Case concerning Navigational and Related Rights

(Costa Rica v Nicaragua)

Costa Rica's comments on Nicaragua's response to the Questions asked by Judges Koroma, Keith and Bennouna

Costa Rica's comments on Nicaragua's response to the question asked by Judge Koroma

1. Judge Koroma asked both parties to provide evidence as to whether Costa Rican locals and immigrants used the San Juan River in the period around 1858. He also requested evidence as to the nature and scope of the subsequent practice in the use of the River by Costa Rican locals and immigrants.

2. In its answer to this question, Costa Rica provided concrete evidence that the Sarapiquí-San Juan River route was the most important means of communication between the central valley of Costa Rica and the United States and Europe in the period around 1858. Both goods and passengers were transported using this transit route.[1] Evidence was also provided of the use of the San Juan River as the entry route by immigrants coming to Costa Rica.[2]

3. In its response, Nicaragua basically argued that:

(a) "there were no Costa Rican locals and immigrants, hence there was there was no use of the river by such persons" before or around 1858;[3] and

(b) "it was not until the 1960s and 1970 that there was any significant settlement on the Costa Rican bank of the river".[4]

(a) Response to Nicaragua's first argument

4. In regard to the first argument, Costa Rica established that both before and after the signing of the 1858 Treaty, the San Juan was in fact used for the transit of passengers and goods. The evidence presented by Costa Rica leaves no doubt, and Nicaragua's claim that "there were no Costa Rican locals and immigrants" is simply wrong.

5. In support of its argument, Nicaragua presented, *inter alia*, extracts from an account by Dr. Alexander Von Frantzius entitled *The Right Bank of the San Juan River—a Nearly Unknown Part of Costa Rica*.[5] Nicaragua presented two English translations of extracts from this account. The first, according to Nicaragua, reads "On the right bank of the San Juan River, between the mouth of the Sarapiquí and the place where the Colorado River separates, there is still no human settlement". The original Spanish text does not refer to "human settlement" but to "colonia".[6] "Colonia", literally

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1 See Costa Rica's Answer to Questions from Judges Koroma, Keith and Bennouna, para 3.

2 *Ibid*, paras 4 and 7.

3 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, p. 1.

4 *Ibid*, p. 3.

5 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, Annex 2, pp. 1, 54.

6 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, Annex 2, p. 54. The original Spanish text reads: "En la ribera derecha del río San Juan, entre la desembocadura del Sarapiquí y la separación del Río Colorado, no se encuentra tampoco todavía ninguna colonia".

translated means "colony", evidently referring to non-indigenous settlements, not "human settlements" in general. Nicaragua's translation does not reflect the sense of this phrase in the original Spanish.

6. The second extract from Von Frantzius' account presented by Nicaragua reflects a similar stance: "The northern part of the Republic of Costa Rica, situated along the San Juan River and bounded by the volcanic mountain range, is all *tierra incognita*".[7]

7. In fact the existence of indigenous groups inhabiting both banks of the San Juan River since the 16th century[8], as well as non-indigenous residents on the Costa Rican bank of the San Juan[9], was already established. Actual use of the River by indigenous peoples around the time of the signing of the Treaty of Limits was also established.[10]

8. In quoting other sources, Nicaragua has followed this same biased approach. For example, according to Nicaragua, Admiral Peary's account said that "...all these surveys...were confined almost entirely to the San Juan River, and its immediate banks; and the country on either side beyond these narrow limits, was up to 1885, almost entirely unknown."[11] Although the text says "almost" — not a categorical assertion — it is clear that it could not have been unknown to the indigenous inhabitants. Peary was conducting a detailed survey for a canal route: he had no knowledge of and no reason to inquire about transit on the San Juan and its tributaries earlier in the century.

9. Another source quoted by Nicaragua is a purported report of 1891 by "the Physical Geographical Institute and the Museum of Costa Rica", presented as Annex 4 to its Answer. According to Nicaragua, this "report" claims that "Costa Rica has to be interested above all in populating that part of her territory that still today is almost without inhabitants".[12]

10. It should be noted that this is not a report by the Physical Geographical Institute and the Museum of Costa Rica, but rather the same account by Dr. Alexander Von Frantzius entitled *The Right Bank of the San Juan River—a Nearly Unknown Part of Costa Rica*, published in 1892 in the Annals of the Physical Geographical Institute and the Museum of Costa Rica.

11. As a matter of fact, Von Frantzius' account refers quite often to indigenous peoples on Costa Rican territory. For example, while describing the trip of Mr. Luz Blanco in 1847 to explore the Sucio River, a tributary of the Sarapiqui River, he mentions that "in the right bank of the Sucio River [Luz Blanco] saw a large banana plantation made by savage Indians".[13] This River, according, to Von Frantzius, "is navigable in its lower course, and offers a convenient connection with the San Juan".[14]

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7 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, p. 2.

8 See Costa Rica's Answer to Questions from Judges Koroma, Keith and Bennouna, paras. 10 and 11.

9 *Ibid*, paras. 8 and 11.

10 *Ibid*, para. 11.

11 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, p. 3.

12 *Ibid.*

13 Alexander Von Frantzius, *La ribera derecha del Río San Juan: una parte casi desconocida de Costa Rica (1862)*, translation by Pablo Biolley (Alajuela: Museo Histórico Cultural Juan Santamaría, 1999) p. 24 (**Attachment A**). Also available in H. Pittier, *Annals of the Physical-Geographical Institute*

12. Describing another expedition carried out in 1856 by Mr. Pío Alvarado in the northern flat region between the San Carlos and the Frío Rivers, Von Frantzius says that "[a]fter having crossed this plain, Pío reached an elevation where lie the first huts of the Guatusos, who extend from there to the Frio River".[15] Later on, Von Frantzius describes this plain as extending "up to the outlet of the Frio River in the San Juan".[16] The Frio River, as can be recalled, flows to the Lake of Nicaragua, near the source of the San Juan River.

13. Describing another portion of Costa Rica lying between the Sarapiquí River and the Atlantic ocean on the one side, and between the volcanic mountain range and the San Juan River on the other, Von Frantzius refers to the Zaimán lagoon, south of the Colorado river. He explains that "[t]his name was given to it by the Misquito Indians who visit the lagoon during certain times of the year to catch turtles."[17] This is consistent with Costa Rica's answer, which stated that:

> "At this time the San Juan River was not a boundary between the indigenous communities that inhabited its banks. The San Juan River constituted their main means of communication, between themselves and with other indigenous groups such as the Miskito Indians on the Atlantic coast."[18]

14. Von Frantzius ends his recount by recalling that "the Spaniards, when they took over the country [Costa Rica], based their alleged rights over the fact they had found the new discovered lands in possession of the indians who did not know how to extract any profit from it and, according to them, extracting profits constituted a formal obligation for the possessor."[19] Nicaragua's attitude of disregarding the indigenous peoples of Costa Rica is reminiscent of this approach.

15. But Von Frantzius also stated that:

> "The country [Costa Rica] is traversed in small distances through navigable rivers which, using small boats, allow an easy and quick communication with the San Juan and, *what is most important*, immigrants can get there in an easy and inexpensive way, as well as to any other point located in the Atlantic coast."[20] [Emphasis added.]

16. This quote clearly describes the San Juan River in 1862 as a communication route for Costa Rica.

17. Not only private passengers and goods were transported through the San Juan River, but also the mail and official articles destined for Costa Rica's Government that arrived via the Port of San Juan del Norte. For these purposes, Costa Rica's

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and the Museum of Costa Rica, Vol III, 1890 (San José: 1892), available at http://www.archive.org/stream/analesdelinstit00ricagoog.

14 *Ibid*, p. 25 (**Attachment A**).

15 *Ibid*, p. 37 (**Attachment A**).

