

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DU DIFFÉREND
TERRITORIAL ET MARITIME

(NICARAGUA *c.* COLOMBIE)

EXCEPTIONS PRÉLIMINAIRES

ARRÊT DU 13 DÉCEMBRE 2007

2007

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING THE TERRITORIAL
AND MARITIME DISPUTE

(NICARAGUA *v.* COLOMBIA)

PRELIMINARY OBJECTIONS

JUDGMENT OF 13 DECEMBER 2007

Mode officiel de citation:

*Différend territorial et maritime (Nicaragua c. Colombie),
exceptions préliminaires, arrêt, C.I.J. Recueil 2007, p. 832*

Official citation:

*Territorial and Maritime Dispute (Nicaragua v. Colombia),
Preliminary Objections, Judgment, I.C.J. Reports 2007, p. 832*

ISSN 0074-4441
ISBN 978-92-1-071038-1

| | |
|------------------------------|------------|
| N° de vente: Sales number | 931 |
|------------------------------|------------|

13 DÉCEMBRE 2007

ARRÊT

DIFFÉREND TERRITORIAL ET MARITIME
(NICARAGUA c. COLOMBIE)
EXCEPTIONS PRÉLIMINAIRES

TERRITORIAL AND MARITIME DISPUTE
(NICARAGUA v. COLOMBIA)
PRELIMINARY OBJECTIONS

13 DECEMBER 2007

JUDGMENT

PRINTED IN THE NETHERLANDS

ISSN 0074-4441

ISBN 978-92-1-071038-1



9 789210 710381

TABLE OF CONTENTS

| | <i>Paragraphs</i> |
|---|-------------------|
| 1. CHRONOLOGY OF THE PROCEDURE | 1-14 |
| 2. HISTORICAL BACKGROUND | 15-32 |
| 3. SUBJECT-MATTER OF THE DISPUTE | 33-42 |
| 4. FIRST PRELIMINARY OBJECTION | 43-120 |
| 4.1. General overview of the arguments of the Parties on the first preliminary objection | 43-44 |
| 4.2. The appropriate stage of proceedings for examination of the preliminary objection | 45-52 |
| 4.3. Jurisdictional system of the Pact of Bogotá | 53-59 |
| 4.4. The question whether the 1928 Treaty and 1930 Protocol settled the matters in dispute between the Parties | 60-120 |
| 4.4.1. Arguments of the Parties | 60-61 |
| 4.4.2. The conclusion of the 1928 Treaty and signature of the 1930 Protocol | 62-72 |
| 4.4.3. The question whether the 1928 Treaty was in force in 1948 | 73-82 |
| 4.4.4. Examining the preliminary objection in relation to different elements of the dispute | 83-85 |
| 4.4.5. The jurisdiction of the Court as regards the question of sovereignty over the named islands of the San Andrés Archipelago | 86-90 |
| 4.4.6. The jurisdiction of the Court as regards the question of the scope and composition of the rest of the San Andrés Archipelago | 91-97 |
| 4.4.7. The jurisdiction of the Court as regards the question of sovereignty over Roncador, Quitasueño and Serrana | 98-104 |
| 4.4.8. The jurisdiction of the Court as regards the question of maritime delimitation | 105-120 |
| 5. SECOND PRELIMINARY OBJECTION | 121-140 |
| 6. OPERATIVE CLAUSE | 142 |

INTERNATIONAL COURT OF JUSTICE

YEAR 2007

13 December 2007

2007
13 December
General List
No. 124CASE CONCERNING THE TERRITORIAL
AND MARITIME DISPUTE(NICARAGUA *v.* COLOMBIA)

PRELIMINARY OBJECTIONS

JUDGMENT

Present: *President* HIGGINS; *Vice-President* AL-KHASAWNEH; *Judges* RANJEVA, SHI, KOROMA, PARRA-ARANGUREN, BUERGENTHAL, OWADA, SIMMA, TOMKA, ABRAHAM, KEITH, SEPÚLVEDA-AMOR, BENNOUNA, SKOTNIKOV; *Judges ad hoc* FORTIER, GAJA; *Registrar* COUVREUR.

In the case concerning the territorial and maritime dispute,

between

the Republic of Nicaragua,
represented by

H.E. Mr. Carlos Argüello Gómez, Ambassador of the Republic of Nicaragua to the Kingdom of the Netherlands,

as Agent and Counsel;

H.E. Mr. Samuel Santos, Minister for Foreign Affairs of the Republic of Nicaragua,

Mr. Ian Brownlie, C.B.E., Q.C., F.B.A., member of the English Bar, Chairman of the United Nations International Law Commission, Emeritus Chichele Professor of Public International Law, University of Oxford, member of the Institut de droit international, Distinguished Fellow, All Souls College, Oxford,

Mr. Alex Oude Elferink, Research Associate, Netherlands Institute for the Law of the Sea, Utrecht University,

Mr. Alain Pellet, Professor at the University Paris X-Nanterre, Member and former Chairman of the United Nations International Law Commission,

Mr. Antonio Remiro Brotóns, Professor of International Law, Universidad Autónoma, Madrid,
 as Counsel and Advocates;
 Ms Irene Blázquez Navarro, Doctor of Public International Law, Universidad Autónoma, Madrid,
 Ms Tania Elena Pacheco Blandino, Counsellor, Embassy of Nicaragua in the Netherlands,
 Ms Nadine Susani, Doctor of Public Law, Centre de droit international de Nanterre (CEDIN), University of Paris X-Nanterre,
 as Assistant Advisers,

and

the Republic of Colombia,
 represented by

H.E. Mr. Julio Londoño Paredes, Ambassador of the Republic of Colombia to the Republic of Cuba,
 as Agent;
 H.E. Mr. Guillermo Fernández de Soto, Ambassador of the Republic of Colombia to the Kingdom of the Netherlands, member of the Permanent Court of Arbitration and former Minister for Foreign Affairs,
 as Co-Agent;
 Mr. Stephen M. Schwebel, member of the Bars of the State of New York, the District of Columbia, and the Supreme Court of the United States of America; member of the Permanent Court of Arbitration; member of the Institut de droit international,
 Sir Arthur Watts, K.C.M.G., Q.C., member of the English Bar; member of the Permanent Court of Arbitration; member of the Institut de droit international,
 Mr. Prosper Weil, Professor Emeritus, University of Paris II; member of the Permanent Court of Arbitration; member of the Institut de droit international; member of the Académie des Sciences Morales et Politiques (Institut de France),
 as Counsel and Advocates;
 Mr. Eduardo Valencia-Ospina, Member of the United Nations International Law Commission,
 Mr. Rafael Nieto Navia, former Judge of the International Criminal Tribunal for the former Yugoslavia; former Judge of the Inter-American Court of Human Rights; member of the Permanent Court of Arbitration; member of the Institut de droit international,
 Mr. Andelfo García González, Professor of International Law, Deputy Chief of Mission of the Embassy of Colombia in the Kingdom of Spain, former Deputy Minister for Foreign Affairs, Republic of Colombia,
 Mr. Enrique Gaviria Liévano, Professor of Public International Law; former Ambassador and Deputy Permanent Representative of Colombia to the United Nations; former Chairman of the Sixth Committee of the United Nations General Assembly; former Ambassador of Colombia to Greece and to the Czech Republic,

Mr. Juan Carlos Galindo Vacha, former Deputy Inspector-General before the Council of State of the Republic of Colombia, National Head of the Civil Registry,

as Advocates;

Ms Sonia Pereira Portilla, Minister Plenipotentiary, Embassy of Colombia in the Netherlands,

Mr. Juan José Quintana, Minister Counsellor, Ministry of Foreign Affairs of the Republic of Colombia,

Ms Mirza Gnecco Plá, Counsellor, Ministry of Foreign Affairs of the Republic of Colombia,

Mr. Julián Guerrero Orozco, Counsellor, Embassy of Colombia in the Netherlands,

Ms Andrea Jiménez Herrera, First Secretary, Ministry of Foreign Affairs of the Republic of Colombia,

Ms Daphné Richemond, member of the Bars of Paris and the State of New York,

as Legal Advisers;

Mr. Scott Edmonds, Cartographer, International Mapping,

as Technical Adviser;

Ms Stacey Donison,

as Stenographer,

THE COURT,

composed as above,

after deliberation,

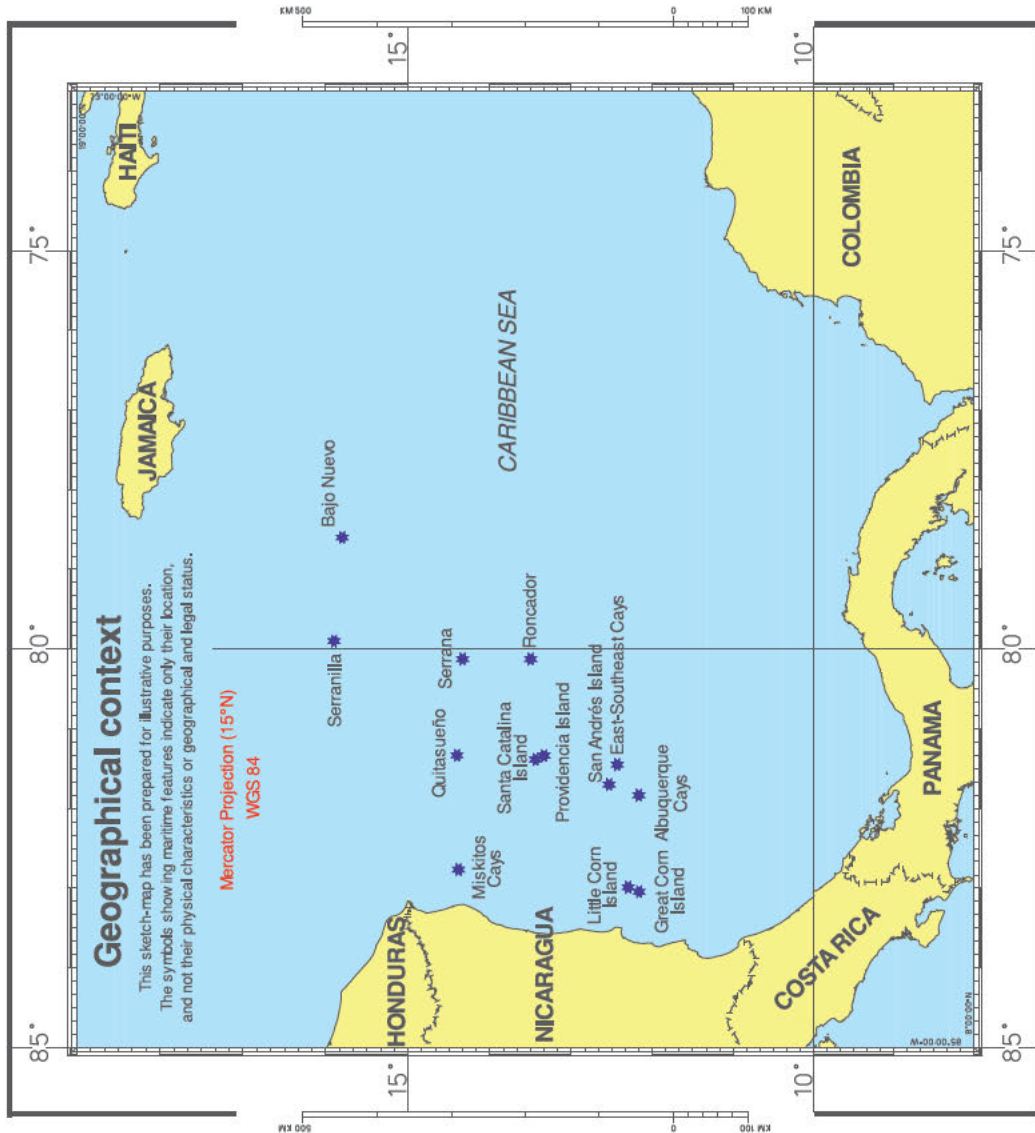
delivers the following Judgment:

1. On 6 December 2001, the Republic of Nicaragua (hereinafter “Nicaragua”) filed in the Registry of the Court an Application instituting proceedings against the Republic of Colombia (hereinafter “Colombia”) in respect of a dispute consisting of “a group of related legal issues subsisting” between the two States “concerning title to territory and maritime delimitation” in the western Caribbean (for the geographical context of the case, see below, p. 836, sketch-map).

In its Application, Nicaragua seeks to found the jurisdiction of the Court on the provisions of Article XXXI of the American Treaty on Pacific Settlement signed on 30 April 1948, officially designated, according to Article LX thereof, as the “Pact of Bogotá” (hereinafter referred to as such) as well as on the declarations made by the Parties under Article 36 of the Statute of the Permanent Court of International Justice, which are deemed, for the period which they still have to run, to be acceptances of the compulsory jurisdiction of the present Court pursuant to Article 36, paragraph 5, of its Statute.

2. Pursuant to Article 40, paragraph 2, of the Statute of the Court, the Registrar immediately communicated the Application to the Government of Colombia; and, pursuant to paragraph 3 of that Article, all other States entitled to appear before the Court were notified of the Application.

