

INTERNATIONAL COURT OF JUSTICE

**DISPUTE CONCERNING
NAVIGATIONAL AND RELATED RIGHTS**

(COSTA RICA *v.* NICARAGUA)

MEMORIAL OF COSTA RICA



VOLUME 2

(Annexes 1 to 29)

29 August 2006

LIST OF ANNEXES (VOLUME 2)

Number	Description	Annexes Page N°
Annex 1	Capitulación con Diego Gutiérrez para la conquista de la Provincia de Cartago, 29 November 1540 (extracts) Source: MM de Peralta, <i>Costa Rica, Nicaragua y Panamá en el Siglo XVI. Su Historia y sus Límites</i> (Madrid: Librería M. Murillo, 1883), 101-103.....	1
Annex 2	Real Provision de SS. MM. el Emperador y la Reina doña Juana sobre los límites de la gobernacion de Cartago, y en particular sobre los del Desaguadero ó rio de San Juan de Nicaragua, 6 May 1541 (extracts) Source: MM de Peralta, <i>Costa Rica Nicaragua y Panamá en el Siglo XVI. Su Historia y sus Límites</i> (Madrid: Librería de M. Murillo, 1883), 125-127	5
Annex 3	Titulo de Alcalde Mayor de las Provincias de Nueva Cartago y Costa Rica, en favor del Licenciado Juan Cavallon.- Límites de estas Provincias, 17 May 1561 (extracts) Source: MM de Peralta, <i>Costa Rica Nicaragua y Panamá en el Siglo XVI. Su Historia y sus Límites</i> (Madrid: Librería de M. Murillo, 1883), 194-195	11
Annex 4	United States-Great Britain, Convention Concerning a Ship Canal Connecting the Atlantic and Pacific Oceans (Clayton-Bulwer) Articles I, IV, VI, Washington, D.C., 19 April 1850 (in force 4 July 1850) Source: 104 CTS 41; 38 BFSP 4.....	15
Annex 5	Treaty of Limits (Cañas-Juárez), Managua, 6 July 1857 (unratified) Source: www.manfut.org/cronologia/t-canasjuarez.html	21
Annex 6	Convention of Peace (Cañas-Martínez), Rivas, 8 December 1857 (Arts 8, 9 subject to ratification, unratified; remainder in force on signature) Source: 49 BFSP 1222	25
Annex 7	Costa Rica-Nicaragua, Treaty of Limits (Cañas-Jérez), San José, 15 April 1858 (a) Original version in Spanish Source: <i>Colección de las Leyes, Decretos y Ordenes expedidos por los Supremos Poderes Legislativo y Ejecutivo de Costa Rica en el año de 1858</i> , Tomo XV, (San José: Imprenta de la Paz, 1871), 175 – 188	33

	(b) English translation: Costa Rican version submitted to Cleveland, Source: P Pérez Zeledón, <i>Argument on the Question of the Validity of the Treaty of Limits between Costa Rica and Nicaragua</i> (Washington, D.C., Gibson Bros, 1887), Document No. 1, 185.	46
	(c) English translation: Nicaraguan version submitted to Cleveland Source: The Case of Nicaragua, 1887, Appendix B, 34	54
	(d) English translation Source: 48 BFSP 1049	61
Annex 8	Nicaragua-Costa Rica-F Belly, Convention relative to the Concession for an Inter-oceanic Canal by the River San Juan and the Lake of Nicaragua, Rivas, 1 May 1858, Article 1 Source: F. Belly, <i>Carte d'étude pour le trace et le profil de Canal de Nicaragua</i> (Paris: Chez Dalmont et Duod, Éditeurs, 1858), Document II, 19-27.	67
Annex 9	Costa Rica-Nicaragua, Preliminary Convention on a Scientific Survey (Volio-Zelaya), San José, 13 July 1868, Article 1 Source: JM Bonilla, <i>Colección de Tratados Internacionales</i> . (Managua: Tipografía Internacional, 1909), 365-366	69
Annex 10	Costa Rica-Nicaragua, Treaty of Commerce (Volio-Zelaya), San José, 14 August 1868, Articles 1, 2 Source: JM Bonilla, <i>Colección de Tratados Internacionales</i> (Managua: Tipografía Internacional, 1909), 386-392	73
Annex 11	Republic of Nicaragua-M. Chevalier, Contract for the Excavation of an Interoceanic Canal across Central America (Ayon-Chevalier), Paris, 6 October 1868, Articles 53-56 Source: 61 BFSP 1266 (French)	77
Annex 12	Costa Rica-Nicaragua, Convention Additional to the Preliminary Convention on a Scientific Survey of 13 July 1868 relative to the improvement of the Colorado or San Juan Rivers (Esquivel-Rivas), San José, 21 December 1868 (unratified) Article 2 Source: JM Bonilla, <i>Colección de Tratados Internacionales</i> . (Managua: Tipografía Internacional, 1909), 369-371	79

Annex 13	Costa Rica-Nicaragua, Treaty for the excavation of an Interoceanic Cañal (Jiménez-Montealegre), San José, 18 June 1869, Article 1	85
	Source: 61 BFSP 1144	
Annex 14	Costa Rica-Nicaragua, Convention to submit to the arbitration of the Government of the United States the question in regard to the validity of the treaty of April 15, 1858 (Esquivel-Roman), Guatemala, 24 December 1886, Articles 6,7,10	87
	Source: 168 CTS 371	
Annex 15	Costa Rica-Nicaragua, Convention (Soto-Carazo), Managua, 26 July 1887 (unratified)	89
	Source: <i>Memoria anual de la Secretaría de Relaciones Exteriores y Carteras Anexas 1888</i> (San José: Imprenta Nacional, 1888)	
Annex 16	Cleveland Award upon the validity of the Treaty of Limits of 1858 between Costa Rica and Nicaragua, Washington, 22 March 1888	95
	Source: Papers relating to the Foreign Relations of the United States transmitted to Congress, with the annual message of the President, Part I, December 1888. (Washington, D.C.: Government Printing Office, 1889).	
Annex 17	Costa Rica-Nicaragua, Delimitation Convention (Pacheco-Matus), San Salvador, 27 March 1896, Article 2	101
	Source: 182 CTS 359	
Annex 18	First Award rendered by the umpire, EP Alexander, San Juan del Norte on Sep 30, 1897, in the boundary question, between Costa Rica and Nicaragua	105
	Source: H. LaFontaine, <i>Pasicrisie Internationale 1794-1900: Histoire Documentaire des Arbitrages Internationaux</i> (1902, reprinted 1997, Martinus Nijhoff, The Hague), 529-532	
Annex 19	United States-Nicaragua, Convention for the construction of a Canal by the River San Juan (Chamorro-Weitzel), Washington, D.C., 8 February 1913	111
	Source: Republic of Costa Rica, <i>Complaint before the Central American Court of Justice</i> (Washington, D.C.: Press of Gibson Bros., Inc. 1916) Annex L, p.82-86	
Annex 20	United States-Nicaragua, Convention for the construction of a Canal by the River San Juan (Bryan-Chamorro), Washington, D.C., 5 August 1914	117
	Source: 220 CTS 215	
Annex 21	<i>Republic of Costa Rica v Republic of Nicaragua</i> , Central American Court of Justice, Opinion and Decision of the Court, 30 September 1916	121
	Source: (1917) 11 AJIL 181-229	

Annex 22	Costa Rica-Nicaragua, Convention for the Canalization of the San Juan River (Cordero-Zúñiga), San José, 5 April 1940 (in force 21 June 1940), Articles 3, 10 Source: Ministerio Relaciones Exteriores, <i>Convención para la canalización del Río San Juan y otros particulares relacionados con dicha canalización</i> (San José: Imprenta Nacional, 1940) 15-22	171
Annex 23	Costa Rica-Nicaragua, Pact of Amity (Sevilla-Esquivel) Washington, D.C., 21 February 1949 (in force 15 July 1949) Source: 1465 UNTS, 221	175
Annex 24	Costa Rica-Nicaragua, Agreement pursuant to Article IV of the Pact of Amity (Fournier-Sevilla) Washington, D.C., 9 January 1956, Articles 1, 4 Source: 1465 UNTS 233,234	179
Annex 25	Costa Rica-Nicaragua, Agreement of Understanding between the Ministries of Tourism of the Republic of Costa Rica and the Republic of Nicaragua (Roesch-Guzmán), Barra del Colorado, 5 June 1994 Source: Copy of the original	183
Annex 26	Costa Rica-Nicaragua, Agreement of Understanding between the Ministries of Tourism of the Republic of Costa Rica and the Republic of Nicaragua on the Tourist Activity in the Border Zone of the San Juan River (Roesch-Guzmán), Barra del Colorado, 5 June 1994 Source: Copy of the original	187
Annex 27	Army of the Republic of Nicaragua-Ministry of Public Security of the Republic of Costa Rica, Joint Communiqué (Cuadra-Castro), La Cruz, 8 September 1995 Source: Copy of the original	191
Annex 28	Ministry of Defence of Nicaragua- Ministry of Government, Police and Public Security of Costa Rica, Joint Communiqué (Cuadra-Lizano), Managua, 30 July 1998 Source: Copy of the original	195
Annex 29	Costa Rica-Nicaragua, Agreement (Tovar-Caldera), Alajuela, 26 September 2002 Source: 2197 UNTS 78	199

Annex 1

Capitulación con Diego Gutiérrez para la conquista de la Provincia de
Cartago, 29 November 1540 (extract)

Source: MM de Peralta, *Costa Rica, Nicaragua y Panamá en el Siglo XVI.
Su Historia y sus Límites* (Madrid: Librería M. Murillo, 1883), 101-103

TRANSLATION

Royal Ordinance with Diego Gutierrez for the Conquest of the Province of Cartago, Madrid 29 November 1540

“Firstly, I grant you license and faculty so that by on our behalf and in our name and that of the Royal Crown of Castille you may conquer and populate the land that remains for us in said Province of Veragua, inclusive from sea to sea... measured in the said manner must commence your conquest and population, and end at the Rio Grande, towards the west of the other part of Cape Camarón, the coast of said river towards Honduras remaining under the governance of the said province of Honduras, also if in said river there be islands populated or to be populated with Indians, which have not been populated and conquered by Spaniards, you can conquer them, and the navigation and fishing and other uses of the said river shall be common, provided and insofar as you do not come within fifteen leagues of the lagoon of Nicaragua, since those fifteen leagues and with the said lagoon must stay and stays to the governance of Nicaragua; but the navigation and fishing that remains with you in said river, and the said fifteen leagues and the lagoon that remain with Nicaragua shall be common...”

