

**TERRITORIAL AND MARITIME DISPUTE  
NICARAGUA V. COLOMBIA**

**APPLICATION BY COSTA RICA FOR PERMISSION TO INTERVENE**

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**COSTA RICA'S ANSWER TO THE HONOURABLE JUDGE BENNOUNA'S QUESTION**

1. At the conclusion of the oral pleadings on Costa Rica's application for permission to intervene in the case concerning the *Territorial and Maritime Dispute (Nicaragua/Colombia)*, Judge Bennouna posed to Costa Rica the following question:

“Costa Rica has indicated to the Court that it has still not ratified the maritime delimitation treaty in the Caribbean Sea, which it signed with Colombia on 17 March 1977, “in consideration of Nicaragua’s continuous requests that Costa Rica not ratify the treaty until the dispute with Colombia has been resolved [and] acting out of good neighbourliness” (CR 2010/12, p. 22, para. 8 (Brenes)).

Has Costa Rica postponed ratification of the Treaty of 17 March 1977 pending the Court’s judgment on the merits, in the case before it, between Nicaragua and Colombia?

In other words, is Costa Rica waiting for the Court’s judgment on the merits for clarification of certain notions mentioned in the same verbatim record (CR 2010/12, p. 35, para. 13 (Lathrop)), on the basis of which the 1977 Treaty was supposedly negotiated and signed?”<sup>1</sup>

2. With regard to the first formulation of the question, Costa Rica answers affirmatively: Costa Rica has postponed ratification of the 1977 agreement because the ongoing dispute between the Parties, Nicaragua and Colombia, requires decision by this Court. On 24 December 1999, the Nicaraguan president, Arnoldo Alemán, announced Nicaragua’s intention to bring a case before this Court against Colombia.<sup>2</sup> That same year, President Alemán warned Costa Rica that should the treaty between Costa Rica and Colombia in the Caribbean Sea be ratified, this would create a serious crisis.<sup>3</sup> Subsequently, on 21 February 2001, Roberto Rojas, the Foreign Minister of Costa Rica, announced in relation to ratification of the 1977 agreement that Costa Rica “will await the results from The Hague to better clarify which is really the actual territorial

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<sup>1</sup> CR 2010/17, p. 27 (Judge Bennouna).

<sup>2</sup> *Nicaragua's Written Observations to Colombia's Preliminary Objections*, Vol. I, p. 127, para. 3.91.

<sup>3</sup> See *La Nación*, San José, 25 October 2000, [http://www.nacion.com/ln\\_ee/2000/octubre/25/ultima3.html](http://www.nacion.com/ln_ee/2000/octubre/25/ultima3.html) (“The Nicaraguan president, Arnoldo Alemán, warned Costa Rica last year that should that Treaty that delimit areas in the Caribbean Sea be approved, it would provoke a serious crisis like the one that Honduras is facing resulting from a similar agreement with Colombia.” (Translation by Costa Rica)).

sovereignty pertaining to Colombia, and which pertains to Nicaragua.”<sup>4</sup> At that time, the 1977 Treaty was already before Costa Rica’s Legislative Assembly. On 12 September, 2001, a commission of the Legislative Assembly referred the agreement back to the executive branch for possible resubmission to the Assembly. On 6 December 2001, Nicaragua did, in fact, file its application in this case, asking the Court

“to adjudge and declare:

*First*, that the Republic of Nicaragua has sovereignty over the Islands of Providencia, San Andres and Santa Catalina and all the appurtenant islands and keys, and also over the Roncador, Serrana, Serranilla and Quitasueño keys (in so far as they are capable of appropriation);

*Second*, in the light of the determinations concerning title requested above, the Court is asked further to determine the course of the single maritime boundary between the areas of continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Colombia, in accordance with equitable principles and relevant circumstances recognized by general international law, as applicable to such a delimitation of a single maritime boundary.”<sup>5</sup>

3. In this context, the Costa Rican executive branch has, to date, not resubmitted the 1977 agreement for legislative consideration. In this sense, “Costa Rica has postponed ratification of the Treaty of 17 March 1977 pending the Court’s judgment on the merits, in the case between Nicaragua and Colombia”.