3. Pursuant to the instructions of the Court under Article 43 of the Rules of Court, the Registrar addressed to States parties to the Pact of Bogotá the noti-



fications provided for in Article 63, paragraph 1, of the Statute of the Court. In accordance with the provisions of Article 69, paragraph 3, of the Rules of Court, the Registrar moreover addressed to the Organization of American States (hereinafter the "OAS") the notification provided for in Article 34, paragraph 3, of the Statute. The Registrar subsequently transmitted to that organization copies of the pleadings filed in the case and asked its Secretary-General to inform him whether or not it intended to present observations in writing within the meaning of Article 69, paragraph 3, of the Rules of Court. The OAS indicated that it did not intend to submit any such observations.

4. Since the Court included upon the Bench no judge of the nationality of either of the Parties, each Party proceeded to exercise its right conferred by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case. Nicaragua first chose Mr. Mohammed Bedjaoui, who resigned on 2 May 2006, and subsequently Mr. Giorgio Gaja. Colombia chose Mr. Yves Fortier.

5. By an Order dated 26 February 2002, the Court fixed 28 April 2003 as the time-limit for the filing of the Memorial of Nicaragua and 28 June 2004 as the time-limit for the filing of the Counter-Memorial of Colombia. Nicaragua filed its Memorial within the time-limit so prescribed.

6. On 21 July 2003, within the time-limit set by Article 79, paragraph 1, of the Rules of Court, as amended on 5 December 2000, Colombia raised preliminary objections to the jurisdiction of the Court. Consequently, by an Order dated 24 September 2003, the Court, noting that by virtue of Article 79, paragraph 5, of the Rules of Court, the proceedings on the merits were suspended, fixed 26 January 2004 as the time-limit for the presentation by Nicaragua of a written statement of its observations and submissions on the preliminary objections made by Colombia. Nicaragua filed such a statement within the time-limit so prescribed, and the case thus became ready for hearing in respect of the preliminary objections.

7. Referring to Article 53, paragraph 1, of the Rules of Court, the Governments of Honduras, Jamaica, Chile, Peru, Ecuador and Venezuela asked to be furnished with copies of the pleadings and documents annexed in the case. Having ascertained the views of the Parties pursuant to Article 53, paragraph 1, of the Rules of Court, the Court decided to grant these requests. The Registrar duly communicated these decisions to the said Governments and to the Parties.

8. On 4 June 2007, Colombia, referring to Article 56, paragraph 4, of the Rules of Court and Practice Directions *IXbis* and *IXter*, transmitted to the Court four documents and the certified English translations thereof, to which it intended to refer during the oral proceedings.

9. In accordance with Article 53, paragraph 2, of the Rules of Court, the Court decided, after ascertaining the views of the Parties, that copies of the pleadings and documents annexed would be made accessible to the public on the opening of the oral proceedings.

10. Public hearings were held between 4 June and 8 June 2007, at which the Court heard the oral arguments and replies of:

For Colombia: H.E. Mr. Julio Londoño Paredes,
Sir Arthur Watts,
Mr. Prosper Weil,
Mr. Stephen M. Schwebel.

For Nicaragua: H.E. Mr. Carlos Argüello Gómez,
Mr. Alain Pellet,
Mr. Antonio Remiro Brotóns,
Mr. Ian Brownlie.

*

11. In its Application, the following requests were made by Nicaragua:

“[T]he Court is asked to adjudge and declare:

First, that the Republic of Nicaragua has sovereignty over the islands of Providencia, San Andrés 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.”

Nicaragua also stated:

“Whilst the principal purpose of this Application is to obtain declarations concerning title and the determination of maritime boundaries, the Government of Nicaragua reserves the right to claim compensation for elements of unjust enrichment consequent upon Colombian possession of the Islands of San Andrés and Providencia as well as the keys and maritime spaces up to the 82 meridian, in the absence of lawful title. The Government of Nicaragua also reserves the right to claim compensation for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua.

The Government of Nicaragua, further, reserves the rights to supplement or to amend the present Application.”

12. In the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Nicaragua,
in the Memorial:

“Having regard to the legal considerations and evidence set forth in this Memorial: *May it please the Court to adjudge and declare that:*

- (1) the Republic of Nicaragua has sovereignty over the islands of San Andrés, Providencia, and Santa Catalina and the appurtenant islets and cays;
- (2) the Republic of Nicaragua has sovereignty over the following cays: the Cayos de Albuquerque; the Cayos del Este Sudeste; the Cay of Roncador; North Cay, Southwest Cay and any other cays on the bank of Serrana; East Cay, Beacon Cay and any other cays on the

bank of Serranilla; and Low Cay and any other cays on the bank of Bajo Nuevo;

- (3) if the Court were to find that there are features on the bank of Quitasueño that qualify as islands under international law, the Court is requested to find that sovereignty over such features rests with Nicaragua;
- (4) the Barcenas-Esguerra Treaty signed in Managua on 24 March 1928 was not legally valid and, in particular, did not provide a legal basis for Colombian claims to San Andrés and Providencia;
- (5) in case the Court were to find that the Barcenas-Esguerra Treaty had been validly concluded, then the breach of this Treaty by Colombia entitled Nicaragua to declare its termination;
- (6) in case the Court were to find that the Barcenas-Esguerra Treaty had been validly concluded and were still in force, then to determine that this Treaty did not establish a delimitation of the maritime areas along the 82° meridian of longitude West;
- (7) in case the Court finds that Colombia has sovereignty in respect of the islands of San Andrés and Providencia, these islands be enclaved and accorded a territorial sea entitlement of twelve miles, this being the appropriate equitable solution justified by the geographical and legal framework;
- (8) the equitable solution for the cays, in case they were to be found to be Colombian, is to delimit a maritime boundary by drawing a 3 nautical mile enclave around them;
- (9) the appropriate form of delimitation, within the geographical and legal framework constituted by the mainland coasts of Nicaragua and Colombia, is a single maritime boundary in the form of a median line between these mainland coasts.”

On behalf of the Government of Colombia,

in the preliminary objections:

“For the reasons set out in the preceding Chapters, *Colombia respectfully requests the Court, in application of Article 79 of the Rules of Court, to adjudge and declare that:*

- (1) under the Pact of Bogotá, and in particular in pursuance of Articles VI and XXXIV, the Court declares itself to be without jurisdiction to hear the controversy submitted to it by Nicaragua under Article XXXI, and declares that controversy ended;
- (2) under Article 36, paragraph 2, of the Statute of the Court, the Court has no jurisdiction to entertain Nicaragua’s Application; and that
- (3) Nicaragua’s Application is dismissed.”

On behalf of the Government of Nicaragua,

in its written statement of observations and submissions on the preliminary objections made by Colombia:

“1. For the reasons advanced, the Republic of Nicaragua requests the Court to adjudge and declare that the Preliminary Objections submitted by the Republic of Colombia, both in respect of the jurisdiction based upon the Pact of Bogotá, and in respect of the jurisdiction based upon Article 36, paragraph 2, of the Statute of the Court, are invalid.

2. In the alternative, the Court is requested to adjudge and declare, in accordance with the provisions of Article 79, paragraph 9, of the Rules of Court that the objections submitted by the Republic of Colombia do not have an exclusively preliminary character.

3. In addition, the Republic of Nicaragua requests the Court to reject the request of the Republic of Colombia to declare the controversy submitted to it by Nicaragua under Article XXXI of the Pact of Bogotá 'ended', in accordance with Articles VI and XXXIV of the same instrument.

4. Any other matters not explicitly dealt with in the foregoing Written Statement are expressly reserved for the merits phase of this proceeding."

13. At the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Colombia,

at the hearing of 6 June 2007:

"Pursuant to Article 60 of the Rules of the Court, having regard to Colombia's pleadings, written and oral, Colombia respectfully requests the Court to adjudge and declare that:

- (1) under the Pact of Bogotá, and in particular in pursuance of Articles VI and XXXIV, the Court declares itself to be without jurisdiction to hear the controversy submitted to it by Nicaragua under Article XXXI, and declares that controversy ended;
- (2) under Article 36, paragraph 2, of the Statute of the Court, the Court has no jurisdiction to entertain Nicaragua's Application; and that
- (3) Nicaragua's Application is dismissed."

On behalf of the Government of Nicaragua,

at the hearing of 8 June 2007:

"In accordance with Article 60 of the Rules of Court and having regard to the pleadings, written and oral, the Republic of Nicaragua respectfully requests the Court, to adjudge and declare that:

1. The Preliminary Objections submitted by the Republic of Colombia, both in respect of the jurisdiction based upon the Pact of Bogotá, and in respect of the jurisdiction based upon Article 36, paragraph 2, of the Statute of the Court, are invalid.

2. In the alternative, the Court is requested to adjudge and declare, in accordance with the provisions of Article 79, paragraph 9, of the Rules of Court that the objections submitted by the Republic of Colombia do not have an exclusively preliminary character.

3. In addition, the Republic of Nicaragua requests the Court to reject the request of the Republic of Colombia to declare the controversy submitted to it by Nicaragua under Article XXXI of the Pact of Bogotá 'ended', in accordance with Articles VI and XXXIV of the same instrument.

4. Any other matters not explicitly dealt with in the foregoing Written

Statement and oral pleadings, are expressly reserved for the merits phase of this proceeding.”

* * *

14. For the sake of convenience, the preliminary objection raised by Colombia relating to the Court’s jurisdiction under the Pact of Bogotá will hereinafter be referred to as the “first preliminary objection”. The preliminary objection raised by Colombia relating to the Court’s jurisdiction under the optional clause declarations made by the Parties will hereinafter be referred to as the “second preliminary objection”.

* * *

2. HISTORICAL BACKGROUND

15. Before becoming independent in 1821, Nicaragua was a colonial province under the rule of Spain. Thereafter, Nicaragua together with Guatemala, El Salvador, Honduras and Costa Rica formed the Federal Republic of Central America, also known as the United Provinces of Central America and as the Central American Federation. In 1838 Nicaragua seceded from the Federal Republic, maintaining the territory it had before. The Federal Republic disintegrated in the period between 1838 and 1840. In a Treaty of 25 July 1850, Spain recognized the independence of Nicaragua.

16. The territory which is now Colombia was also under the rule of Spain and formed part of the Viceroyalty of New Granada. In 1810 the provinces of the Viceroyalty of New Granada declared independence from Spain. In 1819 the Republic of “Great Colombia” was formed. It included the territories of the former Captaincy-General of Venezuela and the Viceroyalty of New Granada. In 1830 Venezuela and Ecuador seceded from the Republic of “Great Colombia”. The remaining territory was named the Republic of New Granada in 1832. The name of the Republic was changed to Granadine Confederation in 1858 and the 1863 Constitution created the United States of Colombia. On 30 January 1881 Spain and the United States of Colombia concluded a Treaty of Peace and Amity. Under a new constitution adopted in 1886, the United States of Colombia was renamed the Republic of Colombia. The territorial scope of the State remained unchanged between 1830 and 1903 when Panama, the territory of which had formed part of the Republic of Colombia, seceded and became a separate State.

17. On 15 March 1825 the United Provinces of Central America and Colombia signed the Treaty of Perpetual Union, League and Confederation. In Article VII of that Treaty, both Parties agreed to respect their boundaries as they existed at that time and to settle the “demarcation or divisional line” between them in due course. In the period that followed,

a number of claims were made by Nicaragua and Colombia over the Mosquito Coast and the Archipelago of San Andrés.

18. On 24 March 1928, a “Treaty concerning Territorial Questions at Issue between Colombia and Nicaragua” was signed at Managua (hereinafter the “1928 Treaty”). The preamble of the Treaty stated that:

“The Republic of Colombia and the Republic of Nicaragua, desirous of putting an end to the territorial dispute between them, and to strengthen the traditional ties of friendship which unite them, have decided to conclude the present Treaty . . .” [*Translation by the Secretariat of the League of Nations, for information.*]

Article I of the 1928 Treaty provided as follows:

“The Republic of Colombia recognises the full and entire sovereignty of the Republic of Nicaragua over the Mosquito Coast between Cape Gracias a Dios and the San Juan River, and over Mangle Grande and Mangle Chico Islands in the Atlantic Ocean (Great Corn Island and Little Corn Island). The Republic of Nicaragua recognises the full and entire sovereignty of the Republic of Colombia over the islands of San Andrés, Providencia and Santa Catalina and over the other islands, islets and reefs forming part of the San Andrés Archipelago.

The present Treaty does not apply to the reefs of Roncador, Quitasueño and Serrana, sovereignty over which is in dispute between Colombia and the United States of America.” [*Translation by the Secretariat of the League of Nations, for information.*]

The Court has noted that there are certain differences between the original Spanish text of the 1928 Treaty and the French and English translations prepared by the Secretariat of the League of Nations. In particular, the term “cayos” in Spanish, which appears in the first and second paragraphs of Article I of the Treaty, is translated as “récifs” in French and “reefs” in English rather than “cays”. For the purposes of the present Judgment, the Court will, in quotations, use the translation prepared by the League of Nations. However, it will employ the word “cays” rather than “reefs” when the Court itself refers to the first paragraph of Article I and will not use any geographical qualification when referring to Roncador, Quitasueño and Serrana, the three maritime features named in the second paragraph of Article I. This approach is without prejudice to the physical and legal characterization of these features.