COSTA-RICA NICARAGUA Y PANAMÁ

EN EL SIGLO XVI

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RECOGIDOS Y PUBLICADOS

CON NOTAS Y ACLARACIONES HISTÓRICAS Y GEOGRÁFICAS

POR

D. MANUEL M. DE PERALTA

Correspondiente de las Reales Academias Española y de la Historia,
de la de Buenas Letras de Sevilla y de la Sociedad Geográfica de New-York;
del Comité de honor de la Asociación literaria internacional,

Enviado extraordinario
y Ministro plenipotenciario de Costa-Rica, etc.



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diciones que de yuso seran contenidas sobre lo que yo mandé tomar con vos el asyento y capitulacion siguientes.

«Primeramente, vos doy licencia y facultad para que por nos y en nuestro nombre et de la Corona real de Castilla, podais conquistar e poblar la tierra que queda para nos en la dicha provincia de Veragua, incluso de mar a mar, que comience de donde se acabaren las veinte et cinco leguas en quadra, de que hemos hecho merced al almirante don Luis Colon, hazia el poniente, las quales dichas veynte et cinco leguas comiençan desde el Rio de Velen ynclusive, contando por un paralelo hasta la parte occidental de la bahia de Çarabaro, y las que faltaren para las dichas veynte et cinco leguas, se han de contar adelante de la dicha bahia por el dicho paralelo, y donde se acabaren las dichas veynte e cinco leguas comiençen otras veynte e cinco leguas por un meridiano Norte Sur, y otras tantas comiençen desde el Rio de Velen, por el dicho meridiano del dicho Norte Sur, y donde las dichas veynte et cinco leguas se acabaren comiençen otras veynte et cinco, las quales se han de yr contando por un paralelo hasta fenecer donde se acabaren las dichas veynte et cinco leguas, que se contaren mas adelante de la bahia de Çarabaro, de manera que donde se acabaren las dichas veynte et cinco leguas en quadra, medidas de la manera que dicha es, ha de comenzar la dicha vuestra conquista y poblacion, y acabar en el Rio Grande hacia el Poniente de la otra parte del cabo de Camaron, con que la costa del dicho Rio hazia Honduras quede en la gobernacion de la dicha provincia de Honduras, e asi mismo si en el dicho Rio hoviere algunas yslas pobladas o por poblar de indios, y no estuvieren conquistadas y pobladas de españoles, las podeys vos conquistar, y que la navegacion y pesca e otros aprovechamientos del dicho Rio sean comunes, e asi mismo con tanto que no llegueis á la laguna de Nicaragua con quince leguas, por quan-

Annex 2

Real Provision de SS. MM. el Emperador y la Reina doña Juana sobre los límites de la gobernacion de Cartago, y en particular sobre los del Desaguadero ó rio de San Juan de Nicaragua, 6 May 1541 (extract)

Source: MM de Peralta, *Costa Rica Nicaragua y Panamá en el Siglo XVI. Su Historia y sus Límites* (Madrid: Librería de M. Murillo, 1883), 125-127

TRANSLATION

Royal Provision of His Majesty the Emperor and the Queen, Doña Juana, About the Limits of the Governance of Cartago, and in Particular on the Limits of the Desaguadero or San Juan River of Nicaragua, Talavera, 6 May 1541

“In the villa of Madrid, on 9th day of the month of April of the year 1541, seen by the lords of the Council of the Indies of His Majesty the plea in degree of review presented by Rodrigo de Contreras, Governor of Nicaragua, and Diego Gutierrez, Governor of the Province of Cartago, requested that His Majesty give letter so that said Diego Gutierrez can enter through the mouth of the Desaguadero of the North Sea, and populate and distribute on the coast of both sides of said Desaguadero, even if it has been discovered by said Rodrigo de Contreras or by the Captains sent, as long as that said Diego Gutierrez does not enter where, said Rodrigo de Contreras or said Captains have populated or distributed, and that was really possessed by the encomenderos in all of said Desaguadero, in both said coasts, because that is how it is established by the Ordinance that was taken with said Diego Gutierrez, and if about it there were doubts, the hearers shall declare it, and order that said Governors keep and comply with the aforementioned, under penalty of losing said Governances, and it is so pronounced and mandated in degree of review, and likewise we mandate that said Diego Gutierrez nor the captains and people that he take now or in any time, may not enter nor do enter in said lagoon nor within the 15 leagues of the Desaguadero, even if it was not discovered or populated by said Rodrigo de Contreras; and now, by said Rodrigo de Contreras, it has been implored that we send our letter and Provision so that what is contained therein, by said our Council, pronounced in degree of review, be kept and complied with or as our grace commands, which seen by our said Council, was agreed that we shall give this our letter for you, and finding it in good form, thereby we declare and mandate that you, said Diego Gutierrez, may enter by the mouth of said Desaguadero of the North Sea and populate and distribute on the coast of both sides of said Desaguadero, even if it has been discovered by said Rodrigo de Contreras or by the Captains sent, as long as you do not enter where, said Rodrigo de Contreras or said Captains have populated or distributed, and that was really possessed by the encomenderos in all of said Desaguadero, in both said coasts, because that is how it is forbidden to you by said Ordinance that we have taken with you, and if about the aforementioned there were some doubts between the both of you, we mandate that you recur to our hearers of our Audience and Royal chancellery, that resides in the city of Panama of the Province of Tierra Firme, to whom we mandate that heard the parties, declare it, and what is declared and mandated we order you said Diego

Gutierrez and said Rodrigo de Contreras, that you both be obliged to comply, and it is also forbidden, defended and mandated to you Diego Gutierrez that you, nor your captains or people that you take now or in any time, may not enter nor do enter in said lagoon, nor within the 15 leagues of the said Desaguadero, that by your Ordinance is forbidden and banned, even if it were not discovered or populated by said Rodrigo de Contreras, all of which is set forth and declared in this our letter that we mandate to you, said Diego Gutierrez and said Rodrigo de Contreras, that you keep and comply with, each of you, with that which corresponds and pertains to comply with, and that you do not go against the literal meaning and form of it, under penalty of loosing said Governances that have been given to you, and more than one hundred thousand maravedis for our chamber./ Dated in Talavera on 6th days of the month of May of the year 1541.”

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dicho auto se quitaban todas las dudas que podía aver entre vosotros, y que si alguna de nuevo naciese, estaba bien remitida a los dichos nuestros Oidores; e ansy nos suplicó mandásemos confirmar el dicho auto, syn embargo de lo en contrario alegado, todo lo cual visto por los del dicho nuestro Consejo y lo demas que por vuestra parte y por parte del dicho Rodrigo de Contreras fue alegado cerca dello, pronunciaron otro auto del tenor siguiente:—En la villa de Madrid, a nueve dias del mes de abril de mill e quinientos e quarenta e un años, vistas por los señores del Consejo de las Yndias de Su Magestad las suplicaciones en grado de revista interpuestas por parte de Rodrigo de Contreras, Governador de Nicaragua, y Diego Gutierrez, Governador de la provincia de Cartago, mandaron que se de carta de su magestad, para que el dicho Diego Gutierrez pueda entrar por la boca del Desaguadero de la mar del Norte, y poblar y repartir en la costa de ambas partes del dicho Desaguadero, aunque este descubierto por el dicho Rodrigo de Contreras o por los capitanes que obieren embiado, con tanto que el dicho Diego Gutierrez no entre en lo que el dicho Rodrigo de Contreras o los dichos Capitanes ovieren poblado o repartido e poseyeren los encomendados realmente en todo el dicho Desaguadero, en ambas las dichas costas, porque ansy le fue y esta proveido por la capitulacion que se tomo con el dicho Diego Gutierrez, e que si cerca dello obiere dudas, los oidores lo declaren, e mandavan que los dichos gobernadores guarden e cumplan lo susodicho, so pena de privacion de las dichas gobernaciones, e ansy lo pronunciaban e mandaban en grado de revista, e ansy mismo mandamos que el dicho Diego Gutierrez, ny los capitanes y gente que llevare agora ni en tiempo alguno, no puedan entrar ny entren en la dicha laguna ny en las quince leguas del Desaguadero, aunque no esté poblado ni descubierto por el dicho Rodrigo de Contreras; e

agora por parte del dicho Rodrigo de Contreras nos ha sido suplicado le mandasemos dar nuestra carta e provision para que lo contenido en el dicho auto, por los del dicho nuestro Consejo, pronunciado en grado de revista, fuese guardado e cumplido o como la nuestra merced fuese, lo qual visto por los del dicho nuestro consejo, fue acordado que debiamos mandar dar esta nuestra carta para vos, e nos tuvimoslo por bien, por la qual declaramos e mandamos que vos el dicho Diego Gutierrez podais entrar por la boca del dicho Desaguadero de la mar del Norte y poblar y repartir en la costa de ambas partes del dicho Desaguadero, aun queste descubierto por el dicho Rodrigo de Contreras y por los capitanes que obiere enbiado, con tanto que no entreis en lo quel dicho Rodrigo de Contreras o los dichos capitanes obieren poblado o repartido, e posesyeren los comenderos realmente en todo el dicho Desaguadero en ambas las dichas costas, porque ansy vos esta proybido por la dicha Capitulacion que con vos mandamos tomar, e sy cerca de lo susodicho entre vosotros obiese algunas dudas, mandamos que ocurrays á los nuestros oydores de la nuestra abdiencia y chancilleria Real, que reside en la cibdad de Panama de la provincia de Tierra Firme, a los quales mandamos que oydas las partes lo declaren, e lo que ansy declarasen y mandasen mandamos a vos el dicho Diego Gutierrez e a dicho Rodrigo de Contreras, que ambos a dos seays obligados a lo cumplir, e ansy mismo proibimos, defendemos y mandamos a vos el dicho Diego Gutierrez que vos, ni los capitanes y gente que llevaredes agora ni en tiempo alguno, no podays ni puedan entrar ni entren en la dicha laguna, ni en las quince leguas del dicho Desaguadero, que por la dicha vuestra Capitulacion os esta proibido y vedado aunque no este poblado ni descubierto por el dicho Rodrigo de Contreras, todo lo qual como de suso se contiene e declara en esta nuestra

DIEGO GUTIERREZ Y RODRIGO DE CONTRERAS 127

carta mandamos a vos el dicho Diego Gutierrez e al dicho Rodrigo de Contreras, que guardeys y cumplays, cada uno lo que le tocare e atañere de cumplir, y que contra el tenor y forma dello non vayais ny paseys por alguna manera, so pena de privacion de las dichas governaciones que vos estan encomendadas, e mas de cien mill maravedis para la nuestra camara. / Fecha en Talavera a seis dias del mes de mayo de mill e quinientos e quarenta e un años / FR. GARCIA, *Cardinalis hispalensis* / Refrendada de JUAN DE SAMANO / Firmada del dottor VELTRAN. OBISPO DE LUGO. Dottor BERNAL, GUTIERRE VELAZQUEZ.»