16 *Ibid*, p. 38 (**Attachment A**).

17 *Ibid*, p. 51 (**Attachment A**).

18 Costa Rica's Answer to Questions from Judges Koroma, Keith and Bennouna, para. 10.

19 Alexander Von Frantzius, *La ribera derecha del Río San Juan: una parte casi desconocida de Costa Rica (1862)*, translation by Pablo Biolley (Alajuela: Museo Histórico Cultural Juan Santamaría, 1999) p. 67 (**Attachment A**).

20 *Ibid*, p. 62 (**Attachment A**).

Government had an official representative at the Port of San Juan. The following account describes Costa Rica's relation with the Port of San Juan del Norte:

> "The frequent relation with the port can be observed through different events: When the cholera devastated the port in 1849, Costa Rica requested the Governor, Pedro Shepherd, to order a fumigation of the mail entering the country. Moreover, it kept there agents to dispatch the mail and the merchandise that was consigned to the Government and the merchants.
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> Costa Rica's first agent was the German Andres Louis Beschor, who had the task of dispatching the mail and the small parcels with die-stamps for the Minting House, music sheets and musical instruments, and other articles that were sent from London by Costa Rica's Consul... Following Beschor's death, his son, George Phillips, who founded the Beschor-Wieden Company with his own means of transportation, took over as agent. After that it was another German, Mr. Geddes. Besides, in the port nine Costa Ricans or persons living in Costa Rica had commercial houses, among them the German resident in San José Mr. Enrique Ellebroch... Besides, the government kept a mail administrator in the port, who in 1854 was Mr. F. Salte..."[21]

18. The important issue, therefore, is not whether the right bank of the San Juan was inhabited but the use that Costa Rica made of the River. It has been shown that the San Juan was at the time the main communication route between Costa Rica's central valley (seat of the cities of San José, Cartago, Alajuela and Heredia) and the Atlantic Ocean, both for the transportation of passengers as well as goods, including the mail, official communications, and articles belonging to the Costa Rican Government.

(b) Response to Nicaragua's second argument

19. Nicaragua's second argument claims that "[a]uthoritative historical sources establish that it was not until the 1960s and 1970s that there was any significant settlement on the Costa Rican bank of the river."[22] Who or what these "authoritative historical sources" might be is a mystery, since Nicaragua does not even mention them, much less annex a single piece of documentary evidence to support this claim.

20. Next, Nicaragua claims that "[d]uring the 1960s, the Costa Rican Government sent prisoners, who had not yet completed their sentences, to reside freely on the right bank of the San Juan, subject to the condition that they populate the area."[23] Again, no single reference is made to any source to support this unfounded statement.

21. Nicaragua then devotes several lines to argue first that during the periods of the armed conflicts of 1977-1979 and 1981-1990 "[t]he local population was augmented by immigrants from Nicaragua"[24], but then to claim that during those same years "the river was unsafe for normal civilian traffic, and navigation on the river, whether for

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[21] Clotilde Obregón, *El Río San Juan en la Lucha de las Potencias (1821-1860)*, (San José: Editorial Universidad Estatal a Distancia, 2001), p. 142 (**Attachment B**), available at http://books.google.co.cr/books?id=iACOaiasV1oC&dq=clotilde+obregon+san+juan+lucha+potencias&printsec=frontcover&source=bl&ots=oYjLAGC2WH&sig=64LUoAt8yMIKmF7yoIFTVTU4ljs&hl=es&ei=sGvJSdzsIYLCyQX36IXRAw&sa=X&oi=book_result&resnum=1&ct=result#PPA6,M1.

[22] Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, p. 3.

[23] *Ibid*, pp. 3-4.

[24] *Ibid*, p. 4.

commercial or other purposes, was extremely uncommon."[25] Despite this argumentative contradiction — if the San Juan River was unsafe for Costa Ricans it would be equally unsafe for Nicaraguan settlers on the right bank[26] — both statements contain elements of truth. It is true that during the time of the internal conflicts in Nicaragua there was large scale immigration to Costa Rica, but the majority of those immigrants established themselves in the interior of Costa Rica, not on the banks of the San Juan. On the other hand, several affidavits presented by Costa Rican police officers confirm that particularly during the 1980s Costa Rican police navigation was greatly reduced because of security concerns.[27] This is the reason why there is little documented navigation by Costa Rican police during this time. All these affidavits, nevertheless, confirm that prior to 1998 Costa Rica's police navigated freely on the San Juan without requesting permission from Nicaragua.

22. Other Costa Rican public servants working in health, education and social assistance areas testified that prior to 2006 they regularly navigated the San Juan without ever having to ask for permission.[28]

23. In the case of civilian navigation, Costa Rica presented evidence in the form of affidavits of boatmen who described their navigation on the San Juan even during the times of the Nicaraguan armed conflict, and before that as early as 1958.[29] Other evidence proves that Costa Rican tourist vessels were regularly navigating the San Juan as early as 1972 without any restrictions whatsoever.[30]

24. The rest of Nicaragua's claims, supported by witness statements describing Costa Rican navigation on the San Juan around 1960 and thereafter, generally coincide with the information presented by Costa Rica in its response. For example, a Nicaraguan affidavit established that:

> "[t]he river was also navigated by local Costa Ricans who lived in the communities in the Costa Rican territory near the river. These were very small hamlets with a total Costa Rican population of no more than a thousand people. Most were dedicated to cattle raising, which was the biggest industry and main source of employment on the Costa Rican side. They used the river to travel to work, or to a store to purchase supplies, for example. *They travelled freely on the river.*"[31] [Emphasis added.]

25. Finally, Nicaragua claimed that

> "[a]t the oral hearings, Costa Rica relying on certain affidavits, argued that local residents were subjected to Nicaragua's departure clearance inspections and immigration processing requirements. However, Nicaragua showed that Costa Rica's argument was groundless, because, *inter alia*, the witnesses who supplied the affidavits on which Costa Rica relied, and who claimed to have been

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25 *Ibid.*

26 In this regard, the Affidavit by Brigadier Cesar Ovidio Largaespada, presented in NR as Annex 72, stated that the entire population of San Juan del Norte had abandoned the town during the civil war of the 1980s: NR Annex 72, p. 448.

27 For example, CRM Annexes 89, 94 and 105.

28 For example, CRM Annex 99; CRR Annexes 55, 56 and 57.

29 For example, CRM Annex 96.

30 For example, CRM Annexes 95 and 96.

31 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, p. 4.

subjected to Nicaragua's regulations, were not, in fact, local riparian residents."[32]

To support this claim, Nicaragua refers to "CR, 2006/6, p. 44 para. 27 and p. 48, para. 38".[33]

26. Nicaragua's argument that all of these witnesses were not "local riparian residents" is incorrect. The fact is Costa Rica did not use the expression "local riparian residents" in the paragraphs quoted, but referred instead to "local residents" and to "boatmen". In paragraph 27 at page 44 of CR 2006/6, Costa Rica stated that "out of six local residents, four testified that they were charged [for the departure clearance]" and reference was made to CRM Annexes 92, 96, 103 and 108; and to CRR Annexes 50 and 51. In paragraph 38 at page 48 of CR 2006/6, it was stated that "Costa Rica has shown, however, that boatmen were in fact required to secure visas to carry on their activities..." and reference was made to CRM Annexes 85, 87, 91, 92, 93, 95 and 189; and to CRR Annexes 51 and 52. All of these statements are accurate.

27. Perhaps for Nicaragua, boatmen who reside in Puerto Viejo de Sarapiquí or Barra del Colorado are not "local residents", but the fact is that they had for many years traversed regularly the San Juan River, travelling from one point in Costa Rica to another.

28. Furthermore, Nicaragua is silent in regard to the testimonies of two riparians who testified they had been demanded departure clearance certificates.

