

International Court of Justice — Jurisdiction — American Treaty on Pacific Settlement, 1948 (“Pact of Bogotá”), Article XXXI — Nicaragua instituting proceedings against Colombia — Nicaragua’s First Request concerning delimitation of continental shelf between Parties in area beyond 200 nautical miles from Nicaraguan coast — Nicaragua’s Second Request requesting Court to determine principles and rules of international law governing right and duties of two States in relevant area pending delimitation — Whether Court having jurisdiction to entertain application — Colombia raising preliminary objections — Whether Court lacking jurisdiction *ratione temporis* — Pact of Bogotá — Denunciation by Colombia — Interpretation of Pact of Bogotá — Whether Article XXXI of Pact of Bogotá remaining in force on date of application — Effect of second paragraph of Article LVI — Whether *effet utile* principle applicable — *Travaux préparatoires* — Whether Court having “continuing jurisdiction” — Whether Court having already fully dealt with Nicaragua’s claims regarding delimitation of continental shelf between Nicaragua and Colombia beyond 200 nautical miles of Nicaraguan coast — 2012 Judgment — Whether Nicaragua’s claim barred by way of *res judicata* — Issue concerning Article 76(8) of United Nations Convention on the Law of the Sea, 1982 — Whether application attempt to revise 2012 Judgment — Admissibility of application

Treaties — Denunciation — Effect — Interpretation — American Treaty on Pacific Settlement, 1948 (“Pact of Bogotá”) — Whether Article XXXI of Pact of Bogotá remaining in force on date of application — Effect of second paragraph of Article LVI — Transmission of notification — One-year period between denunciation and termination of Pact — Institution of proceedings during one-year period — Object and purpose of Pact — *A contrario* interpretation — *Effet utile* principle — Whether applicable — *Travaux préparatoires* — Whether Court having jurisdiction by means of Article XXXI of Pact of Bogotá — Whether necessary for Court to consider other bases of jurisdiction

General principles of international law — *Res judicata* — Identity between parties, object and legal ground — Final and definitive determination of Nicaragua’s extended continental shelf claim — Scope of 2012 Judgment — Meaning of operative clause established by reference to reasoning of Judgment — Nicaragua’s obligation to submit information on limits of extended continental

shelf to Commission on the Limits of the Continental Shelf (“CLCS”) — Article 76 of the United Nations Convention on the Law of the Sea, 1982 (“UNCLOS”) — Whether Nicaragua’s claim to a continental shelf barred by *res judicata*

Sea — Maritime delimitation — Delimitation of continental shelf beyond 200 nautical miles — Role and function of Commission on the Limits of the Continental Shelf (“CLCS”) — Delineation not delimitation — Article 76 of United Nations Convention on the Law of the Sea, 1982 (“UNCLOS”) — Delimitation of continental shelf governed by Article 83 of UNCLOS — Whether obligation to obtain recommendation by CLCS before International Court of Justice could delimit continental shelf beyond 200 nautical miles

QUESTIONS OF THE DELIMITATION OF THE CONTINENTAL SHELF
 BETWEEN NICARAGUA AND COLOMBIA BEYOND 200 NAUTICAL
 MILES FROM THE NICARAGUAN COAST

(NICARAGUA *v.* COLOMBIA)¹

International Court of Justice

Preliminary Objections. 17 March 2016

(Abraham, *President*; Yusuf, *Vice-President*; Owada, Tomka, Bennouna, Cañado Trindade, Greenwood, Xue, Donoghue, Gaja, Sebutinde, Bhandari, Robinson and Gevorgian, *Judges*; Brower and Skotnikov, *Judges ad hoc*)

¹ Nicaragua was represented by HE Mr Carlos José Argüello Gómez, as Agent and Counsel; Mr Vaughan Lowe, QC, Mr Alex Oude Elferink, Mr Alain Pellet, and Mr Antonio Remiro Brotons as Counsel and Advocates; Mr César Vega Masís, Mr Walner Molina Pérez and Mr Julio César Saborio as Counsel; Mr Edgardo Sobenes Obregon, Ms Claudia Loza Obregon, Mr Benjamin Samson and Ms Gimena González as Assistant Counsel; and Ms Sherly Noguera de Argüello as Administrator.