19. On 10 April 1928 Colombia and the United States of America (hereinafter the “United States”) exchanged Notes concerning the status of Roncador, Quitasueño and Serrana. Colombia undertook to “refrain from objecting to the maintenance by the United States of the services which it has established or may establish on said cays to aid navigation” and the United States undertook to “refrain from objecting to the utilization, by Colombian nationals, of the waters appurtenant to the Islands for the purpose of fishing”.

20. The instruments of ratification of the 1928 Treaty were exchanged at Managua on 5 May 1930. The Parties signed on that occasion a Protocol of Exchange of Ratifications (hereinafter the “1930 Protocol”). The Protocol noted that the 1928 Treaty was concluded between Colombia and Nicaragua “with a view to putting an end to the dispute between both republics concerning the San Andrés and Providencia Archipelago and the Nicaraguan Mosquito Coast”. The Protocol stipulated as follows:

“The undersigned, in virtue of the full powers which have been granted to them and on the instructions of their respective Governments, hereby declare that the San Andrés and Providencia Archipelago mentioned in the first article of the said Treaty does not extend west of the 82nd degree of longitude west of Greenwich.”
[Translation by the Secretariat of the League of Nations, for information.]

21. In a diplomatic Note, dated 4 June 1969, from the Ambassador of Colombia to Nicaragua to the Minister for Foreign Affairs of Nicaragua, Colombia protested against the granting of certain oil exploration concessions and reconnaissance permits by Nicaragua, which allegedly covered Quitasueño and the waters surrounding it as well as maritime zones that surpassed the 82nd meridian to the east. With respect to Quitasueño, Colombia pointed out that the 1928 Treaty explicitly declared that the Roncador, Quitasueño and Serrana cays were in dispute between Colombia and the United States. It requested Nicaragua “to remedy the error or inadvertence that may have been incurred by exercising acts of domain or disposition over a good that is solemnly acknowledged as outside of Nicaraguan jurisdiction or sovereignty”. Colombia also made “a formal reservation . . . of its rights over the referenced territory, as well as over the adjacent maritime zone”. With respect to the maritime zones over which oil exploration concessions had been granted, Colombia observed that the 82nd meridian had been noted in the 1930 Protocol as the western boundary of the Archipelago of San Andrés and Providencia. Colombia asserted that it had “clear and indisputable . . . rights over that [maritime] zone” which it formally reserved and stated that it trusted that Nicaragua “shall find it appropriate and adequate to revoke [the concessions] or reform them to the extent that they exceed the limit of Nicaraguan national jurisdiction and invade Colombian domain”.

22. In a diplomatic Note, dated 12 June 1969, to the Ambassador of Colombia to Nicaragua, the Minister for Foreign Affairs of Nicaragua stated that his Government would carefully consider the question of the oil reconnaissance permit granted over the Quitasueño area while reserving its rights to the continental shelf. With respect to the oil exploration concessions, Nicaragua asserted that the areas concerned were part of its continental shelf and that the concessions had therefore been granted “in use of the sovereign rights [Nicaragua] fully and effectively exercises in

accordance with the norms of international law”. As to the reference to the 82nd meridian in the 1930 Protocol, Nicaragua asserted that

“[a] simple reading of the . . . texts makes it clear that the objective of this provision is to clearly and specifically establish in a restrictive manner, the extension of the Archipelago of San Andrés, and by no valid means can it be interpreted as a boundary of Nicaraguan rights or creator of a border between the two countries. On the contrary, it acknowledges and confirms the sovereignty and full domain of Nicaragua over national territory in that zone.”

23. In a Note in response, dated 22 September 1969, the Minister for Foreign Affairs of Colombia, *inter alia*, made a “formal declaration of sovereignty in the maritime areas located East of Meridian 82 of Greenwich”, relying on the “definitive and irrevocable character of the [1928] Treaty on Boundaries” and “[t]he declaration by the . . . [1930] Protocol . . . that the dividing line between respective maritime areas or zones was set at Greenwich Meridian 82”. He also pointed to the exclusion in the 1928 Treaty of the Roncador, Quitasueño and Serrana says “from any negotiations between Colombia and Nicaragua”.

24. In 1971 Colombia and the United States engaged in negotiations regarding the status of Roncador, Quitasueño and Serrana. On 23 June 1971, the Minister for Foreign Affairs of Nicaragua sent a memorandum to the Department of State of the United States formally reserving its rights over its continental shelf in the area around Roncador, Quitasueño and Serrana and noting that it considered those banks to be part of its continental shelf. It further stated that it could not accept Colombia’s contention that the 82nd meridian referred to in the 1930 Protocol set the dividing line between the respective maritime zones of the two States since it only constituted the limit of the San Andrés Archipelago. In a Note, dated 6 December 1971, the Secretary of State of the United States assured the Ambassador of Nicaragua in Washington that the United States would take into account Nicaragua’s rights over the continental shelf.

25. On 8 September 1972, Colombia and the United States signed the Treaty concerning the status of Quitasueño, Roncador and Serrana (also known as and hereinafter the Vásquez-Saccio Treaty), the preamble of which stated that the two States were “[d]esirous of settling the long-standing questions concerning the status of Quita Sueño, Roncador and Serrana”. Article 1 of the Treaty provided that “the Government of the United States hereby renounces any and all claims to sovereignty over Quita Sueño, Roncador and Serrana”. Each State agreed not to interfere with the fishing activities of the other State in the waters adjacent to Quitasueño. With respect to Roncador and Serrana, the Treaty stipulated that Colombia would guarantee nationals and vessels of the United

States a continuation of fishing rights in the waters adjacent to those cays.

26. On the same day as the signature of the Vásquez-Saccio Treaty, there was an Exchange of Notes between Colombia and the United States concerning their “legal position respecting Article 1 of [the] Treaty”. The United States affirmed that its legal position was, *inter alia*, that “Quita Sueño, being permanently submerged at high tide, is at the present time not subject to the exercise of sovereignty” and that the 1928 Treaty did not apply to Roncador, Quitasueño and Serrana. For its part, Colombia stated that its position was that the “[t]he physical status of Quita Sueño is not incompatible with the exercise of sovereignty” and that “with the renunciation of sovereignty by the United States over Quita Sueño, Roncador, and Serrana, the Republic of Colombia is the only legitimate title holder on those banks or cays, in accordance with the [1928 Treaty and 1930 Protocol] and international law”.

27. On 4 October 1972, the National Assembly of Nicaragua adopted a formal declaration proclaiming Nicaraguan sovereignty over Roncador, Quitasueño and Serrana. On 7 October 1972, the Minister for Foreign Affairs of Nicaragua sent diplomatic Notes to the Minister for Foreign Affairs of Colombia and the Secretary of State of the United States formally protesting against the signing of the Vásquez-Saccio Treaty and maintaining that “the banks located in that zone . . . are part of [Nicaragua’s] territory and therefore subject to its sovereignty”. The Minister added that his Government could not accept Colombia’s contention that the 82nd meridian referred to in the 1930 Protocol constituted the boundary line of the respective maritime areas of the two States since it did not coincide with the letter or spirit of the Protocol, the clear intention of which was to specify that the San Andrés Archipelago did not extend west further than the 82nd meridian. The Minister further noted that the continental shelf concept had not been recognized at the time of the signing of the 1928 Treaty and 1930 Protocol and that, consequently, Nicaragua could not at that time have relinquished rights that had not yet been acknowledged.

28. In July 1979 the Sandinista Government came to power in Nicaragua. On 4 February 1980, the Minister for Foreign Affairs of Nicaragua published an official declaration and a “Libro Blanco” (hereinafter “White Paper”) in which Nicaragua declared

“the nullity and lack of validity of the Bárcenas-Meneses-Esguerra Treaty [the 1928 Treaty] . . . [concluded] in a historical context which incapacitated as rulers the presidents imposed by the American forces of intervention in Nicaragua and which infringed . . . the principles of the National Constitution in force . . .”.

The White Paper acknowledged that “[a] great deal of time has passed since the [1928 Treaty]” but pointed out that “it was only on 19 July 1979 that Nicaragua recovered its national sovereignty”. On 5 February 1980,

the Minister for Foreign Affairs of Colombia addressed a diplomatic Note to his counterpart in Nicaragua, stating that his Government rejected the declaration of 4 February 1980 as “an unfounded claim that counters historical reality and breaches the most elementary principles of public international law”. He also affirmed that, in the view of his Government, the 1928 Treaty “[was] a valid, perpetual instrument, and in full force in light of the universally recognized legal norms”.

29. From 1976 to 1981 there were several exchanges of diplomatic Notes between Nicaragua and the United States concerning the status of Roncador, Quitasueño and Serrana in the context of the process of ratification by the United States of the Vásquez-Saccio Treaty. On 16 July 1981, the United States presented Nicaragua with an *aide-mémoire* entitled “United States Legal Position” which stated, *inter alia*, that the United States had not taken and did not intend to take any position regarding the legal merits of the competing claims of Colombia and Nicaragua over Roncador, Quitasueño and Serrana. On 17 September 1982, the Vásquez-Saccio Treaty came into force following the exchange of instruments of ratification between Colombia and the United States.

30. The new government which came to power in Nicaragua in 1990 and subsequent governments maintained the position with regard to the meaning of certain provisions of the 1928 Treaty and 1930 Protocol which had been stated from 1969 onwards and the position with regard to the invalidity of the 1928 Treaty which had been set out in the 1980 White Paper.

31. On 9 June 1993 helicopters of the Colombian Air Force intercepted two Nicaraguan fishing vessels in the vicinity of the 82nd meridian and ordered them to abandon their alleged “illegal fishing activities”. On 7 July 1993, in the same area, the Colombian coastguard seized a Honduran fishing vessel which had a fishing permit issued by Nicaragua. In diplomatic Notes to the Minister for Foreign Affairs of Colombia, dated respectively 11 June 1993 and 9 July 1993, Nicaragua protested against these actions by Colombia which it claimed had occurred in Nicaraguan waters, west of the 82nd meridian. In a diplomatic Note in response, dated 19 July 1993, the Minister for Foreign Affairs of Colombia asserted that the fishing vessels were east of the 82nd meridian at the relevant time and that consequently all the events in question had taken place in waters under Colombian jurisdiction. In a diplomatic Note, dated 26 July 1993, the Minister for Foreign Affairs of Nicaragua contended that, even if the vessels had been located at the co-ordinates given by Colombia, they would still have been within Nicaraguan waters. He added that the claim of Colombian sovereignty over those waters was “totally inadmissible and baseless”. Between 1995 and 2002, there followed similar seizures of vessels by both Colombia and Nicaragua.

32. In 1977, 1995 and 2001, meetings took place between officials of the Nicaraguan and Colombian Ministries of Foreign Affairs concerning contentious issues between the two States. The Parties do not agree on the content and significance of those discussions.

* * *

3. SUBJECT-MATTER OF THE DISPUTE

33. The Court initially notes that the Parties have presented different views about whether there is an extant dispute between them and, if so, the subject-matter of that dispute. Consequently, before addressing the preliminary objections raised by Colombia, it is necessary for the Court to examine these issues.

34. The Court recalls that in its Application, Nicaragua stated that “[t]he dispute consists of a group of related legal issues subsisting between the Republic of Nicaragua and the Republic of Colombia concerning title to territory and maritime delimitation”. It noted that “the definitive settlement of . . . issues of [territorial] title must constitute a condition precedent to the complete and definitive determination of the maritime areas”.

35. In its written pleadings, Nicaragua submitted that “[t]he core of the dispute relates to the maritime delimitation between the Parties”, asserting that “the subject-matter of the dispute is the determination of a single maritime boundary” and that “the issue of title is not the subject-matter of the dispute but a necessary prerequisite” for the definitive determination of the maritime areas.

36. Nicaragua asserted that the dispute submitted to the Court concerned (i) the validity of the 1928 Treaty and its termination due to material breach; (ii) the interpretation of the 1928 Treaty, particularly regarding the geographical scope of the San Andrés Archipelago; (iii) the legal consequences of the exclusion from the scope of the 1928 Treaty of Roncador, Quitasueño and Serrana; and (iv) the maritime delimitation between the Parties including the legal significance of the reference to the 82nd meridian in the 1930 Protocol. In its view, the fourth element “implied and encompassed all the others”. In this regard, Nicaragua contended that the question of sovereignty over the maritime features was both accessory and preliminary to that of maritime delimitation. That is, even if the case were limited to a maritime delimitation, it would be necessary for the Court first to resolve the question of territorial title over the maritime features in the disputed area. Finally, Nicaragua also submitted that the question whether the 1928 Treaty has settled all questions between the Parties is “the very object of the dispute” and “the substance of the case”.

37. Colombia denied that there was an extant dispute over which the

Court could have jurisdiction, claiming that the matters in issue had already been settled by the 1928 Treaty. It further contended that the real purpose behind Nicaragua's Application was maritime delimitation rather than the determination of sovereignty over the maritime features.