(a) **José Moreno Rojas**, a farm owner resident of Boca de San Carlos, declared on 6 July 2006 (CRM Annex 108) that "despite being a neighbor of the River all his life, now he is demanded a departure clearance in order to go or to come from his house, which he has to carry with him always and during the entire voyage."[34] He added that "they [the riparians] are imposed timetables and are forced to carry the Nicaraguan flag."[35] Finally, he attested as to Nicaragua's recently established prohibition on fishing on the River and the negative consequences this restriction has caused.[36]

(b) **Leonel Morales Chacón**, a farm owner resident of Boca de San Carlos since 1979, gave an affidavit on 30 April 2007 (CRR Annex 50) in which he described an incident that occurred on 24 April 2007, whereby he went to request permission from the Nicaraguan military to navigate on the San Juan to visit his farm in San Antonio de Cutris to transport some calves. The military personnel informed him that he could not be granted the permit and that he should return to them in two days for an answer, and when he did, he was informed they would not grant him the permission. He added that he knows other cases where riparians have also had problems transporting their cattle using the San Juan River. Finally, he indicated that at present neighbours in the area are forced to carry a courtesy departure clearance, and that people who do not live in the area are demanded visas and passports to allow their navigation.[37] Incidentally, in an earlier affidavit given on 6 July 2006 (CRM Annex 106), Mr Morales also referred to Nicaragua's prohibition of fishing by local residents, as well as some instances where

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32 *Ibid*, p. 5.
33 *Ibid*, footnote 16.
34 CRM Annex 108, p. 569.
35 *Ibid.*
36 *Ibid.*
37 CRR Annex 50, pp. 279-280.

the Nicaraguan authorities had confiscated fishing gear even when the riparians were not fishing. He mentioned cases where Costa Ricans who were found with fish in their vessels had their belongings as well as their vessels confiscated by Nicaraguan authorities.[38]

29. In any event, the argument posed by Nicaragua that local riparians are granted courtesy departure clearance certificates and are exempted from Nicaragua's immigration requirements[39] misses the point. First, it is not only a matter of departure clearance certificates or immigration charges, but it is a matter of a whole array of restrictions affecting all Costa Rican navigation on the San Juan, by riparians, non-riparians and public vessels. Second, a "courtesy" can always be taken away. If Costa Rica's navigation depended on Nicaragua's goodwill, nothing would be left of Article VI of the 1858 Treaty of Limits, which establishes Costa Rica's perpetual right of free navigation for purposes of commerce.

Costa Rica's comments on Nicaragua's response to the question asked by Judge Keith

30. Nicaragua took advantage of the question put by Judge Keith to expand its position with regard to the scope of the Costa Rican right of navigation recognised in Article VI of the 1858 Treaty, already fully developed in its written and oral pleadings.

31. Indeed, only the last two paragraphs of Nicaragua's answer are really directed to the question at issue, after two and a half pages of developments purporting to demonstrate that Costa Rica's right of navigation would only include the transport of merchandise.

32. Costa Rica submits that, at this late stage, the parties must limit themselves to answering the questions raised by the judges and Costa Rica has acted on this basis. For the record, however, this comment will state Costa Rica's position with regard to the general arguments put forward by Nicaragua in its answer to Judge Keith's question **(a)**. It will then comment on the actual answer provided by the Respondent to this question **(b)**.

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38 CRM Annex 106, p. 561.

39 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, p. 5.

(a) Nicaragua's extemporaneous developments related to Costa Rica's right of navigation have no basis

33. Nicaragua begins by stating that the Treaty of Limits "does not give Costa Rica the right to transport passengers *as the sole object* of the navigation on the San Juan River" (emphasis added).[40] But this has never been Costa Rica's position, which has permanently considered and exercised its right of navigation as including both the transport of goods and that of passengers. In principle, it is not necessary that these two purposes of navigation (transport of goods and persons) be accomplished together, i.e. a vessel transporting both merchandise and passengers, in order to be recognised as having the right of free navigation.

34. Nicaragua also contends that "the right to authorize or engage in commercial transport of passengers on the San Juan was reserved exclusively to Nicaragua".[41] It adds that if the intention of the parties to the Treaty had been to allow such transport by Costa Rica, "it would have been expressly stated in the Treaty that Costa Rica's rights included the right to navigate with or transport passengers."[42] Nothing in the Treaty permits such an interpretation. Subsequent practice does not lead to such a conclusion either. Nicaragua insists that the most lucrative activity involving the San Juan at the time of the conclusion of the Treaty was the inter-oceanic transit of passengers. Even so, this is no reason for a restrictive interpretation of the Treaty as concerns the area where navigation is common. Of course, Costa Rica acquired no right of inter-oceanic transport of passengers any more than of goods. But the question is whether the Treaty by implication excluded the existing practice of transportation of passengers *to, from and within Costa Rica*, and the answer is that obviously it did not. Nothing in the Treaty excludes these more modest kinds of transport of persons. Costa Rica has already answered the assertions of Nicaragua regarding the inter-oceanic transport service both in its written and oral pleadings.[43] It has also referred to the treaties concluded by Nicaragua with the United States, France and Great Britain in 1857, 1859 and 1860, recognising the extent of Costa Rica's navigation as to include persons and goods, and private and public vessels.[44]

35. Nicaragua's answer also indicates that:

> "...navigation with coffee or other goods on board necessarily involves the transport of people, as well, particularly the captain and crew of the vessel; goods cannot navigate by themselves. But navigation with such 'passengers' on a vessel whose principal mission is the transport of article of trade is a far cry from the commercial transport of paying passengers as the sole or primary purpose of the navigation."[45]

Nicaragua adopts an ambiguous position here. Apparently, the last sentence seems to concede that transport of passengers could be included in the Costa Rican right of navigation, provided that such a transport is not the only purpose of the vessel carrying on this navigation, whose main or primary purpose would be the transport of merchandise. Costa Rica has already demonstrated that its right of navigation

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40 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, p. 6.

41 *Ibid.*

42 *Ibid*, p. 7.

43 CRR paras. 3.76-3.78; CR 2009/2, p. 55-56, paras. 28-29.

44 CRM paras. 4.61-4.62; CRR, paras. 2.52; CR 2009/2, pp. 61-62, paras. 49-51.

45 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, p. 7.

acknowledged by the Treaty of Limits includes both transport of persons and goods and there is no need to relitigate it here.[46]

36. Nicaragua's answer also refers to subsequent practice to argue that it was only Nicaragua that authorised passenger traffic on the San Juan. Again, it provides examples of inter-oceanic treaties or contracts as though this was the only possible kind of navigation with passengers in the part of the river "where navigation is common" (Article VI of the 1858 Treaty). Costa Rica's answer has already provided examples of different kinds of navigation involving passengers falling within the scope of Article VI.

(b) Nicaragua's actual answer to the question put by Judge Keith contradicts Article VI of the 1858 and the Cleveland Award

37. Nicaragua's actual answer to the question raised by Judge Keith is that only transportation that is paid for the service provided would fall within the scope of Article VI. Nicaragua ends by accepting that transportation of passengers is a form of "commercial navigation".[47] However, it does it in the narrowest possible way.

38. Surprisingly, Nicaragua contends that:

> "Costa Rica does not invoke this alleged right for the benefit of the local riparians, who have always been free to navigate on the river for their own purposes, but to use it as a wedge to create a broad right to navigate on the river for any purpose".[48]

On the one hand, Costa Rica does claim that the navigation by riparians is a *right* covered by Article VI, in contrast with Nicaragua's assertion that it is a mere *courtesy*. On the other hand, it is not true that Costa Rica asserts a right to navigate through the San Juan for any purpose. Costa Rica is bound by the Cleveland Award and has never invoked a right to navigate with vessels of war.