Annex 3

Titulo de Alcalde Mayor de las Provincias de Nueva Cartago y Costa Rica, en favor del Licenciado Juan Cavallon.- Limites de estas Provincias, 17 May 1561 (extract)

Source: MM de Peralta, *Costa Rica Nicaragua y Panamá en el Siglo XVI. Su Historia y sus Límites* (Madrid: Librería de M. Murillo, 1883), 194-195

TRANSLATION

Title of Alcalde Mayor of the Provinces of Nueva Cartago and Costa Rica, in favour of Licentiate Juan Cavallon.- Limits of these Provinces. Santiago de Guatemala, 17 May 1561.

“...Therefore by Provision given at our Audience and Royal chancellery of the confines, We mandate and appoint to Licentiate Juan de Cavallon, who was our Alcalde Mayor at the Province of Nicaragua, that he go on to discover and populate and pacify the naturals of Costa Rica and Nuevo Cartago, and bring them by doctrine and peace to the knowledge of our Lord and that they recognize us and give to us the dominion that is owed to us as King and natural Lord, and now we are informed that said Licenciate Cavallon, moved by the zealous service to God our Lord and ours, putting into execution the aforesaid, went to said journey, taking with him the people that he could and that entering in said land, he populated the Ciudad del Castillo de Garci-Muñoz and the Port of Landecho, which is in the South Sea, from where he has started to bring to peace many of the Chiefs and naturals of said land, and that from the aforementioned he has taken news that further on *as far as the boundary of the city of Nata and its jurisdiction, in the Kingdom of Tierra Firme, otherwise called Castilla del Oro, and then along this line to the limits of the Dukedom of Veragua, and from the Southern Sea to the Northern Sea up to the Desaguadero, this being included* there are many naturals that have not had news of God our Lord...”

COSTA-RICA NICARAGUA Y PANAMÁ

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Titulo de Alcalde Mayor de las Provincias de Nueva Cartago y Costa Rica, en favor del Licenciado Juan Cavallon.—Límites de estas Provincias

SANTIAGO DE GUATEMALA, 17 DE MAYO DE 1561.

DON PHELIPE, por la gracia de Dios, Rey de Castilla, de Leon, de Aragon, de las dos Sicilias, de Jherusalem, de Navarra, de Granada, de Toledo, de Valencia, de Galicia, de Mayorca, de Sevilla, de Cerdeña, de Córdoba, de Córcega, de Murcia, de Jaen, de los Algarbes, de Algeciras, de Gibraltar, de las Islas de Canarias, de las Indias, Islas e Tierra-Firme del mar Océano, Conde de Barcelona, Señor de Vizcaya e de Molina, Duque de Atenas y de Neopatria, Conde de Ruisellon, e de Cerdania, Marqués de Oristán y de Goçiano, Archiduque de Abstria, Duque de Borgoña e de Brabante y Milan, Conde de Flandes, e de Tírol, &. Por quanto por provision librada en la nuestra Audiencia e chancilleria Real de los Confines, Nos encargamos y mandamos a el licenciado Juan de Cavallon, nuestro Alcalde mayor que a la sazón era en la Provincia de Nicaragua, que fuese a descubrir e poblar e pacificar los naturales de Costa-Rica e nuevo Cartago, y traerlos por doctrina y paz al conoscimiento de nuestro Señor e que nos reconociesen e diesen el

dominio que se nos deve como a Rey y Señor natural, e agora somos ynformados que dicho Licenciado Cavallon, movido con zelo del servicio de Dios nuestro Señor y nuestro, poniendo en ejecucion lo susodicho, fué a la dicha jornada, llevādo consigo la gente que pudo haber, y que entrando en la dicha tierra pobló la Cibdad del Castillo de Garci-Muñoz y el puerto de Landecho, ques en la mar del Sur, desde donde ha comenzado a traer de paz muchos de los caciques e naturales de la dicha tierra, y que de los susodichos ha tomado noticia que adelante *hasta los limites e jurisdiccion de la Cibdad de Natā, del Reino de Tierra-Firme, llamada Castilla del Oro, la tierra en largo hasta los limites del Ducado de Veragua, y desde la mar del Sur hasta la del Norte, hasta el Desaguadero inclusive*, ay mucha cantidad de naturales que no han tenido noticia de Dios nuestro Señor, los quales estan en su gentilidad y que debaxo de dicho zelo e por cumplir lo que por nos le esta mandado, queria yr á los conquistar y traer de paz e poblar e fundar en la dicha tierra e puertos que en ella se pudiesen descubrir, ansi por la mar del Sur como la del Norte, cibdades, villas y lugares, para que la dicha tierra se allane y en ella aya cristianos españoles que la tengan poblada en nuestro nombre, y los dichos naturales pudiesen venir al dicho conocimiento e se yntroduzca en ellos la dotrina evangelica y costumbre de paz y justicia, y acatando lo suso dicho, y a ques necesario nombrar persona que sea nuestro alcalde mayor de la dicha tierra, e tenga la jurisdiccion cibil e criminal, e provea y haga las cosas que en ella fuesen necesarias de hazer e proveer, en bien y aumento, pulicía e conbersion de los dichos naturales e de las otras personas que en la dicha tierra ovieren de rresidir e que a vos el dicho licenciado Juan de Cavallon Nos a cometido y que nos servireis de aqui adelante, e a vuestras letras y persona, subficiencia y fidelidad, que

Annex 4

United States-Great Britain, Convention Concerning a Ship Canal Connecting
the Atlantic and Pacific Oceans (Clayton-Bulwer) Articles I, IV, VI
Washington, D.C., 19 April 1850 (in force 4 July 1850)

Source: 104 CTS 41; 38 BFSP 4

Convention for Facilitating and Protecting the
Construction of a Ship Canal between the
Atlantic and Pacific Oceans etc. between
Great Britain and the United States,
signed at Washington, 19 April 1850

THE text of this, the Clayton-Bulwer Treaty, is taken here from Miller, *Treaties and other International Acts of the United States*, vol. V, p. 671. The Treaty, which was terminated by that of 18 November 1901, is printed also in *Parliamentary Papers, 1850*, vol. LVI, p. 37; *British and Foreign State Papers*, vol. XXXVIII, p. 4; *Hertslet's Commercial Treaties*, vol. VIII, p. 969; by Martens, *Nouveau Recueil Général*, vol. XV, p. 187; Malloy, *Treaties etc. between the United States and Other Powers*, p. 659, and Martens et de Cussy, *Recueil Manuel et Pratique des Traités*, vol. VI, p. 386. There is added to Miller's text here, reproduced from *British and Foreign State Papers*, vol. XLII, p. 162, the text of the Declaration respecting British Honduras made by the British plenipotentiary upon the exchange of ratifications. This is printed also in *Hertslet's Commercial Treaties*, vol. X, p. 645, and by Martens, *Nouveau Recueil Général*, vol. XV, p. 192.

ENGLISH TEXTS

THE UNITED STATES OF AMERICA and HER BRITANNIC MAJESTY, being desirous of consolidating the relations of amity which so happily subsist between them, by setting forth and fixing in a Convention their views and intentions with reference to any means of communication by Ship Canal, which may be constructed between the Atlantic and Pacific Oceans, by the way of the River San Juan de Nicaragua and either or both of the Lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean,—THE PRESIDENT OF THE UNITED STATES, has conferred full powers on JOHN M. CLAYTON, Secretary of State of the United States; and HER BRITANNIC MAJESTY on the Right Honourable Sir HENRY LYTTON BULWER, a Member of Her Majesty's Most Honourable Privy Council, Knight Commander of the Most Honourable Order of the Bath, and Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to the United States, for the aforesaid purpose; and the said Plenipotentiaries having exchanged their full powers, which were found to be in proper form, have agreed to the following articles.

ARTICLE I.

The Governments of the United States and Great Britain hereby declare, that neither the one nor the other will ever obtain or maintain

for itself any exclusive control over the said Ship Canal; agreeing, that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; nor will either make use of any protection which either affords or may afford, or any alliance which either has or may have, to or with any State or People for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito Coast or any part of Central America, or of assuming or exercising dominion over the same; nor will the United States or Great Britain take advantage of any intimacy, or use any alliance, connection or influence that either may possess with any State or Government through whose territory the said Canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one, any rights or advantages in regard to commerce or navigation through the said Canal, which shall not be offered on the same terms to the citizens or subjects of the other.

ARTICLE II.

Vessels of the United States or Great Britain, traversing the said Canal, shall, in case of war between the contracting parties, be exempted from blockade, detention or capture, by either of the belligerents; and this provision shall extend to such a distance from the two ends of the said Canal, as may hereafter be found expedient to establish.

ARTICLE III.

In order to secure the construction of the said Canal, the contracting parties engage that, if any such Canal shall be undertaken upon fair and equitable terms by any parties having the authority of the local Government or Governments, through whose territory the same may pass, then the persons employed in making the said Canal and their property used, or to be used, for that object, shall be protected, from the commencement of the said Canal to its completion, by the Governments of the United States and Great Britain, from unjust detention, confiscation, seizure or any violence whatsoever.

ARTICLE IV.

The contracting parties will use whatever influence they respectively exercise, with any State, States or Governments possessing, or claiming to possess, any jurisdiction or right over the territory which the

said Canal shall traverse, or which shall be near the waters applicable thereto; in order to induce such States, or Governments, to facilitate the construction of the said Canal by every means in their Power: and furthermore, the United States and Great Britain agree to use their good offices, wherever or however it may be most expedient, in order to procure the establishment of two free Ports,—one at each end of the said Canal.

ARTICLE V.

The contracting parties further engage that, when the said Canal shall have been completed, they will protect it from interruption, seizure or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said Canal may forever be open and free, and the capital invested therein, secure. Nevertheless, the Governments of the United States and Great Britain, in according their protection to the construction of the said Canal, and guaranteeing its neutrality and security when completed, always understand that, this protection and guarantee are granted conditionally, and may be withdrawn by both Governments, or either Government, if both Governments, or either Government, should deem that the persons, or company, undertaking or managing the same, adopt or establish such regulations concerning the traffic thereupon, as are contrary to the spirit and intention of this Convention,—either by making unfair discriminations in favor of the commerce of one of the contracting parties over the commerce of the other, or by imposing oppressive exactions or unreasonable tolls upon passengers, vessels, goods, wares, merchandize or other articles. Neither party, however, shall withdraw the aforesaid protection and guarantee, without first giving six months notice to the other.

ARTICLE VI.

