



**ALLEGED VIOLATIONS OF SOVEREIGN RIGHTS AND
MARITIME SPACES IN THE CARIBBEAN SEA
(NICARAGUA V. COLOMBIA)**

MERITS

AGENT'S SPEECH ON COUNTER-CLAIMS AND

SUBMISSIONS

1 OCTOBER 2021

(Estimated time 10')

1. Madame President, Members of the Court,
good afternoon.
2. Before reading Nicaragua's submissions on
the counterclaims of Colombia, please al-
low me a few comments on the question of the
Raizales and the use of straight baselines.

The straight baselines

3. The counterclaim on the question of the straight base lines used by Nicaragua has been amply analysed and set to rights by Professor Oude Elferink.
4. One important issue is that since Colombia is not a party to UNCLOS and there are no other treaties binding the parties on matters of base lines or base points, the law applicable is customary international law. In the present case, what I would emphasize is that Colombia has established its own straight base line system but its counsel insists that they not be taken into consideration.¹
5. Colombia, for example, questions the length of Nicaragua's straight base lines

¹ CR 2021/15, p.51, para.5 (Thouvenin).

and yet has even lengthier straight base lines of its own. Can Colombia claim that Nicaragua is violating a rule that it does not itself respect?

6. The Court cannot allow the application of a double standard. As this Court has stated, and the International Law Commission has reiterated, the rules of customary international law, "by their very nature, must have equal force for all members of the international community, and cannot therefore be the subject of any right of unilateral exclusion exercisable at will by any one of them in its own favour".²

7. On the question of base lines, the only rules that can be applied are those that have "equal force" for Nicaragua

² *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, pp. 38-39, para. 63; see also ILC doc. A/73/10, para. 66, Conclusion 15, Commentary 1.

and for Colombia. Colombia does not have “any right of unilateral exclusion” of its own practice. Quite the contrary, this practice is conclusive.

The question of the alleged traditional fishing right

8. On the question of the Raizales, Colombia's Submissions on 29 September requests the Court to declare that “the inhabitants of the San Andres Archipelago, in particular the Raizales, enjoy artisanal fishing rights.”³ ; and further asks, that the Court declare that “Nicaragua has violated the traditional fishing rights of the inhabitants of the San Andres Archipelago.”⁴

³ CR 2021/18, p.75, para.II.3 (Arrieta).

⁴ CR 2021/18, p.75, para.II.4 (Arrieta).

9. First, it should be emphasized that what Colombia is claiming is artisanal fishing rights and not, for example, industrial fishing rights, which they have nevertheless granted to Colombia and foreign-flagged vessels so that they could fish in Nicaragua's EEZ without Nicaragua's authorization.
10. With respect to artisanal fishing by the Raizales, Nicaragua has made it clear that it is willing and even happy to help the Raizal population which has close relations with the Caribbean population of Nicaragua. Obviously, as in any other similar situation fishing is not a free for all and artisanal fisherman need to identify themselves and fulfill certain requirements including registering with Nicaragua. This is also a requirement for Nicaraguan artisanal fishermen. As indicated in my previous

presentation, in 2018, all 8907 Nicaraguan artisanal fisherman were registered.⁵ All these procedures for the Colombian Raizales have to be worked out in an agreement between our two States.

11. Second, these potential rights in no way apply to the non Raizal population of San Andrés. As I indicated before, these newcomers from the mainland arrived after the 1950's when San Andres was converted into a Freeport and a tourist destination⁶. In 1925, as I indicated, the population of the Raizales in San Andrés was approximately 5.000 and the non Raizal population were only 30⁷. At present, as I explained in my earlier presentation, the majority of the population is non Raizal and this populatin has not been

⁵ CR 2021/16, p.14, para. 23 (Argüello).

⁶ CR 2021/16, p.12, para. 12 (Argüello).

⁷ CR 2021/16, p.13, para. 17 (Argüello).

part of any traditional artisanal fishing⁸. The newcomers simply took over from the Raizal the most lucrative businesses of the islands which did not include artisanal fishing.⁹

12. For this reason, it is necessary to emphasize that the offer made by Nicaragua to reach an agreement to facilitate the artisanal fishing of the Raizales, refers to that population only. This of course, does not close the door on the possibility of other fishing agreements, but that is not the point under discussion.

13. Third, Nicaragua has not violated any fishing rights of the inhabitants of San Andrés as claimed in the Colombian Submissions. This claim is based on the affidavits of 11 persons and has been

⁸ CR 2021/16, pp.12-13, paras.15-17 (Argüello).

