

9-20-2007

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Recommended Citation

Leffert, Mike. "Nicaragua and Colombia in New Round of Fighting Over Archipelago." (2007). <https://digitalrepository.unm.edu/noticen/9547>

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Nicaragua and Colombia in New Round of Fighting Over Archipelago

by Mike Leffert

Category/Department: Nicaragau

Published: 2007-09-20

Nicaragua's claim to sovereignty over the San Andres Archipelago has returned to the diplomatic agenda as suspected oil deposits provide compelling economic incentive for the Central American country to wrest control of the islands from their present owner, Colombia. Colombia authorized Norwegian exploration of the area in 2005, heating up the issue, which was taken to the International Court of Justice (ICJ) in 2001.

The dispute actually dates back to the 1920s, when Nicaragua signed a treaty recognizing the 15th parallel as its maritime boundary with Honduras and ceding the islands of San Andres and Providencia and Serrana, Rocador, and Quitasueno keys to Colombia. The archipelago of San Andres, Providencia and Santa Catalina is 775 km northwest off Colombia's coast and 220 km east off Nicaragua's coast. San Andres has a population of slightly more than 100,000.

In 1980, during his first presidency, President Daniel Ortega renounced the treaty on the grounds that the US forced the decision to compensate Colombia for its US-crafted loss of Panama. The US Marines exerted the alleged coercive force at gunpoint. There is no disputing the Marines were there. As one of his earliest moves upon returning as president, Ortega objected to Colombia's entry into Plan Puebla-Panama (see NotiCen, 2007-04-19), a move timed to the last flare-up of the controversy.

In July, the Colombian government said that it would not accept any ICJ decision and that the sovereignty of the islands was not up for discussion. Colombian Foreign Minister Fernando Araujo said his country's position was that the issue was settled in 1928 with the signing of the Esquerra-Barrancas Treaty and again with its ratification in 1930. If that did not settle it, said Araujo, there was the Pacto de Bogota of 1948, in which Nicaragua recognized the validity of the 1928 treaty. "With that," said the minister, "the court's jurisdiction is excluded, whatever difference it might interpose." The treaty ratified the 1803 cession of the islands to Nuevo Granada, the Spanish colony that included Colombia, while giving Nicaragua possession of the Mosquito Coast, now Nicaragua's Caribbean coast.

With that recitation of history, Araujo was responding to an objection by Ortega to the presence of Colombian President Alvaro Uribe on the island on July 20, Colombian Independence Day. "This seems to me a lack of respect, making this defiant stand with powerful forces, because they are very powerful forces, militarily speaking," said Ortega. He was talking about a military parade marking the day.

In the Asamblea Departamental of San Andres, deputies rejected criticism of the parade and called Nicaragua's claim unfounded. The Asamblea passed a resolution demanding respect from Nicaragua, which it also sent on the ICJ. The document went further in accusing Managua of

violating the human rights of the island's residents "with threats and with kidnapping fishers and boats that are doing their fishing in Colombian waters." It cited even more ancient documentation than had the foreign minister in asserting that "185 years ago the Cabildo de Providencia freely adhered to the Constitucion de Cucuta on June 23, 1823." Lest there be the slightest doubt as to their intent or resolve, the Asamblea concluded, "We reiterate, in the name of the ancestral, present, and future people, our disposition not to cede one drop more of the water of our archipelago, nor much less one kilometer of terra firma to another state."

Legal opinions many and various

It is not, however, water or land that the Nicaraguans want; it is oil, and, according to scholars, the matter is not as simple as who has the most venerable documents or most convincing rhetoric. "Modern law of the sea, which is still evolving, is confronting the classic stance of international law with its strict respect for treaties," said law professor Antonio Rengifo Lozano of the Universidad Nacional in Bogota. "The way this and other conflicts will be solved is crucially important because they will set lasting precedents for the 21st century."

Nicaraguan law professor and specialist in territorial issues Norman Miranda said the US presence in Nicaragua at the time of the treaty introduced the legal concept of diminished sovereignty, an important consideration in overturning this kind of agreement. From the remaining involved country, University of Florida professor and author of a history of Colombia David Bushnell offered, "The legitimacy of the Nicaraguan government that signed the treaty is simply irrelevant. The pertinent facts are that the islands have been formally part of Colombia from the time of independence until now, and the great majority of inhabitants want to stay part of Colombia."

Accepting that what Nicaragua really wants is the oil

Some experts believe that what it is after is expanded maritime rights so it can drill for oil and gas and get at least some share in the lobstering and shrimping on the Luna Verde shelf, which Colombia now controls. There is some possibility that Nicaragua could be awarded some expanded rights because the islands are considerably closer to Nicaragua than to Colombia and, as Martin Pratt, geographer at the International Boundaries Unit at Durham University in Britain, put it, "The modern law of the sea is clear that maritime boundary delimitation must produce an equitable solution."

As the case plods on in The Hague, there is the possibility, however slim, that neither country will prevail. The black Raizal minority of San Andres, which settled the island, has said it would ignore any court decision, and it seeks autonomy. "The [autonomy] movement has come about because of the ill treatment of the natives by the Colombian state. As long as Colombia continues to exercise power over us, the legitimate owners, the Raizal people, will continue to be second-class citizens," said movement leader Raymond Howard.

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