The contracting parties in this Convention engage to invite every State with which both or either have friendly intercourse, to enter into stipulations with them similar to those which they have entered into with each other; to the end, that all other States may share in the honor and advantage of having contributed to a work of such general interest and importance as the Canal herein contemplated. And the contracting parties likewise agree that, each shall enter into Treaty stipulations with such of the Central American States, as they may deem advisable, for the purpose of more effectually carrying out the great design of this Convention, namely,—that of constructing and maintaining the said Canal as a ship-communication between the

two Oceans for the benefit of mankind, on equal terms to all, and of protecting the same; and they, also, agree that, the good offices of either shall be employed, when requested by the other, in aiding and assisting the negotiation of such Treaty stipulations; and, should any differences arise as to right or property over the territory through which the said Canal shall pass—between the States or Governments of Central America,—and such differences should, in any way, impede or obstruct the execution of the said Canal, the Governments of the United States and Great Britain will use their good offices to settle such differences in the manner best suited to promote the interests of the said Canal, and to strengthen the bonds of friendship and alliance which exist between the contracting parties.

ARTICLE VII.

It being desirable that no time should be unnecessarily lost in commencing and constructing the said Canal, the Governments of the United States and Great Britain determine to give their support and encouragement to such persons, or company, as may first offer to commence the same with the necessary capital, the consent of the local authorities, and on such principles as accord with the spirit and intention of this Convention; and if any persons, or company, should already have, with any State through which the proposed Ship-Canal may pass, a contract for the construction of such a Canal as that specified in this Convention,—to the stipulations of which contract neither of the contracting parties in this Convention have any just cause to object,—and the said persons, or company, shall, moreover, have made preparations and expended time, money and trouble on the faith of such contract, it is hereby agreed, that such persons, or company, shall have a priority of claim over every other person, persons or company, to the protection of the Governments of the United States and Great Britain, and be allowed a year, from the date of the exchange of the ratifications of this Convention, for concluding their arrangements, and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood, that if, at the expiration of the aforesaid period, such persons, or company, be not able to commence and carry out the proposed enterprise, then the Governments of the United States and Great Britain shall be free to afford their protection to any other persons, or company, that shall be prepared to commence and proceed with the construction of the Canal in question.

Annex 5

Treaty of Limits (Cañas-Juárez)
Managua, 6 July 1857 (unratified)

Source: www.manfut.org/cronologia/t-canasjuarez.html

TRANSLATION

Cañas – Juárez Treaty, Managua, 6 July 1857

Gregorio Juárez and José María Cañas, special Commissioners; the first for the Supreme Government of Nicaragua, and the second for Costa Rica, to enter into a definite border treaty which divides both Republics and ends the disputes that until now have stalled the good understanding that should reign between them, for their mutual safety and exaltation; having exchanged our respective powers, which we found to be in good and due form, we have agreed on the following:

First: The Government of Nicaragua, as a sign of gratitude for the Government of Costa Rica, for its good offices on behalf of the Republic, for the solid determination and great sacrifices made for the cause of national independence, waives, takes and puts away every right on the District of Guanacaste, which is now called the Province of Moracia of the Republic of Costa Rica, to be understood, held, and acknowledged, from now and forever, as an integral part of said Republic, under the sovereign jurisdiction of said Government.

Second: As that Province of Moracia is located between the San Juan del Norte River and the South Sea, both parties agree that the border should be an imaginary line, drawn from a point in the middle of the Golfo de Salinas de Bolaños in the South Sea, up to a point below Castillo Viejo, that will be marked two English miles from the outside fortifications of said castle, downstream of the river, up to the aforementioned point; and whilst this one is made, Raudal del Mico, across the river known as Bartola, will be taken as a natural border marker on that side; and following the margin and the shore of said river, the same dividing line will follow down, until it reaches Punta de Castilla.

Third: The demarcation of said points and the imaginary line, will be done by two Commissioners appointed by each of the parties accompanied by an engineer; and if there are points that can serve as natural boundaries, along the entire line or in some parts, these will be preferred to the astronomical line, that eventually must be marked.

Fourth: The extremity of the aforementioned bordering line, in the Salinas Gulf, will be commonable to both Republics; and each one may use it at their convenience.

Fifth: The Republic of Costa Rica, as well as the one of Nicaragua, will have free use of the waters of the San Juan River, for navigation and transportation of articles of trade of import and export, observing customs legislation, and

complying with the fiscal duties of each Republic, as well as those that will be taxed over the articles that will be brought in through their respective customs.

Sixth: The Nicaraguans that live in Costa Rica and the Costa Ricans that live in Nicaragua shall be respectively considered natural citizens of those countries, with the same rights to purchase and possess empty lots and privately-owned properties, as well as for the guarantee of both governments, concerning the exercise of those rights.

Seventh: The original products and manufactured articles of both republics, may be mutually imported, free of tax, and will only be subjected to the own and local municipal taxes, but the import of those articles that have been monopolized or stagnated by both governments in their own republics, shall not be authorized.

Eighth: Both governments agree that their respective authorities shall mutually turn over the prisoners for ordinary offences from the other country that seek shelter in their country, with a previous rogatory where it is shown a prison warrant against the offender. They also agree to provide safe asylum to political emigrants of both republics, and both governments cannot force one another to extradite the émigré. They must only keep the émigré away from the border, if this is requested by his country of origin.

Ninth: Both governments may detach the guard or guards that they may deem necessary to watch over fiscal duties in the environs of the bordering line marked in this agreement, although those guards may go into the territory of the other country, with previous notice and knowledge of that in which internment may be deemed necessary.

Tenth: This agreement shall be ratified, and its ratifications shall be exchanged within the shortest time possible.

In witness thereof, we sign this document in duplicate, in the City of Santiago de Managua, on the sixth day of July, of the year of the Lord of eighteen hundred fifty seven.

G. Juárez (signature) José M. Cañas (signature)

Colección de Documentos Históricos

Tratado Cañas-Juárez (Managua, 6 de Julio de 1857)

Gregorio Juárez y José María Cañas Comisionados especiales, el primero por el Supremo Gobierno de Nicaragua y el segundo por el de Costa Rica para celebrar un tratado definitivo de límites que dibida ambas Repúblicas y termine las diferencias que hasta ahora habían retardado la buena inteligencia que debe reinar entre ellas para su mutua seguridad y engrandamiento; cangeados nuestros respectivos poderes que encontramos en buena y debida forma, hemos convenido en lo siguiente:

Primero: El Gobierno de Nicaragua en señal de gratitud hacia el de Costa Rica por sus buenos oficios en favor de la República, por el desidido empeño y los grandes sacrificios que ha hecho por la causa de la independencía nacional. desiste, quita y aparta de todo derecho al Distrito de Guanacaste que lleva ahora la denominación de Provincia de Moracia de la República de Costa Rica para que se entienda, tenga y reconozca desde ahora para siempre como parte integrante de dicha República, bajo el dominio y sumo imperio de dicho Gobierno.

Segundo: Como dicha Provincia de Moracia se halla colocada entre el Río San Juan del Norte y el Mar del Sur, convienen ambas partes en que el límite sea una línea imaginaria tirada desde un punto medio del Golfo de Salinas de Bolaños en el Mar del Sur hasta un punto abajo del Castillo Viejo que se señalará á dos millas inglesas de distancia medidas desde las fortificaciones exteriores de dicho Castillo, aguas abajo del Río, hasta el expresado punto; y mientras éste se señala, se tendrá como punto natural del límite por aquella parte el Raudal del Mico frente del Río llamado Bartola; y siguiendo la margen y orilla derecha del mismo Río, continuará la misma línea divisoria por la misma, hasta llegar á Punta de Castilla.

Tercero: La fijación de dichos puntos y la línea imaginaria, seran trazados por dos Comisionados nombrados uno por cada parte acompañados de un ingeniero; y en el caso de encontrarse en el todo ó en parte de dicha línea puntos de sirban de límites naturales, serán estos preferidos á la línea astronómica que en último caso debe señalarse.

Cuarto: La estremidad de la predicha línea limitrofe, en el Golfo de Salinas, será comun a ambas Repúblicas; pudiendo cada una, por su lado,

hacer el uso que le convenga.

Quinto: La República de Costa Rica lo mismo que la de Nicaragua, usarán libremente de las aguas de l Río San Juan para la navegación y transporte de artículos de comercio de importación y exportación, respetando las leyes de aduana, y satisfaciendo los derechos fiscales de cada una de dichas Repúblicas tiene impuestos o imponga en lo subsesivo sobre los artículos que se introduzcan por sus respectivas aduanas.

Sexto: Los nicaragüenses en Costa Rica y los costarricenses en Nicaragua, serán considerados respectivamente como naturales con los mismos derechos para la adquisición y conservación de terrenos de propiedad particular y baldías, así como p.a la garantía de ambos gobiernos en cuanto al uso de dichos derechos.

Septimo: Los productos y manufacturas naturales de ambas Reúblicas, pueden introducirse recíprocamente libres de todo impuesto fiscal, sugetos solamente á los de propios y advitrios municipales, pero no será permitida la introduccion de artículos monopolizados o estancados por los dos Gobiernos en sus respectivas Repúblicas.

Octavo: Ambos Gobiernos consienten en que sus autoridades respectivas entreguen mutuamente los reos de delitos comunes que da la una República se refugien en la otra, previo exhorto en que conste haberse decretado auto de prision contra el reo. E igualmente se comprometen á dar seguro asilo á los emigrantes por motivos políticos de ambas Repúblicas, sin que se pueda obligarse al uno por el otro Gobierno., á la extradicion del emigrado, sino solamente á alejarle de la frontera siempre que esto le sea pedido por el Gobierno, á quien pertenezca.

Noveno: Ambos Gobiernos pueden colocar el resguardo ó resguardos que crean convenientes para el celo de los derechos fiscales en las inmediaciones de la línea limítrofe marcada en el presente convenio, aunque dichos resguardos se internen en el terreno de la otra República con previo aviso y conocimiento de aquel en que se esta internacion se crea necesaria.

Decimo: El actual convenio será ratificado y sus ratificaciones cambiadas dentro del menor término posible .

En fé de lo cual firmamos el presente en dos ejemplares, en la Ciudad de Santiago de Managua a los seis dias del mes de Julio del año del Señor de mil ochocientos cincuenta y siete.

G. Juárez (rúbrica) José M. Cañas (rúbrica)

A.N.C.R., Sec. Adm., Arch, Congreso, Exp. 5199, fls. 5-6 v.- (Transcrito por Sibaja - Zelaya en " La Anexión de Nicoya, Doc. N0. 12, pág. 160 -162)

Versión internet: Eduardo Manfut P.