39. Nicaragua's arguments regarding communication as one of the purposes of commerce contradict the Cleveland Award. If the Respondent's position regarding the scope of Costa Rica's right to navigation were correct, then the decision of President Cleveland would have been inconsistent with Article VI. The 1888 Award refers to the navigation by Costa Rican revenue vessels as being both for the protection of the "purposes of commerce" and for the enjoyment of such a right.[49] How could revenue vessels have enjoyed the right of navigation acknowledged in Article VI if this right had been limited to the transport of merchandise? By definition, transportation of merchandise is not the task of a revenue service vessel.

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[46] CRM paras. 4.58-4.72; CRR paras. 3.76-3.78; CR 2009/2, pp. 62-63, para. 52; CR 2009/6, p. 34, paras. 52-53; see also among others, affidavit of Carlos Lao Jarquin, 27 January 2006, CRM Annex 84 ; affidavit of Geovany Navarro Garro, 27 January 2006, CRM Annex 85 ; affidavit of Pablo Gerardo Hernández Varela, 27 January 2006, CRM Annex 86 ; affidavit of Santos Martin Arrieta Flores, 27 January 2006, CRM Annex 87; affidavit of Carlos Luis Alvarado Sánchez, 27 January 2006, CRM Annex 88 ; affidavit of Daniel Soto Montero, 27 January 2006, CRM Annex 89 ; affidavit of Luis Ángel Jiron Angulo, 28 January 2006, CRM Annex 90; affidavit of Marvin Hay Gonzalez, 28 January 2006, CRM Annex 91 ; affidavit of Armando Perla Pérez, 28 January 2006, CRM Annex 92; affidavit of Ruben Lao Hernández, 17 February 2006, CRM Annex 103.

[47] Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, p. 8.

[48] *Ibid.*, p. 9.

[49] CRM Annex 16, p. 98.

40. In sum, Nicaragua's "answer" to the question put by Judge Keith is not supported either in law or in fact.

Costa Rica's comments on Nicaragua's response to the question asked by Judge Bennouna

41. In its response to this question as others, Nicaragua has raised a number of issues not directly relevant to Judge Bennouna's question. The questions put to the parties were clear, specific and limited, and Costa Rica understands that the Court was not calling for a further round of pleadings. Costa Rica's position is that arguments and purported evidence not directly relevant to the questions asked ought to be disregarded by the Court.

42. In respect of the direct question asked by Judge Bennouna, Nicaragua first states that it has no legal obligation to consult or inform Costa Rica about measures it has adopted and implemented on the River.[50] Nicaragua ignores the plain text of Article VI of the Treaty of Limits,[51] which provides that neither country may impose charges on the other, except when there is agreement by both Governments. Article VI states that "no charges of any kind, or duties, shall be collected unless when levied by mutual consent of both Governments". In this respect, the imposition of any charges on Costa Rican navigation on the San Juan requires not only consultation and notification, but an express agreement between the two States. Costa Rica's position concerning Nicaragua's regulations has been already dealt at length; it is well known to the Court, and therefore will not be re-stated here.

43. Although its primary position is that there is no legal obligation to consult with or inform Costa Rica – either in advance or retrospectively – concerning measures it implements on the River, Nicaragua claims that it has "regularly consulted, informed and engaged in dialogue with Costa Rica about the measures Nicaragua has adopted and implemented to regulate navigation on the river", "in the interests of good neighbourliness and as a courtesy to Costa Rica".[52] Nicaragua cites at length various documents and produces new evidence to support its claim of good neighbourliness.[53] It must be noted at the outset that none of the documents referred to by Nicaragua expressly or implicitly refer to consultation or notification of Nicaraguan regulatory measures on the River, nor do they make reference to any Nicaraguan law, executive or presidential decrees, by-law or other document passed in accordance with Nicaraguan law which refer to the implementation or application of any such measures.

44. The first document cited is the 1991 Joint Declaration by the Presidents of Costa Rica and Nicaragua.[54] This does not provide for any agreement by the Parties on any of Nicaragua's measures and charges unilaterally imposed on Costa Rica's navigation. While it has been in Costa Rica's interest to keep the dialogue open and find ways to cooperate with Nicaragua, it is necessary to remind the Court that for seven years Costa Rica requested that Nicaragua permit such consultative, informative and engaged dialogue to resolve their differences, yet Nicaragua, time and again, rejected this path.[55]

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50 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, page 10.

51 CRM Annex 7.

52 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, p. 11.

53 *Ibid.*

54 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, Annex 5.

55 CRM paras. 3.30-3.49.

45. Nicaragua also cites the Agreement signed on 5 June 1994 by the Ministers of Tourism.[56] Nicaragua claims that

> "In relevant part, it approves the immigration requirements applied by Nicaragua to tourists traveling on Costa Rican tour boats, as well as other vessels."[57]

It also claims that:

> "Regarding tourists cards, which Nicaragua requires all foreign nationals entering Nicaragua via de San Juan (or otherwise) to purchase, the Ministers of Tourism agreed to: 'Develop the necessary mechanisms, within the next thirty days, in order to be able to provide pre-registered [tourism] companies with tourism cards, which the latter must purchase, fill in correctly and hand over to the relevant authorities...'"[58]

46. The text of the 1994 Agreement is clear: it establishes that tourist operators will acquire tourist cards from each country, that is, Costa Rican tourist operators will purchase those from Costa Rican authorities and Nicaraguan tourist operators will do the same from the Nicaraguan authorities, each regulating the vessels of their own tourist operators. Nicaragua claims that by this Agreement, Costa Rica "accepted and endorsed Nicaragua's regulations governing tourists to the San Juan River, including the requirements that all tourists purchase a tourist card and undergo immigration processing."[59] First, it must be noted that an agreement that Costa Rican tourist operators purchase tourist cards from Costa Rican authorities cannot amount to express or implicit acceptance or endorsement of Nicaragua's regulations relating to tourism. To the contrary, it recognises the right of each State to regulate its own boats on the River.[60] Second, regarding the migration requirements, Nicaragua does not specify that any such requirements were established in the 1994 Agreement between the Ministers of Tourism: it cannot do so because none were agreed and none were enforced at that time. The migration requirements in dispute were imposed only after 2001. The imposition of a visa only became an issue in 2005, in retaliation for the filing of the present case.[61]

47. In support of its claim that Costa Rica "accepted and endorsed Nicaragua's regulations governing tourists to the San Juan River", Nicaragua also refers to the Final Minutes of the Binational Costa Rica-Nicaragua meeting of 21 November 1995.[62] The Minutes state that "Nicaragua presented a report on compliance" with the 1994 Agreement.[63] As Costa Rica has explained, the 1994 Agreement provided only for Nicaraguan regulation of Nicaraguan tourist boats and Costa Rican regulation of Costa Rican tourist boats on the San Juan. A report on Nicaragua's compliance with this Agreement cannot be taken as express or implicit acceptance or endorsement of Nicaraguan regulation of Costa Rican tourist boats or tourists.

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56 CRM Annex 26.

57 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, p. 11.

58 *Ibid.*

59 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, p. 12.

60 See CRR paras. 4.66-4.69.

61 See CRM paras. 5.58-5.67.

62 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, p. 12.

63 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, Annex 6, page 12

48. That the 1994 Agreement provided for each State to regulate tourist navigation by its own vessels is reflected in another paragraph of the 1995 Final Minutes which Nicaragua does not cite. It states:

> "The Nicaraguan side made particular emphasis on tourist cooperation and tourist marketing: conversion and development, as well as the exchange of the registry of tour operators in the border zone. On this last point, it requested the Costa Rican side to send the corresponding list. It also invited to improve the existing infrastructure on the border posts, in order to facilitate the transit of tourists."[64]

If the 1994 Agreement had provided for exclusive regulation by Nicaragua of tourism on the River, one would be surprised to find that Nicaragua was encouraging Costa Rica in its efforts to facilitate and regulate tourism on the River.

