

INTERNATIONAL COURT OF JUSTICE

DISPUTE CONCERNING ALLEGED VIOLATIONS OF SOVEREIGN RIGHTS AND MARITIME SPACES IN THE CARIBBEAN SEA

(Nicaragua v. Colombia)

ORAL PLEADINGS

ROUND TWO

THE EVIDENCE OF COLOMBIA'S VIOLATIONS OF NICARAGUA'S RIGHTS UNDER THE JUDGMENT OF 19 NOVEMBER 2012

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27 September 2021

1. Madame President, Members of the Court, Good Afternoon.
2. Last Wednesday, Colombia claimed to be "astonished" that Nicaragua, in its first round, set out the evidence of eleven incidents in which the Colombian Navy violated Nicaragua's

sovereign rights under the Court's 2012 Judgment, all of which occurred after the "critical date" of 27 November 2013.

3. There were good reasons for this. First, as Professor Pellet has just demonstrated, the Court has jurisdiction over these post-critical date violations, just as it has over the violations that preceded it, because all these violations are part of the same dispute, over which the Court found that it has jurisdiction in its Judgment of March 2016.
4. Second, as we said last Monday, we focused on these eleven violations because they are emblematic of those that Colombia has committed, on an ongoing basis since 2013, and because we have irrefutable proof that Colombia committed them, in the form of audio recordings, some of which we played for the Court, and others that we displayed in transcription.
5. What is most revealing about Colombia's response, and quite "astonishing" in its own right, is that it had absolutely nothing to say about nine of these violations – precisely the nine for which we played audio recordings or displayed transcriptions

before the Court. Their silence about these nine incidents last week speaks loudly. It confirms that they have no credible defence for these blatant violations of Nicaragua's sovereign rights, as I will discuss further later in my presentation.

6. But first: What other compelling evidence of Colombia's violations of Nicaragua's sovereign rights, in its EEZ, as determined by the Court, did we present that Colombia kept absolutely quiet about?
7. How about the official statements by the President of Colombia that Colombia regards the 2012 Judgment as inapplicable?¹ Colombia made no attempt to explain or justify them, only accusing Nicaragua of quoting them “out of context”.²
8. What about the official statements by the President of Colombia, including its current President earlier this month,³

¹ See “Declaration of President Juan Manuel Santos on the judgment of the International Court of Justice”, 19 November 2012 (NM, Annex 1); “Colombia denounces the Pact of Bogota after Judgement of the ICJ”, *DW*, 28 November 2012 (NM, Annex 2); “Declaration of President Juan Manuel Santos on the integral strategy of Colombia on the Judgment of the International Court of Justice”, 9 September 2013 (NM, Annex 4).

² CR 2021/14 (Uncorrected) p. 14, para. 25 (Cepeda Espinosa).

³ “Presidente Duque ve con buenos ojos propuesta de Uribe sobre ‘consulta popular’ para confirmar límite con Nicaragua”, *Semana*, 1 September 2021.

that the boundary with Nicaragua is the 82nd meridian, notwithstanding the Court's Judgment rejecting that claim.⁴ On these statements, not a word was heard from Colombia last week.

9. Then there were the statements by Commanders of the Colombian Navy, and other senior naval officers, that Colombia does not regard the Court's 2012 Judgment as applicable, that the boundary with Nicaragua is the 82nd meridian, and that the Navy exercises and protects Colombia's sovereignty all along that meridian and in all the maritime space lying east of it.⁵ Not a peep from the other side about any of this, either.

10. Colombia also had nothing to say about the three maps published by the Colombian Navy showing the boundary with Nicaragua as the 82nd meridian and indicating, specifically, that the Navy's responsibility included exercising and

⁴ "Declaration of President Juan Manuel Santos on the integral strategy of Colombia on the Judgment of the International Court of Justice", 9 September 20 (NM, Annex 4).

⁵ See "Santos orders defense of the continental shelf with cloak and sword", *El Espectador*, 19 September 2013 (NM, Annex 41); "There are no vetoed zones for the fishermen in San Andrés: National Navy," *El País*, 3 December 2015 (NR, Annex 26); "La Armada continúa patrullando el meridiano 82" *El Nuevo Siglo*, 7 December 2019.

protecting the sovereignty and sovereign rights that Colombia claims for itself, despite the Court's Judgment, in all areas east of that meridian.⁶ Absolutely nothing from Colombia about these. Instead, its counsel chose to ignore them, and to spend his time on a map produced by the National Hydrocarbon Agency, making a grand show of the fact that, although it depicts petroleum blocks available for license up to the 82nd meridian, in Nicaragua's EEZ, Colombia has not actually licensed any exploration there.⁷ But we had already said that to the Court on Monday.⁸ Our purpose in displaying that map was simply to show that the Navy is not the only Colombian State organ publishing official maps showing that the boundary with Nicaragua is the 82nd meridian, exactly as Colombia's Presidents have been declaring from 2012 through 2021.