Colombia was represented by HE Ms María Angela Holguín Cuéllar, Hon Ms Aury Guerrero Bowie, and HE Mr Francisco Echeverri Lara as National Authorities; HE Mr Carlos Gustavo Arrieta Padilla as Agent; HE Mr Manuel José Cepeda Espinosa as Co-Agent; Mr W. Michael Reisman, Mr Rodman R. Bundy, Sir Michael Wood, Mr Tullio Treves, Mr Eduardo Valencia-Ospina and Mr Matthias Herdegen as Counsel and Advocates; HE Mr Juan José Quintana Aranguren, HE Mr Andelfo García González, Ms Andrea Jiménez Herrera, Ms Lucía Solano Ramírez, Mr Andrés Villegas Jaramillo, Mr Giovanni Andrés Vega Barbosa, Ms Ana María Durán López, Mr Camilo Alberto Gómez Niño and Mr Juan David Veloza Chará as Legal Advisers; Rear Admiral Luis Hernán Espejo, CN William Pedroza, CF Hermann León, Mr Scott Edmonds and Mr Thomas Frogg as Technical Advisers; and Ms Charis Tan, Mr Eran Sthoeger, Mr Renato Raymundo Treves and Mr Lorenzo Palestini as Legal Assistants.

SUMMARY:² *The facts:*—On 19 November 2012, the International Court of Justice (the “Court”) determined the sovereignty over certain features in the Caribbean Sea and delimited the maritime boundary between Nicaragua and Colombia in the case of *Territorial and Maritime Dispute (Nicaragua v. Colombia)* (“the 2012 Judgment”).³ Subsequently, on 27 November 2012, Colombia gave notice of its denunciation of the American Treaty on Pacific Settlement, 1948 (“the Pact of Bogotá”), to which Nicaragua was a State Party, by way of a diplomatic note to the Secretary-General of the Organization of American States.

On 16 September 2013, Nicaragua instituted proceedings against Colombia before the Court, invoking Article XXXI of the Pact of Bogotá.⁴ Nicaragua submitted two requests in its application to the Court. First, Nicaragua requested that the Court delimit the continental shelf boundary between the Parties in the area beyond 200 nautical miles from the Nicaraguan coast (“the First Request”). Secondly, Nicaragua requested that the Court determine the principles and rules of international law governing the rights and duties of the two States in the relevant area pending the delimitation (“the Second Request”).

Colombia raised five preliminary objections to the jurisdiction of the Court or to the admissibility of Nicaragua’s application. First, Colombia contended that the Court lacked jurisdiction *ratione temporis* under the Pact of Bogotá because Nicaragua had instituted the proceedings after Colombia’s notice of denunciation had become effective. Secondly, Colombia argued that the Court did not have “continuing jurisdiction” as it had already fully dealt with Nicaragua’s claims regarding the delimitation of the continental shelf between Nicaragua and Colombia beyond 200 nautical miles of the Nicaragua coast in the *Territorial and Maritime Dispute* case. Thirdly, Colombia submitted that the issues raised in Nicaragua’s application had been “explicitly decided” by the Court in its 2012 Judgment and Nicaragua’s present claim was therefore barred as *res judicata*. Fourthly, Colombia contended that Nicaragua’s application was an attempt to appeal and revise the Court’s 2012 Judgment and that the Court had no jurisdiction to entertain such an

² Prepared by Ms Ryce Lee.

³ *Territorial and Maritime Dispute (Nicaragua v. Colombia) (Merits)*, 169 ILR 1.

⁴ Article XXXI of the American Treaty on Pacific Settlement (the “Pact of Bogotá”) provided that:

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;
- (d) The nature or extent of the reparation to be made for the breach of an international obligation.

application. Finally, Colombia claimed that Nicaragua's First Request and Second Request were inadmissible. Colombia argued that the First Request was inadmissible because Nicaragua had not obtained a recommendation from the Commission on the Limits of the Continental Shelf ("CLCS") with regard to whether, and to what extent, Nicaragua might claim a continental shelf beyond 200 nautical miles from its coast. The Second Request was inadmissible, in Colombia's view, because there would not be any pending delimitation issue before the Court if it found that it had no jurisdiction over the First Request or that the request was inadmissible. The Second Request would thus be without object as the Court would have to rule on both requests simultaneously. Further, Colombia contended that the Second Request was a disguised request for provisional measures that should be disallowed, and also argued that there was in fact no dispute between the Parties regarding the hypothetical legal regime to be applied pending the Court's delimitation of the maritime boundary of Nicaragua's extended continental shelf.