49. Nicaragua argues further that the same Minutes of 21 November 1995, evidence "Costa Rica's acceptance of ... Nicaraguan control posts", which Nicaragua suggests amounts to acceptance of Nicaraguan regulation of Costa Rican navigation.[65] The Minutes make no reference to regulation of Costa Rican navigation. In the context of the 1994 Agreement, which provided for each State to regulate navigation by its own vessels, these Minutes do not evidence any acceptance of the broad rights of regulation which Nicaragua claims. The relevant section, entitled "Customs Facilities", makes no reference to navigation at all. In the quoted paragraph Costa Rica took notice of improvements in customs facilities by Nicaragua; in the next paragraph Nicaragua took notice of Costa Rica's new customs legislation. Each State was merely informing the other on customs issues: this did not amount to consultation or information about Nicaraguan regulations on the River, nor did it amount to Costa Rican acceptance or endorsement of any purported regulations.

50. Nicaragua further argues that in the Final Minutes of the 1997 meeting of the Binational Commission "Costa Rica urged Nicaragua to use at least three control posts along the San Juan River .... to stop and register all vessels navigating on the river, inspect them and issue departure clearance certificates for them."[66] This is not true. Costa Rica has already dealt with this issue in its oral pleadings.[67] It suffices to note that Costa Rica requested Nicaragua to exercise better control of its vessels to combat drug trafficking. That is what was agreed and stated in those minutes.

51. That no charges were ever agreed or consented to by Costa Rica is supported by the protest letter of Minister Niehaus of March 1994,[68] and by a subsequent protest letter by Minister Rojas of May 2001,[69] strongly rejecting, among other measures, the tourist charges. Nicaragua's response to Minister Rojas in 2001[70] did not state that those charges had been consented to by Costa Rica in the 1994 Agreement or subsequently – a silence which is telling of the absence of consultation with or consent on the part of Costa Rica.

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64 *Ibid.*

65 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, p. 12.

66 *Ibid.*, p. 13.

67 CR 2009/3, p. 29, para. 22.

68 CRM paras. 3.16-17.

69 CRM Annex 71.

70 CRM Annex 72.

52. The fact that no regulations were established until 2001 is supported by Nicaragua's own production of the Army Action Plan of 5 July 2001.[71] Costa Rica was not informed or consulted in advance on the application of these measures: the first time Costa Rica was made aware of the existence of this Army Action Plan was when Nicaragua filed its Rejoinder.[72] Nicaragua makes no reference to the Army Action Plan in its answers to the Court.

53. Nicaragua misrepresents Costa Rica's protest letter of May 2001, stating that "in 2001 Costa Rica formally requested through diplomatic channels that Nicaragua lower the fee for departure clearance inspections..."[73] As can be seen from the text of the letter,[74] Costa Rica did not request Nicaragua to lower the charge for departure clearance certificates. Costa Rica stated that the charge was altogether illegal and ought to be withdrawn. The letter made no reference to "departure clearance inspections", as opposed to certificates, since no inspections were ever performed.[75]

54. Nicaragua presents a further late affidavit[76] dealing with issues that could have and should have presented in its Counter Memorial, or at least in its Rejoinder when the relevant army officer in fact gave an affidavit. It must be noted further that the new affidavit deals with several matters which are irrelevant to the questions asked, and which cannot at this late stage have any probative value. Notwithstanding Costa Rica's position on the production of said affidavit, the following comments are in order.

55. The second and further affidavit of General Membreño attempts to show that the Nicaraguan Army had discussed with Costa Rican officials the imposition of regulations on Costa Rican navigation before 1995. Costa Rica denies that any meetings took place for such a purpose or with such an agenda. It also denies that it ever agreed – at any level of administration, still less at the senior level that would be expected as concerns the renunciation of treaty rights – to regulations interfering with Costa Rica's navigation, or that these regulations were ever applied at the time. General Membreño purports to recall meetings with Costa Rican police officers and other officials, but he fails to recall their names or ranks, or the dates of the meetings, or even the particular discussions held. Still less does he exhibit documents supporting the claim that meetings were held at which the so-called regulations were presented by Nicaragua.

56. Thus, General Membreño's statement that he held meetings involving several institutions from both governments[77] is unsupportable – it manifests *esprit d'escalier* on a grand scale. The record shows that any binational meeting was held either at Presidential or at least Ministerial level. The fact that no documents of any sort, whether in the form of an invitation, an agenda or follow-up documentation between the officials concerned is decisive against this belated claim of consent or consultation.

57. The same can be said about the claim that Costa Rica requested General Membreño to reduce the charge for departure clearance certificates.[78] Again, the record

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71 NR Annex 48.

72 Costa Rica's Answer to Questions from Judges Koroma, Keith and Bennouna, para. 24.

73 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, p. 13.

74 CRM Annex 71.

75 See for example, CRR Annexes 51 and 52.

76 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, Annex 7.

77 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, Annex 7, point 3.

78 *Ibid*, point 4.

shows that when Costa Rica raised issues of this kind, it did so in writing through the proper channels, and certainly not with a local commander. It is inconceivable that these issues were to be settled between low-ranking Nicaraguan military officials and Costa Rican police officers, when they were subject of lively dispute between foreign ministers! The fact that General Membreño does not even recall the amounts charged for alleged departure clearance certificates at the time, or how much of a reduction was purportedly requested by the Costa Rican officials, or the fact that not a single receipt has been produced by Nicaragua showing the existence of the charge in this period, reinforces the point. As Costa Rica has shown in relation to another late-filed General's affidavit,[79] this too is entirely unreliable.

58. To conclude, the evidence Nicaragua has referred to does not show that it has "consulted, informed and engaged in dialogue with Costa Rica" concerning its measures on the River. Nicaragua denies that it is under any obligation to "consult with Costa Rica... or to inform Costa Rica in advance" of any measures for the regulation of navigation on the San Juan:[80] this is its true position, and – having regard to its continued posture in this case – makes it implausible to suggest that it did what it claims to have had no obligation to do. In fact it did not: Costa Rica has never been informed about the application or lawful basis of these measures.[81]

26 March 2009

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79 CR 2009/2, p. 25-26, paras. 9, 10 and 11.

80 Nicaragua's Answer to Questions from Judges Koroma, Keith and Bennouna, page 10, para 2.

81 Costa Rica's Answer to Questions from Judges Koroma, Keith and Bennouna, para. 19.

List of Attachments

Attachment A

Alexander Von Frantzius, *La ribera derecha del Río San Juan: una parte casi desconocida de Costa Rica (1862)* translation from the German by Pablo Biolley (Alajuela: Museo Histórico Cultural Juan Santamaría, 1999), pp. 24, 25, 37, 38, 51, 62 and 67 (extracts)

Also in H. Pittier, *Annals of the Physical-Geographical Institute and the Museum of Costa Rica, Vol III, 1890* (San José: 1892), available at http://www.archive.org/stream/analesdelinstit00ricagoog, pp. 110, 111, 113, 115, 118 and 119

Attachment B

Clotilde Obregón, *El Río San Juan en la Lucha de las Potencias (1821-1860)*, (San José: Editorial Universidad Estatal a Distancia, 2001), available at http://books.google.co.cr/books?id=iACOaiasV1oC&dq=clotilde+obregon+san+juan+lucha+potencias&printsec=frontcover&source=bl&ots=oYjLAGC2WH&sig=64LUoAt8yMIKmF7yoIFTVTU4ljs&hl=es&ei=sGvJSdzsIYLCyQX36IXRAw&sa=X&oi=book_result&resnum=1&ct=result#PPA6,M1, p. 142 (extract)