11. Colombia attempts to portray all the post-November 2013 incidents as disconnected from the dispute that arose prior

⁶ Admiral Hernando Wills Vélez, *Proyectando el Futuro, Poder Marítimo Colombiano*, pp. 5-7 (“Areas of Responsibility of the National Army”).

⁷ CR 2021/15 (Uncorrected) p. 21, para. 59 (Bundy).

⁸ CR 2021/13 (Uncorrected) p. 48, para. 23 (Reichler).

thereto, and thus, beyond the scope of the dispute over which the Court confirmed its jurisdiction, when it rejected Colombia's Second Preliminary Objection in March 2016. This is an untenable argument, as Professor Pellet has explained.

12. Let me illustrate further the impeccable logic of Professor Pellet's analysis. As we showed you last Monday, in November 2012, President Santos declared that Colombia "emphatically rejects" the boundary established by the Court,⁹ and in September 2013 he emphasized that "The Judgment of the International Court of Justice is NOT APPLICABLE...".¹⁰ On 17 November 2013, in an incident that occurred prior to the critical date, which I did not discuss last week, the Colombian naval frigate *ARC Almirante Padilla* ordered a Nicaraguan fishing vessel, the *Miss Sofía*, to leave what it said were Colombian waters, **NEW SLIDE** in the location now shown on your screens, which is plainly

⁹ "Declaration of President Juan Manuel Santos on the integral strategy of Colombia on the Judgment of the International Court of Justice", 9 September 2013, (NM, Annex 4).

¹⁰ *Id.*

within Nicaragua's EEZ.¹¹ This is at Tab PR-1 of our Folder for today.

13. The *Miss Sofía* radioed a Nicaraguan Coast Guard vessel, the *CG-205*, calling for help.¹² The *CG-205* advised the Colombian navy vessel by radio that it was in Nicaraguan waters, pursuant to the Judgment of the International Court of Justice.¹³ The Colombian vessel responded, according to the official report sent by the *CG-205* to Nicaragua's naval command, that "*ellos no reconocían la sentencia y que por lo tanto se mantendrían en el lugar*".¹⁴ In English, the message from Colombia was that "they did not recognize the Judgment and therefore would maintain their position".¹⁵ This was a clear reflection of President Santos' declaration, just a few days earlier, that, for Colombia, the Court's Judgment was "inapplicable". And it is the same message that Colombian

¹¹ Memorial of the Republic of Nicaragua, 3 October 2014, Annex 23-A, p. 297.

¹² *Id.*

¹³ *Id.*

¹⁴ Memorial of the Republic of Nicaragua, 3 October 2014, Complete Copies of Certain Annexes, Annex 23-A, p. 281.*Id.*

¹⁵ Memorial of the Republic of Nicaragua, 3 October 2014, Annex 23-A, p. 297..

naval vessels communicated to Nicaragua's Coast Guard repeatedly during the incidents after 27 November 2013, as you heard during our presentation last week.

14. The same Colombian policy expressed in various declarations by President Santos in 2012 and 2013 – that the Court's 2012 Judgment is inapplicable, that Colombia does not recognize it, and that Colombia is therefore free to prevent Nicaragua from exercising sovereign rights in its own EEZ - is reflected in all the incidents that occurred after November 2013, in which Colombia's naval vessels repeatedly invoked the same policy, in virtually the same language reflected in the President of Colombia's earlier pronouncements.
15. To recall briefly, in the incident of 18 March 2015, Colombia's *ARC Independiente* radioed Nicaragua's CG-401 that: "The Colombian state has established that the ruling of The Hague is not applicable; therefore, the units of the Navy of the Republic of Colombia will continue to exercise sovereignty in these waters."¹⁶ Likewise, in the incident

¹⁶ Audio Transcription of 18.03.2015 (NR, Annex 32).

occurring on 23 March 2015, Colombia's Navy radioed to the Nicaraguan Coast Guard: "I inform you that the Colombian government has not abided by the ruling in The Hague."¹⁷ On 26 March 2015, Colombia's *ARC 11 de Noviembre* insisted to Nicaragua's CG-401: "According to the Colombian government, the ruling of The Hague is inapplicable..."¹⁸

16. In light of this evidence, it is simply untenable for Colombia to argue that the incidents after 27 November 2013 – all to the very same effect and purpose, and all repeating, almost word for word, the declarations of Colombia's President which gave rise to them - are not part of the same dispute, that is, the dispute over Nicaragua's allegations that Colombia has violated its sovereign rights under the Court's 2012 Judgment. All of these incidents are plainly part of the same, indivisible and ongoing dispute over Colombia's violations of Nicaragua's sovereign rights in its EEZ. Colombia cannot artificially divide them into separate disputes, in order to escape responsibility for its violations after November 2013.