Recopilación Antonio Esgueva

Universidad Centroamericana

Facultad de Ciencias Jurídicas

Instituto de Historia de Nicaragua y Centroamérica

Regresa al siglo XIX

Annex 6

Convention of Peace (Cañas-Martínez)
Rivas, 8 December 1857 (Arts 8, 9 subject to ratification, unratified;
remainder in force on signature)

Source: 49 BFSP 1222

BRITISH AND FOREIGN
STATE PAPERS.

1858—1859.

VOL. XLIX.

COMPILED BY THE LIBRARIAN AND KEEPER OF THE PAPERS,
FOREIGN OFFICE.

London:

WILLIAM RIDGWAY, 169, PICCADILLY.

1867.

*CONVENTION of Peace, between Costa Rica and Nicaragua.**Signed at Rivas, December 8, 1857.*

(Translation.)

THE President, General Don Tomas Martinez, as actual Commander-in-chief of the army of the Republic, of the one part, and of the other part General José Maria Cañas, and Licentiate Don J. Emiliano Cuadra, Ministers Plenipotentiary and Envoys Extraordinary of the Republic of Costa Rica, with the desire of putting an end to the misunderstanding which has unfortunately arisen between Nicaragua and Costa Rica, which never ought to exist between two neighbouring and sister Republics, and which it is more than ever indispensable to terminate under the circumstances of their common independence being threatened by a fresh invasion of filibusters who have already made their invasion upon the river San Juan. The Legation of Costa Rica being sufficiently authorized, according to the tenor of the powers conferred by that Republic, which were presented for exchange and found to be in good and due form; and the Commander-in-chief in campaign acting in regard to arrangements for peace as in similar cases, without omitting to include other points which it has been considered desirable to embrace in this Convention, although, in regard to these, it is to be observed that they are agreed to "sub spe ratis," and are duly subject to the approbation of the Supreme Powers of this Republic, have agreed upon the following arrangements for peace:

I. Nicaragua shall again come into possession of Castillo Viejo, which fortification the Legation of Costa Rica has been willing to restore from the beginning; but this is not to put any obstacle in the way should Costa Rica think it necessary, on account of danger of invasion by filibusters, to station forces of her own at the same point, on such conditions as to number, length of time, and the rest, as may be agreed upon between the two Governments according to circumstances.

II. While Costa Rica retains the steamers, she shall be allowed to keep at such part of the river as she may think fit, the guard which is intended to serve in them, the total number of which, on board or ashore, shall not exceed 30 men. The persons employed by Nicaragua shall also aid and assist in the care and preservation of the said steamers.

III. The Government of Costa Rica shall not dispose of the steamers without giving previous notice of the agreement to the Government of Nicaragua, and hearing its opinion as to the inconveniences which the alienation may occasion; at all events, Nicaragua shall have a right to the preference in taking all or any of them on the same conditions.

IV. So long as the steamers belong to Costa Rica, her Government shall only make use of them for commercial purposes, and subject in all things to the police and exchequer laws of Nicaragua, the same as the vessels of that Republic which trade upon the river and the lake.

V. The forces of Nicaragua, on receiving Castillo Viejo, shall also receive all the munitions of war and other goods belonging to that Republic; and the forces of Costa Rica have a right to take away all the elements of war and other goods which may exist there, and belong to that country.

VI. Costa Rica shall evacuate the point of Tortuga, as has been arranged by the Legation of that Republic to take place without delay; and as her object in maintaining the picket at that point has been to guard provisions and munitions of war intended for the Costa Rican forces in the castle and the steamers, so long as she keeps them, she is allowed to have her picket at the Virgin to the number of 10 men.

VII. By the present Convention, and in consideration of the increased expenses which Costa Rica has been put to in the national war, all claims cease on the part of Nicaragua to which she may consider she has a right, as originating from the disagreements which are now put an end to. Costa Rica, on her part, in witness of the good and cordial understanding now established, gives up any balance which there is, or might be, in her favour and against Nicaragua, on whatever ground.

VIII. The boundaries between Nicaragua and Costa Rica shall be those which were established in the last Treaty concluded at Managua, in July of the present year, between the Commissioners, Licenciado D. Gregario Juarez, and General D. José Maria Cañas, or else those which have been recognized of old as the proper ones of the district of Nicoya, and within which the authorities of that district have always exercised their jurisdiction. The Government of Costa Rica shall state which of these two demarcations is adopted, and this is to be included in the act of the ratification of the present Convention. If the second be adopted by that Government, and any difficulties should occur in fixing it from point to point, they shall be decided by arbitrators, to be appointed by the two Governments, in order to come to a definitive resolution, with the assistance of the necessary documents.

IX. If, from any unforeseen event, the engagement concerning transit, concluded in The United States by the Minister Plenipotentiary of Nicaragua, D. Antonio José de Irisari, with the Canalisation Company, should be ineffective for that Republic, she shall not enter into any other contract concerning transit, without first taking the opinion of the other Governments of Central America.

1224

PRUSSIA, &C., AND URUGUAY.

X. Articles VIII and IX are subject to the respective ratifications. The others are definitively concluded by both parties.

In witness whereof they sign two copies of the same tenor, which are countersigned by the respective Secretaries.

In the city of Rivas, 8th December, 1857.

(L.S.) TOMAS MARTINEZ.

(L.S.) JOSE MARIA CANAS.

(L.S.) JOSE EMILIANO QUADRA.

MAXIMO JEREZ, *Secretary*.

JOSE ANTONIO CHAMORRO, *Secretary*.

TREATY of Friendship, Commerce, and Navigation, between the States of the German Customs and Commercial Union and the Oriental Republic of the Uruguay.—Signed at Monte Video, June 23, 1856.

[Ratifications exchanged at Monte Video, April 3, 1857.]

(Translation.)

HIS Majesty the King of Prussia, both for himself and as representing the Sovereign States and Provinces, adhering to his system of customs and taxation, namely, the Grand Duchy of Luxembourg, the Grand Ducal Mecklenburg enclosed territories (enclaven) Rossow, Netzeband; and Schönberg, the Grand Ducal Oldenburg Principality of Birkenfeld, the Duchies of Anhalt-Dessau-Cöthen, and Anhalt-Bernburg, the Principalities of Waldeck and Pyrmont, the Principality of Lippe, and the Landgrave-Hessian High Bailiwick of Meissenheim, as also in the name of the other members of the German Customs and Commercial Union; namely, the Crown of Bavaria, the Crown of Saxony, the Crown of Hanover, and the Crown of Wirtemberg, the Grand Duchy of Baden, the Electorate of Hesse, the Grand Duchy of Hesse, together with the Landgrave-Hessian Bailiwick of Homberg; and the States forming the Thuringian Customs and Commercial Union, namely, the Grand Duchy of Saxony, the Duchies of Saxe-Meiningen, Saxe Altenburg, and Saxe Coburg and Gotha, the Principalities of Schwartzburg-Rudolstadt and Schwarzburg-Sondershausen, Reuss of the elder and Reuss of the younger line, the Duchy of Brunswick, the Duchy of Oldenburg, the Duchy of Nassau, and the Free Town of Frankfort, on the one side, and

The President of the Oriental Republic of the Uruguay, on the other side, animated with the desire of extending and consolidating the friendly relations as well as those of commerce and navigation

TRATADO DE PAZ ENTRE COSTA RICA Y NICARAGUA

El General Presidente, don Tomás Martínez, como actual encargado del mando en jefe del ejército de Nicaragua, por una parte, y los señores Generales don José María Cañas y licenciado don Emiliano Quadra, Ministros Plenipotenciarios y Enviados Extraordinarios de la República de Costa Rica por otra: con el deseo de poner término a las desavenencias que desgraciadamente se han suscitado entre Costa Rica y Nicaragua, las que si nunca debieron existir entre dos Repúblicas vecinas y hermanas, es aún más indispensable hacer que desaparezcan en circunstancias en que su común independencia se halla amenazada por una nueva invasión de filibusteros, que ya ha ejecutado su incursión sobre el río San Juan.

Hallándose la Legación de Costa Rica competentemente autorizada según el tenor de los Poderes que le han sido conferidos por el Gobierno de aquella República; y que para el canje presentó y se encontraron en buena y debida forma:

Y HACIENDO USO EL General Presidente de Nicaragua de las facultades naturales de un general en Jefe en campaña. Respecto a arreglos de paz, conforme a los casos emergentes, sin dejar de comprender otros puntos que se ha considerado interesante abrazar en el presente Convenio, bien que observando en cuanto a éstos el carácter de acordados *sub spē rati* y con la debida sujeción a la aprobación de los Supremos Poderes de la República, han celebrado el siguiente

ARREGLO DE PAZ:

Artículo 1.º

Nicaragua volverá a entrar en posesión del Castillo Viejo, cuya fortificación ha estado dispuesta a devolverle la Legación de Costa Rica desde su ingreso; pero no servirá de obstáculo para que Costa Rica, en caso de creerlo conveniente por peligros de invasión de

filibusteros, sitúe también en el mismo punto fuerzas suyas en el número, por el tiempo y bajo las demás estipulaciones que con relación a los casos que ocurran, se acuerden por los dos Gobiernos.

Artículo 2.º

Mientras Costa Rica tenga los vapores, se le permitirá tener en el punto del río que crea conveniente la custodia destinada a servir en ellos, cuyo número total a bordo o en tierra, no podrá exceder de treinta hombres.

Los empleados de Nicaragua cuidarán también y ayudarán a la custodia y a la conservación de dichos vapores.

Artículo 3.º

El gobierno de Costa Rica no podrá enajenar los vapores sin dar previo conocimiento del contrato al de Nicaragua, y oír su opinión sobre los inconvenientes que la enajenación pueda tener.

En toda caso, Nicaragua tendrá derecho de preferencia a tomarlos todos o algunos de ellos, bajo igualdad de condiciones.

Artículo 4.º

Mientras los vapores pertenezcan a Costa Rica, su Gobierno no podrá hacer de ellos sino usos mercantes, y con sujeción en todo a las leyes de Policía y de Hacienda de Nicaragua, de la misma manera que las embarcaciones de esta República, que trafican en el río y el lago.

Artículo 5.º

Al recibir las fuerzas de Nicaragua El Castillo Viejo, recibirán igualmente todos los útiles de guerra y demás enseres pertenecientes a la República; y los de Costa Rica tienen el derecho de sacar todos los elementos de guerra y otros útiles que allí existen y pertenecer a aquel país.

Artículo 6.º

Costa Rica evacuará el punto de Tortuga, como también ha estado dispuesta la Legación de aquella República a que se verifique sin demora; y como el objeto que ha tenido en mantener un piquete en aquel punto ha sido el de custodiar víveres y elementos de guerra, destinados a las fuerzas costarricenses que han existido en El Castillo y los vapores, se le permite tener mientras los conserve, un piquete en La Virgen, hasta un número de diez hombres.