Attachment A

Alexander Von Frantzius, "La ribera derecha del Río San Juan: una parte casi desconocida de Costa Rica (1862)" translation from the German by Pablo Biolley (Alajuela: Museo Histórico Cultural Juan Santamaría, 1999),

pp. 24, 25, 37, 38, 51, 62 and 67 (extracts)

Also in H. Pittier, *Annals of the Physical-Geographical Institute and the Museum of Costa Rica, Vol III, 1890* (San José: 1892), available at http://www.archive.org/stream/analesdelinstit00ricagoog,

pp. 110, 111, 113, 115, 118 and 119

TRANSLATION

Alexander Von Frantzius, "La ribera derecha del Río San Juan: una parte casi desconocida de Costa Rica (1862)" translation from the German by Pablo Biolley (Alajuela: Museo Histórico Cultural Juan Santamaría, 1999),

pp. 24, 25, 37, 38, 51, 62 and 67 (extracts)

Page 24:
"Before reaching that point, in the right bank of the Sucio River he saw a large banana plantation made by savage Indians"

Page 25:
"The way through the Barva Volcano presents the advantage that it does not need the construction of bridges; the Sucio River is navigable in its lower course, and offers a convenient connection with the San Juan and if it is added that the Tortugero River, as expected, is also navigable, we would have here, provided by nature itself, the easiest and shortest communication with the Atlantic Ocean."

Page 37:
"After having crossed this plain, Pío reached an elevation where lie the first huts of the Guatusos, who extend from there to the Frio River"

Page 38:
"The plain we refer to extends up to the outlet of the Frio River in the San Juan and is covered with high virgin jungle"

Page 51:
"This name was given to it by the Misquito Indians who visit the lagoon during certain times of the year to catch turtles."

Page 62:
"The country is traversed in small distances through navigable rivers which, using small boats, allow an easy and quick communication with the San Juan and, what is most important, immigrants can get there in an easy and inexpensive way, as well as to any other point located in the Atlantic coast."

Page 67:
"Certainly the Costa Ricans will see it as such, although forgetting that the Spaniards, when they took over the country, based their alleged rights over the fact they had found the new discovered lands in possession of the indians who did not know how to extract any profit from it and, according to them, extracting profits constituted a formal obligation for the possessor."

La Ribera Derecha del Río San Juan

(una parte casi desconocida de Costa Rica)

por

Dr. Alexander von Frantzius

(1862)

TRADUCCIÓN DEL ALEMÁN Y ANOTADO POR

Pablo Biolley

VIAJE DE LUZ BLANCO A LO LARGO DEL RÍO SUCIO EN 1847 y colonización de las llanuras de Santa Clara

DURANTE LARGO TIEMPO ESTE CAMINO quedó completamente abandonado, hasta que en el año de 1847, Luz Blanco, que había sido enviado a San Juan del Norte en comisión del Gobierno, prefirió pasar por el camino de la Palma, descubierto por Joaquín Mora, en lugar de tomar el camino del Sarapiquí que se encontraba a la sazón en muy mal estado. Aprendió de este modo a conocer las hermosas llanuras de Santa Clara. Llegó primero al río Salto, caudaloso y muy encajonado y de allí, siguiendo la ribera izquierda del río Sucio por un camino muy quebrado, al río Patria que atravesó. Alcanzó después el río General situado cerca, y después de haberlo casado, se volvió más al este y siguió otra vez, por terreno plano, el río Sucio hasta su reunión con el río San José. Un poco más arriba de este lugar, se desprenden del Sucio muchos brazos y cuando éstos han vuelto a reunirse se dirige la corriente hacia el Océano Atlántico con el nombre de Río Tortuguero, recibiendo todavía otros afluentes que bajan de la vertiente septentrional del volcán de Turrialba. Dando su atención siempre a la orilla izquierda del Sucio, Luz Blanco siguió este río hasta su desembocadura en el Sarapiquí. Antes de llegar a este punto vio, en la ribera derecha del Sucio, un gran platanar hecho por indios salvajes. Llegado al Sarapiquí, se embarcó y se fue hasta San Juan del Norte; pero para el regreso escogió el camino del Sarapiquí descubierto por los alajuelenses.

Las llanuras de Santa Clara habían hecho tan buena impresión sobre Luz Blanco, que se resolvió a establecer en ellas una hacienda de ganado. Por eso se fue, en 1849, al otro lado de la Palma con algunos hombres, todos bien aprovisionados de lo necesario. Se estableció sobre el Río Sucio, poco antes de su reunión con el San José y comenzó los trabajos necesarios para la colonización algo más abajo. Después de haber trabajado algún tiempo en este lugar, sus peones descubrieron, un poco más al este, una familia de indios con

la cual pudieron establecer pronto un tráfico amistoso, pues uno de ellos, vecino de Térraba, comprendía el idioma de aquellos indios. Estos nudos amistosos fueron desgraciadamente destruidos al cabo de poco tiempo por culpa de un soldado de los del resguardo establecido en el Sarapiquí, con que la gente de Luz Blanco tenía también relaciones. Este soldado se robó una muchacha india que murió más tarde en San José, después de haber sido llevada allá por el culpable que fue castigado.

Luz Blanco había abandonado la administración de su hacienda a sus peones, pero tuvo que renunciar a todo tráfico con ellos porque el camino del Río Salto era tan malo que apenas se podía pasar por él. Los hizo volver y desde entonces el ganado y la plantación quedaron abandonados a sí mismos. Con todo, Luz Blanco había obtenido un título de posesión por un terreno de importancia en el confluente del Río San José y del Río Sucio y trató de establecer una comunicación más fácil, valiéndose del camino descubierto por Pío Murillo. En unión de éste supo ganarse a algunas otras personas para una colonización común en Santa Clara. Pero como estaban con la idea de llevar a cabo este plan, precisamente en 1856, hizo fracasar la empresa el estallido de la guerra contra Walker y la epidemia de cólera que la siguió. Desde entonces no se ha hecho absolutamente nada para mejorar el camino por el volcán de Barva.

Consideradas bajo el punto de vista de la feracidad, las llanuras de Santa Clara, comprenden bosques ricos en árboles de goma, cedros, caobas y otras especies de maderas preciosas. El camino por el volcán de Barva presenta la ventaja de que no necesita la construcción de puentes; el río Sucio es navegable en su curso inferior, ofrece una conexión cómoda con el río San Juan y si se agrega que el río Tortuguero, como se pretende, es también navegable, tendríamos aquí, proporcionado por la misma naturaleza, la comunicación más fácil y más corta con el Océano Atlántico.