¹⁷ Audio Transcription of 23.03.2015 (NR, Annex 32).

¹⁸ Audio Transcription of 26.03.2015 (a) (NR, Annex 32).

17. The first documented incident in this series occurred in February 2013, well before the critical date. It also involved the *ARC Almirante Padilla*, which, at that time, prevented a Nicaraguan naval vessel from inspecting a Colombian-flagged fishing boat operating in the *Luna Verde* area, which is well within Nicaragua’s EEZ. A Colombian media report directly quoted a Colombian naval commander, Roberto Garcia Marquez, as confirming that this incident occurred.¹⁹ Colombia disputes it on the ground that the *Almirante Padilla* was in its home port on the date the media report was published. But that media report was published several days after the incident.²⁰ Colombia has not accounted, in its written pleadings, for the whereabouts of the *Almirante Padilla* on the date of the incident, or produced evidence that it was in another location on that date. Nor has it discredited the statement of its naval commander. My friend Mr. Bundy, reading from an older Nicaragua case, reminded the Court that it “takes the view that statements of this kind...are of

¹⁹ “Colombia avoided boundary frictions with the Army of Nicaragua”, *Caracol*, 19 February 2013, (NM, Annex 34).

²⁰ *See Id.*; Reply of the Republic of Nicaragua, 15 May 2018, para. 4.53.

particular probative value when they acknowledge facts or conduct unfavourable to the State represented by the person who made them.”²¹

18. There was another incident on 18 September 2013, also before the critical date, and just prior to President Santos’ issuance of Decree 1946 establishing Colombia’s Integral Contiguous Zone.²² On that date, the President, along with the Minister of Defence and the Commanders of Colombia’s Armed Forces, conducted what they themselves called a “sovereignty exercise” in the waters between San Andres and the 82nd meridian.²³ During the exercise, inside Nicaragua’s EEZ, President Santos said: “We find ourselves patrolling and exercising sovereignty over Colombian waters.”²⁴ Exercising sovereignty in Nicaragua’s EEZ is plainly a violation of Nicaragua’s sovereign rights under the 2012 Judgment. In its

²¹ CR 2021/15 (Uncorrected) p. 11, para. 22 (Bundy), citing to *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, ICJ Reports 1986, p. 41, para. 64.

²² “Declaration of President Juan Manuel Santos during the sovereignty exercises performed in the Caribbean Sea”, 18 September 2013, (NM, Annex 5).

²³ *Id.*

²⁴ *Id.*

written pleadings, Colombia's first response was that this was nothing more than an exercise of Colombia's freedom of navigation,²⁵ but that conflicted with President Santos' own description of it as a "sovereignty exercise". Then they gave another equally untenable explanation, that this was all about protection of Colombia's Biosphere Reserve.²⁶ But, of course, the Biosphere Reserve in Nicaragua's EEZ and continental shelf is Nicaraguan, not Colombian.

19. I have already mentioned the incident involving the *Almirante Padilla*, the *Miss Sofía* and Nicaraguan Coast Guard vessel CG-205 on 17 November 2013, also prior to the critical date. Columbia does not deny that the incident occurred, but claims that the *Almirante Padilla* performed a humanitarian service, rescuing two of the *Miss Sofía*'s crew, who had fallen overboard during the incident.²⁷ But this is not inconsistent with the evidence submitted by Nicaragua. Nicaragua has not accused Colombia of acting inhumanely to its nationals, or

²⁵ Counter-Memorial of the Republic of Colombia, Volume 1, 17 November 2016, para. 4.24.

²⁶ *Id.* para. 4.25.

²⁷ *Id.*, paras. 4.40, 4.45.

violating human rights, but of violating its sovereign rights, including with respect to control of fishing activities in its own EEZ, as determined by the Court. Colombia's answer, in its written pleadings, does not refute Nicaragua's evidence.

20. All three of these incidents occurred prior to 27 November 2013. Colombia attempts to brush them off, based on public statements by Nicaraguan officials during this period that there was no conflict with the Colombian Navy, and no incidents of which to complain. We have already accounted for Nicaragua's reluctance to speak out at that time. My good friend Mr. Bundy scoffed at our explanation, and redoubled his emphasis on Nicaragua's statements. But what he failed to mention was that the last such statement was made in March 2014.²⁸ Thereafter, as Colombia's violations of Nicaragua's sovereign rights continued, Nicaragua not only began to protest them, it began to record the radio communications exchanged during these incidents. Nicaragua has submitted audio recordings, and accompanying transcriptions, of many of these exchanges, beginning in early 2014, as part of

²⁸ El Economista, *Nicaragua denies intimidation of Colombia in San Andrés*, 18 Mar 2014 (Preliminary Objections of the Republic of Colombia, 19 December 2014, Annex 26, p. 367).