Nicaragua opposed all of Colombia's preliminary objections. First, Nicaragua argued that the proceedings had been instituted after Colombia's notification of denunciation but before the Pact of Bogotá had been terminated between both States, which, under the terms of the Pact, would only occur one year after the notification of denunciation. Therefore, the Pact of Bogotá remained in force between both States at the time that Nicaragua had instituted proceedings. Secondly, Nicaragua submitted that the Court possessed continuing jurisdiction over the subject matter of the application, as it had declined in its 2012 Judgment to exercise its jurisdiction in respect of the delimitation of Nicaragua and Colombia's overlapping extended continental shelf for reasons which no longer appertained. Thirdly, in Nicaragua's view, *res judicata* did not preclude Nicaragua's claim as the delimitation of its extended continental shelf had not been disposed of finally and definitively by the Court in the 2012 Judgment. Fourthly, Nicaragua denied that its application sought to revise the 2012 Judgment or appeal it. Finally, Nicaragua maintained that a recommendation from the CLCS was not required before the Court could delimit its extended continental shelf because delimitation could be effected by agreement between the States concerned or by recourse to dispute resolution procedures. In any case, Nicaragua argued, the recommendations of the CLCS were not binding and in the event of a dispute over the limits of an extended continental shelf, the CLCS would refrain from making recommendations. With regard to admissibility, Nicaragua considered that the relevance of its Second Request would depend on the Court's decision on the merits and should not be examined at the stage of preliminary objections. Further, Nicaragua denied that its Second Request was a disguised request for provisional measures and asserted that there was a dispute between the Parties regarding the legal regime to be applied in the delimitation of its extended continental shelf.

Held:—Nicaragua's First Request was admissible and the Court had jurisdiction in respect of this claim on the basis of Article XXXI of the Pact

of Bogotá. All five of Colombia's preliminary objections, with the exception Colombia's fifth preliminary objection insofar as it concerned Nicaragua's Second Request, were dismissed.

(1)(a) (unanimously) Colombia's first preliminary objection was dismissed. Article XXXI of the Pact of Bogotá conferring jurisdiction upon the Court had remained in force between the Parties on the date that Nicaragua filed its application. The subsequent termination of the Pact of Bogotá after the expiry of one year following Colombia's notification of denunciation, in accordance with the first paragraph of Article LVI of the Pact,⁵ did not affect the jurisdiction which existed on the date that Nicaragua instituted proceedings (paras. 31-2).

(b) The second paragraph of Article LVI of the Pact of Bogotá did not alter, and instead confirmed, the effect of the first paragraph. Colombia's *a contrario* interpretation of the second paragraph contradicted the language of Article XXXI, which provided that the parties to the Pact of Bogotá had to recognize the Court's compulsory jurisdiction so long as the treaty was in force. Further, taking a contextual approach to interpretation, Colombia's interpretation would have resulted in most of the Articles of the Pact of Bogotá being disappplied between the denouncing State and the other States Parties in spite of the express stipulation in the first paragraph of Article LVI that the treaty was to remain in force during the one-year period. Moreover, Colombia's interpretation was inconsistent with the object and purpose of the Pact of Bogotá as it would deprive the denouncing State and other States Parties to the Pact of Bogotá of access to the dispute settlement procedures provided for therein (paras. 33-40).

(c) The *effet utile* principle did not apply to a provision which was not strictly necessary but had been included in a treaty for the avoidance of doubt, such as the second paragraph of Article LVI of the Pact of Bogotá. Colombia's interpretation threatened to render the first paragraph of LVI devoid of purpose or effect as the Pact of Bogotá would only continue to be in force during the one-year period in respect of a few treaty provisions (paras. 41-4).

(d) While the States Parties to the Pact of Bogotá could have expressly provided for the validity of proceedings instituted before the expiry of the one-year period, as Colombia argued, they could just as easily have provided for the contrary if that had been their intention (para. 45).

(e) The fact that many declarations made under Article 36(2) of the Statute of the Court were terminable without notice was irrelevant to the

⁵ Article LVI provided that:

The present Treaty shall remain in force indefinitely, but may be denounced upon one year's notice, at the end of which period it shall cease to be in force with respect to the State denouncing it, but shall continue in force for the remaining signatories. The denunciation shall be addressed to the Pan American Union, which shall transmit it to the other Contracting Parties.