Artículo 7.º

Por el presente Convenio y en consideración a los crecidos gastos que Costa Rica impendió en la guerra nacional, cesa de parte de Nicaragua toda reclamación a que crea tener derecho, como originada de las desavenencias a que se pone término Costa Rica, por la suya, en testimonio de la buena y cordial inteligencia que queda establecida, se parte de cualquiera créditos que tenga o crea tener a su favor y contra Nicaragua, hasta esta fecha, por cualesquiera títulos.

Artículo 8.º

Los límites entre Costa Rica y Nicaragua serán los que se establecieron en el último Tratado celebrado en Managua, en julio del corriente año, entre los señores Comisionados General don José María Cañas y Licenciado don Gregorio Juárez: ó bien los que de antiguo han sido conocidos como propios del Partido de Nicoya y dentro de los cuales ejercieron constantemente sus actos de jurisdicción las autoridades del mismo Partido.

El Gobierno de Costa Rica designará cuál de estas dos demarcaciones queda adoptada, debiéndose comprender esto en el acto de la ratificación del presente Convenio.

Si por el mismo Gobierno se adoptase la segunda; y al fijarla punto a punto ocurrieren algunas dificultades, se decidirán por un

arbitramento que precisamente deben nombrar los dos gobierno, a fin de que son presencia de los documentos resuelva definitivamente.

Artículo 9.º

Si por algún incidente imprevisto quedare para Nicaragua insubsistente el compromiso contraído por el Convenio sobre tránsito celebrado en los Estados Unidos, por el Ministro Plenipotenciario de esta República, don Antonio José de Irisarri, con la Compañía de Canalización, no podrá celebrar ningún otros contrato sobre tránsito, sin oír antes la opinión de los demás Gobiernos de la América Central.

Los artículos 8.º y 9.º quedan sujetos a las respectivas ratificaciones y los demás concluidos definitivamente por ambas partes.

En fe de lo cual, firmamos dos ejemplares de un tenor, refrendados por los respectivos Secretarios, en la ciudad de Rivas, a los ocho días del mes de diciembre del año del Señor de mil ochocientos cincuenta y siete.

Tomás Martínez.

José María Cañas.

T. Emiliano Quadra.

Máximo Jerez,
Secretario.

José Antonio Chamorro,
Secretario.

Annex 7

Costa Rica-Nicaragua, Treaty of Limits (Cañas-Jérez)
San José, 15 April 1858

(a) Original version in Spanish

Source: *Colección de las Leyes, Decretos y Ordenes expedidos por los Supremos Poderes Legislativo y Ejecutivo de Costa Rica en el año de 1858*, Tomo XV, (San José: Imprenta de la Paz, 1871), 175–188

(b) English translation: Costa Rican version submitted to Cleveland,
Source: P Pérez Zeledón, *Argument on the Question of the Validity of the Treaty of Limits between Costa Rica and Nicaragua* (Washington, D.C., Gibson Bros, 1887), Document No. 1, 185

(c) English translation: Nicaraguan version submitted to Cleveland
Source: *The Case of Nicaragua*, 1887, Appendix B, 34

(d) English translation
Source: 48 BFSP 1049

COLECCION

DE LAS

LEYES, DECRETOS Y ORDENES
EXPEDIDOS POR LOS SUPREMOS PODERES

LEGISLATIVO Y EJECUTIVO

DE COSTA-RICA,

EN EL AÑO DE 1858.

Ref

ROMA XV.

Impreso por disposicion del Supremo Poder Ejecutivo

de la Republica.

1871.

SAN JOSÉ.

Imprenta de la Paz—Calle del Puente Ancho

“Visto con las diligencias correspondientes y constando: que D. Manuel Leiva natural de la República de Honduras, reúne las circunstancias que para naturalizarse en Costa-Rica prescribe la ley número 21 de 25 de Noviembre de 1852; y que con tal mira ha renunciado sus derechos nacionales, se le concede la carta de naturaleza en el país, y se le declara en el libre uso de los derechos que la Constitución y las leyes acuerdan á los costaricenses. Comuníquese por circular impresa para los fines que son consiguientes.”—I lo comunico á U. para su conocimiento y efectos.—Dios guarde á U.—
Cálvo.

DECRETO VI

Convoca extraordinariamente al Congreso Nacional.

Nº 3.

“Juan Rafael Mora, Presidente de la República de Costa-Rica.

Con presencia de la autorizacion dada al Poder Ejecutivo por la fraccion 19ª artículo 77 de la Constitución, he venido en decretar y decreto:

Art. 1º Se convoca extraordinariamente al Excelentísimo Congreso Nacional para someter á su alto conocimiento y deliberacion asuntos de la mayor importancia al bien general de los pueblos.

Art. 2º La reunion de los Honorables Representantes se verificará en el Salon de Sesiones á las doce del dia de mañana 15 de los corrientes; y al in.

—175—

tento el Ministro del Interior dictará las providencias que corresponden.—Dado en el Palacio Nacional en San José, á los catorce dias del mes de Abril de mil ochocientos cincuenta y ocho.—Juan Rafael Mora.—El Ministro de Estado en el Despacho de Gobernacion, Joaquin Bernardo Calvo.”

DECRETO VII.

Aprueba en todas sus partes el Tratado de límites territoriales celebrado con Nicaragua.

Nº 1º

“Juan Rafael Mora, Presidente de la República de Costa-Rica.—Por cuanto el Excelentísimo Congreso Constitucional ha decretado lo siguiente.

El Excelentísimo Congreso Constitucional de la República de Costa-Rica, considerando: que el Tratado de límites territoriales entre la República de Costa-Rica y la de Nicaragua, celebrado y firmado en la ciudad de San José por Ministros plenamente autorizados por los Gobiernos de las Repúblicas mencionadas, con la mediacion del Salvador, obsequia los principios de recíproco interes, de paz y de justicia, y estrecha los vínculos que unen á dos Repúblicas limítrofes, poniendo un término definitivo á cuestiones pendientes entre ellas; ha venido en decretar y decreta:

Artículo único. Se aprueba en todas sus partes y artículos el Tratado de límites territoriales entre

—176—

Costa-Rica y Nicaragua, firmado en esta ciudad el quince de los corrientes por Plenipotenciarios autorizados al efecto.—Al Supremo Poder Ejecutivo.—Dado en el Salon de Sesiones, en San José, á los dieziseis dias del mes de Abril de mil ochocientos cincuenta y ocho.—Rafael G. Escalante, Presidente.—Juan Gonzalez, Secretatio.—Manuel Joaquin Gutierrez, Secretario.—Por tanto: EJECUTESE.—Palacio Nacional, San José, Abril dieziseis de mil ochocientos cincuenta y ocho.—Juan Rafael Mora.—El Ministro de Estado en el Despacho de Relaciones Exteriores, Nazario Toledo.”

DECRETO VIII.

Destina a uno y otro lado de las riberas del rio Sarapiquí, una faja de tierra baldia para agraciara los costaricenses pobres.

Nº 3.

“Rafael G. Escalante, Vice-Presidente en ejercicio del Supremo Poder Ejecutivo de la República de Costa-Rica.

Deseoso de favorecer á los costaricenses pobres concediéndoles de gracia un terreno capaz de mantener con sus productos á sus familias, y con la mira, al mismo tiempo de promover y facilitar la inmigracion de extranjeros en el pais, haciéndoles gracia de los terrenos mas feraces y mejor situados para el comercio, decreto:

Art. 1º Se destina en ambas riberas del rio de

—177—

Sarapiquí, y en toda su estension hasta su confluencia con el rio de San Juan, una faja de tierra baldía de 500 varas de ancho, dedicada esclusivamente á agraciarse á los costaricenses pobres, y á los habitantes laboriosos de cualquiera nacion que quieran poblarla y cultivarla con sujecion á las reglas establecidas en este decreto.

Art. 2º Se concede de gracia á cada poblador un cuadro de tierra de cinco manzanas ó 50,000 varas cuadradas, tomando de frente sobre el rio cien varas, y 500 de fondo, cuidándose de dejar entre una y otra propiedad una calle de veinte varas de ancho, que facilite el acceso á los demas terrenos baldíos que quedan detras de los ya dichos.

Art. 3º Gozarán de la gracia los pobladores que hayan comenzado á hacer uso de ella, dentro del término de dos años contados desde esta fecha, y perderán su derecho á la propiedad del terreno los que dentro de cinco años contados tambien desde hoy no lo tengan cultivado.

Art. 4º El agraciado que haya llenado las condiciones del artículo anterior, á mas de la gracia antes dicha, tendrá derecho á que se le dé un cuadro igual al que tenga cultivado á la espalda de este, para usarlo como le convenga.

Art. 5º Si el poblador, ademas de los cuadros que se le conceden por los artículos precedentes, quisiere emprender tambien en hacienda de cacao, y la plantare dentro de los cinco años que señala el art. 3º, tendrá derecho á la propiedad del terreno que tenga así cultivado, con tal que esté distante mil varas por lo menos, de la orilla del Sarapiquí.

DECRETO X.

Tratado de límites entre Nicaragua y Costa-Rica.

N° 4.

“Rafael G. Escalante, Vice-Presidente de la República de Costa-Rica en ejercicio del Supremo Poder Ejecutivo.

Habiéndose concluido y firmado en esta ciudad el quince de Abril del presente año, un Tratado de límites territoriales entre la República de Costa-Rica y la República de Nicaragua por Plenipotenciarios autorizados al intento, el cual ha sido ratificado por ambas partes, y cuyo tenor con la ratificación que por la muestra se le ha dado es como sigue.

“Juan Rafael Mora Presidente de la República de Costa-Rica en la América Central.

Por cuanto entre la República de Costa-Rica y la República de Nicaragua se concluyó y firmó en esta ciudad el quince del mes de Abril del presente año de mil ochocientos cincuenta y ocho, por medio de Plenipotenciarios debida y suficientemente autorizados por ambas partes, un Tratado de límites territoriales entre Nicaragua y Costa-Rica, cuyo tenor palabra por palabra es como sigue:

“Máximo Jerez, Ministro Plenipotenciario del Gobierno de la República de Nicaragua, y José María Cañas, Ministro Plenipotenciario del Gobierno de la República de Costa-Rica: encargados por nuestros comitentes de celebrar un Tratado de límites entre ambas Repúblicas, que ponga término á las diferencias que han retardado la mejor y mas perfecta inteligencia y armonía que deben reinar entre ellas, pa-

—183—

ra su comun seguridad y engrandecimiento: habiendo verificado el canje de nuestros respectivos poderes, bajo el exámen que de ellos hizo el Honorable Sr. D. Pedro Rómulo Negrete, Ministro Plenipotenciario del Gobierno de la República del Salvador, en ejercicio de las nobles funciones de mediador fraternal en estas negociaciones, quien los encontró en buena y debida forma; de la misma manera que por nuestra parte fueron hallados bastantes los que exhibió el mismo Sr. Ministro: discutidos con el detenimiento necesario los puntos convenientes, con la asistencia y auxilio del Representante del Salvador; hemos convenido y celebrado el siguiente

TRATADO DE LIMITES ENTRE NICARAGUA Y COSTA-RICA.

