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World Court Wades Into Nicaragua-Colombia Maritime Border Dispute

by Benjamin Witte-Lebhar

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A long-anticipated International Court of Justice (ICJ) ruling that was supposed to settle a decades-old maritime boundary dispute between Nicaragua and Colombia has instead riled relations further still for the two countries.

In a binding decision announced Nov. 19, the Netherlands-based ICJ recognized Colombian sovereignty over a handful of disputed keys near the Caribbean archipelago of San Andrés. In a previous ruling, the court established that the archipelago’s three biggest islands—San Andrés, Providencia, and Santa Catalina—also belong to Colombia, even though they are much closer to Nicaragua (220 km) than they are to Colombia (775 km).

When it came to the water around those islands, however, the ICJ ruled very much in favor of Nicaragua, nearly doubling the country’s Caribbean claims by extending its maritime border well east of the 82nd meridian, a de facto boundary line imposed for years by Colombia. Nicaragua had long argued that the meridian demarcation violated the country’s right under international law to enjoy sovereignty over the first 200 nautical miles of coastal waters. After more than 10 years of deliberations, the ICJ now says it agrees (NotiSur, Sept. 22, 1995).

"The provisional median line cut Nicaragua off from three-fourths of the area into which its coast projected," said Peter Tomka, the head judge in the case. The court’s goal, he explained, was to reach an "equitable solution" by dividing up the disputed areas in a "reasonable and mutually balanced way."

Cause for celebration

Nicaragua, which now controls nearly 100,000 additional sq km of sea—at least on paper—is clearly satisfied with the ICJ’s decision. President Daniel Ortega called it "a national victory." His wife and official spokesperson Rosario Murillo described the ruling as "the beginning of a new history of recovering Nicaragua's sovereignty."

The "loss" of the islets in question is of little apparent concern compared to what Nicaragua gained. The disputed waters are teeming with marine life, particularly in and around an area known as the Seaflower Biosphere Reserve, which received UNESCO recognition in 2000 and is home to one of the largest coral reefs in the Americas. The ruling also extends Nicaraguan sovereignty over valuable fishing grounds. Currently 70% of the lobsters Colombia exports come from the area.

There are hints as well that the disputed waters could eventually be used for offshore oil drilling. Earlier this month Nicaragua’s Minister of Energy and Mines Emilio Rappaccioli announced a tentative agreement with Spanish energy giant Repsol to begin preliminary exploration studies in the Caribbean, including in areas just extended to the country by the ICJ ruling.

"The endgame was not to gain sovereignty over a few rocks and stones in the Caribbean; our main objective was to establish clear borders with Colombia that respect our claim to at least 200 nautical
miles of ocean," Francisco Aguirre, who served as Nicaragua’s foreign minister under President Arnoldo Alemán (1997-2002), told the online news site The Nicaragua Dispatch. "In that sense, we achieved our endgame. And as the Shakespeare play says, all’s well that ends well."

**Bye-bye, Bogotá pact**

Authorities in Colombia, starting with President Juan Manuel Santos, are livid and appear hell-bent on discrediting and ultimately ignoring the ICJ ruling. The president’s initial reaction was to accuse the ICJ of committing "omission, errors, excesses, and inconsistencies that we can’t accept." Foreign Minister María Angela Holguín took a softer approach, calling later that day for dialogue with Nicaragua.

But, as the days went on, Santos remained on the defensive. Colombian citizens, in the meantime, took to the streets in several major cities to protest what they saw as an embarrassing attack on their country’s sovereignty. In one poll, 85% of Colombians who responded said they wanted their government to ignore the maritime boundary changes, even if doing so could result in a military conflict.

With his own approval numbers in sudden free fall, President Santos took the dramatic step on Nov. 28 of withdrawing Colombia from the Bogotá Pact, a 1948 Organization of American States (OAS) treaty by which most countries in the region agreed to recognize ICJ jurisdiction in international disputes. During the following years and decades, the majority of signatories—including Colombia in 1968—ratified the treaty. Notable exceptions include Venezuela, Argentina, and the US.

In announcing the withdrawal, Santos said his government would only recognize land and sea borders set through bilateral treaties. "Never again should we have to face what happened to us on Nov. 19," he said. Colombia and Nicaragua established their pre-ICJ ruling maritime borders in a 1928 treaty. Nicaragua, which was occupied at the time by US military forces, has long challenged the validity of that accord.

Analysts say Colombia’s reversal on the Bogotá Pact cannot be applied retroactively and thus does not legally affect the ICJ maritime border ruling. "This is little more than a salute to the flag," Jaime Durate, an international-law expert at Bogotá's Universidad Externado de Colombia, told The Miami Herald.

Nicaraguan authorities agree. "The ruling’s already been made. It’s over," Carlos José Argüello Gómez, who presented Nicaragua’s case before the ICJ, said during a recent meeting with government officials in Managua. He went on to say that the Ortega administration has no interest in renegotiating the borders with Colombia. "Simply put, it just wouldn't make any sense," he said.

"**Improvised responses**"

Still, Santos’s refusal to heed the ICJ ruling certainly spells trouble for Nicaragua, which has no immediate way of forcing the Colombian government into compliance. Militarily, Ortega has little bite to back up his bark. Nicaragua’s meager armed forces would no doubt be out-gunned should tensions with Colombia lead to open conflict.

Both leaders say they are hoping to avoid such a scenario. Ortega and Santos met face to face in Mexico City just prior to the Dec. 1 inauguration ceremony for Mexican President Enrique Peña.
Nieto. "I told [Ortega] that we need to manage this situation with cool heads, in a friendly and diplomatic way...to avoid incidents," the Colombian president told reporters afterwards. War "is a last resort. Nobody wants a violent confrontation."

Ortega said military action is "completely ruled out." That did not stop him, however, from trying the next day to flex a bit of naval muscle. "At midnight on Sunday [Dec. 2] our ships sailed," the Nicaraguan leader announced in a brief radio and television message. "They sailed to the recovered area, and by now they have established sovereignty in that whole territory." Nicaraguan fishing boats, in the meantime, are complaining of harassment at the hands of Colombian military vessels, which continue to patrol the disputed waters.

Michael Shifter and Cameron Combs of the Washington, DC-based think tank Inter-American Dialogue believe the "improvised responses" currently being seen from the Colombian and Nicaraguan governments speak to a much larger problem. Latin America, they explained in a recent briefing, simply does not have "credible and effective multilateral mechanisms" to settle such disputes. The OAS, they argue, lacks the infrastructure to handle matters of this kind. The more recently created Unión de Naciones Suramericanas (UNASUR) has shortcomings as well, namely that some perceive it as politically partisan.

So what options does Ortega have? The Nicaraguan president, a historically divisive figure when it comes to the international stage, has already ruled out bringing the case before the UN Security Council. "How will that solve anything?" he asked reporters last week. "All it takes is one veto and there’s goes the solution."

Ex-foreign minister Aguirre thinks Ortega’s best bet at this point is to approach individual foreign governments and lobby for support. While he could start with ally nations such as Venezuela and Bolivia, there is no reason why Ortega should not also plead his case to nations such as Japan, Canada, and even the US. "Traditionally, the United States had been much closer to Colombia, but I don’t see the United States taking Colombia’s side when there’s a World Court ruling involved," he said.

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