Annexes 23A and B of its Memorial, and Annex 2 of its Reply.

21. Here is a transcription of one of those early recordings, from 8 May 2014, **NEW SLIDE**, which is in today's Folder at Tab PR-2. The incident occurred in the location depicted on the map, well within Nicaragua's EEZ. What may be of particular interest to the Court is this part of the message from Colombia's *ARC 20 de Julio* to Nicaragua's *CG-201*: "I remind you that this is a unit of the Coast Guard of the Armada [that is, the Navy] of the Republic of Colombia, which is protecting the historical fishing rights of the Colombian State ... This communication is being recorded for legal purposes."
22. Madame President, Nicaragua was not the only Party recording these exchanges. Colombia was, as well. Yet Colombia has submitted no recordings and no transcriptions of any of them to the Court. Surely, if their recordings contradicted what is on those submitted by Nicaragua, Colombia would have included them with its written pleadings. We can only presume, from Colombia's

withholding of its own audio recordings, that they confirm, or at least do not contradict, what is on Nicaragua's.

23. I turn next to the nine incidents after 27 November 2013 for which we played recordings, or displayed transcriptions, last week. Colombia's silence in the face of this evidence may reflect more than the absence of a credible defense. It may also indicate a deliberate litigation strategy of saving their arguments for the second round, and denying us an opportunity to respond to them. In consequence, we urge the Court to approach with caution anything that may be said for the first time on Wednesday. In the meantime, we will respond to what Colombia has already said about these incidents in its written pleadings, especially in Appendix 1 of its Rejoinder, which is where Mr. Bundy, in his only comment on these incidents, said Colombia's response could be found.²⁹

24. We begin with the incident that occurred on 18 March 2015, as depicted at Tab 17 of our Folder from last Monday. **OLD**

²⁹ CR 2021/15 (Uncorrected) p. 48, para. 7 (Bundy).

SLIDE Colombia responds to Nicaragua's evidence as follows: "The authenticity of that audio cannot be confirmed by Colombia. Moreover, the circumstances of where and when the alleged interaction took place cannot be established from the said recording, since neither the date nor the position of the vessels are stated in the dialogue."³⁰ That is their entire defense, even at this late stage of the proceedings.

25. To which Nicaragua responds: first, Colombia only states that it cannot confirm the authenticity of the audio, which is not the same thing as claiming, let alone offering evidence, that the audio is inauthentic.³¹ And Nicaragua has vouched for its authenticity, having been recorded contemporaneously at the time radio communications between the two vessels were exchanged, and having been furnished to the Nicaraguan naval command pursuant to standard procedures, and in turn to the Foreign Ministry, from which counsel for Nicaragua obtained it. Colombia did not argue that its naval officials did not make the statements that are reflected in the recording.

³⁰ Rejoinder of the Republic of Colombia, 15 December 2018, Volume II, Appendix 1, p. 52, para. 2.

³¹ *Id.*

Presumably, that is because its own recording is to the same effect.

26. In regard to the location of the incident, Colombia is correct that this is not stated in the radio communications. The source of that information is the official daily report by the Nicaraguan Coast Guard vessel, and the official log of such reports maintained by the naval command, which was submitted to the Court as part of Annex 2 to Nicaragua's Reply.³² Notably, Colombia does not argue that the incident did not occur, or that it did not occur on the date or in the location shown in Nicaragua's evidence. This is significant because Colombia praises itself, repeatedly, about "the Colombian Navy's thoroughness in keeping record of its activities."³³ Accordingly, if Colombia's records showed the *ARC Independiente* in another location on the date of the incident, Colombia would not have failed to mention that in its written pleadings.

³² Reply of the Republic of Nicaragua, 15 May 2018, Annex 2, p. 210.

³³ Rejoinder of the Republic of Colombia, 15 December 2018, Volume II, Appendix 1, p. 62, para. 3.

27. I turn to the second of the nine incidents that we discussed last week, which occurred on 23 March 2015, as depicted at Tab 18 of last week's Folder. **OLD SLIDE** Here again, Columbia's defense is that it cannot confirm the authenticity of Nicaragua's audio recording, and that the date and location of the incident are not in it.³⁴ Nicaragua's response is the same as for the incident of 18 March 2015: the authenticity of the recording and the date and location of the incident are confirmed by Nicaragua's evidence, submitted with its Reply. Colombia also contends that the Honduran-flagged *Lucky Lady* was not authorized by Colombia to fish at *Luna Verde*, but only in Colombian waters.³⁵ But it does not dispute that it was in the location depicted on this map when Nicaragua's Coast Guard vessel encountered it, or that Colombia's *ARC Independiente* intervened to prevent Nicaragua from approaching that fishing vessel, claiming that it was in Colombian waters.