The denunciation shall have no effect with respect to pending procedures initiated prior to the transmission of the particular notification.

interpretation of Article LVI of the Pact of Bogotá given that such unilateral declarations, unlike treaty commitments, could be freely withdrawn with immediate effect (para. 45).

(f) The absence of objection by Nicaragua or the other States Parties to the Pact of Bogotá with respect to Colombia's notification of denunciation taking immediate effect did not have any material effect (para. 44).

(g) The *travaux préparatoires* of the Pact of Bogotá neither indicated the purpose of including the second paragraph of Article LVI in the text nor indicated that it would have the effect of precluding proceedings from being commenced after a notification of denunciation had been transmitted, as Colombia claimed (paras. 45-6).

(2) (by eight votes to eight, by the President's casting vote, Vice-President Yusuf, Judges Cançado Trindade, Xue, Donoghue, Gaja, Bhandari, Robinson and Judge ad hoc Brower dissenting) Colombia's third preliminary objection was dismissed as the *res judicata* principle did not apply to preclude the Court from ruling on the application. This preliminary objection was an objection to admissibility and not to jurisdiction, as had been framed by Colombia. For the 2012 Judgment to have *res judicata* effect, the Court must finally and definitively have decided the question of delimiting Nicaragua's extended continental shelf. It was insufficient that there was identity between the parties, object and legal ground in the 2012 Judgment and the present proceedings. These were necessary but not sufficient conditions. Examining the relevant part of the operative clause and accompanying reasoning in its 2012 Judgment, the Court found that it had not decided on the merits of Nicaragua's request to delimit the maritime boundary of its extended continental shelf that overlapped with Colombia's entitlements. Instead, the Court had only declined to decide on Nicaragua's request as Nicaragua had not discharged its obligation under Article 76(8) of the United Nations Convention on the Law of the Sea, 1982 ("UNCLOS")⁶ to submit information on the limits of its extended continental shelf to the CLCS. As the issue had not been finally and definitively determined by the Court in 2012, no *res judicata* applied to bar Nicaragua's First Request. After Nicaragua had furnished the requisite information to the CLCS in 2013, it became appropriate for the Court to consider Nicaragua's claim to an extended continental shelf on the merits (paras. 47-88).

(3) (unanimously) Colombia's fourth preliminary objection was rejected as Nicaragua neither requested the Court to revise the 2012 Judgment nor framed its application as an appeal, as Colombia claimed (para. 89).

⁶ Article 76(8) of UNCLOS provided that: "Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding."

(4) (unanimously) The Court had jurisdiction over the proceedings by way of Article XXXI of the Pact of Bogotá and it was not necessary to consider whether any additional bases of jurisdiction existed. The Court therefore did not rule upon Colombia's second preliminary objection (paras. 90-4).

(5)(a) (by eleven votes to five, Vice-President Yusuf, Judges Cañado Trindade, Xue, Bhandari and Robinson dissenting) Colombia's fifth preliminary objection, insofar as it pertained to the admissibility of Nicaragua's First Request, was dismissed as Nicaragua was not required to secure a recommendation from the CLCS before asking the Court to delimit the boundary of its extended continental shelf. The role of the CLCS as defined under Article 76 of UNCLOS was only to delineate, and not delimit, the outer limits of the continental shelf. Delimitation of the continental shelf was governed by Article 83 of UNCLOS and was effected by agreement between the States concerned, or by recourse to dispute resolution procedures. The CLCS had established procedures to ensure that its actions did not prejudice matters relating to delimitation (paras. 95-115).

(b) (unanimously) Colombia's fifth preliminary objection, insofar as it concerned the Second Request, was upheld as it was not the Court's function to determine the applicable principles and rules of international law with regard to a hypothetical situation. The Second Request did not relate to an actual dispute between the Parties (paras. 116-25).

Joint Dissenting Opinion of Vice-President Yusuf, Judges Cañado Trindade, Xue, Gaja, Bhandari, Robinson and Judge ad hoc Brower: (1) It was clear from the *dispositif* of the 2012 Judgment that the Court had rejected, by finding that it "cannot uphold", Nicaragua's request to delimit the allegedly overlapping continental shelf entitlements (paras. 9-17).