*

38. The Court notes that, while the Applicant must present its view of the "subject of the dispute" pursuant to Article 40, paragraph 1, of the Statute of the Court, it is for the Court itself to determine the subject-matter of the dispute before it, taking account of the submissions of the Parties (see *Fisheries Jurisdiction (Spain v. Canada)*, *Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, pp. 447-449, paras. 29-32). As stated in the *Nuclear Tests* cases:

"it is the Court's duty to isolate the real issue in the case and to identify the object of the claim. It has never been contested that the Court is entitled to interpret the submissions of the parties, and in fact is bound to do so; this is one of the attributes of its judicial functions." (*Nuclear Tests (Australia v. France)*, *Judgment, I.C.J. Reports 1974*, p. 262, para. 29; *Nuclear Tests (New Zealand v. France)*, *Judgment, I.C.J. Reports 1974*, p. 466, para. 30.)

39. As a preliminary point, the Court recalls that the Parties disagree on whether or not the dispute between them had been "settled" by the 1928 Treaty within the meaning of Article VI of the Pact of Bogotá. The Court first notes that Article VI of the Pact provides that the dispute settlement procedures in the Pact "may not be applied to matters already *settled* by arrangement between the parties, or by arbitral award or by decision of an international court, or which are *governed* by agreements or treaties in force on the date of the conclusion of the present Treaty" (emphasis added). The Court also notes that according to Article XXXIV of the Pact controversies over matters which are *governed* by agreements or treaties shall be declared "ended" in the same way as controversies over matters *settled* by arrangement between the Parties, arbitral award or decision of an international court. The Court considers that, in the specific circumstances of the present case, there is no difference in legal effect, for the purpose of applying Article VI of the Pact, between a given matter being "settled" by the 1928 Treaty and being "governed" by that Treaty. In light of the foregoing, the Court will hereafter use the word "settled".

40. The Court notes that Nicaragua submitted that issues relating to the validity and alleged termination of the 1928 Treaty as well as the question whether the Treaty and its 1930 Protocol covered or resolved all the contentious matters between the Parties, including the geographical scope of the San Andrés Archipelago, sovereignty over Roncador, Qui-

tasueño and Serrana and maritime delimitation, all formed part of the dispute before the Court (see paragraph 36 above).

In the Court's view, all those issues relate to the single question whether the 1928 Treaty and 1930 Protocol settled the matters in dispute between the Parties concerning sovereignty over the islands and maritime features and the course of the maritime boundary. The Court considers, however, that this does not form the subject-matter of the dispute between the Parties and that, in the circumstances of the present case, the question is a preliminary one (see paragraphs 49 to 52 below).

41. With respect to Colombia's contention that Nicaragua's true interest lay in the maritime delimitation rather than in sovereignty over the maritime features, the Court notes that nonetheless "the claim of one party is positively opposed by the other" as to sovereignty over the maritime features (see *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, *Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328).

42. In light of the foregoing, the Court concludes that the questions which constitute the subject-matter of the dispute between the Parties on the merits are, first, sovereignty over territory (namely the islands and other maritime features claimed by the Parties) and, second, the course of the maritime boundary between the Parties.

* * *

4. FIRST PRELIMINARY OBJECTION

4.1. General Overview of the Arguments of the Parties on the First Preliminary Objection

43. The Court recalls that in its first preliminary objection, Colombia claims that pursuant to Articles VI and XXXIV of the Pact of Bogotá, the Court is without jurisdiction under Article XXXI of the Pact to hear the controversy submitted to it by Nicaragua and should declare the controversy ended (for the text of Articles VI, XXXI and XXXIV of the Pact of Bogotá, see paragraphs 55 and 56 below). In this regard, Colombia, referring to Article VI of the Pact, argues that the matters raised by Nicaragua were settled by a treaty in force on the date on which the Pact was concluded, namely the 1928 Treaty and the 1930 Protocol. Colombia adds that this question can and must be considered at the preliminary objections stage.

44. Nicaragua claims that the Court has jurisdiction under Article XXXI of the Pact of Bogotá. In this regard, Nicaragua argues that the 1928 Treaty and its 1930 Protocol did not settle the dispute between Nicaragua and Colombia within the meaning of Article VI of the Pact of Bogotá because the 1928 Treaty was invalid or had been terminated and

that, even if that was not the case, the 1928 Treaty did not cover all the matters now in dispute between the Parties. Moreover, Nicaragua contends that the Court may not pronounce upon these issues at this stage of the proceedings since that would require an examination of the merits of the case.

* *

4.2. *The Appropriate Stage of Proceedings for Examination of the Preliminary Objection*

45. The Court initially notes that the Parties disagree on whether the questions raised by the first preliminary objection may be examined at this stage of the proceedings.

46. Citing Article 79, paragraph 9, of the Rules of Court, Nicaragua considers that the Court cannot at this stage of the proceedings pronounce upon Colombia's first preliminary objection because "[i]t is difficult to find a better example of an objection that 'does not possess, in the circumstances of the case, an exclusively preliminary character'". In this regard, it argues that the "point raised by the objection and those arising on the merits 'are too intimately related and too closely interconnected'". Nicaragua considers that if the Court "were to accept what Colombia is requesting, it would not be upholding a preliminary objection to its jurisdiction, but ruling in favour of Colombia on the merits of the dispute referred to it by Nicaragua". Nicaragua contends that the Court cannot "without a thorough examination of the merits" decide questions such as whether or not the 1928 Treaty is valid, what meaning to ascribe to the term "San Andrés Archipelago" and the course of the maritime boundary between the Parties. Nicaragua notes that, in the *ICAO Council* case, the Court upheld the principle that "a decision on jurisdiction can never directly decide any question of merits" (*Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, Judgment, *I.C.J. Reports 1972*, p. 56). It adds that "'touching upon' questions relating to the merits is one thing; settling all of them after a preliminary and inevitably summary examination is another". Nicaragua concludes that if the Court does not reject the objection put forward by Colombia, "it should join that objection to the merits, as none of the questions raised has an exclusively preliminary character".

47. Colombia disagrees with Nicaragua's arguments, observing that Article 79, paragraph 1, of the Rules includes, in addition to objections to the Court's jurisdiction or to admissibility, any "other objection the decision upon which is requested before any further proceedings on the merits". It contends that in revising its Rules in 1972, the Court "expanded the definition of preliminary objections". Colombia notes, in this connection, that in the *Lockerbie* cases (*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)*), Pre-

liminary Objections, Judgment, I.C.J. Reports 1998, pp. 131 *et seq.*, paras. 46 *et seq.*; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 26 *et seq.*, paras. 47 *et seq.*) and a number of earlier cases, the Court made clear that the field of application *ratione materiae* of Article 79 was no longer limited to objections to jurisdiction or admissibility, but that it covers any objection the purpose of which is “to prevent, *in limine*, any consideration of the case on the merits”. In answer to Nicaragua’s contention that the Parties are precluded at this stage from touching upon issues that might have to be dealt with on the merits, Colombia notes that “[p]reliminary objections cannot be — and in practice never are — argued in a void, removed from all factual context. And that factual context may well touch on issues the full exposition of which will come later when — and if — the merits phase is reached.” Colombia contends that the Court can and must determine, at the preliminary objections stage, whether the 1928 Treaty and 1930 Protocol settled the dispute between the Parties and asserts that this is explicitly prescribed in Article XXXIII of the Pact of Bogotá which stipulates that, if the Parties fail to agree as to whether the Court has jurisdiction, the Court shall “first” decide that question.

*

48. The Court recalls that, under Article 79, paragraph 9, of the Rules of Court, there are three ways in which it may dispose of a preliminary objection: the Court “shall either uphold the objection, reject it, or declare that the objection does not possess, in the circumstances of the case, an exclusively preliminary character”.

49. The Court further recalls that, in the *Nuclear Tests* cases (albeit in slightly different circumstances), it emphasized that while examining questions of jurisdiction and admissibility, it is entitled, and in some circumstances may be required, to go into other questions which may not be strictly capable of classification as matters of jurisdiction or admissibility but are of such a nature as to require examination before those matters (*Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974*, p. 259, para. 22; and *Nuclear Tests (New Zealand v. France), Judgment, I.C.J. Reports 1974*, p. 463, para. 22; see also *Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 29).

50. The Court believes that it is not in the interest of the good administration of justice for it to limit itself at the present juncture to stating merely that there is a disagreement between the Parties as to whether the 1928 Treaty and 1930 Protocol settled the matters which are the subject

of the present controversy within the meaning of Article VI of the Pact of Bogotá, leaving every aspect thereof to be resolved on the merits.

51. In principle, a party raising preliminary objections is entitled to have these objections answered at the preliminary stage of the proceedings unless the Court does not have before it all facts necessary to decide the questions raised or if answering the preliminary objection would determine the dispute, or some elements thereof, on the merits. The Court finds itself in neither of these situations in the present case. The determination by the Court of its jurisdiction may touch upon certain aspects of the merits of the case (*Certain German Interests in Polish Upper Silesia, Jurisdiction, Judgment No. 6, 1925, P.C.I.J., Series A, No. 6*, p. 15). Moreover, the Court has already found that the question of whether the 1928 Treaty and the 1930 Protocol settled the matters in dispute does not constitute the subject-matter of the dispute on the merits. It is rather a preliminary question to be decided in order to ascertain whether the Court has jurisdiction (see paragraph 40 above).

52. In light of the above, the Court is unable to uphold Nicaragua's contention that it is precluded from addressing Colombia's first preliminary objection at this stage of the proceedings. Accordingly, the Court will now proceed to examine this objection.

* *

4.3. Jurisdictional System of the Pact of Bogotá

53. The Court will begin by considering the jurisdictional system of the Pact of Bogotá.

54. The Pact of Bogotá, which was ratified by Nicaragua on 21 June 1950 and by Colombia on 14 October 1968, was adopted in Bogotá, Colombia on 30 April 1948, at the same conference that adopted the Charter of the OAS. The importance attached to the pacific settlement of disputes within the inter-American system is reflected in Article 2 (c) of the OAS Charter, which declares that one of the essential purposes of the organization is "to ensure the pacific settlement of disputes that may arise among the Member States". This provision is supplemented by Article 27 of the OAS Charter (formerly Article 23), which anticipated the adoption of the Pact of Bogotá in the following terms:

"A special treaty will establish adequate means for the settlement of disputes and will determine pertinent procedures for each peaceful means such that no dispute between American States may remain without definitive settlement within a reasonable period of time."

The Preamble to the Pact of Bogotá declares that the Treaty was concluded "in fulfilment of Article XXIII [now Article XXVII] of the Charter". Thirteen Member States of the OAS, including Colombia and Nicaragua, are at present States parties to the Pact of Bogotá.

55. The Pact of Bogotá contains a number of provisions relating to the

judicial settlement of disputes. One such provision, Article XXXI, which has been invoked by Nicaragua and Colombia in these proceedings, reads as follows:

“In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:

- (a) The interpretation of a treaty;
- (b) Any question of international law;
- (c) The existence of any fact which, if established, would constitute the breach of an international obligation; or
- (d) The nature or extent of the reparation to be made for the breach of an international obligation.”

56. The other relevant provisions, both invoked by Colombia, are Articles VI and XXXIV. Article VI provides that:

“The aforesaid procedures, furthermore, may not be applied to matters already settled by arrangement between the parties, or by arbitral award or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty.”

Article XXXIV reads as follows:

“If the Court, for the reasons set forth in Articles V, VI and VII of this Treaty, declares itself to be without jurisdiction to hear the controversy, such controversy shall be declared ended.”

57. These provisions indicate that if the Court were to find that the matters referred to it by Nicaragua pursuant to Article XXXI of the Pact of Bogotá had previously been settled by one of the methods spelled out in Article VI thereof, it would lack the requisite jurisdiction under the Pact to decide the case.

58. With respect to Article XXXIV of the Pact, the Court recalls that Colombia considers that, in the present case, the Court should declare the dispute “ended” in accordance with that provision since, pursuant to Article VI, it is without jurisdiction. For its part, Nicaragua contends that, under Article XXXVII of the Pact, the Court should follow the procedure set down in its Statute and that such a declaration could not, in any event, be made at the preliminary stage of the proceedings since it would require the Court to examine the merits of the case.

59. With respect to the arguments made relating to Article XXXIV of the Pact, the Court recalls that it must apply Article 1 of its Statute, which states that the Court “shall function in accordance with the provisions of the present Statute”. This approach is also indicated by Arti-

cle XXXVII of the Pact of Bogotá, which stipulates that “[t]he procedure to be followed by the Court shall be that established in the Statute thereof”. In this regard, the Court notes that, at this stage of the proceedings, it is only deciding, under Article 36, paragraph 6, of the Statute, whether or not it has jurisdiction to hear the merits of the case and may not go further.

* *

4.4. The Question Whether the 1928 Treaty and 1930 Protocol Settled the Matters in Dispute between the Parties

4.4.1. Arguments of the Parties

60. The Court recalls that Colombia asserts that the 1928 Treaty settled the issue of sovereignty over all of the islands, islets and cays in question and that the 1930 Protocol settled the course of the maritime boundary between the Parties. It contends that consequently there is no dispute between the Parties to be resolved by the Court. In Colombia’s view, the Court’s jurisdiction under the Pact of Bogotá is excluded pursuant to Article VI thereof which provides that the dispute settlement procedures set out in the Pact “may not be applied to matters already settled by arrangement between the parties . . . or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty”.