³⁴ *Id.*, p. 53, para. 2.

³⁵ *Id.*, p. 53, para. 3.

28. The third incident that we discussed last week occurred on 26 March 2015, as depicted at Tab 19 of last week’s Folder. **OLD SLIDE** Again, Colombia’s main defense is that it cannot confirm the authenticity of the audio recording.³⁶ Beyond this, Colombia claims that the *ARC 11 de Noviembre*’s conduct was “far from hostile”.³⁷ But that is beside the point. The indisputable fact is it was in Nicaragua’s EEZ, as defined by the Court, where it was claiming to protect “the historic fishing rights of the Colombian State” in those waters. This, in itself, was a violation of Nicaragua’s sovereign rights.
29. The fourth incident also occurred on 26 March 2015, depicted at Tab 20 of our first round Folder. **OLD SLIDE** This is also evidenced by an audio recording, and by the official daily report of Nicaragua’s BL-405 and logs of the naval command.³⁸ Colombia argues that “no evidence of the [*Doña*

³⁶ *Id.*, p. 54, para. 2.

³⁷ *Id.*, para. 3.

³⁸ Reply of the Republic of Nicaragua, 15 May 2018, Annex 2, p. 213; Audio Transcription 26.03.2015 (b) (NR, Annex 32).

Emilia's] flag has been produced by Nicaragua.”³⁹ Yet, two paragraphs later in the Appendix to its Rejoinder, Colombia quotes one of its own naval officers as having radioed to the *Dona Emilia* that “your country has a restriction...which forbids snail and lobster fishing.”⁴⁰ Colombia thus admits that it knew that the *Dona Emilia* was flagged by Nicaragua. Colombia then accuses Nicaragua of having “manipulated” the recording, because “the only audible parts of the audio are the statements by the alleged Colombian officer; the responses by the crew of the *Dona Emilia* are not on record.”⁴¹ Nicaragua emphatically rejects Colombia’s unfounded accusation, and it denies any manipulation of the recording. Significantly, Colombia admits that the statements by its naval officer are indeed “audible”, and does not deny that these were made, as transcribed by Nicaragua.

30. In regard to the fifth incident, on 5 April 2015, depicted at Tab 21 of the first-round Folder, **OLD SLIDE** Colombia’s

³⁹ Rejoinder of the Republic of Colombia, 15 December 2018, Volume II, Appendix 1, p. 56, para. 1.

⁴⁰ Audio Transcription 26.03.2015 (b) (NR, Annex 32).

⁴¹ Rejoinder of the Republic of Colombia, 15 December 2018, Volume II, Appendix 1, p. 56, para. 2.

only defense is the now familiar refrain that it cannot confirm the authenticity of the recording, and that the recording itself does not identify the date or location of the incident.⁴² As with previous incantations of these mantras, Nicaragua has furnished uncontradicted evidence of the authenticity of its recordings and the date and location of the incident, in Annex 2 of its Reply.⁴³

31. I turn next to the sixth incident, on 7 April 2015, depicted at Tab 22 of last week's Folder **OLD SLIDE**. Here, Colombia claims that the recording is "incomplete and inaudible in several parts".⁴⁴ But the part that we displayed last Monday is complete and perfectly clear. Colombia further argues that: "In the Maritime Travel Report of the A.R.C. 'San Andres' there are no records of the said interactions as claimed by Nicaragua".⁴⁵ Regardless, the audio recording plainly establishes that the *ARC San Andrés* was in radio

⁴² *Id.*, p. 59, para. 2.

⁴³ Reply of the Republic of Nicaragua, 15 May 2018, Annex 2, p. 215.

⁴⁴ Rejoinder of the Republic of Colombia, 15 December 2018, Volume II, Appendix 1, p. 61, para. 2.

⁴⁵ *Id.*, p. 62, para. 3.

communication with Nicaragua's BL-405, in close proximity to it.⁴⁶ And there is no doubt that this was the *ARC San Andrés*, whatever Colombia's Maritime Travel Report fails to say, because the vessel identified itself as such. Maybe Colombia's Maritime Travel reports are not as thorough or as accurate as Colombia claims.

32. The seventh incident we discussed last week is the one that took place on 12 September 2015, depicted at Tab 23 of the first-round Folder, **OLD SLIDE** in which the Colombian naval vessel instructed Nicaragua's BL-405 to stay away from the Tanzanian-flagged fishing vessel, *Miss Dolores*, which, it said, was fishing "for the Colombian government". Here again, Colombia's only defense is that it cannot confirm the authenticity of the recording, and that the recording itself does not identify the date or location of the incident.⁴⁷ They have not denied, though, that the incident occurred as described by Nicaragua, at least not in their written pleadings.