Expedición Pio Alvarado
del Río San Carlos Al Río Frío, 1856

En este mismo año de 1856 en que la expedición de que hemos hablado bajaba el Río San Carlos por causa de la guerra contra Walker, Pío Alvarado recibió la misión de reconocer por tierra, desde el Muelle, el fuerte de San Carlos, todavía ocupado por los filibusteros, Pío Alvarado salió en diciembre con 19 compañeros de la boca del río Arenal y siguió constantemente la dirección de la brújula W. 22° N.[22]

Encontró los primeros tres cuartos de legua completamente llanos y cubiertos con altas selvas, después el terreno ofreció el aspecto de colinas onduladas. Como a tres leguas y media de su punto de partida llegó a una llanura grande y hermosa, que se extiende principalmente hacia el Sur, hasta el pie de un precioso volcán sobre el cual von Bülow había llamado la atención en su informe. La llanura está cubierta con arbustos y hierbas que ofrecen un buen alimento para el ganado; los árboles no se encuentran en ella sino aislados y diseminados y por todas partes está regada por numerosas arroyos. Después de haber atravesado esta llanura, Pío llegó a un alto donde se encuentran los primeros ranchos de los indios Guatusos, que se extienden desde allí hasta el río Frío. Las casas acababan de ser abandonadas y estaban todavía provistas de algunos pocos utensilios. Encontráronse allí hachas de piedra, guacales y mechas de fibras de plátano, impregnadas con goma elástica, que sirven como candelas, además de algunas mazorcas de maíz y de cacao, el cual se cultiva frecuentemente allí. En la proximidad de los ranchos había también plantaciones de plátanos. No existían piedras de moler para la preparación de las tortillas. Cuando hubo pasado esta altura, que se extiende

[22] *La declinación de la aguja imantada era entonces de unos 8° al este de la comarca recorrida. P.B.*

por el espacio de casi una legua, Pío encontró del otro lado otra llanura de 3 leguas y media de extensión. Allá también había habitaciones de indios diseminadas por todas partes. Los numerosos senderos de los indios presentaban un fenómeno notable, pues cruzaban todos el camino de Pío y se dirigían, como radios, hacia un punto que debía estar situado más al suroeste cerca del Río Frío. También se encontraron allí hoyos muy hábilmente dispuestos para coger animales salvajes. Estaban tan cuidadosamente cubiertos, que los peones cayeron dentro algunas veces. Además había en algunos puntos del camino especies de bancas donde los indios descargan probablemente los bultos que traen al hombro. Cerca del agua encontráronse aparatos destinados a la pesca, hechos de bejucos.

La llanura de que hablamos, se extiende hasta la desembocadura del río Frío en el San Juan y está toda cubierta con altas selvas vírgenes. Cuando Pío hubo llegado bastante cerca de la desembocadura para poder reconocer distintamente el fuerte que está situado en la ribera opuesta del río San Juan, se volvió atrás con su gente.

El primer día se detuvo, como de costumbre, en un rancho abandonado de los indios para el almuerzo; pero como había mandado adelante a 12 de sus hombres, fue atacado repentinamente por una partida de indios. Como a la distancia de 15 pasos, oyóse un mugido salvaje, parecido al grito sordo de congo e inmediatamente cayó una verdadera lluvia de flechas. El ataque se hizo en forma de falange por unos 80 hombres, que parecían todos jóvenes y que tenían a su cabeza a un jefe que se distinguía por un adorno de plumas. Los demás no llevaban adornos en la cabeza y tenían largos cabellos negros. El color de la piel era amarillento, pero más claro de lo que acostumbramos encontrar en la generalidad de los indios. Algunos se habían pintado la mitad de la cara con achiote, lo mismo que ciertas partes del cuerpo que estaba enteramente desnudo, con excepción de las caderas. Las flechas tenían como

marineros por su ancha desembocadura y los hace penetrar en él en lugar de seguir el San Carlos aguas arriba) posee también riberas muy bajas y en la estación lluviosa se extiende de tal modo que toda la comarca parece un lago.

El gran pedazo de terreno que se extiende por un lado entre el Sarapiquí y el Océano Atlántico y por el otro lado entre la cordillera volcánica y el San Juan, nos es poco conocido. En la vertiente septentrional del volcán de Barva encuéntranse espacios llanos, muy valiosos y muy a propósito para el cultivo, los cuales se conocen con el nombre de llanuras de Santa Clara. Pero la región situada al norte del Río Sucio y del Tortuguero es todavía completamente inexplorada. Sólo se sabe que también se compone de terrenos bajos y llanos y que allí se encuentran lagos importantes, principalmente en la proximidad del Río Colorado. Se tiene algún conocimiento de la laguna que está al sur del Colorado y en conexión con él; lleva el nombre de Laguna de Zaimán [y no Caimán]. Este nombre le ha sido dado por los indios mosquitos que visitan la laguna en ciertas épocas del año para coger tortugas. Más al oeste de esta laguna debe existir otra sobre cuyo desagüe y extensión no he podido saber nada hasta ahora.

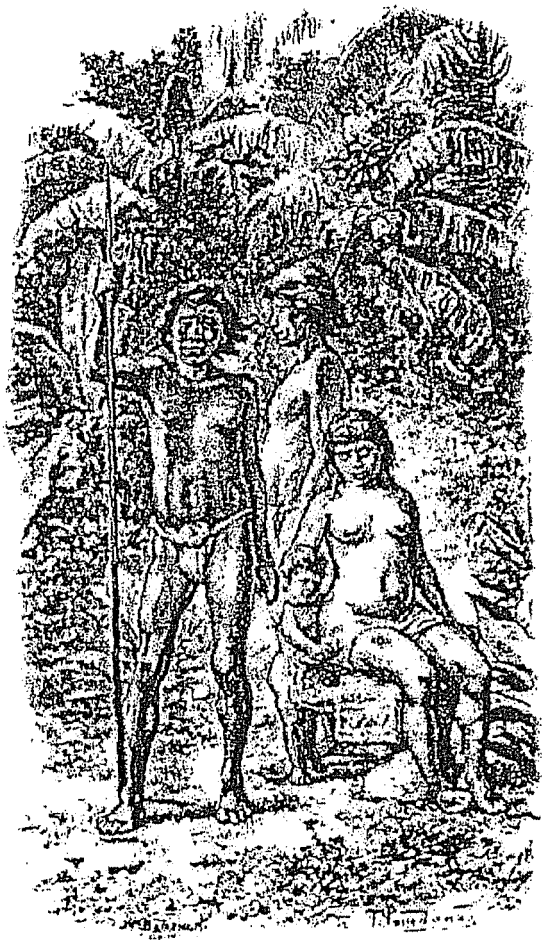
A lo más conócese la propia orilla del mar, aunque muy superficialmente. Toda la costa desde el Cabo Gracias a Dios hasta Boca del Toro está caracterizada por sus esteros, que son producidos tanto por las corrientes marítimas como por los vientos del noreste y los ríos que viene del interior del país y desembocan en el mar.

Concretándonos a la parte que nos interesa, encontramos, desde la desembocadura del Río Colorado hasta Matina, uno de estos esteros que forma una especie de canal navegable para las pequeñas embarcaciones y

análogas en otros puntos adecuados, y por cierto la apertura del paso del Tehuantepec no será la última tentativa de este género. Pero, entre todos los demás puntos, el río San Juan tiene los mayores derechos, porque por él se ha establecido ya, en otros tiempos, una línea de tránsito y, mientras subsistió, tuvo brillante éxito. Ahora puede ser un canal para buques, un ferrocarril u otro medio de tráfico, el llamado a establecer la comunicación entre los dos océanos —y esperamos que no se dejará esperar mucho tiempo— siempre queda la línea de tránsito que ha de abrirse por el San Juan, la primera condición y la más esencial para la prosperidad y ensanche del territorio de Costa Rica situado en este río. En primer lugar Greytown es un puerto frecuentado; después son ciertamente pocas las regiones que ofrecen tantas ventajas para los productores como las riberas del San Juan. Encontramos allí un clima sano donde el colono puede elegir la temperatura que mejor le conviene, ya en la misma llanura , ya en las diferentes alturas de la vertiente de las montañas.[34] El país está recorrido a pequeñas distancias por ríos navegables que, por medio de pequeños botes, permiten una comunicación fácil y rápida con el San Juan, y, lo que más importancia tiene, los emigrantes pueden llegar allí de un modo tan fácil y barato como a todos los demás puntos situados en la costa del océano Atlántico. El suelo se presta para el cultivo de todos los productos de los trópicos, principalmente del tabaco, de la caña, del índigo y del cacao. El algodón se produce también de calidad excelente y algunos pedazos aislados parecen creados especialmente para la cría del ganado. Igualmente pueden cultivarse con buen éxito los productos tropicales que vienen en segunda línea, como el *arrow-root*, el