61. For its part, Nicaragua denies that the dispute between the Parties was settled by the 1928 Treaty and 1930 Protocol. Nicaragua argues first that the 1928 Treaty is not valid and that, even if the Treaty were valid, it was terminated as a result of a material breach by Colombia. Secondly, Nicaragua contends that the 1928 Treaty does not indicate which islands, islets, cays and reefs form part of the San Andrés Archipelago and does not cover all the maritime features in dispute such as Roncador, Quitasueño and Serrana and other maritime features claimed by the Parties which do not form part of the San Andrés Archipelago. Finally, Nicaragua rejects Colombia’s assertion that the 1930 Protocol effected a maritime delimitation between the Parties. Nicaragua submits that it remains necessary for the Court to settle all the above questions.

*

4.4.2. The conclusion of the 1928 Treaty and signature of the 1930 Protocol

62. The Court will briefly recall the factual background of the conclusion of the 1928 Treaty and the signature of the 1930 Protocol.

63. The 1928 Treaty was signed by Nicaragua and Colombia on

24 March 1928. The Protocol of Exchange of Ratifications was signed on 5 May 1930. The Treaty and Protocol were promulgated in Colombia by Decree No. 993 of 23 June 1930, published in its *Diario Oficial*, and they were published in Nicaragua's *Diario Oficial* on 2 July 1930.

64. After the signature of the 1928 Treaty, Nicaragua proposed the addition to the Treaty of a statement to the effect that the Archipelago of San Andrés, sovereignty over which was attributed to Colombia in Article I of the Treaty, did not "extend West of the 82 Greenwich meridian". Colombia agreed to the inclusion of the foregoing statement in the Protocol of Ratification and informed Nicaragua that the addition of the statement did not require the resubmission of the Treaty to its Congress.

65. The 1928 Treaty consists of a preamble and two articles. In the preamble to the Treaty, Colombia and Nicaragua express their desire to put "an end to the territorial dispute pending between them". The substantive provisions of the Treaty are set down in Article I thereof; Article II deals with matters relating to the signature and ratification of the Treaty.

66. In the first paragraph of Article I of the Treaty, Colombia recognizes Nicaragua's sovereignty over the Mosquito Coast between Cape Gracias a Dios and the San Juan River, as well as over the Mangle Grande (Great Corn) and Mangle Chico (Little Corn) Islands in the Atlantic Ocean. In that same paragraph, Nicaragua recognizes Colombia's sovereignty over the islands of San Andrés, Providencia, Santa Catalina, and the other islands, islets and cays that form part of the Archipelago of San Andrés.

67. The second paragraph of Article I provides that the Treaty does not apply to Roncador, Quitasueño and Serrana, "sovereignty over which is in dispute between Colombia and the United States of America".

68. The first paragraph of the 1930 Protocol states that the 1928 Treaty was designed to put "an end to the question pending between both republics, concerning the San Andrés and Providencia Archipelago and the Nicaraguan Mosquito Coast". The second paragraph of the Protocol provides that "the San Andrés and Providencia Archipelago mentioned in the first article of the said Treaty does not extend west of the 82nd degree of longitude west of Greenwich".

69. The text of the 1928 Treaty was based on a draft, dated 18 March 1925, presented to the Nicaraguan Foreign Minister by the Minister Plenipotentiary of Colombia to Nicaragua, who summarized the draft and the motivating considerations in the following terms:

"According to the verbal discussions I have had the honour to hold with Your Excellency regarding the advisability of reaching a fair and decorous solution for Colombia and Nicaragua to the controversy that they may have been having regarding the territorial sovereignty of the Mosquitia Coast, the Mangle Islands [Corn Islands] and the Archipelago of San Andrés and Providencia, and

the possibility of finding that solution in a direct and friendly settlement in which each Party desists from its extreme claims; and by virtue of Your Excellency's suggestion that the Legation summarise its views on this matter in a Draft treaty, I have pleasure in enclosing that Draft with this note, in . . . which Colombia renounces in favour of Nicaragua the rights of dominion which it claims over the Mosquitia Coast, between the San Juan river and Cabo Gracias a Dios, and over the Mangle Islands, that is Great Corn island and Little Corn island; and Nicaragua, in turn, renounces in favour of Colombia, also absolutely and unconditionally, the rights it aspires to over the islands of San Andrés, Providencia and Santa Catalina and the other islands, islets and cays which form the Archipelago.

I believe that this solution perfectly harmonises the interests of the two Nations and is the most efficacious for the definitive termination of the dispute and to secure in a lasting manner, the fraternal relations of friendship between them."

70. The Senate and Chamber of Representatives of Colombia approved the 1928 Treaty by means of Law 93 of 17 November 1928. The preamble of that Law describes the Treaty as reflecting Colombia's and Nicaragua's "desire of putting an end to the territorial dispute pending between them". In addressing the concessions Colombia gained under the Treaty, the preamble points out that the Treaty "definitely consolidates the status of the Republic in the Archipelago of San Andrés and Providencia, erasing any pretensions to the contrary, and recognizes our country's perpetual sovereignty and right to full domain of that important section of the Republic". It declares this arrangement to be "necessary and opportune" because of Nicaragua's pretensions to the Archipelago, which at times reached the point of obstructing Colombia's administrative activities there. As noted above, Colombia considered that the insertion into the 1930 Protocol of the statement that the Archipelago of San Andrés did not extend west of the 82nd degree of longitude west of Greenwich did not require the resubmission of the Treaty to its Congress (see paragraph 64).

71. The Senate and Chamber of Deputies of Nicaragua approved the 1928 Treaty by means of a decree, dated 6 March 1930. The decree stated that

"the Treaty puts an end to the question pending between both Republics regarding the Archipelago of San Andrés and the Nicaraguan Mosquitia; understanding that the Archipelago of San Andrés mentioned in the first clause of the Treaty, does not extend to the west of Greenwich Meridian 82 . . .".

72. On 5 March 1930, prior to Nicaragua's ratification of the 1928 Treaty, Nicaragua's Minister for Foreign Affairs appeared before the Nicaraguan Senate in support of the ratification of this Treaty and noted that, according to the Government of Colombia, the resubmission of the

Treaty to the Colombian Congress was not necessary for the purposes of “the clarification that demarcated the dividing line”. The Minister added that the language relating to the meridian to be included in the Protocol of Exchange of Ratifications “does not reform the Treaty, because it only intends to indicate a limit between the archipelagos that had been reason for the dispute and that the Colombian Government had already accepted that explanation by means of his Minister Plenipotentiary”.

*

4.4.3. *The question whether the 1928 Treaty was in force in 1948*

73. As the Court has found above, the question whether, on the date of the conclusion of the Pact of Bogotá in 1948, the matters raised by Nicaragua were, pursuant to Article VI thereof, “governed by agreements or treaties in force”, namely the 1928 Treaty, is to be decided by the Court at this stage in order to ascertain whether it has jurisdiction (see paragraphs 40 and 51 above). For this purpose, the first point for the Court to consider is whether the Treaty, which Colombia alleges to have settled the matters constituting the subject-matter of the dispute, was in force in 1948.

74. As noted above, Colombia contends that the Court lacks jurisdiction by virtue of Article VI to decide this case because the dispute was settled by the 1928 Treaty and 1930 Protocol, which were in force in 1948. However, Nicaragua claims that the 1928 Treaty is invalid or, in the alternative, has been terminated due to a material breach by Colombia.

75. With respect to the validity of the 1928 Treaty, Nicaragua contends that the Treaty is invalid for two reasons. It argues first that the Treaty was “concluded in manifest violation of the Nicaraguan Constitution of 1911 that was in force in 1928”. In this regard, Nicaragua considers that the conclusion of the 1928 Treaty contravened Articles 2 and 3 of its 1911 Constitution which remained in force until 1939. Article 2 stipulated, *inter alia*, that “treaties may not be reached that oppose the independence and integrity of the nation or that in some way affect her sovereignty . . .”. Article 3 provided that “[p]ublic officials only enjoy those powers expressly granted to them by Law. Any action of theirs that exceeds these [powers] is null.” Its second argument is that at the time the Treaty was concluded, Nicaragua was under military occupation by the United States and was precluded from concluding treaties that ran contrary to the interests of the United States and from rejecting the conclusion of treaties that the United States demanded it to conclude. Nicaragua submits that Colombia was aware of this situation and “took advantage of the US occupation of Nicaragua to extort from her the conclusion of the 1928 Treaty”. Nicaragua claims that it remained under the

influence of the United States even after the withdrawal of the last United States troops at the beginning of 1933.

76. Colombia maintains that Nicaragua's assertion relating to the invalidity of the 1928 Treaty is unfounded. Colombia observes that, even assuming that the 1928 Treaty was incompatible with Nicaragua's 1911 Constitution or that Nicaragua lacked competence to freely conclude treaties due to occupation by the United States, these claims were not raised during the ratification process in the Nicaraguan Congress in 1930, nor for some 50 years thereafter. It points out that, in fact, these arguments were raised for the first time in 1980. Colombia further notes that in 1948, when the Pact of Bogotá was concluded, Nicaragua made no reservation with regard to the 1928 Treaty, despite the fact that Nicaragua knew that it had the right to make such a reservation and made a reservation with regard to the validity of an arbitral award. Finally, Colombia contends that, as a consequence, Nicaragua is now precluded from raising the question of the validity of the 1928 Treaty and its 1930 Protocol. In this regard, Colombia relies on the case concerning the *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)* in which the Court ruled that Nicaragua's failure to question the validity of the Arbitral Award for six years after the terms of the Award had become known to it precluded Nicaragua from relying subsequently on allegations of invalidity (*Judgment, I.C.J. Reports 1960*, pp. 213-214).

77. The Court recalls that Article VI of the Pact of Bogotá excludes from the application of all the procedures provided for in the Pact "matters already settled by arrangement between the parties, or by arbitral award or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty". What matters are or are not settled within the terms of Article VI may require determination. However, the clear purpose of this provision was to preclude the possibility of using those procedures, and in particular judicial remedies, in order to reopen such matters as were settled between the parties to the Pact, because they had been the object of an international judicial decision or a treaty. When ratifying the Pact, States envisaged bringing within its procedures matters not yet so settled.

78. States parties to the Pact of Bogotá would have considered that matters settled by a treaty or international judicial decision had been definitively resolved unless a specific reservation relating thereto was made under Articles LIV and LV of the Pact. Nicaragua did not enter any reservation regarding the 1928 Treaty when it became a party to the Pact of Bogotá, the treaty it now invokes as a basis of jurisdiction, although it did enter a reservation with regard to arbitral decisions the validity of which it contested. The Court notes that there is no evidence that the States parties to the Pact of Bogotá of 1948, including Nicaragua, considered the 1928 Treaty to be invalid. On 25 May 1932, Nicara-

gua registered the Treaty and Protocol with the League of Nations as a binding agreement, pursuant to Article 18 of the Covenant of the League, Colombia having already registered the Treaty on 16 August 1930.

79. The Court recalls that Nicaragua advanced “the nullity and lack of validity” of the 1928 Treaty for the first time in an official declaration and White Paper published on 4 February 1980 (see paragraph 28 above). The Court thus notes that, for more than 50 years, Nicaragua has treated the 1928 Treaty as valid and never contended that it was not bound by the Treaty, even after the withdrawal of the last United States troops at the beginning of 1933. At no time in those 50 years, even after it became a Member of the United Nations in 1945 and even after it joined the Organization of American States in 1948, did Nicaragua contend that the Treaty was invalid for whatever reason, including that it had been concluded in violation of its Constitution or under foreign coercion. On the contrary, Nicaragua has, in significant ways, acted as if the 1928 Treaty was valid. Thus, in 1969, when Nicaragua responded to Colombia’s claim that the 82nd meridian, referred to in the 1930 Protocol, constituted the maritime boundary between the two States, Nicaragua did not invoke the invalidity of the Treaty but argued instead that the 1928 Treaty and 1930 Protocol did not effect a maritime delimitation. Similarly, in 1971 when Nicaragua made representations to the United States reserving its rights over Roncador, Quitasueño and Serrana, it did not call into question the validity of the 1928 Treaty.

80. The Court thus finds that Nicaragua cannot today be heard to assert that the 1928 Treaty was not in force in 1948.

81. In light of all the foregoing, the Court finds that the 1928 Treaty was valid and in force on the date of the conclusion of the Pact of Bogotá in 1948, the date by reference to which the Court must decide on the applicability of the provisions of Article VI of the Pact of Bogotá setting out an exception to the Court’s jurisdiction under Article XXXI thereof.

82. The Court recalls that Nicaragua argues that, even if the 1928 Treaty was valid, it has been terminated due to Colombia’s interpretation of the Treaty in 1969, which Nicaragua characterized as a material breach thereof. This contention is denied by Colombia.

The Court considers that the question whether the Treaty was terminated in 1969 is not relevant to the question of its jurisdiction since what is determinative, under Article VI of the Pact of Bogotá, is whether the 1928 Treaty was in force on the date of the conclusion of the Pact, i.e. in 1948, and not in 1969. Accordingly, there is no need for the Court to address the question of the purported termination of the 1928 Treaty in 1969 for the purposes of the ascertainment of its jurisdiction (see paragraph 89 below).

