



**EMBASSY OF NICARAGUA
THE HAGUE**

The Hague, 09 October 2015
REF: **HOL-EMB-179**

Excellency

I have the honour to refer to the questions put forward by H.E. Judge Cançado Trindade at the end of the hearing held on Friday, 02 October 2015, with reference to the case concerning *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*.

Your letter of 2 October 2015 (Ref. No. 146132) informed the undersigned Agent that the Court had fixed 9 October 2015 as the time limit in which the Government of the Republic of Nicaragua may furnish the written reply to said question.

In compliance with this indication, the Republic of Nicaragua has prepared its Written Reply which is enclosed herein.

Accept, Sir, the assurances of my highest consideration.

Carlos J. ARGÜELLO GÓMEZ
Agent
Republic of Nicaragua

**His Excellency
Mr. Philippe Cuvreur
Registrar
International Court of Justice
Peace Palace
The Hague**

QUESTIONS BY JUDGE CANÇADO TRINDADE

Question 1: “Do the inherent powers or *facultés* of contemporary international tribunals ensue from the exercise itself, by each of them, of their international judicial function?”

Question 2: “Do the distinct bases of jurisdiction of contemporary international tribunals have an incidence on the extent of their *compétence de la compétence*?”

Question 3: “Do the distinct bases of jurisdiction of contemporary international tribunals condition the operation of the corresponding mechanisms of supervision of compliance with their respective judgments and decisions?”

The answers below are given in complement to the relevant parts of Professor Pellet’s pleadings of 29 September and 2 October.¹ Nicaragua will not repeat here what has already been said and respectfully asks His Excellency Judge Cançado Trindade and the Court to consider that these passages are part of the present answers.

Before answering each of the three questions in turn, Nicaragua will make two general remarks which it deems to be relevant for all of them.

First, the inherent powers (or jurisdiction) of international courts and tribunals stem from their very nature. Indeed, the particular contours of their jurisdiction are described in their respective statutes but the fact that all are *judicial* organs has necessary consequences when their judicial functions are at stake and must be preserved, which can result in recognizing either derived competences or limitations to the exercise of their competences.

Second, the international context is also of particular relevance, in particular concerning the follow up of their judgments since they do not enjoy the support of the State apparatus (police, army, administration) to have their decisions enforced.

¹ CR 2015/23, 29 September 2015, pp. 53-56, paras. 21-28, and CR 2015/25, 2 October 2015, pp. 37-40, paras. 12-17 (A. Pellet).

With this in mind, Nicaragua will answer in turn to each of Judge Cançado Trindade's questions.

Question 1: "Do the inherent powers or facultés of contemporary international tribunals ensue from the exercise itself, by each of them, of their international judicial function?"

As noted above, Nicaragua thinks that, more widely than from *the exercise* of their judicial function, the inherent powers of international courts and tribunals ensue from their very *existence* and nature as judicial organs. This being said, when such an organ has exercised a competence belonging to it, such as prescribing interim measures or rendering a judgment, it can use its inherent power to draw the legal consequences of the non-implementation or incomplete implementation of its decision. Otherwise – and except in exceptional circumstances (see below, our answer to question 3) – the binding character of their decisions would remain completely unheeded, and parties would be free to ignore the judgments and orders of the courts and tribunals not only with impunity (in the strict sense of it being without punishment) but even without non-punitive legal consequences.

Question 2: "Do the distinct bases of jurisdiction of contemporary international tribunals have an incidence on the extent of their compétence de la compétence?"

Nicaragua is of the opinion that the *kompetenz kompetenz* principle (understood to mean the competence of a tribunal to make a legally-effective determination of its own jurisdiction) is a well-established legal principle of general application.² In this respect it can be said to be inherent, in that it does not depend on whether or not it is expressly granted by the statute of the court or tribunal concerned (as does Art. 36(6) of the Statute of the ICJ) and that, therefore it is not dependent on the bases of jurisdiction, if this expression means the bases on which the tribunal is seised (e.g., for the ICJ, a compromissory clause or an optional declaration).

² I.C.J., Judgment, 18 November 1953, *Nottebohm case (Preliminary Objection)*, Reports 1953, p. 119 ("Since the *Alabama* case, it has been generally recognized, following the earlier precedents, that, in the absence of any agreement to the contrary, an international tribunal has the right to decide as to its own jurisdiction and has the power to interpret for this purpose the instruments which govern that jurisdiction.").

If “bases for jurisdiction” is intended to point at the statute establishing the international court of tribunal concerned, Nicaragua is of the opinion that in all cases, it includes the power or *faculté* to decide on the existence and scope of an inherent power. However, the recourse to the *compétence de la compétence* principle will lead to different conclusions according to the various statutes.

In other words, we are of the opinion that, in the absence of some express provision in their statute, all tribunals have the same right to determine the scope of their own (express, implied, inherent) powers.

Question 3: “Do the distinct bases of jurisdiction of contemporary international tribunals condition the operation of the corresponding mechanisms of supervision of compliance with their respective judgments and decisions?”

Here again, Nicaragua suggests that is not so much the bases of jurisdiction, one the basis of which the tribunal is seized, but rather the statute that establishes the tribunal that influences the mechanisms of supervision of compliance with its decisions (including judgments). In other words, Nicaragua is of the opinion that, in the absence of some express provision in their statute, all tribunals have the same right to determine the scope of their own (express, implied, inherent) powers, but they would naturally bear in mind their particular role in any wider array of organs or procedures of which they are a part.

No-one could expect a tribunal to be powerless in the face of a party that simply ignores orders from the tribunal; but the existence within the system of which the tribunal is a part of another organ with supervisory powers will have an effect on the ranger of powers that it is assumed were inherent in the tribunal when it was established.

As was explained by Nicaragua’s counsel during the pleadings and as is recalled above, one of the reasons why it is indispensable for international courts and tribunals to exercise some kind of jurisdiction on the implementation of their judgments is that there is no executory force at the world level. However, when a political organ is vested with

some kind of power in respect with the implementation of the judgments of international courts or tribunals, this inherent power may lose its character of necessity since the binding character of the judgment can be effectively assured by the political organ in question³. This explains why the European Court of Human Rights exercises only marginally its inherent power in relation with the execution of its judgments, by contrast with the Inter-American Court which cannot rely on such a mechanism of implementation.

Nicaragua hopes that it has addressed the points at which the questions were directed. If this is not the case, or if the Court wishes to have a fuller response on any point, Nicaragua would be pleased to amplify this response.

³ On the particular issues (or non-issues) relating to Article 94 of the Charter, see: CR 2015/23, 29 September 2015, pp. 58-60, paras. 33-38 (Pellet) et CR 2015/25, 2 October 2015, p. 46, para. 30 (Pellet).