Art. 1.º La República de Nicaragua y la República de Costa-Rica, declaran en los términos mas expresos y solemnes: que si por un momento llegaron á disponerse para combatir entre sí por diferencias de límites y por razones que cada una de las Altas Partes contratantes consideró legales y de honor, hoy, despues de repetidas pruebas de buena inteligencia, de principios pacíficos y de verdadera confraternidad, quieren y se comprometen formalmente á procurar, que la paz, felizmente restablecida, se consolide cada dia mas y mas entre ambos Gobiernos y entre ambos pueblos, no solamente para el bien y provecho de Nicaragua y Costa-Rica, sino para la ventura y prosperidad que en cierta manera redundan en beneficio de nuestras hermanas las demas Repúblicas de Centro-América.

La linea divisoria de las dos Repúblicas, partien-

do del mar del Norte, comenzará en la extremidad de Punta de Castilla, en la desembocadura del río de San Juan de Nicaragua, y continuará marcándose con la margen derecha del expresado río, hasta un punto distante del Castillo Viejo tres millas inglesas, medidas desde las fortificaciones exteriores de dicho Castillo, hasta el indicado punto. De allí partirá una curva, cuyo centro serán dichas obras, y distará de él tres millas inglesas en toda su progresión, terminando en un punto que deberá distar dos millas de la ribera del río aguas arriba del Castillo. De allí se continuará en dirección al río Sapoá, que desagua en el Lago de Nicaragua, siguiendo un curso que diste siempre dos millas de la margen derecha del río de San Juan con sus circunvoluciones hasta su origen en el Lago, y de la margen derecha del propio Lago, hasta el expresado río de Sapoá, en donde terminará esta línea paralela á dichas riberas. Del punto en que ella coincida con el río Sapoá, el que por lo dicho, debe distar dos millas del Lago, se tirará una recta astronómica hasta el punto céntrico de la Bahía de Salinas; en el mar del Sur, donde quedará terminada la demarcación del territorio de las dos Repúblicas contratantes.

Art. 3º. Se practicarán las medidas correspondientes á esta línea divisoria, en el todo ó en parte, por comisionados de los dos Gobiernos, poniéndose estos de acuerdo para señalar el tiempo en que haya de verificarse la operación. Dichos comisionados tendrán la facultad de desviarse un tanto de la curva al rededor del Castillo, de la paralela á las márgenes del río y el Lago, ó de la recta astronómica

entre Sapoá y Salinas, caso que en ello puedan acordarse para buscar mojones naturales.

Art. 4º La Bahía de San Juan del Norte, así como la de Salinas, serán comunes á ambas Repúblicas, y de consiguiente lo serán sus ventajas, y la obligación de concurrir á su defensa. Tambien está obligado Costa-Rica por la parte que le corresponde en las márgenes del río de San Juan, que en los mismos términos que por tratados lo está Nicaragua, á concurrir á la guarda de él, del propio modo que concurrirán las dos Repúblicas á su defensa en caso de agresión exterior; y lo harán con toda la eficacia que estuviere á su alcance.

Art. 5º Mientras tanto que Nicaragua no recobre la plena posesion de todos sus derechos en el puerto de San Juan del Norte, la Punta de Castilla será de uso y posesion enteramente comun igual para Nicaragua y Costa-Rica, marcándose para entre tanto durante esta comunidad, como límite de ella, todo el trayecto del río Colorado. Y ademas se estipula que mientras el indicado puerto de San Juan del Norte haya de existir con la calidad de franco, Costa-Rica no podrá cobrar á Nicaragua derechos de puerto en Punta de Castilla.

Art. 6º La República de Nicaragua tendrá exclusivamente el dominio y sumo imperio sobre las aguas del río de San Juan desde su salida del Lago, hasta su desembocadura en el Atlántico; pero la República de Costa-Rica tendrá en dichas aguas, los derechos perpetuos de libre navegacion, desde la expresada desembocadura hasta tres millas inglesas

antes de llegar al Castillo Viejo, con objetos de comercio, ya sea con Nicaragua ó al interior de Costa-Rica, por los rios de San Carlos ó Sarapiquí, ó cualquiera otra via procedente de la parte que en la ribera del San Juan se establece corresponder á esta República. Las embarcaciones de uno ú otro pais podrán indistintamente atracar en las riberas del rio en la parte en que la navegacion es comun, sin cobrarse ninguna clase de impuestos, á no ser que se establezcan de acuerdo entre ambos Gobiernos.

Art. 7º Queda convenido que la division territorial que se hace por este Tratado, en nada debe entenderse contrariando las obligaciones consignadas, ya sea en tratados políticos, ó en contratos de canalizacion ó de tránsito celebrados por parte de Nicaragua con anterioridad al conocimiento; y ántes, bien se entenderá que Costa-Rica asume aquellas obligaciones en la parte que corresponde á su territorio, sin que en manera alguna se contrarie el dominio eminente y derechos de soberania que tiene en el mismo.

Art. 8º Si los contratos de canalizacion ó de tránsito celebrados antes de tener el Gobierno de Nicaragua conocimiento de este convenio, llegasen á quedar insubsistentes por cualquiera causa, Nicaragua se compromete á no concluir otro sobre los espresados objetos, sin oír ántes la opinion del Gobierno de Costa-Rica, acerca de los inconvenientes que el negocio pueda tener para los dos paises; con tal que esta opinion se emita dentro de treinta dias despues de recibida la consulta; caso que el de Nicaragua manifieste ser urgente la resolucion; y no dañándose en el negocio los derechos naturales de Costa-Rica, este veto será consultivo.

—186—

Art. 9º. Por ningun motivo, ni en caso y estado de guerra, en que por desgracia llegasen á encontrarse las Repúblicas de Nicaragua y Costa-Rica, les será permitido ejercer ningun acto de hospitalidad entre de ellas en el puerto de San Juan del Norte, ni en el rio de este nombre y lago de Nicaragua.

Art. 10. Siendo lo estipulado en el artículo anterior esencialmente importante á la debida guarda del puerto y del rio contra agresiones exteriores que afectarían los intereses generales del pais, queda su estricto cumplimiento, bajo la especial garantia, que á nombre del Gobierno mediador está dispuesto á dar; y en efecto da su Ministro Plenipotenciario presente, en virtud de las facultades que al intento declara estarle conferidas por su Gobierno.

Art. 11. En testimonio de la buena y cordial inteligencia que queda establecida entre las Repúblicas de Nicaragua y Costa-Rica, renuncian á todo crédito activo que entre sí tengan por cualesquiera títulos hasta la asignatura del presente Tratado; é igualmente prescinden las Altas Partes contratantes, de toda reclamacion, por indemnizaciones á que se considerasen con derecho.

Art. 12. Este Tratado será ratificado, y sus ratificaciones cambiadas, dentro de cuarenta dias de la signatura, en Santiago de Managua.—En fé de lo cual firmamos el presente por triplicado, en union del Honorable Señor Ministro del Salvador, refrendándole los respectivos Secretarios en la ciudad de San José, capital de Costa-Rica, á los quince dias del mes de Abril del Año del Señor de mil ochocientos cincuenta y ocho.—(F.) Máximo Jerez.—(F.) José M.

Cañas.—(F.) Pedro Rómulo Negrete.—Por tanto, habiendo visto y examinado el preinserto Tratado, previa la aprobacion del Exmo. Congreso Nacional, y en virtud de la facultad que me concede la Constitucion, lo he aceptado, ratificado y confirmado, y por las presentes lo acepto, ratifico y confirmo, prometiendo observar y hacer observar fielmente todo lo que en él se contiene, sin permitir que se contravenga á él de manera alguna.—En fé de lo cual he hecho expedir las presentes, firmadas de mi mano, selladas con el gran sello de la República, y refrendadas por el Ministro de Estado en el Despacho de Relaciones Exteriores en la ciudad de San José á los dieziseis dias del mes de Abril de mil ochocientos cincuenta y ocho.—(L. S.)—Juan Rafael Mora.—El Ministro de Estado en el Despacho de Relaciones Exteriores, Nazario Toledo.”—Y por cuanto se han canjeado debidamente las respectivas ratificaciones en la ciudad de Rivas de Nicaragua el veintiseis del espresado mes de Abril del presente año de mil ochocientos cincuenta y ocho;—Por tanto:—Hágase público dicho Tratado de límites territoriales; y téngase por obligatorio para la República de Costa-Rica, sus ciudadanos y habitantes, en todas sus partes, artículos y cláusulas; observándose y cumpliéndose fiel y exactamente en los términos que espresan nuestras letras de ratificacion.—Dado, firmado de mi mano, bajo el sello de la República, y refrendado por el Ministro de Estado en el Desdacho de Gobernacion, en el Palacio Nacional en San José, á los diez dias del mes de Mayo de mil ochocientos cincuenta y ocho.—(L. S.)—Rafael G. Escalante.—El Ministro

—188—

de Estado en el Despacho de Gobernacion, Joaquin Bernardo Calvo.”

DECRETO XI.

Hace aplicable la pena de prevaricacion de que habla el artículo 1385, parte 3ª del Código general a los funcionarios públicos que administran justicia.

Nº 5.

“Rafael G. Escalante, Vice-Presidente de la República de Costa Rica en ejercicio del Supremo Poder Ejecutivo.

Habiéndose suscitado dudas sobre la verdadera inteligencia de los artículos 1385 parte 3ª del Código general, 100 del decreto adicional nº 24 de 1º de Junio de 1842, y 2º de la declaratoria nº 24 de 3 de Octubre de 1850; siendo además las penas establecidas en aquellas leyes excesivamente severas en las presentes circunstancias, por haberse logrado ya que los Códigos de la República penetrasen en todas las relaciones de la vida social; y convencido el Gobierno de que una interpretacion rigurosa de tales disposiciones, impediría el desarrollo científico de la legislación patria, decreto:

Art. 1º La pena de prevaricacion que ordena el artículo 1385 parte 3ª del Código general, es aplicable solamente a los funcionarios públicos que administran justicia; es decir, a los Magistrados, Jueces y Alcaldes, y a los escribanos cuando los haya en la

ARGUMENT

ON THE QUESTION OF THE VALIDITY OF
THE TREATY OF LIMITS BETWEEN
COSTA RICA AND NICARAGUA

AND

OTHER SUPPLEMENTARY POINTS CONNECTED WITH IT,

SUBMITTED TO THE

Arbitration of the President of the United States of America,

FILED ON BEHALF OF THE GOVERNMENT OF COSTA RICA

BY

PEDRO PÉREZ ZELEDÓN,

ITS ENVOY EXTRAORDINARY AND MINISTER PLENIPOLENTIARY
IN THE UNITED STATES.