⁴⁶ Audio 7.04.2015 (a) (Mins. 2:20-2:25; 3:26-3:35).

⁴⁷ Rejoinder of the Republic of Colombia, 15 December 2018, Volume II, Appendix 1, p. 66, para. 2.

33. We come next to the eighth incident, which occurred on 12 January 2016, as depicted at Tab 25 of our earlier Folder. **OLD SLIDE** Here, Colombia once again states that the “authenticity of the said audios cannot be confirmed,”⁴⁸ but it does not contest that an incident occurred on 12 January 2016, nor does it contest the location, within Nicaragua’s EEZ, depicted by Nicaragua in this chart. Nor does it challenge Nicaragua’s version of events, as evidenced by the recording, which we played aloud for you last week and showed you in transcription. Colombia’s main argument is that Nicaragua’s CG-403 claimed that it was “in Nicaraguan territorial waters”, when, in fact, “according to the coordinates where it claims the interaction to have occurred, it was clearly in its EEZ, not territorial sea”.⁴⁹ Nicaragua will gladly stipulate to this: that is, that the incident took place in Nicaragua’s EEZ, and not its territorial sea. As such, Colombia has plainly acknowledged violating Nicaragua’s sovereign rights when it admitted to CG-403, on tape, that: “the motorboat Observer is authorized

⁴⁸ *Id.*, p. 69, para. 2.

⁴⁹ *Id.*, p. 70, para. 5.

to fish in this area by the Colombian maritime authority, according to the historic fishing rights of the State of Colombia".⁵⁰

34. The ninth incident that we discussed last Monday occurred on 6 January 2017, as depicted at Tab 26 of that Folder. **OLD SLIDE** This is the incident in which the Colombian Navy instructed Nicaragua's CG-405 "to abort any attempt to board and any attempt to abort the fishing of the *Capitan Geovanie* motorboat," on the ground **OLD SLIDE** that "the *Capitán Geovanie* is authorized by the Colombian maritime authority, fishing in historically Colombian waters".⁵¹ Colombia's first defense is that its naval ship was "in the area watching over the safety of the vessels" and "exercising its freedom of navigation".⁵² But that explanation is directly contradicted by the message delivered by the Colombian naval vessel to CG-405. Colombia further argues that the *Capitan Geovanie* "was authorized to fish, not in Nicaragua's EEZ, but rather in the

⁵⁰ Audio Transcription of 12.01.2016 (NR, Annex 32).

⁵¹ Audio Transcription of 06.01.2017 (NR, Annex 32).

⁵² Rejoinder of the Republic of Colombia, 15 December 2018, Volume II, Appendix 1, p. 73, para. 3.

‘Northern Islands’, i.e., in Colombian waters”.⁵³ But the audio recording contradicts that assertion, too. It shows that the Colombian naval vessel prevented Nicaragua’s Coast Guard from enforcing Nicaragua’s fisheries jurisdiction, in Nicaragua’s EEZ, on the ground that “the *Capitán Geovanie* is authorized by the Colombian maritime authority, fishing in historically Colombian waters”.⁵⁴

35. In sum, the arguments and evidence that Colombia offered in its written pleadings, in respect of the nine incidents it studiously ignored at the oral hearings last week, come nowhere close to refuting Nicaragua’s evidence, including its audio recordings, or justifying Colombia’s interference with Nicaragua’s exercise of its sovereign rights in relation to any of these incidents.

36. In contrast to its silence last week on these nine recorded incidents, Columbia did attempt to respond to our contentions regarding two other incidents.

⁵³ *Id.*, p. 74, para. 4.1.

⁵⁴ Audio Transcription of 06.01.2017 (NR, Annex 32).

37. The first of these was the incident of 10 December 2018, where Nicaragua's *BL-405 Tayacan* encountered, again, the Honduran-flagged *Observer*, in Nicaragua's EEZ, **OLD SLIDE** as depicted at Tab 27 of last week's Folder. Colombia argued last week that the *Observer* was in transit between Quitassueno and Serrana.⁵⁵ Nicaragua does not dispute that. Wherever it might have been headed, it was plainly in Nicaragua's EEZ at the time it was intercepted by Nicaragua's Coast Guard vessel, boarded, and towed toward the Nicaraguan mainland.
38. The incident with Colombia occurred the following day. Colombia's ARC *Antioquía* approached, and ordered Nicaragua's Coast Guard vessel to release the *Observer*. The Nicaraguan vessel refused, successfully maneuvered to escape the Colombian vessel, and hailed the *Observer* to Nicaragua. Although Colombia failed in its attempt to prevent Nicaragua from doing so, the attempt itself is another example of Colombia's violation of Nicaragua's sovereign right to control

⁵⁵ CR 2021/15 (Uncorrected) p. 20, para. 53 (Bundy).

and regulate fishing in its EEZ, and to exercise its law enforcement jurisdiction over unlicensed fishing in its waters.

