law by classifying waters beyond its territorial sea as part of its maritime territory, and by unilaterally purporting to determine the breath of the territorial sea of several Colombian islands, among other violations of international law which gave rise to Colombia's diplomatic protest.

46. It is also clear from the foregoing, that Colombia did not violate Nicaragua's sovereign rights and maritime spaces.

List of Annexes¹⁸

Annex 1 Interview to the Agent of Nicaragua, 2 February 2021.

Annex 2 Statements by Nicaraguan scientists and environmentalists in media reports:

- (a) Media report by La Prensa (28 January 2021).
- (b) Media report by EFE Verde (29 January 2021).
- (c) Media report by 100% Noticias (29 January 2021).

¹⁸ As per Article 51, paragraph 3, of the Rules of the Court, it is to be noted that only certain relevant passages of the following documents have been translated and attached herewith as Colombia's Annexes, as said passages directly relate to the content of Colombia's comments to Nicaragua's new documents.