⁹ CR 2021/16, p.12, para. 12 (Argüello).

totally disproved by Mr. Martin in his first presentation¹⁰, and again this afternoon.

14. In this regard, it should be emphasized that the Raizales could not and did not traditionally fish in Luna Verde, La Esquina and Cape Bank as Mr. Valencia stated.¹¹ This has already been pointed out by Mr. Martin who emphasized that this assertion is without any reference to proof. Permit me to add another consideration. It was simply impractical for the Raizales to have fished traditionally in artisan boats in areas located approximately 100 miles from their home bases. This might occasionally have happened in the so called northern keys of Serrana and Roncador, because these were places where there was land and the fishermen

¹⁰ CR 2021/16, pp.28-31, paras. 46-58 (Martin).

¹¹ CR 2021/18, p.53, para. 12 (Valencia).

could rest and preserve their catch from rotting. In Luna Verde, La Esquina and Cape Bank, there are no land areas so artisanal fishing is not practical from San Andres or Providencia.

15. All this, does not mean that the Raizales could not travel longer distances. Of course they could, and they did. In fact the original population of these islands arrived from the Miskito or Caribbean coast of Nicaragua¹². But there is no evidence to support Colombia's claim that the Raizales who came to inhabit San Andres and its sister islands fished with a degree of regularity, or over a prolonged period, sufficient to establish traditional rights at Luna Verde, La

¹² Artisanal Fisheries in the San Andres Island: between cooperation and cooperativism, Jangwa Pana: Revista de Ciencias Sociales y Humanidades -Vol. 18, No. 2, p.309, January–April 2019 available at <http://oaji.net/articles/2020/2336-1580499670.pdf> (accessed 30 Sept. 2021).

Esquina, Cape Bank or any other location in Nicaragua's EEZ, as delimited by the Court.

16. It should also be noted, in this regard, that all the incidents of illegal fishing in its waters that Nicaragua has brought to the Court's attention in these oral hearings, where the intervention of the Colombian Navy has been recorded, and in some cases played for the Court, involved industrial fishing, not artisanal fishing. And it should also be noted that most of these industrial fishing boats, were not even Colombian flagged but Honduran¹³ and even Tanzanian¹⁴ flagged. Not a single one was an artisanal Raizal fishing boat.

¹³ See for example CR 2021/13,p.52, para.32; p.54, para.39; p. 55, paras.40-41 (Reichler).

¹⁴ CR 2021/13,p.53, para.37 (Reichler).

The Statements of President Ortega

17. Mr. Valencia and other speakers have expounded on the statements made by President Ortega with respect to the Raizales. Mr. Martin has amply covered this subject both in his first statement and his statement this afternoon. I will only add that President Ortega's statements in no way reflect an intention to make a unilateral cession of Nicaragua's sovereign rights over its EEZ, which took Nicaragua more than a dozen hard-fought years to secure in the Judgment of the Court of 19 November 2012. Precisely in order to enjoy those sovereign rights, in the face of Colombia's refusal to accept the Court's Judgment, President Ortega hoped that by offering to reach an agreement granting fishing rights to Colombia's Raizal population,

Colombia could be coaxed into accepting and respecting Nicaragua's sovereign rights in its EEZ. The offer has never been withdrawn. But sadly, Colombia has shown no interest in reaching an agreement with Nicaragua, even if it would benefit its Raizal population.

18. Instead, Colombia hides behinds its Constitution, claiming that it cannot accept the Court's Judgment or Nicaragua's rights without a treaty, while at the same time, refusing to enter into any discussions with Nicaragua that might lead to such a treaty.
19. Meanwhile, Colombia has not changed its attitude toward the Court's Judgment. It continues to reject and disregard it. This leaves us with a fundamental question: Does the Court's Judgment matter? Nicaragua

believes that it does. And that is why we are here before you.

20. Madame President, in compliance with art. 60 of the Rules of Court, I will now proceed to read into the record Nicaragua's final submissions on Colombia's counterclaims. A signed copy of the written text of these Submissions, is being duly communicated to the Court and transmitted to the other Party.

Final Submissions

21. In the case concerning *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, for the reasons explained in the Written and Oral phase, Nicaragua respectfully requests the Court to adjudge and declare that the counter-claims of the Republic of

Colombia are rejected with all legal consequences.

22. Madame President, Members of the Court, this ends Nicaragua's oral pleadings on Colombia's counterclaims. On my behalf and that of the Nicaraguan team we wish to extend our thanks to the Members of the Court, the Registrar and his staff, the translators and interpreters, secretaries and assistants as well as to the technicians who have made this hybrid oral hearings possible. Our thanks also to the Colombian delegation for their attention.