(2) The Court's reasoning in the 2012 Judgment showed that Nicaragua's request had been rejected because Nicaragua had not proven the existence of an overlap between its continental shelf entitlement and Colombia's 200-nautical-mile continental shelf entitlement measured from the Colombian mainland coast. It was not rejected because Nicaragua had not yet discharged its obligation under UNCLOS to submit information on the limits of its extended continental shelf to the CLCS, as the majority had contended (paras. 18-39).

(3) The majority had read into the 2012 Judgment a procedural requirement which required Nicaragua to submit information to the CLCS under Article 76(8) of UNCLOS. This would have to be interpreted as going towards the admissibility of Nicaragua's claim. However, in 2012, Colombia did not argue that Nicaragua's claim was inadmissible because it had failed to fulfil this procedural requirement and the Court had not concluded that Nicaragua's claim was inadmissible. If the Court did not find in 2012 that Nicaragua's claim was inadmissible, it should have addressed the claim on the merits, but it did not. The majority's position was therefore incoherent. Moreover, it was illogical for the majority to hold that the submission of

information to the CLCS was a prerequisite under Article 76(8), while other imperatives in the same provision, including the making of recommendations by the CLCS, were not preconditions to delimitation (paras. 40-51).

(4) The submission of information to the CLCS under Article 76(8) of UNCLOS should not have been considered a prerequisite for delimitation since the purpose of making such a submission was for a State to obtain recommendations from the CLCS to validate its delineation of the extended continental shelf (paras. 52-8).

(5) Even if the majority's interpretation of the 2012 Judgment was accepted, Nicaragua's request would still be precluded on the basis of *ne bis in idem* and exhaustion of treaty processes under the Pact of Bogotá (paras. 59-62).

Separate Opinion of Judge Owada: (1) The 2012 Judgment did not have any effect of *res judicata* because the Court could not, and did not in fact, examine the substance of Nicaragua's claim of an extended continental shelf on the merits. The Court expressly stated that it would only consider whether it was in a position to determine Nicaragua's claim and refrained from analysing the substance of the Parties' arguments on the factual and legal issues in order to reach a conclusion on Nicaragua's claim. The structure of the 2012 Judgment indicated that the Court wished to avoid a substantive examination of the merits of Nicaragua's extended continental shelf claim. The Court deliberately separated its analysis of this question from the delimitation of the maritime boundary between Nicaragua's entitlements within 200 nautical miles from its mainland coast and islands, and Colombia's entitlements within 200 nautical miles from its islands. Further, the Court in its 2012 Judgment did not find that Nicaragua had failed in law to meet its burden of proof to establish its claim of an extended continental shelf and merely concluded that the Court was not in a position to proceed further on the merits of the claim (paras. 17-32).

(2) An additional reason for rejecting Colombia's fifth preliminary objection would be that Colombia, as a non-party to UNCLOS, could not invoke Nicaragua's alleged non-compliance with Article 76 of UNCLOS unless Colombia could establish that the provisions of Article 76 formed a part of customary international law. In its 2012 Judgment, the Court expressly stated that it need not decide whether other provisions of Article 76, apart from paragraph 1, constituted customary international law. Even though the Court had found that Nicaragua continued to have an obligation under Article 76(8) of UNCLOS to submit adequate information to the CLCS despite Colombia not being a party to the treaty, this did not mean that Colombia could oppose Nicaragua in respect of its non-compliance with this provision before the Court (paras. 33-9).

Separate Opinion of Judge Greenwood: For *res judicata* to apply, it was not sufficient that there was an identity of the parties, the object and the legal ground; it was also essential that the matter at issue had been decided in the

earlier proceedings to which the force of *res judicata* allegedly attached. As Nicaragua did not request the delimitation of its claim to an extended continental shelf in the area more than 200 nautical miles from Colombia's mainland coast but within 200 nautical miles of the coast of certain Colombian islands in the *Territorial and Maritime Dispute* case, the Court did not decide on this issue in the 2012 Judgment and there was no question of *res judicata* in respect of Nicaragua's claims in that area. In relation to Nicaragua's claims to an extended continental shelf in the area within 200 nautical miles of the Colombian mainland coast, the Court neither assessed the evidence before it nor decided what Nicaragua had to prove under customary international law. Thus, the Court could not have been said to have decided definitively that Nicaragua failed to satisfy its burden of proving its extended continental shelf entitlement and consequently no *res judicata* could have arisen. Given the difference in approaches to the question of *res judicata* in both areas, the Court should have ruled on them separately in the present decision (paras. 4-21).