*

4.4.4. *Examining the preliminary objection in relation to different elements of the dispute*

83. Having established that the 1928 Treaty was in force in 1948, the Court will now turn to the question whether the Treaty and its 1930 Protocol settled the matters in dispute between the Parties and consequently whether the Court has jurisdiction in the case under Article XXXI of the Pact. The Court recalls that it has concluded above that there are two questions in dispute between the Parties on the merits: first, territorial sovereignty over islands and other maritime features and, second, the course of the maritime boundary between the Parties (see paragraph 42).

84. The Court notes that the Parties disagree about whether various matters relating to territorial sovereignty were settled by the 1928 Treaty, namely sovereignty over the three islands of the San Andrés Archipelago expressly named in the Treaty, the scope and composition of the rest of the San Andrés Archipelago and sovereignty over Roncador, Quitasueño and Serrana. The Parties also disagree about whether the 1930 Protocol effected a maritime delimitation between them.

85. The Court finds it appropriate to examine in turn whether each matter listed above has been settled by the 1928 Treaty and 1930 Protocol. In this regard, the Court recalls that it and its predecessor have already considered the well-foundedness of a preliminary objection in relation to different elements of the dispute, taken separately (see *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 2007*, pp. 596-597, paras. 31-33 and, pp. 617-618, para. 98; *Oil Platforms (Islamic Republic of Iran v. United States of America)*, *Preliminary Objection, Judgment*, *I.C.J. Reports 1996 (II)*, p. 810, para. 17, and p. 821, para. 55; *Electricity Company of Sofia and Bulgaria (Belgium v. Bulgaria)*, *Judgment, 1939, P.C.I.J., Series A/B, No. 77*, pp. 76-77 and 84).

*

4.4.5. *The jurisdiction of the Court as regards the question of sovereignty over the named islands of the San Andrés Archipelago*

86. The Court will begin by examining whether the 1928 Treaty settled the question of sovereignty over the three islands of the San Andrés Archipelago expressly named in the first paragraph of Article I of the 1928 Treaty. That paragraph states, *inter alia*, that: “[t]he Republic of Nicaragua recognises the full and entire sovereignty of the Republic of Colombia over the islands of San Andrés, Providencia, Santa Catalina and over the other islands, islets and reefs forming part of the San Andrés Archipelago”.

87. In Colombia’s view, Article I of the 1928 Treaty clearly establishes that it has sovereignty over the islands of San Andrés, Providencia and

Santa Catalina. For its part, Nicaragua acknowledges that Article I of the 1928 Treaty stipulates that Colombia has sovereignty over the Archipelago of San Andrés and recognizes that the Archipelago includes the three named islands. However, it contends that the Treaty is invalid or has been terminated and that therefore Article I has no legal value.

88. The Court considers that it is clear on the face of the text of Article I that the matter of sovereignty over the islands of San Andrés, Providencia and Santa Catalina has been settled by the 1928 Treaty within the meaning of Article VI of the Pact of Bogotá. In the Court's view there is no need to go further into the interpretation of the Treaty to reach that conclusion and there is nothing relating to this issue that could be ascertained only on the merits.

89. Nicaragua's contention that the 1928 Treaty is invalid, has been dealt with by the Court in paragraphs 79 to 81 above. With regard to Nicaragua's further assertion that the 1928 Treaty has been terminated by material breach due to the interpretation adopted by Colombia from 1969 onwards, as the Court stated in paragraph 82 above, that issue will not be addressed by the Court at this stage since it is not relevant to the question of its jurisdiction by reference to Article VI of the Pact of Bogotá. Even if the Court were to find that the 1928 Treaty has been terminated, as claimed by Nicaragua, this would not affect the sovereignty of Colombia over the islands of San Andrés, Providencia and Santa Catalina. The Court recalls that it is a principle of international law that a territorial régime established by treaty "achieves a permanence which the treaty itself does not necessarily enjoy" and the continued existence of that régime is not dependent upon the continuing life of the treaty under which the régime is agreed (*Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, I.C.J. Reports 1994, p. 37, paras. 72-73).

90. In the light of the foregoing, the Court finds that it can dispose of the issue of the three islands of the San Andrés Archipelago expressly named in the first paragraph of Article I of the 1928 Treaty at the current stage of the proceedings. That matter has been settled by the Treaty. Consequently, Article VI of the Pact is applicable on this point and therefore the Court does not have jurisdiction under Article XXXI of the Pact of Bogotá over the question of sovereignty over the three named islands. Accordingly, the Court upholds the first preliminary objection raised by Colombia in so far as it concerns the Court's jurisdiction as regards the question of sovereignty over the islands of San Andrés, Providencia and Santa Catalina.

*

4.4.6. *The jurisdiction of the Court as regards the question of the scope and composition of the rest of the San Andrés Archipelago*

91. The Court now turns to examine whether the 1928 Treaty settled, within the meaning of Article VI of the Pact of Bogotá, the question of

sovereignty over the maritime features which are not expressly mentioned in the first paragraph of Article I of the 1928 Treaty.

92. Colombia contends that geographically and historically the Archipelago of San Andrés was “understood as comprising the string of islands, cays, islets and banks stretching from Albuquerque in the south to Serranilla and Bajo Nuevo in the north — including the *Islas Mangles* (Corn Islands) — and the appurtenant maritime areas”. Colombia points out that, under the terms of Article I of the Treaty, Nicaragua recognizes Colombia’s sovereignty not only over San Andrés, Providencia and Santa Catalina but also over “all the other islands, islets and cays that form part of the . . . Archipelago of San Andrés”. Colombia also observes that Article I of the Treaty provided that Nicaragua has sovereignty over the Corn Islands and notes that consequently the Archipelago of San Andrés as defined from 1928 onwards did not include those islands.

93. In Colombia’s view, other than San Andrés, Providencia and Santa Catalina and appurtenant cays, the Archipelago as defined in the 1928 Treaty includes

“the Cays of Roncador (including Dry Rocks), Quitasueño, Serrana (including North Cay, Little Cay, Narrow Cay, South Cay, East Cay and Southwest Cay), Serranilla (including Beacon Cay, East Cay, Middle Cay, West Breaker and Northeast Breaker), Bajo Nuevo (including Bajo Nuevo Cay, East Reef and West Reef), Albuquerque (including North Cay, South Cay and Dry Rock), and the group of Cays of the East-Southeast . . . (including Bolivar Cay or Middle Cay, West Cay, Sand Cay and East Cay), as well as by other adjacent islets, cays, banks and atolls”.

In support of its claims, Colombia refers to an inset on an official map of Colombia from 1931, showing the Archipelago of San Andrés and Providencia as including the islands of San Andrés, Providencia and Santa Catalina as well as the Roncador, Quitasueño, Serrana, Serranilla, Bajo Nuevo, Albuquerque and East-Southeast Cays. Colombia notes that Nicaragua did not protest against that map.

94. Nicaragua observes that, while Article I of the 1928 Treaty stipulates that San Andrés, Providencia and Santa Catalina form part of the San Andrés Archipelago, it does not define which “other islets and reefs” are included in the Archipelago. Nicaragua notes that, according to the 1930 Protocol, the Archipelago does not extend west of the 82nd meridian. It points out, however, that the Treaty does not give any indication as to the northern or southern limits of the Archipelago. Nicaragua submits that the Archipelago of San Andrés “only includes the islands of San Andrés and Providencia and adjacent islets and cays, but does not include, among others, the features of Serrana, Roncador, Quitasueño, Serranilla and Bajo Nuevo”.

95. Nicaragua contends that the claims made by Colombia to maritime features, other than San Andrés, Providencia and Santa Catalina

relate to “a few groups of very small islands, without any connection, lying hundreds of kilometres apart” and that, geographically and geomorphologically, these features are separate and do not form a single unit. Nicaragua claims that, according to the practice prevailing when the 1928 Treaty was concluded, these features did not form an archipelago in legal terms either. With reference to the 1931 map relied upon by Colombia, Nicaragua notes that the map does not indicate precisely which features are included in the Archipelago of San Andrés and Providencia.

96. The Court recalls that there is agreement between the Parties that the San Andrés Archipelago includes the islands of San Andrés, Providencia and Santa Catalina as well as adjacent islets and cays. However, the Parties disagree as to which maritime features other than those named islands form part of the Archipelago.

97. The Court considers that it is clear on the face of the text of the first paragraph of Article I of the 1928 Treaty that its terms do not provide the answer to the question as to which maritime features apart from the islands of San Andrés, Providencia and Santa Catalina form part of the San Andrés Archipelago over which Colombia has sovereignty. That being so, this matter has not been settled within the meaning of Article VI of the Pact of Bogotá and the Court has jurisdiction under Article XXXI of the Pact of Bogotá. Therefore, the Court cannot uphold the first preliminary objection raised by Colombia in so far as it concerns the Court’s jurisdiction as regards the question of sovereignty over the maritime features forming part of the San Andrés Archipelago, save for the islands of San Andrés, Providencia and Santa Catalina.

*

4.4.7. The jurisdiction of the Court as regards the question of sovereignty over Roncador, Quitasueño and Serrana

98. The next question for the Court to answer is whether the issue of sovereignty over Roncador, Quitasueño and Serrana has been settled by the 1928 Treaty within the meaning of Article VI of the Pact of Bogotá. The second paragraph of Article I of the 1928 Treaty states that “[t]he present Treaty does not apply to the reefs of Roncador, Quitasueño and Serrana, sovereignty over which is in dispute between Colombia and the United States of America”.

99. Colombia notes that the 1928 Treaty provided that it did not apply to Roncador, Quitasueño and Serrana because they were in dispute between itself and the United States. It contends that those three maritime features form part of the San Andrés Archipelago and submits that the second paragraph of Article I was included in the Treaty precisely for that reason. In Colombia’s view, that provision is only explicable on the basis that it was necessary to put Roncador, Quitasueño and Serrana outside of the reach of the recognition of Colombian sov-

ereignty over the San Andrés Archipelago contained in the first paragraph of Article I.

100. Colombia submits that by agreeing to the inclusion of the second paragraph of Article I of the 1928 Treaty, Nicaragua recognized that it did not have any claim to sovereignty over Roncador, Quitasueño and Serrana and that the only possible “claimants” were Colombia or the United States. Colombia notes that there is no mention in the second paragraph of Article I of any dispute over Roncador, Quitasueño and Serrana involving a Nicaraguan claim or right and it considers that it is not conceivable that, had Nicaragua had any claim to those three maritime features, it would have refrained from at least mentioning it during the negotiation of the 1928 Treaty. It further points out that Nicaragua did not assert a claim of sovereignty over Roncador, Quitasueño and Serrana until 1971 when Colombia and the United States began negotiating a treaty regarding those three features. Colombia submits that the result of the renunciation by the United States of its claims to Roncador, Quitasueño and Serrana in the 1972 Vásquez-Saccio Treaty (see paragraph 25 above) was that Colombia had sovereignty over those three maritime features and thus over the whole of the San Andrés Archipelago.

101. Nicaragua contends that, even if the 1928 Treaty is valid and in force, it did not settle the dispute between Colombia and Nicaragua concerning sovereignty over Roncador, Quitasueño and Serrana since the matter was expressly excluded from the scope of that Treaty. Nicaragua disputes Colombia’s claim that the San Andrés Archipelago or the definition of the San Andrés Archipelago in the 1928 Treaty includes Roncador, Quitasueño and Serrana. It submits that, historically, the Archipelago was not considered to include those three features and notes that they are situated at a great distance from the islands mentioned by name in Article I of the 1928 Treaty. Nicaragua argues that the fact that the 1928 Treaty mentions Roncador, Quitasueño and Serrana does not mean that those features are part of the San Andrés Archipelago since the 1928 Treaty deals generally with “territorial questions” between Colombia and Nicaragua and not just the San Andrés Archipelago.

102. Nicaragua denies that it relinquished its claim to sovereignty over Roncador, Quitasueño and Serrana by agreeing to the inclusion of the second paragraph of Article I in the text of the 1928 Treaty. It notes that, if the intention had been for Nicaragua to renounce its claim, this could have been stated in a much more explicit manner. Nicaragua adds that it reserved its rights over Roncador, Quitasueño and Serrana in 1971 during the negotiation of the Vásquez-Saccio Treaty and recalls that, following the signing of the Treaty, its National Assembly passed a formal declaration of sovereignty over Roncador, Quitasueño and Serrana and the Government made a formal protest to the Governments of Colombia and the United States (see paragraphs 24 and 27 above).

103. Nicaragua also denies that the 1972 Vásquez-Saccio Treaty con-

stituted an acknowledgment of Colombian sovereignty by the United States. Nicaragua contends that, in relinquishing its rights over Roncador, Quitasueño and Serrana, the United States did not acknowledge Colombia's rights thereover. In this regard, Nicaragua contends that, as stated in the Senate Foreign Relations Committee and in a 1981 *aide-mémoire* presented by the United States to Nicaragua, the United States considered that the 1972 Treaty was without prejudice to Nicaragua's claim to sovereignty over Roncador, Quitasueño and Serrana and did not intend to take any position regarding the merits of the competing claims of Colombia and Nicaragua.