4. For the sake of completeness, it must be noted that Costa Rica’s constitution places the foreign affairs power, including the power to negotiate and conclude international agreements, in the executive, but locates the power to conclusively bind the State through ratification with Costa Rica’s legislature, the Legislative Assembly. Thus, as noted during Costa Rica’s oral submissions, the ultimate decision to ratify, if and when the Treaty is resubmitted, “falls upon Costa Rica’s Parliament”.<sup>6</sup> And, as is the nature of the democratic process, that decision will be taken in consideration of the varied positions put forward by Costa Rican civil society and the individual members of the Assembly.

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<sup>4</sup> *La Nación*, San José, 21 February 2001, [http://www.nacion.com/ln\\_ee/2001/febrero/21/ultima1.html](http://www.nacion.com/ln_ee/2001/febrero/21/ultima1.html) (Translation by Costa Rica).

<sup>5</sup> *Application Instituting Proceedings*, p. 8, para. 8.

<sup>6</sup> CR 2010/12, p. 22, para. 8 (Brenes).

5. However, with regard to the second formulation of the question—“[. . .] is Costa Rica waiting for the Court’s judgment on the merits for clarification of certain notions mentioned in the same verbatim record [. . .], on the basis of which the 1977 Treaty was supposedly negotiated and signed?”—the answer is that Costa Rica is not. These notions were presented by Costa Rica in its Application<sup>7</sup> and oral submissions<sup>8</sup> to demonstrate that Costa Rica believed—at the time the 1977 agreement was concluded—that Colombia was the state with which delimitation was required in this part of the Caribbean.<sup>9</sup> The decision in this case may confirm or contradict this belief, but is not itself a reason for the non-ratification of the 1977 agreement. Moreover, neither the “certain notions” referenced in the question posed by the Court nor the 1977 agreement itself constitute an interest of a legal nature that may be affected by the decision in this case, *per se*. Costa Rica’s interest of a legal nature, as presented in its Application and throughout its oral submissions is its “[. . .] interest in the exercise of its sovereign rights and jurisdiction in the maritime area in the Caribbean Sea to which it is entitled under international law by virtue of its coast facing on that sea.”<sup>10</sup>

6. In its limited position in this request for permission to intervene, Costa Rica has not asked the Court to adjudicate the legal merits of the notions underpinning the 1977 agreement. Instead, Costa Rica has simply brought to the Court’s attention the implications for the geographic scope of Costa Rica’s legal interest, should the Court’s decision affect its neighborly relationships in the vicinity of the 1977 agreement. Should this happen, it would render ratification without purpose or practical effect.

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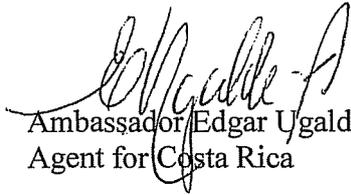
<sup>7</sup> *Application for Permission to Intervene by the Republic of Costa Rica*, p. 3, para. 11.

<sup>8</sup> CR 2010/12, p. 35, para. 13 (Lathrop).

<sup>9</sup> This belief is consistent with Costa Rica’s diplomatic note (No. 68,682 - PE) of 18 October 1972 “regarding the situation of the banks of Quitasueño, Roncador and Serrana”, all of which are located well to the north, beyond any area to which Costa Rica may be entitled in accordance with the principles of international law. (*Memorial of the Government of Nicaragua*, Vol. II, Annex 36, p. 133).

<sup>10</sup> *Application for Permission to Intervene by the Republic of Costa Rica*, p. 2, para. 11; *see also* CR 2010/12, pp. 30-31, paras. 10-14 (Vargas); CR 2010/12, p. 33, para. 4 (Lathrop); CR 2010/15, p. 17, para. 18 (Lathrop); CR 2010/15, p. 18, para. 3 (Ugalde).

7. Finally, Costa Rica reiterates that it has complied in good faith with the 1977 Treaty, that it will continue to do so, and that it does not seek any particular outcome from this case in relation to this Treaty.

  
Ambassador Edgar Ugalde Alvarez  
Agent for Costa Rica