Dissenting Opinion of Judge Donoghue: (1) Nicaragua's First Request was partially inadmissible. As the Court had rejected Nicaragua's claim on the merits in the 2012 Judgment by concluding that Nicaragua had not proven the existence of an overlap between its continental shelf entitlement and Colombia's 200-nautical-mile continental shelf entitlement measured from the Colombian mainland coast, this determination had *res judicata* effect. It was clear from the structure of the 2012 Judgment that the Court's decision was one made on the merits. The Court had not rejected Nicaragua's proposed delimitation in 2012; the Court found that it was not in a position to determine the continental shelf boundary as Nicaragua had not proven the existence of an overlap in the Parties' entitlements. The Court's style of drafting in 2012 was not unusual in describing each party's position followed by a brief statement of its conclusion on that issue without analysing the evidence or certain legal issues before it (paras. 19-42).

(2) Nicaragua had not requested the Court to address, and the Court had not addressed, the question of an overlap between Nicaragua's extended continental shelf entitlement and Colombia's entitlement measured from the Colombian islands. Therefore no *res judicata* applied in respect of this area (paras. 43-4).

(3) Nicaragua was not precluded from pursuing the delineation of the outer limits of its extended continental shelf under the UNCLOS framework or negotiating with Colombia on the delimitation of any area of overlapping entitlement located more than 200 nautical miles from Nicaragua's coast. Nicaragua's failure to meet its burden of proof in the 2012 Judgment had no effect on third States (paras. 45-6).

(4) Nicaragua had in 2012 met its obligation under Article 76(8) UNCLOS by transmitting Preliminary Information on the outer limits of its extended continental shelf to the Secretary-General of the United Nations.

Moreover, the obligation to make a submission was for the purposes of delineation and not judicial or arbitral delimitation of an extended continental shelf. Even if it were relevant for judicial delimitation, what was critical was not that a submission had been made, but rather that the submission had been reviewed by the CLCS. If the Court had imposed in 2012 a precondition to delimitation cases that States were required to make a submission to the CLCS, the Court had done so as a matter of judicial policy and not customary international law. The question of whether any of the procedural steps in the CLCS process was a precondition to delimitation should have been regarded as a question of the merits and not admissibility (paras. 47-52).

Declaration of Judge Gaja: It would often be difficult to delimit the maritime boundary of an extended continental shelf without first delineating the outer limits of the continental shelf, which would be effected by recommendation of the CLCS in accordance with UNCLOS. Article 76(10) of UNCLOS provided that the CLCS' recommendations would not prejudice the question of delimitation. The CLCS should thus modify its Rules of Procedure and consider submissions even when the delimitation was under dispute (para. 3).

Declaration of Judge Bhandari: Colombia's third preliminary objection should have been allowed as Nicaragua's claim to an extended continental shelf had been barred by *res judicata*, for the same reasons that were stated in the Joint Dissenting Opinion by the other Members of the Court. Colombia's fifth preliminary objection should also have been allowed as Nicaragua was required to obtain the CLCS' recommendations before making its claim before the Court. There were eight reasons for this. First, Nicaragua had not proven that it had furnished the necessary information to CLCS required under UNCLOS and the Court's conclusion that it had done so was ill-founded. Second, the CLCS had not yet issued a recommendation to Nicaragua and the Court was not in a position to speculate when the CLCS might do so. Third, inter-institutional comity required the Court to defer to the CLCS' recommendations. Fourth, the CLCS was a specialized agency possessing technical expertise and it was practical to defer to the CLCS' recommendations. Fifth, considering the merits of Nicaragua's case without CLCS' recommendation would go against the reasoning in the 2012 Judgment. Sixth, Nicaragua was a signatory of UNCLOS and bound by its provisions. Seventh, Nicaragua's claims constituted a *de facto* appeal or revision of the 2012 Judgment, which contravened the Statute of the Court, and should not be allowed. Eighth, allowing Nicaragua's case to proceed without a binding recommendation from the CLCS would diminish the authority of the body (paras. 1-13).

Declaration of Judge Robinson: The Court's observation that Nicaragua had an obligation under Article 76(8) of UNCLOS to submit information on the limits of its extended continental shelf to the CLCS undermined the rule that treaty rights and obligations applied only between States Parties, unless they