104. The Court observes that the meaning of the second paragraph of Article I of the 1928 Treaty is clear: this Treaty does not apply to the three maritime features in question. Therefore, the limitations contained in Article VI of the Pact of Bogotá do not apply to the question of sovereignty over Roncador, Quitasueño and Serrana. The Court thus has jurisdiction over this issue under Article XXXI of the Pact of Bogotá and cannot uphold the first preliminary objection raised by Colombia in so far as it concerns the Court's jurisdiction as regards the question of sovereignty over Roncador, Quitasueño and Serrana.

*

4.4.8. The jurisdiction of the Court as regards the question of maritime delimitation

105. The Court turns to address the question whether the 1928 Treaty and 1930 Protocol settled the question of the maritime delimitation between the Parties within the meaning of Article VI of the Pact of Bogotá.

106. Colombia asserts that the Parties had agreed in the 1928 Treaty and 1930 Protocol upon the 82nd meridian as the delimitation line of the maritime areas between them and that, consequently, the delimitation issue must be considered to have been settled. To support this contention, Colombia points to the language of the Protocol, in which the Parties declare that "the San Andrés and Providencia Archipelago mentioned in the first article of the said Treaty does not extend west of the 82nd degree of longitude west of Greenwich".

107. Colombia submits that the drafting history of the 1930 Protocol shows that the Parties regarded the 82nd meridian as "a limit, as a dividing line, as a line separating whatever Colombian or Nicaraguan jurisdictions or claims there then existed or might exist in the future". It asserts that the debates in the Nicaraguan Senate show that the provision regarding the 82nd meridian was intended to define the maritime boundary between the two States in order to put an end, once and for all, to the entire dispute, both territorial and maritime, between them. In this regard,

Colombia points to certain statements during the debates in the Senate, including that the “demarcation of the dividing line of the waters in dispute . . . is indispensable for the question to be at once terminated forever” and a statement of the Nicaraguan Minister for Foreign Affairs that the Senate Commission on Foreign Affairs and the advisers of the Government had agreed “to accept the 82° west Greenwich meridian . . . as the boundary in this dispute with Colombia”.

108. Colombia also underscores the difference in the language used in the Protocol and in the Treaty. It notes that in the Treaty, the Parties speak of being “desirous of putting an end to the *territorial* dispute between them” (emphasis added by Colombia), whereas in the Protocol they refer to putting an end to “the question” pending between them. In Colombia’s view, the language of the Protocol indicates that, while the 1928 Treaty addressed the territorial dispute, the 1930 Protocol addressed the territorial and maritime dispute.

109. Colombia also points out that the 82nd meridian has been depicted on its maps since 1931 as the maritime boundary between Colombia and Nicaragua, and that Nicaragua never lodged any protest against those maps. Colombia also maintains, contrary to Nicaragua’s contention, that no subsequent maritime boundary negotiations had taken place between it and Nicaragua, and that the delimitation issue was deemed to have been “settled” by the Treaty and Protocol thereto.

110. Colombia contends further that since the 82nd meridian was conceived as a maritime boundary, it remains valid pursuant to the fundamental principle of the stability of boundaries, regardless of any intervening change in the law of the sea.

111. Nicaragua rejects Colombia’s argument that the reference to the 82nd meridian in the 1930 Protocol sought to effect a general maritime delimitation between Nicaragua and Colombia. It maintains that the Protocol simply fixed the western limit of the San Andrés Archipelago at the 82nd meridian. In support of this contention, Nicaragua points to the statement made by Nicaragua’s Minister for Foreign Affairs during the ratification debates in Nicaragua’s Senate, where he stated that the provision concerning the 82nd meridian “does not reform the [1928] Treaty, because it only intends to indicate a limit between the archipelagos that had been the reason for the dispute”. Nicaragua also refers to the language of the decree whereby Nicaragua ratified the Treaty and Protocol “in the understanding that the Archipelago of San Andrés mentioned in the first clause of the Treaty does not extend west of Greenwich Meridian 82 . . .”. According to Nicaragua, it is significant that the decree makes no reference at all to maritime delimitation.

112. Nicaragua points out that if the reference in the Protocol to the 82nd meridian had amounted to a maritime delimitation, the provision

would have been included in the operative part of the 1928 Treaty, and not in a protocol of exchange of ratifications. Nicaragua emphasizes that the difference in the words used in the preamble of the Treaty and the Protocol did not mean that the Parties had given a maritime dimension to the agreement. It further submits that the reference to the 82nd meridian could not have effected a maritime delimitation since the concepts of continental shelf and exclusive economic zone were at the time still unknown under international law.

113. As for the maps that Colombia asserts have depicted the 82nd meridian, Nicaragua contends that there were no legends or other indications on these maps, identifying the 82nd meridian as a maritime boundary. Nicaragua had no reason, therefore, to protest against these maps. Nicaragua also asserts that it was not informed of Colombia's maritime claims until 1969, when Colombia protested against Nicaragua's grants of oil exploration concessions in areas east of the 82nd meridian. Nicaragua notes that it responded to those claims immediately, stating that the objective of the provision referring to the 82nd meridian was "to clearly and specifically establish in a restrictive manner the extension of the Archipelago of San Andrés, and by no valid means can it be interpreted as a boundary of Nicaraguan rights or creator of a border between the two countries". It contends further that negotiations between the Parties in 1977, 1995 and 2001 demonstrate that Colombia did not consider that the maritime delimitation had been finally settled between the two States. Nicaragua emphasizes, in this connection, that these negotiations concerned, *inter alia*, the delimitation of the respective maritime areas of the Parties.

114. Finally, Nicaragua maintains that since the 1928 Treaty and 1930 Protocol did not settle the maritime dispute between it and Colombia, Article VI of the Pact of Bogotá is not applicable to this issue. It claims that the Court must, therefore, reject that aspect of Colombia's preliminary objection.

115. The Court considers that, contrary to Colombia's claims, the terms of the Protocol, in their plain and ordinary meaning, cannot be interpreted as effecting a delimitation of the maritime boundary between Colombia and Nicaragua. That language is more consistent with the contention that the provision in the Protocol was intended to fix the western limit of the San Andrés Archipelago at the 82nd meridian.

116. In the Court's view, a careful examination of the pre-ratification discussions of the 1928 Treaty by and between the Parties confirms that neither Party assumed at the time that the Treaty and Protocol were designed to effect a general delimitation of the maritime spaces between Colombia and Nicaragua (see paragraphs 70 to 72 above). Here it is to be noted that Colombia did not find it necessary to resubmit the 1928 Treaty to its Congress for the consideration of the provision inserted into

the 1930 Protocol because Colombia's diplomatic representatives assumed that the reference to the 82nd meridian in the Protocol amounted to an interpretation of the first paragraph of Article I of the Treaty and thus had not changed the substance thereof. It may be added that Nicaragua's Minister for Foreign Affairs, in his appearance before the Nicaraguan Senate prior to ratification, assured that body that the reference to the 82nd meridian "does not reform the Treaty, because it only intends to indicate a limit between the archipelagos that have been [the] reason for the dispute".

117. Contrary to Colombia's assertion, the Court does not consider it significant that in the preamble of the Treaty, the Parties express their desire to put an end to the "*territorial dispute* pending between them" (emphasis added) whereas in the Protocol they refer "to the *dispute* between both republics" (emphasis added). In the Court's view, the difference between the language of the Treaty and that of the Protocol cannot be read to have transformed the territorial nature of the Treaty into one that was also designed to effect a general delimitation of the maritime spaces between the two States. This conclusion is apparent from the full text of the aforementioned phrase in the Protocol, where the Parties state that the 1928 Treaty was concluded "with a view to putting an end to the dispute between both republics concerning the San Andrés and Providencia Archipelago and the Nicaraguan Mosquito Coast". In other words, the "dispute" to which the Protocol refers relates to the Mosquito Coast along with the San Andrés Archipelago; it does not refer, even by implication, to a general maritime delimitation.

118. The Court does not share Colombia's view that its maps, dating back to 1931, which allegedly show the 82nd meridian as the boundary dividing the maritime spaces between Nicaragua and Colombia, demonstrate that both Parties believed that the Treaty and Protocol had effected a general delimitation of their maritime boundary. An examination of these maps indicates that the dividing lines on them are drawn in such a way along the 82nd meridian between the San Andrés Archipelago and Nicaragua that they could be read either as identifying a general maritime delimitation between the two States or as only a limit between the archipelagos. Given the ambiguous nature of the dividing lines and the fact that these maps contain no explanatory legend, they cannot be deemed to prove that both Colombia and Nicaragua believed that the Treaty and Protocol had effected a general delimitation of their maritime spaces. Nicaragua's failure to protest the maps does not therefore imply an acceptance of the 82nd meridian as the maritime boundary.

119. Finally, with respect to Nicaragua's claim that the negotiations between the two States in 1977, 1995 and 2001 dealt with the delimitation of their respective maritime spaces, the Court finds that the material presented to it by the Parties on this subject is inconclusive and does not

allow it to evaluate the significance of the meetings held in 1977, 1995 and 2001 for the question of whether the Parties considered that the 1928 Treaty and 1930 Protocol had effected a maritime delimitation between them.

120. Consequently, after examining the arguments presented by the Parties and the material submitted to it, the Court concludes that the 1928 Treaty and 1930 Protocol did not effect a general delimitation of the maritime boundary between Colombia and Nicaragua. It is therefore not necessary for the Court to consider the arguments advanced by the Parties regarding the effect on this question of changes in the law of the sea since 1930. Since the dispute concerning maritime delimitation has not been settled by the 1928 Treaty and 1930 Protocol within the meaning of Article VI of the Pact of Bogotá, the Court has jurisdiction under Article XXXI of the Pact. Therefore, the Court cannot uphold Colombia's first preliminary objection in so far as it concerns the Court's jurisdiction as regards the question of the maritime delimitation between the Parties.

* * *

5. SECOND PRELIMINARY OBJECTION

121. In addition to Article XXXI of the Pact of Bogotá, Nicaragua invoked as a basis of the Court's jurisdiction the declarations made by the Parties under Article 36 of the Statute of the Permanent Court of International Justice, which are deemed, for the period for which they still have to run, to be acceptances of the compulsory jurisdiction of the present Court pursuant to Article 36, paragraph 5, of its Statute (see paragraph 1 above). In its second preliminary objection, Colombia asserts that the Court has no jurisdiction on this basis.

122. Nicaragua made a declaration under Article 36 of the Statute of the Permanent Court of International Justice on 24 September 1929 in the following terms:

“On behalf of the Republic of Nicaragua, I recognize as compulsory unconditionally the jurisdiction of the Permanent Court of International Justice.” [*Translation from the French.*]

On 30 October 1937 Colombia made a declaration in the following terms:

“The Republic of Colombia recognizes as compulsory, *ipso facto* and without special agreement, on condition of reciprocity, in relation to any other State accepting the same obligation, the jurisdiction of the Permanent Court of International Justice in accordance with Article 36 of the Statute.

The present declaration applies only to disputes arising out of facts subsequent to 6 January 1932.” [*Translation from the French.*]

The Court notes that, under Article 36, paragraph 5, of its Statute, the declarations made by both Parties are deemed to be acceptances of its compulsory jurisdiction for the period which they still had to run and in accordance with their terms. On 23 October 2001, Nicaragua made a reservation to its declaration which does not, however, have any relevance to the present case. On 5 December 2001, Colombia notified the Secretary-General of the termination of its optional clause declaration.

123. Colombia claims that jurisdiction under the Pact of Bogotá is governing and hence exclusive. In its view, since the Court has jurisdiction under Article XXXIV of the Pact to declare the controversy ended and must do so in the present case, the Court may not proceed further to consider whether it might have jurisdiction under the optional clause. In support of its claim, Colombia relies on the Court's Judgment in the *Border and Transborder Armed Actions (Nicaragua v. Honduras)* case, in which Nicaragua also asserted jurisdiction on the basis of Article XXXI of the Pact of Bogotá and on the basis of optional clause declarations. Colombia notes that, in the *Armed Actions* case, the Court declared that "in relations between the States parties to the Pact of Bogotá, that Pact is governing" and that

"the commitment in Article XXXI . . . is an autonomous commitment, independent of any other which the parties may have undertaken or may undertake by depositing with the United Nations Secretary-General a declaration of acceptance of compulsory jurisdiction under Article 36, paragraphs 2 and 4, of the Statute" (*Border and Transborder Armed Actions (Nicaragua v. Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 82, para. 27, and p. 85, para. 36).

124. Colombia considers that the Court thus laid down the principle of the primacy of the title of jurisdiction under the Pact of Bogotá. It concludes that, when an Applicant invokes both the Pact of Bogotá and optional clause declarations, it is the Pact of Bogotá, as *lex specialis*, which governs or, in other words, is determinative and conclusive.

125. Colombia claims that in the *Armed Actions* case, the Court held that the title of jurisdiction under the Pact of Bogotá prevailed over subsequent optional clause declarations. Colombia points out that, in the present case, the argument that the Pact of Bogotá takes precedence is even stronger since the optional clause declarations of Nicaragua and Colombia were made before the entry into force of the Pact of Bogotá. Therefore, the Pact of Bogotá is not only *lex specialis* but also *lex posterior*.

