

In the International Court of Justice
NICARAGUA,)
APPLICANT)
V.)
JAPAN,)
RESPONDENT)

MEMORIAL OF NICARAGUA

COMES NOW Nicaragua and for their Memorial to the Court states the following:

STATEMENT OF JURISDICTION

The Court has jurisdiction over the present dispute in accordance with the provisions of Article 36, paragraphs 1 and 2, of its Statute, due to the following:

I. The declaration of acceptance of the Court's jurisdiction made respectively by the Republic of Colombia on January 6, 1932, and the Republic of Nicaragua on September 24, 1929.

II. The American Treaty of Pacific Settlement of Disputes Article XXXI. recognizes the jurisdiction of the Court as compulsory ipso facto in all matters of international law for all treaty signatories.

STATEMENT OF LAW

The Republic of Nicaragua claims as a matter of law the following:

I. Articles 51-52 of the Vienna Convention on the Law of Treaties designate treaties that have been procured by means of corruption, fraud, or coercion are invalidated and not enforceable.

II. While not formally law, the principle of *ut i possidet is juris* is a longstanding and well accepted principle of territorial law and has been invoked by the Court in the past.

STATEMENT OF FACT

I. The Barcenas-Esguerra Treaty of 1930 was signed while armed forces of the United States of America occupied the Republic of Nicaragua.

II. Upon the dissolution of the Captaincy General of Guatemala in 1821, by means of the gaining of independence of its constituent provinces from Spain, the Federation of Central American States was created. Under the principles of *uti possidet is juris* the sovereignty of all of the Captaincy territory, including the island groups and keys of San Andres and Santa Catalina and Providencia, was transferred to this successor state. This same principle caused the transfer of the same territory from the Federation to Nicaragua upon its dissolution in 1838.

ARGUMENTS

I. The Barcenas-Esguerra Treaty was signed while under duress due to the occupation of Nicaragua by forces of the United States of America, without proper consideration of Nicaraguan interests, and cannot be considered a sovereign decision. Under the provisions of the Vienna Convention on the Law of Treaties regarding the circumstances in which a treaty can be considered invalid this treaty should be considered null and void.

II. The principle of *ut i possidet is juris*, as a recognized standard for the fate of territorial possessions during the transition of one state to another, should be employed by the Court

in this case as it has in the past to designate Republic of Nicaragua as the successor state to the Federation of Central American States and rightful owner of its former territories.

SUMMARY AND PRAYER FOR RELIEF

It is the belief of the Republic of Nicaragua that the Barcenas-Esguerra Treaty, which the Republic of Colombia bases its territorial claims upon, is invalid under international law and custom. Thus, Colombia would have no legal justification for its claims. Nicaragua, however, rests its claim upon one of the oldest international principles for territorial delimitation and what we feel is a longstanding historical right. We pray that the Court sees fit to rule in favor of invalidating the Barcenas-Esguerra Treaty and granting Nicaragua the rights to the territories in question in accordance with international custom and law.