39. On Monday, we said that the captain of the *Observer* admitted that it had been fishing in Nicaragua's EEZ without a Nicaraguan license at the time of its arrest.⁵⁶ Counsel for Colombia insisted this was not correct.⁵⁷ He was right. It was the owner of the *Observer*, not the captain, who admitted that his vessel was fishing illegally in Nicaragua's waters.⁵⁸ The real question is this: What right does Colombia have to challenge Nicaragua's enforcement of its fisheries jurisdiction, in its own EEZ, against a vessel flagged by a third State that is unlicensed by Nicaragua and that it believes to be fishing illegally in its waters? Colombia has no answer to this question.

40. Instead, it argues that the maneuvers by the *BL-405 Tayacan* threatened the safety of the *Observer*, which was bumped in

⁵⁶ CR 2021/13 (Uncorrected) p. 56, para. 43 (Reichler).

⁵⁷ CR 2021/15 (Uncorrected) p. 20, para. 53 (Bundy).

⁵⁸ Judgment of Nicaragua's Supreme Court of Justice No. 086, 26 October 2020, p. 10. Spanish original available at https://www.poderjudicial.gob.ni/pjupload/sconten2012/pdf/certificacion_caso_observer.pdf.

the process.⁵⁹ This, of course, is irrelevant to these proceedings, which do not involve Nicaragua's compliance with international rules of navigation. Whether or not the Nicaraguan vessel's maneuvers violated such rules, which is denied, they were undertaken to escape and avoid Colombia's naval vessel, which had no right to interfere with Nicaragua's exercise of its law enforcement rights in regard to fishing in its EEZ.

41. Colombia has challenged our assertion that it licensed and encouraged Colombian and foreign-flagged vessels, including industrial-commercial vessels, to fish in waters that the Court determined to fall within Nicaragua's EEZ, and it has disputed our reading of a Colombian-issued Industrial Commercial Fishing Permit that expressly refers to fishing in the areas known as *Luna Verde* and *La Esquina*, which are indisputably located in Nicaragua's EEZ.⁶⁰

⁵⁹ CR 2021/15 (Uncorrected) p. 20, para. 53 (Bundy).

⁶⁰ CR 2021/15 (Uncorrected) p. 20, para. 55 (Bundy).

42. We stand by our reading of that permit, which is at Tab 29 of our Folder from last week. But this case does not turn on Colombia's fishing licenses. It turns on the actions by Colombia's Navy, in Nicaragua's EEZ, including the physical protection given by the Colombian Navy to Colombian and foreign-flag fishing vessels at *Luna Verde* and *La Esquina*, and, according to Mr. Valencia Ospina, various other locations in Nicaragua's EEZ;⁶¹ and, including especially, the Colombian Navy's prevention of Nicaragua's enforcement of its own fishing laws and regulations in regard to these vessels, which have not been authorized by Nicaragua to fish in these areas. My friend Mr. Bundy appears to have conceded this. As he said last week, correctly: "In most of the exchanges, the Colombian vessels indicated that they were protecting Colombia's historical fishing rights..."⁶² Protecting them from whom? From Nicaragua, of course. And that is exactly why their actions violated Nicaragua's sovereign rights over fishing in its own EEZ.

⁶¹ CR 2021/15 (Uncorrected) pp. 42-43, para. 21 (Valencia Ospina).

⁶² CR 2021/15 (Uncorrected) p. 18, para. 48 (Bundy).

43. The only other incident, of the eleven that we discussed last Monday, with which Colombia chose to engage, is the one in which Colombia's *Almirante Padilla* intervened to prevent a Mexican scientific research vessel, licensed by Nicaragua, from carrying out its research activities in Nicaragua's EEZ.⁶³ What was Colombia's defense? There was none. Mr. Bundy cavalierly dismissed the incident as a "non-event", on the ground that Mexico did not complain to Colombia about it.⁶⁴ That is all they said on Wednesday. They did not dispute that the Mexican vessel was conducting marine scientific research under a Nicaraguan license, that it was in Nicaragua's EEZ, or that Colombia prevented it from carrying out its mission. In other words, they were unable to defend Colombia's clear violation of Nicaragua's right to authorize marine scientific research in its own EEZ.

44. As in most situations, context is relevant. All 11 of these incidents, plus the three incidents prior to 27 November 2013

⁶³ Letter of the Agent of Nicaragua to the International Court of Justice, REF: HOL-EMB-098-2019, 23 September 2019, p. 1, Annex 1, 2 (p. 2), 7, 10.