126. In Colombia's view, "it is the Pact of Bogotá which constitutes the Court's title of jurisdiction in our case" and were the Court to conclude that it had no jurisdiction to adjudicate upon the present dispute,

the application of the Pact would require the Court to declare the controversy ended pursuant to Article XXXIV thereof, “not only for the purposes of the Court’s jurisdiction under the Pact, but for all purposes”. In this regard, Colombia claims that a dispute cannot be settled and ended and yet at the same time be a dispute capable of adjudication by the Court pursuant to jurisdiction accorded under the optional clause. Consequently, once the controversy between the Parties has been declared by the Court to be ended under the Pact of Bogotá, there would be no controversy outstanding to which jurisdiction could attach under any other title, including the declarations of the Parties under the optional clause.

127. Colombia argues that, in any event, the Court would have no jurisdiction on this basis since Colombia’s optional clause declaration had been withdrawn by the date of the filing of Nicaragua’s Application. Colombia further contends that even if its declaration were found to be in force at the time when Nicaragua filed its Application, the alleged dispute would fall outside the scope of the declaration as a result of a reservation which excluded disputes arising out of facts prior to 6 January 1932. According to Colombia, the facts which have given rise to the dispute between Nicaragua and Colombia, namely the conclusion of the 1928 Treaty and 1930 Protocol, predate 6 January 1932.

128. Nicaragua submits that although the Court stated in its Judgment in the *Armed Actions* case that “in relations between the States parties to the Pact of Bogotá, that Pact is governing”, this cannot “destroy the value of the Optional Clause declarations as an independent basis of jurisdiction” since they “have an intrinsic value in and of themselves, and their operation is not predetermined by other titles of jurisdiction”.

It considers that the primacy of the Pact does not signify exclusiveness. Nicaragua contends that this was recognized by the Court itself in the *Armed Actions* case when it stated that the commitment under the Pact of Bogotá is “*independent* of any other which the parties may have undertaken . . . by depositing . . . a declaration of acceptance of compulsory jurisdiction” (emphasis added). It points out that in the *Armed Actions* case, the Court did not rule out the possibility that it also had jurisdiction under the Parties’ optional clause declarations but simply concluded that it “[did] not need to consider” that question since it had already found that it had jurisdiction under the Pact of Bogotá.

129. In Nicaragua’s view, if the Court were to declare the controversy ended pursuant to Article XXXIV of the Pact, that finding would have to be understood within the framework of the Pact itself. Thus the controversy would be ended only to the extent that it would no longer be possible to invoke the Pact as a basis of jurisdiction. It underlines that such a finding pursuant to Article XXXIV of the Pact does not exclude the existence of other bases of jurisdiction such as the declarations by the Parties under the optional clause. These declarations “operate independ-

ently of any bases of jurisdiction that may be established by means of treaties; they are not subordinate to them”.

130. Nicaragua argues that the two bases of jurisdiction, namely Article XXXI of the Pact of Bogotá and the declarations made by the Parties under the optional clause are complementary and that it is for the Court to decide whether to rely upon only one of them or to combine them. It points out that the States parties to the Pact of Bogotá intended to broaden the jurisdiction of the Court not to limit existing obligations deriving from other instruments. In this context, Nicaragua refers to the statement of the Permanent Court of International Justice in the *Electricity of Sofia and Bulgaria* case regarding multiple agreements accepting compulsory jurisdiction.

131. Nicaragua denies that Colombia’s declaration was not in force at the time of the filing of the Application. It contends that reasonable notice is required for the withdrawal of declarations and that this condition was not complied with by Colombia. Nicaragua does not dispute that Colombia’s declaration applied only to disputes arising from facts subsequent to 6 January 1932; it argues, however, that the generating fact of the present dispute, namely the interpretation of the 1928 Treaty and 1930 Protocol adopted by Colombia from 1969 onwards, arose after 6 January 1932. Finally, Nicaragua asserts, referring to the provisions of Article 79, paragraph 9, of the Rules of Court, that in any event the objection submitted by Colombia does not have an exclusively preliminary character (see paragraph 13 above).

*

132. The Court notes initially that the question of whether the declarations made by the Parties under the optional clause can provide a distinct and sufficient basis of jurisdiction in the present case, as submitted by Nicaragua, now only arises in respect of that part of the dispute relating to the sovereignty over the three islands expressly named in Article I of the 1928 Treaty: San Andrés, Providencia and Santa Catalina. Having first examined the preliminary objection raised by Colombia to jurisdiction under the Pact of Bogotá, the Court has concluded above (paragraphs 97, 104 and 120) that it has jurisdiction on the basis of Article XXXI of the Pact to deal with all the other aspects of the dispute. Consequently, no purpose is served by examining whether, in relation to those aspects, the declarations of the Parties under the optional clause could also provide a basis of the Court’s jurisdiction (see *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, *Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 90, para. 48).

133. The Court recalls that in the *Armed Actions* case it stated that “[s]ince, in relations between the States parties to the Pact of Bogotá, that Pact is governing, the Court will *first* examine the question whether it has

jurisdiction under Article XXXI of the Pact” (*Border and Transborder Armed Actions (Nicaragua v. Honduras)*, *Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 82, para. 27; emphasis added). However, this cannot be interpreted in any way other than that the Court, faced with the two titles of jurisdiction invoked, could not deal with them simultaneously and decided to proceed from the particular to the more general, without thereby implying that the Pact of Bogotá prevailed over and excluded the second title of jurisdiction, namely the optional clause declarations.

134. In stating in the *Armed Actions* Judgment (*ibid.*, p. 85, para. 36) that the commitment under Article XXXI of the Pact is autonomous, the Court was merely responding to and rejecting the arguments by Honduras, first, that Article XXXI requires an optional clause declaration to be made in order for that Article to be in effect and, second, that the conditions of acceptance of compulsory jurisdiction of the Court set forth in such a declaration by way of reservations were determinative of the scope of the commitment under Article XXXI of the Pact of Bogotá.

In particular, by stating that the commitment under Article XXXI is an autonomous commitment, independent from an optional clause declaration, the Court explained why “the commitment in Article XXXI can only be limited by means of reservations to the Pact itself” (*ibid.*).

135. The Court further notes that

“the multiplicity of agreements concluded accepting the compulsory jurisdiction is evidence that the contracting Parties intended to open new ways of access to the Court rather than to close old ways or to allow them to cancel each other out with the ultimate result that no jurisdiction would remain” (*Electricity Company of Sofia and Bulgaria (Belgium v. Bulgaria)*, *Judgment, 1939, P.C.I.J., Series A/B, No. 77*, p. 76).

136. In the light of the above, the Court considers that the provisions of the Pact of Bogotá and the declarations made under the optional clause represent two distinct bases of the Court’s jurisdiction which are not mutually exclusive.

137. The Court notes that the scope of its jurisdiction could be wider under the optional clause than under the Pact of Bogotá.

The Court observes that neither Colombia nor Nicaragua has made a reservation to their respective optional clause declarations identical or similar to the restriction contained in Article VI of the Pact of Bogotá. Accordingly, the limitation imposed by Article VI of the Pact would not be applicable to jurisdiction under the optional clause.

138. The question has arisen as to whether the claim by Nicaragua of sovereignty over the islands of San Andrés, Providencia and Santa Catalina in the present case means that there thus is a continuing dispute as to

this matter. The Court has upheld the first preliminary objection to jurisdiction, based on the Pact of Bogotá, raised by Colombia in so far as it concerns the Court's jurisdiction regarding the question of sovereignty over these three islands, after satisfying itself that the matter of sovereignty over these islands had been settled by the 1928 Treaty. The Court could not have concluded that it lacked jurisdiction over that matter under the Pact of Bogotá had there still been an extant dispute with regard thereto.

It is recalled in this connection that

“it is not sufficient for one party to a contentious case to assert that a dispute exists with the other party. A mere assertion is not sufficient to prove the existence of a dispute any more than a mere denial of the existence of the dispute proves its non-existence. Nor is it adequate to show that the interests of the two parties to such a case are in conflict.” (*South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, *Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328.)

Moreover, “[w]hether there exists an international dispute is a matter for objective determination” (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74). This determination is an integral part of the Court's judicial function.

The Court's acknowledgment of the fact that sovereignty over the three islands was attributed to Colombia under the 1928 Treaty was made for the purposes of ascertaining whether or not the Court had jurisdiction over the matter under the Pact of Bogotá. However, the very fact that the dispute on the question of the sovereignty over the three islands has been settled by the 1928 Treaty is equally relevant for the purposes of determining whether the Court has jurisdiction on the basis of the optional clause declarations. In this regard, the Court notes that Article 36, paragraph 2, of the Statute expressly requires that, in order for the Court to have jurisdiction on the basis of optional clause declarations, there must exist a “legal dispute” between the Parties.

Given the Court's finding that there is no extant legal dispute between the Parties on the question of sovereignty over the islands of San Andrés, Providencia and Santa Catalina, the Court cannot have jurisdiction over this question either under the Pact of Bogotá or on the basis of the optional clause declarations.

139. In the light of the foregoing, the Court finds that no practical purpose would be served by proceeding further with the other matters raised in the second preliminary objection filed by Colombia, including the examination of Colombia's contentions that its declaration under the optional clause was terminated with legal effect by the date on which Nicaragua filed its Application or that the present dispute falls outside the scope of Colombia's declaration due to the effect of its reservation *ratione temporis*.

140. The Court thus upholds the second preliminary objection relating to jurisdiction under the optional clause declarations raised by Colombia in so far as it concerns the Court's jurisdiction as regards the question of sovereignty over the islands of San Andrés, Providencia and Santa Catalina, and finds that it is not necessary to examine the objection in so far as it concerns sovereignty over the other maritime features in dispute between the Parties and the maritime delimitation between the Parties (see paragraph 132).

* * *

141. In accordance with Article 79, paragraph 9, of the Rules of Court, time-limits for the further proceedings shall subsequently be fixed by Order of the Court.

* * *

6. OPERATIVE CLAUSE

142. For these reasons,

THE COURT,

(1) As regards the first preliminary objection to jurisdiction raised by the Republic of Colombia on the basis of Articles VI and XXXIV of the Pact of Bogotá:

(a) By thirteen votes to four,

Upholds the objection to its jurisdiction in so far as it concerns sovereignty over the islands of San Andrés, Providencia and Santa Catalina;

IN FAVOUR: *President Higgins; Judges Shi, Koroma, Parra-Aranguren, Buerenthal, Owada, Simma, Tomka, Keith, Sepúlveda-Amor, Skotnikov; Judges ad hoc Fortier, Gaja;*

AGAINST: *Vice-President Al-Khasawneh; Judges Ranjeva, Abraham, Benouna;*

(b) Unanimously,

Rejects the objection to its jurisdiction in so far as it concerns sovereignty over the other maritime features in dispute between the Parties;

(c) Unanimously,

Rejects the objection to its jurisdiction in so far as it concerns the maritime delimitation between the Parties;

(2) As regards the second preliminary objection to jurisdiction raised by the Republic of Colombia relating to the declarations made by the Parties recognizing the compulsory jurisdiction of the Court:

(a) By fourteen votes to three,

Upholds the objection to its jurisdiction in so far as it concerns sovereignty over the islands of San Andrés, Providencia and Santa Catalina;

IN FAVOUR: *President Higgins; Judges Shi, Koroma, Parra-Aranguren, Buergenthal, Owada, Simma, Tomka, Abraham, Keith, Sepúlveda-Amor, Skotnikov; Judges ad hoc Fortier, Gaja;*

AGAINST: *Vice-President Al-Khasawneh; Judges Ranjeva, Bennouna;*

(b) By sixteen votes to one,

Finds that it is not necessary to examine the objection to its jurisdiction in so far as it concerns sovereignty over the other maritime features in dispute between the Parties and the maritime delimitation between the Parties;

IN FAVOUR: *President Higgins; Vice-President Al-Khasawneh; Judges Ranjeva, Shi, Koroma, Parra-Aranguren, Buergenthal, Owada, Tomka, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov; Judges ad hoc Fortier, Gaja;*

AGAINST: *Judge Simma;*

(3) As regards the jurisdiction of the Court,

(a) Unanimously,

Finds that it has jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to adjudicate upon the dispute concerning sovereignty over the maritime features claimed by the Parties other than the islands of San Andrés, Providencia and Santa Catalina;

(b) Unanimously,

Finds that it has jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to adjudicate upon the dispute concerning the maritime delimitation between the Parties.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this thirteenth day of December, two thousand and seven, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic Nicaragua and the Government of the Republic of Colombia, respectively.

(Signed) Rosalyn HIGGINS,
President.

(Signed) Philippe COUVREUR,
Registrar.

Vice-President AL-KHASAWNEH appends a dissenting opinion to the Judgment of the Court; Judge RANJEVA appends a separate opinion to the Judgment of the Court; Judges PARRA-ARANGUREN, SIMMA and TOMKA append declarations to the Judgment of the Court; Judge ABRAHAM appends a separate opinion to the Judgment of the Court; Judge KEITH appends a declaration to the Judgment of the Court; Judge BENNOUNA appends a dissenting opinion to the Judgment of the Court; Judge *ad hoc* GAJA appends a declaration to the Judgment of the Court.

(Initialed) R.H.

(Initialed) Ph.C.