[34] *Estamos muy de acuerdo con el Dr. Frantzius sobre la gran importancia que presentan los terrenos de la región septentrional, pero no en cuanto a la salubridad de los mismos. No hay que engañar al colono: el clima no es, ni puede ser sano en las regiones bajas, siempre pantanosas, y los establecimientos en la vertiente de las montañas presentan la gran desventaja de encontrarse a mucha distancia de la parte navegable de los ríos que ha de ser por mucho tiempo el mejor camino para la exportación. Apuntemos también aquí que Costa Rica no sería la favorecida por este comercio de exportación sino Greytown, mientras no tenga nuestra república un puerto en el Atlántico más al norte de Limón, o no se haya construido el ferrocarril al norte, llamado éste si a dar un valor inmenso a las llanuras de la orilla derecha del San Juan. P. B.*

situaciones de causarle daños, hasta que pasara enteramente a sus manos. Desgraciadamente no se puede preveer si Costa Rica sabrá oponerse al peligro señalado. El porvenir nos dirá también si hay que considerar este desenlace como una desgracia para el país. Ciertamente, el costarricense lo mirará como tal, aunque olvidando que los españoles, cuando se enseñorearon del mismo país, fundaron sus pretendidos derechos sobre el hecho de que habían encontrado las nuevas tierras descubiertas en posesión de los indios que no sabían sacar de ella ninguna utilidad, y, según ellos, esto de sacar utilidad constituía una obligación formal para el poseedor.[38]



[38] *El porvenir no ha realizado por suerte las previsiones demasiado negras del autor. Con todo creemos que, hoy todavía, no debe desoírse del todo su voz de alarma. Si no exactamente en la forma como lo pinta el Dr. Frantzius, el peligro existe para todos los países hispano americanos, no tanto por la inercia y despreocupación de la raza latina, como por la avidez insaciable y el egoísmo de la sajona que, seguramente ha de triunfar en esta lucha por la existencia, lo mismo que los indígenas han desaparecido o van desapareciendo al contacto de los españoles. P. B.*

Attachment B

Clotilde Obregón, *El Río San Juan en la Lucha de las Potencias (1821-1860)*, (San José: Editorial Universidad Estatal a Distancia, 2001), available at http://books.google.co.cr/books?id=iACOaiasV1oC&dq=clotilde+obregon+san+juan+lucha+potencias&printsec=frontcover&source=bl&ots=oYjLAGC2WH&sig=64LUoAt8yMIKmF7yoIFTVTU4ljs&hl=es&ei=sGvJSdzsIYLCyQX36IXRAw&sa=X&oi=book_result&resnum=1&ct=result#PPA6,M1,

p. 142 (extract)

TRANSLATION

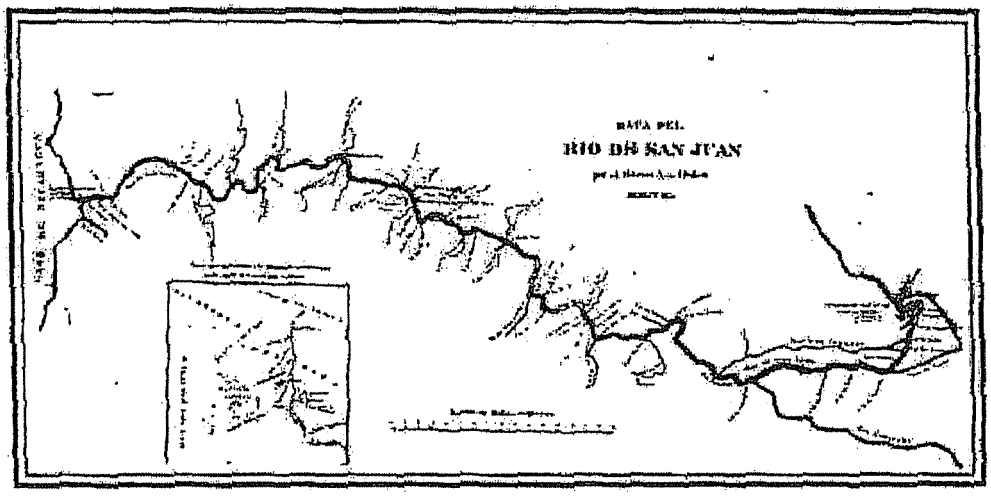
Clotilde Obregón, *El Río San Juan en la Lucha de las Potencias (1821-1860)*, (San José: Editorial Universidad Estatal a Distancia, 2001), p. 142 (extract)

"The frequent relation with the port can be observed through different events: When the cholera devastated the port in 1849, Costa Rica requested the Governor, Pedro Shepherd, to order a fumigation of the mail entering the country. Moreover, it kept there agents to dispatch the mail and the merchandise that was consigned to the Government and the merchants.

Costa Rica's first agent was the German Andres Louis Beschor, who had the task of dispatching the mail and the small parcels with die-stamps for the Minting House, music sheets and musical instruments, and other articles that were sent from London by Costa Rica's Consul (ANCR, RE, c.19 and 21, F and P). Following Beschor's death, his son, George Phillips, who founded the Beschor-Wieden Company with his own means of transportation, took over as agent. After that it was another German, Mr. Geddes. Besides, in the port nine Costa Ricans or persons living in Costa Rica had commercial houses, among them the German resident in San José Mr. Enrique Ellebroch (BNMO, Gaceta #214). Besides, the government kept a mail administrator in the port, who in 1854 was Mr. F. Salte (Molina, T:I,#126)."

CLOTILDE OBREGÓN QUESADA

EL RÍO SAN JUAN EN LA LUCHA DE LAS POTENCIAS (1821 - 1860)



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tantemente a pesar de lo malo del camino a Sarapiquí, pues era el sitio de llegada de los buques procedentes de Europa y de los Estados Unidos (Molina,T.I,#194.

La frecuente relación con el puerto, se nota en diferentes sucesos: Cuando el cólera asoló el puerto en 1849, Costa Rica le solicitó al gobernador Pedro Shepherd que ordenase fumigar el correo que venía para el país. Además, mantuvo en él agentes para que remitiesen el correo y las mercaderías que venían consignadas al gobierno y a los comerciantes.

El primer agente de Costa Rica lo fue el alemán Andres Louis Beschor, a quien le tocó remitir la correspondencia y los pequeños bultos con troqueles para la Casa de la Moneda, música escrita e instrumentos musicales, y otros objetos que enviaba desde Londres el Cónsul de Costa Rica (ANCR,RE,c.19 y 21,FyP). A la muerte de Beschor, el agente lo fue su hijo George Phillips, quien fundó la Compañía Beschor-Wieden con sus propios medios de transporte. Luego lo fue otro alemán, el señor Geddes. Además, en el puerto tuvieron casas comerciales nueve costarricenses o personas que vivían en Costa Rica, entre ellos el alemán radicado en San José don Enrique Ellebroch (BNMO,Gaceta #214). Además, el gobierno mantuvo en el puerto a un administrador de correos, para 1854 lo era el señor F. Salte (Molina,T.I,#126).

Asimismo, la actividad costarricense en el puerto fue bastante y lo importado por él fue significativo, aunque para ello se tuvieran que utilizar barcazas hasta el Sarapiquí y de ahí en adelante mulas que no cargaban más de 250 libras cada una.

Con este método y vía tan rudimentaria se importaron en 1851 de Inglaterra en el vapor "Clyde", ponchos de lana, cintas de seda, manta lavada, zapatos de hombre, mujer y niño, botas para hombre y botines para niño, tafetán, sarga de Málaga, pañueloncitos de punto, felpa de seda y ordinaria, chilillos, basenicas, cepillos de diente, cepillos para barba y para ropa, esencia y jabón de almendra y de rosa y peinetas(ANCR,Hac.11714)