⁶⁴ CR 2021/15 (Uncorrected) p. 21, para. 56 (Bundy).

that I discussed earlier, and the 37 others described in our written pleadings, occurred within a context that was framed by the repeated declarations of Colombia's Presidents and senior naval commanders that the Judgment of the Court is inapplicable, that the boundary with Nicaragua is the 82nd meridian, that Colombia alone has sovereignty or exclusive sovereign rights in all the waters east of that meridian, and that the Colombian Navy would actively exercise Colombia's sovereignty or sovereign rights in those waters and, specifically, that it would protect what they called Colombia's historic fishing rights east of the meridian. The actions by Colombia's Navy that we have described in all of these incidents are entirely consistent with these declarations; indeed, they follow directly from them, and are linked to each other by them. They are the inevitable result of the policies expressed, and directions given, in the official statements by Colombia's Presidents and Naval Commanders, commencing in November 2012 and continuing through to the present.

45. Most of these statements can be found on Colombian government websites.⁶⁵ Three of the Naval Commanders' statements were published by online news sources.⁶⁶ Consistent with the Court's treatment of media reports, Nicaragua has not relied on them as proof of the events that the reports themselves narrate. We have only relied on them as evidence of the public statements by Colombian naval authorities directly quoted therein. As Mr. Bundy helpfully reminded us, such statements, against the interests of the State these high officials represent, “are of particular probative value.”

46. As you have seen, Nicaragua has also relied on audio recordings made contemporaneously, and transcribed

⁶⁵ “Declaration of President Juan Manuel Santos on the judgment of the International Court of Justice”, 19 November 2012, Spanish original available at <https://www.cancilleria.gov.co/newsroom/news/alocucion-presidente-juan-manuel-santos-fallo-corte-internacional-justicia>, (NM, Annex 1); “Colombia denounces the Pact of Bogota after Judgement of the ICJ”, *DW*, 28 November 2012, Spanish original available at <https://www.dw.com/es/colombia-denuncia-pacto-de-bogot%C3%A1-tras-fallo-de-la-cij/a-16414772>, (NM, Annex 2); Declaration of President Juan Manuel Santos on the integral strategy of Colombia on the Judgment of the International Court of Justice”, 9 September 2013, Spanish original available at <https://www.cancilleria.gov.co/newsroom/news/colombia-presenta-su-estrategia-integral-frente-fallo-haya>. (NM, Annex 4).

⁶⁶ See “Santos orders defense of the continental shelf with cloak and sword”, *El Espectador*, 19 September 2013, Spanish original available at <https://www.elespectador.com/politica/santos-ordena-defender-plataforma-continental-a-capa-y-espada-articulo-447445/> (NM, Annex 41); “There are no vetoed zones for the fishermen in San Andrés: National Navy,” *El País*, 3 December 2015, (NR, Annex 26); “La Armada continúa patrullando el meridiano 82” *El Nuevo Siglo*, 7 December 2019, Spanish original available at <https://www.elnuevosiglo.com.co/articulos/12-2019-la-armada-continua-patrullando-el-meridiano-82>.

faithfully, as well as on official daily reports of its naval and coast guard vessels, routinely submitted in the regular course of operations to the naval command. To be sure, the reports concerning events after Nicaragua's *Application* was filed were prepared while this case was in progress. Mr. Bundy attempts to demean them as "prepared for purposes of litigation."⁶⁷ But it is unavoidable that evidence of this nature would be produced during litigation in any case where the alleged violations are ongoing. In this case, the Nicaraguan naval and Coast Guard officers who recorded and reported on the incidents did so in the regular performance of their official duties. There is no reason to doubt the credibility of the recordings or the reports, especially after Colombia has had every opportunity to discredit them in its written pleadings, and it failed to do so, or to submit its own audio recordings of the incidents. Nicaragua trusts the Court will give this evidence its proper weight.

47. Colombia's primary response to all the evidence of its repeated and ongoing violations of Nicaragua's sovereign

⁶⁷ CR 2021/14 (Uncorrected) p. 11, para. 15 (Bundy).

rights, as defined by the Court in its November 2012 Judgment is to place its bet on a longshot jurisdictional argument, pursuant to which, it hopes, the Court will ignore most of the violations, including those that are recorded. But, as Professor Pellet has explained, Colombia has got the law wrong, especially its strained and implausible interpretation of Article XXXI of the Pact of Bogota. And the facts show, beyond reasonable argument, that Colombia's violations of Nicaragua's rights after the critical date are inextricably part of the same dispute that arose in November 2012, when Colombia first denounced, rejected and declared inapplicable the Judgment of the Court, and vowed that its Navy would disregard it.

48. In closing, Nicaragua reaffirms what it said last week: Colombia cannot escape international responsibility for violating Nicaragua's sovereign rights either on jurisdictional grounds, or on the merits.

49. Madame President, Members of the Court, it has been an honor for me to appear before you in these proceedings, and I thank you for your kind courtesy and patient attention, and ask that you call my colleague, Professor Lowe, to the podium.