



1 **THE REPUBLIC OF NICARAGUA**

2 **APPLICANT**

3 **V.**

4 **THE REPUBLIC OF COLOMBIA**

5 **RESPONDENT**

6 **MEMORIAL OF THE REPUBLIC OF COLOMBIA**

7 COMES NOW the Republic of Colombia and for their Memorial to the Court states the following:

8 STATEMENT OF JURISDICTION

9 1. According to the 1928 Barcenas-Esguerra Treaty and the 1930 Protocol that followed, The Re-
10 public of Colombia and the Republic of Nicaragua agreed upon who had sovereignty over the islands
11 disputed in this case; therefore the court does not have jurisdiction because this situation was previ-
12 ously resolved and agreed on by both parties.

13 2. According to the Pact of Bogota, "The aforesaid procedures, furthermore, may not be applied
14 to matter already settled by arrangement between the parties, or by arbitral award or by decision of
15 an international court, or which are governed by agreements or treaties in force on the date of the
16 conclusion of the present Treaty." The Barcenas-Esguerra Treaty is still in force and was never cited in
17 Article VLIII as one to cease to be enforced.

18 STATEMENT OF LAW:

19 1. In accordance with the 1928 Barcenas-Esguerra Treaty, the Republic of Colombia maintains
20 the sovereignty and full dominion over the islands of San Andres, Providencia, Santa Catalina and all
21 other islands, islets and keys which form part of said San Andres archipelago.

22 2. In accordance with 1930 Protocol, referring to the 1928 treaty, the Republic of Colombia main-
23 tains control of the eastern side of the 82W Meridian while Nicaragua maintains the western side. All of
24 the islands, islets and cays including in the 1928 treaty are on the eastern side of the 82W Meridian.

25 3. Article 51 and Article 52 of the Vienna Convention 1969 on the Law of Treaties, which states
26 "the expression of a State's consent to be bound by a treaty which has been procured by the coercion
27 of its representative through acts of threats directed against him shall be without any legal effect" and
28 "A treaty is void if its conclusion have been procured by the threat of use of force in violation of the
29 principles of international law embodied in the Charter of the United Nations."

30 a. The Republic of Nicaragua never appealed to say that they were coerced into the Barcenas-
31 Esguerra Treaty by the United States of America, signifying the validity of the 1928/1930 Treaty.

32 4. Article 56 of the 1969 Vienna Convention on the Law of Treaties states "a treaty which contains
33 no provision regarding its termination and which does not provide for denunciation or withdrawal is not
34 subject to denunciation or withdrawal unless:

35 a. it is established that the parties intended to admit the possibility of denunciation or with-
36 drawal; or

37 b. a right of denunciation or withdrawal may be implied by the nature of the treaty."

38 STATEMENT OF FACT:

39 The San Andres archipelago is located approximately 480 miles north of the mainland of the
40 Republic of Colombia. This archipelago was considered part of the Viceroyalty of New Granada, the
41 precursor to the modern Republic of Colombia during colonial times. There has been a Colombian

42 claim to these islands, made official with the ratification of the Barcenas Esguerra Treaty. At this time,
43 the Republic of Nicaragua claims to have been influenced by the United States during the ratification of
44 this treaty, however these claims are untrue, and attempt to disrupt decades of Colombian sovereignty
45 over the aforementioned territories.

46 The ensuing disagreement is subject to previous longstanding treaties, namely the 1928/1930
47 Barcenas-Esguerra Treaty which delineated the archipelago and surrounding territories in two parts,
48 along the 82W Meridian. This provision was put forth into discussion by the Republic of Nicaragua as an
49 important piece to their ratification of the 1928 Treaty. This provision was subsequently agreed upon,
50 and has been adhered to for decades, until the claims by the Republic of Nicaragua have created the
51 situation in which our nations currently find themselves.

52 ARGUMENTS

53 1. The principle of *Uti Possidetis Juris*, asserts that states who emerge from colonization, or ex-
54 ternal influence, inherit the administrative borders they hold at the time of independence. This would
55 signify that the Republic of Nicaragua, when no longer under influence from the United States of Amer-
56 ica, would retain the borders pursuant to the agreement previously signed between the Republics of
57 Colombia and Nicaragua. This same principle applies to the Republic of Colombia in regard to the fact
58 that the archipelago was a territory of the Viceroyalty of New Granada during the Spanish Colonial Era.
59 Thus according to *Uti Possidetis Juris*, the Republic of Colombia would also retain the archipelago from
60 its colonial history.

61 2. The 1928 Barcenas-Esguerra Treaty and following ratification of the aforementioned docu-
62 ment sets forth provisions in which the Republic of Colombia is the sovereign over the archipelago, and
63 the Republic of Nicaragua controls the Mosquito Coast and the Corn Islands. This agreement has not
64 been disputed until this case, and remains a binding document on both parties.

65 3. The 1930 Protocol regarding the 1928 Barcenas-Esguerra Treaty was a provision in which
66 neither country would claim any territory on opposing sides of the 82W Meridian. As such, the Republic
67 of Nicaragua would control to the west of the meridian, and the Republic of Colombia to the east.
68 This would coincide with the land agreements between the two states regarding the archipelago and
69 surrounding islands. By agreeing to this treaty, the Republic of Nicaragua abandoned its claims to the
70 archipelago, while also eliminating future ability to claim these territories.

71 4. The Republic of Nicaragua has never filed that they were coerced under the use of force
72 in accordance with the Vienna Convention of 1969 for the Barcenas-Esguerra Treaty. As such, the
73 Barcenas-Esguerra Treaty is still enforceable. At no point of the 32 years after this treaty has the Re-
74 public of Nicaragua stated that they did not agree and adhere to the treaty.

75 SUMMARY AND REQUESTS

76 Reiterating the fact that Nicaragua has made no prior attempts to nullify the Barcenas-Esguerra
77 Treaty and has had a longstanding acknowledgement of the 1928 Treaty and the 1930 Protocol as valid,
78 the Republic of Colombia requests, if it may please the Court, to deny the Republic of Nicaragua's
79 application, and to allow the continuation of the Barcenas-Esguerra Treaty due to its continued validity
80 and the enduring sovereignty of the Republic of Colombia over the San Andres Archipelago.