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No End In Sight For Nicaragua-Colombia Sea-Border Standoff

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A maritime border dispute that was supposed to have been settled last year by the UN’s International Court of Justice (ICJ) continues to fuel a war of words between Nicaragua and Colombia, whose respective leaders—Presidents Daniel Ortega and Juan Manuel Santos—dug their heels in still deeper in recent weeks with fresh legal challenges that threaten to extend the discord for years to come.

Colombia suffered a stunning setback last November when the ICJ, or World Court as it is commonly known, granted Nicaraguan control of a huge swath of contested Caribbean waters (NotiCen, Dec. 13, 2012). The ruling followed more than a decade of deliberations. The ICJ upheld Colombia’s claim to the Caribbean archipelago of San Andrés—even though its islands are far closer to Nicaragua—but established Nicaraguan sovereignty over much of the surrounding sea. Overall, Nicaragua gained at least 75,000 sq km of valuable maritime territory at Colombia’s expense.

The Santos administration made it clear from the start it was unwilling to accept the loss. It has struggled ever since, however, to justify the stance, which amounts to open defiance of The Hague-based tribunal’s supposedly binding authority in the matter.

Desperate for a face-saving solution to the conundrum, the Colombian president recently turned to his country’s Corte Constitucional for help. In mid-September, Santos called upon the court to consider arguments against the Pacto de Bogotá, a 65-year-old international treaty by which Colombia originally agreed to recognize ICJ jurisdiction. Santos says the pact contradicts national law regarding national borders and is thus unconstitutional. Colombia’s Constitution establishes that borders can be altered only via bilateral treaties, not, as the pact allows, by an outside legal authority.

As such, the ICJ’s November judgment is "not applicable," Santos announced during a Sept. 9 radio and television address. The president went on to say, "Colombians are still outraged by the ruling," and he warned that he would "confront [Nicaragua’s] expansionist pretensions with all the determination and rigor it requires."

The only way Colombia will accept changes to its boundary lines, Santos explained, is through direct negotiations with Nicaragua. The president qualified his government’s stance by saying that any new treaty the two nations might come up with would have to "protect the rights of Colombians" and be approved by his nation’s Congress.

Seeking "clarification"
Nicaragua says there is nothing to negotiate—except maybe how best to implement the ICJ’s binding decision. "The [World] Court’s decisions are obligatory," President Ortega, in direct response to Santos’ statements, told reporters on Sept. 10. "They are not subject to discussion. It’s..."
disrespectful to the court. It’s as if we decided not to abide by the ruling because we didn’t receive 100% of what we sought, which in this case was the San Andrés archipelago."

"Nicaragua wants peace," Ortega added. "We don’t have any expansionist intentions. That’s ridiculous. Expansionism is something that’s done with violence. All we want is what the court in The Hague awarded us in the [November] ruling."

Less than a week later, however, the Ortega administration muddied the already turbulent diplomatic waters with a legal maneuver of its own. On Sept. 16, Nicaragua formally petitioned the ICJ to revisit the Caribbean border dispute. It is hoping in particular that the court will offer a more detailed definition of the new boundary lines and consider extending Nicaragua’s reach into the Caribbean even further—by approximately 150 nautical miles.

Nicaragua’s representative in The Hague, Carlos Argüello, describes the new petition as a natural extension of the original ICJ proceedings. "The court defined the borders as being at 200 nautical miles [from Nicaragua’s Caribbean coast], but it did not have enough information to determine how much further Nicaragua’s continental shelf extends beyond that distance," he told reporters. "What we’re looking to settle now is everything that wasn’t clear the first time around."

**Gunboat diplomacy**

Argüello’s explanation did little to assuage concerns in Colombia, which sees the new ICJ petition as a clear provocation. "We vehemently reject the new petition, which is asking that the [continental] shelf be extended even though the ICJ in The Hague already ruled against that," Santos told reporters on Sept. 19. "We believe that [Nicaragua’s] new case is unfair, unfounded, unfriendly, reckless, and has no chance whatsoever of succeeding."

The president—a one-time naval cadet who later served a stint as defense minister—issued his statement while traveling around the San Andrés archipelago on board the Colombian warship Almirante Padilla. "We’re here patrolling and exercising sovereignty over Colombian waters," said Santos, who was accompanied by his justice and defense ministers, various Colombian legislators, and the head of the country’s Corte Suprema de Justicia (CSJ) Ruth Marina Díaz. A second military frigate joined in the patrol exercises as well.

This is not the first time Colombia has tried to fortify its position by flexing a bit of military muscle. Two weeks earlier authorities in the coastal city of Cartagena made a show of christening another warship, the US$60 million frigate 7 de Agosto, which will soon be on its way to patrol the 82nd parallel, a north-south line that Colombia considers to be its "real" maritime border with Nicaragua (NotiCen, Sept. 12, 2013).

Nicaragua—by far the weaker of the two nations—is looking to boost its military presence in the contested waters as well. In August, the country announced plans to renew its patrol fleet by purchasing at least eight new boats. Last month, the country’s Army chief, Gen. Julio Cesar Aviles, warned that Nicaragua would not negotiate away "even a single drop of water."

**Oil interests**

Last year’s World Court ruling unleashed no shortage of emotions: jubilation in Nicaragua; trepidation among Colombian fishing fleets; anger, disappointment and surprise among regular Colombian citizens. "Colombia has been in a state of shock since the court’s ruling," Carlos Salgar,
an international affairs professor at the Universidad Externado in Bogotá, told the Los Angeles Times last month. "Although it was predictable, Colombians had been persuaded by members of former President Andrés Pastrana’s negotiating team at the outset of the case that Colombia would win the process and everything would come out fine."

After the initial uproar, however, the standoff entered into something of a holding pattern—at least until July, when news that Nicaragua was auctioning off sea concessions to would-be energy prospectors sent tempers flaring in Bogotá. Relations soured further still in August when, at the Ortega administration’s behest, the US firm Noble Energy began drilling an exploratory oil and gas well in waters awarded Nicaragua by the ICJ ruling. Noble Energy has plans to drill in an adjoining offshore bank as well.

But after reaching their peak with Santos’ swashbuckling performance onboard the Almirante Padilla, tensions now seem to be dissipating somewhat. During a late-September address at the UN General Assembly meeting in the US, the Colombian president—to the surprise of some observers—chose not to mention Nicaragua. Ortega was a no-show at the event. "I would have been like the bullfighter waiting for the bull," the Nicaraguan president later said. "We would have looked ridiculous. I would have looked ridiculous."

Now that they have launched their respective legal challenges, Santos and Ortega may be keen to let the issue rest for a while. For all their bombast, neither side wants to push their differences to the point of military confrontation. The dispute is not, however, going away any time soon, especially if Noble Energy strikes oil in the Caribbean. The company is expected to complete the first phase of its exploration efforts by mid-November.

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