(TRANSLATED INTO ENGLISH BY J. I. RODRIGUEZ.)



WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1887.

DOCUMENTS.

No. 1.

Treaty of Limits between Costa Rica and Nicaragua, concluded April 15th, 1858.

We, Máximo Jerez, Minister Plenipotentiary of the Government of the Republic of Nicaragua, and José María Cañas, Minister Plenipotentiary of the Government of the Republic of Costa Rica, having been entrusted by our respective Governments with the mission of adjusting a treaty of limits between the two Republics, which should put an end to all the differences which have obstructed the perfect understanding and harmony that must prevail among them for their safety and prosperity, and having exchanged our respective powers, which were examined by Hon. Señor Don Pedro R. Negrete, Minister Plenipotentiary of the Government of the Republic of Salvador, exercising the functions of fraternal mediator in these negotiations, who found them to be good and in due form, as we on our part also found good and in due form the powers exhibited by the said Minister, after having discussed with the necessary deliberation all the points in question, with the assistance of the representative of Salvador who was present, have agreed to and adjusted the following Treaty of Limits between Nicaragua and Costa Rica.

ARTICLE I.

The Republic of Nicaragua and the Republic of Costa Rica declare in the most solemn and express terms that if for one moment they were about to enter into a struggle for reason of limits and for others which each one of the high contract-

ing parties considered to be legal and a matter of honor, now after having given each other repeated proofs of good understanding, peaceful principles, and true fraternity, they are willing to bind themselves, as they formally do, to secure that the peace happily re-established should be each day more and more affirmed between the Government and the people of both nations, not only for the good and advantage of Nicaragua and Costa Rica, but for the happiness and prosperity which, to a certain extent, our sisters, the other Central American Republics, will derive from it.

ARTICLE II.

The dividing line between the two Republics, starting from the Northern Sea, shall begin at the end of Punta de Castilla, at the mouth of the San Juan de Nicaragua river, and shall run along the right bank of the said river up to a point three English miles distant from Castillo Viejo, said distance to be measured between the exterior works of said castle and the above-named point. From here, and taking the said works as centre, a curve shall be drawn along said works, keeping at the distance of three English miles from them, in its whole length, until reaching another point, which shall be at the distance of two miles from the bank of the river on the other side of the castle. From here the line shall continue in the direction of the Sapoá river, which empties into the Lake of Nicaragua, and it shall follow its course, keeping always at the distance of two miles from the right bank of the San Juan river all along its windings, up to reaching its origin in the lake; and from there along the right shore of the said lake until reaching the Sapoá river, where the line parallel to the bank and shore will terminate. From the point in which the said line shall coincide with the Sapoá river—a point which, according to the above description, must be two miles distant from the lake—an astronomic straight line shall be drawn to the central point of the Salinas Bay in the Southern Sea, where the line marking the boundary between the two contracting Republics shall end.

ARTICLE III.

Such surveys as may be required to locate this boundary, whether in whole or in part, shall be made by Commissioners appointed by the two Governments; and the two Governments shall agree also as to the time when the said survey shall be made. Said Commissioners shall have the power to somewhat deviate from the curve around the castle, from the line parallel to the banks of the river and the lake, or from the astronomic straight line between Sapoá and Salinas, if they find that natural land-marks can be substituted with advantage.

ARTICLE IV.

The Bay of San Juan del Norte, as well as the Salinas Bay, shall be common to both Republics, and, therefore, both the advantages of their use and the obligation to contribute to their defence shall also be common. Costa Rica shall be bound, as far as the portion of the banks of the San Juan river which correspond to it is concerned, to contribute to its custody in the same way as the two Republics shall contribute to the defence of the river in case of external aggression; and this they shall do with all the efficiency within their reach.

ARTICLE V.

As long as Nicaragua does not recover the full possession of all her rights in the port of San Juan del Norte, the use and possession of Punta de Castilla shall be common and equal both for Nicaragua and Costa Rica; and in the meantime, and as long as this community lasts, the boundary shall be the whole course of the Colorado river. It is furthermore stipulated that, as long as the said port of San Juan del Norte remains a *free* port, Costa Rica shall not charge Nicaragua any custom duties at Punta de Castilla.

ARTICLE VI.

The Republic of Nicaragua shall have exclusively the dominion and sovereign jurisdiction over the waters of the San Juan river from its origin in the Lake to its mouth in the Atlantic; but the Republic of Costa Rica shall have the perpetual right of free navigation on the said waters, between the said mouth and the point, three English miles distant from Castillo Viejo, said navigation being for the purposes of commerce either with Nicaragua or with the interior of Costa Rica, through the San Carlos river, the Sarapiquí, or any other way proceeding from the portion of the bank of the San Juan river, which is hereby declared to belong to Costa Rica. The vessels of both countries shall have the power to land indiscriminately on either side of the river, at the portion thereof where the navigation is common; and no charges of any kind, or duties, shall be collected unless when levied by mutual consent of both Governments.

ARTICLE VII.

It is agreed that the territorial division made by this treaty cannot be understood as impairing in any way the obligations contracted, whether in public treaties or in contracts of canalization or public transit by the Government of Nicaragua previous to the conclusion of the present treaty; on the contrary, it is understood that Costa Rica assumes those obligations, as far as the portion which corresponds to its territory is concerned, without injury to the eminent domain and sovereign right which it has over the same.

ARTICLE VIII.

If the contracts of canalization or transit entered into by the Government of Nicaragua previous to its being informed of the conclusion of this treaty should happen to be invalidated for any reason whatever, Nicaragua binds herself not

to enter into any other arrangement for the aforesaid purposes without first hearing the opinion of the Government of Costa Rica as to the disadvantages which the transaction might occasion the two countries; provided that the said opinion is rendered within the period of 30 days after the receipt of the communication asking for it, if Nicaragua should have said that the decision was urgent; and, if the transaction does not injure the natural rights of Costa Rica, the vote asked for shall be only advisory.

ARTICLE IX.

Under no circumstances, and even in case that the Republics of Costa Rica and Nicaragua should unhappily find themselves in a state of war, neither of them shall be allowed to commit any act of hostility against the other, whether in the port of San Juan del Norte, or in the San Juan river, or the Lake of Nicaragua.

ARTICLE X.

The stipulation of the foregoing article being essentially important for the proper custody of both the port and the river against foreign aggression, which would affect the general interests of the country, the strict performance thereof is left under the special guarantee which, in the name of the mediator Government, its Minister Plenipotentiary herein present is ready to give, and does hereby give, in use of the faculties vested in him for that purpose by his Government.

ARTICLE XI.

In testimony of the good and cordial understanding which is established between the Republics of Nicaragua and Costa Rica, they mutually give up all claims against each other, on whatever ground they may be founded, up to the date of the present treaty; and in the same way the two contracting par-

ties do hereby waive all claims for indemnification of damages which they might consider themselves entitled to present against each other.

ARTICLE XII.

This treaty shall be ratified, and the ratifications thereof shall be exchanged, at Santiago de Managua within forty days after it is signed.

In testimony whereof we have hereunto subscribed our names to the present instrument, executed in triplicate, together with the Hon. Minister of Salvador, and under the countersign of the respective secretaries of Legation, at the city of San José, in Costa Rica, on the 15th day of April, in the year of our Lord 1858.

MAXIMO JEREZ.

JOSÉ M. CAÑAS.

PEDRO RÓMULO NEGRETE.

MANUEL RIVAS,

Secretary of the Legation of Nicaragua.

SALVADOR GONZALEZ,

Secretary of the Legation of Costa Rica.

FLORENTINO SOUZA,

Secretary of the Legation of Salvador.

ADDITIONAL ACT.

The undersigned, Ministers of Nicaragua and Costa Rica, wishing to give public testimony of their high esteem and of their feelings of gratitude towards the Republic of Salvador, and the worthy representative of the same, Col. Don Pedro R. Negrete, have agreed that the treaty of territorial limits be accompanied with the following declaration, namely:

“Whereas, the Government of Salvador has given to the Governments of Costa Rica and Nicaragua the most authentic testimony of its noble feelings, and of its high appreciation of the value and necessity of cultivating fraternal sympathy.

among these Republics, and has interested itself as efficiently as friendly in the equitable settlement of the differences which unhappily have existed between the high contracting parties, a settlement which has been secured by the two Legations, owing in great part to the estimable and efficient action of the Hon. Señor Negrete, Minister Plenipotentiary of the said Government, who proved to be the right person to accomplish the generous mediation for which he was appointed, and who has known perfectly well how to meet the intentions of his Government, and owing also to the important aid, to the learning and to the impartial suggestions of the same Minister during the discussion of the subject, we, the Representatives of Costa Rica and Nicaragua, in the name of our respective countries, do hereby fulfil the pleasant duty of declaring and recording here all the gratitude which we feel for the patriotism, high mindedness, fraternity, and benevolence characterizing the Government of Salvador.

In testimony whereof we have hereunto subscribed our names and signed this, in triplicate, in the presence of the Hon. Minister of Salvador, under the countersign of the respective Secretaries of Legation, in the city of San José, the capital of Costa Rica, on the 15th day of April, in the year of our Lord 1858.

MÁXIMO JEREZ.

JOSÉ M. CAÑAS.

MANUEL RIVAS,

Secretary of the Legation of Nicaragua.

SALVADOR GONZALEZ,

Secretary of the Legation of Costa Rica.

THE CASE

Secretary of State.
OCT 27 1887

OF THE

REPUBLIC OF NICARAGUA

SUBMITTED TO HIS EXCELLENCY

HON. GROVER CLEVELAND,

President of the United States,

ARBITRATOR,

UNDER THE TREATY OF GUATEMALA OF
DECEMBER 24th, 1886.

WASHINGTON, D. C.

1887.

at Managua or San José de Costa Rica on the 30th of June next, or sooner if possible.

In testimony of which, the plenipotentiaries and the minister of foreign affairs of Guatemala have signed and sealed with their private seals, in the city of Guatemala, this 24th day of December, 1886.

J. ANTONIO ROMAN.
ASCENSION ESQUIVEL.
FERNANDO CRUZ.

APPENDIX "B."

Boundary Treaty of 1858 between Costa Rica and Nicaragua.

SAN JOSÉ, April 15, 1858.

I, Maximo Jerez, minister plenipotentiary of the Government of the Republic of Nicaragua, and I, José Maria Cañas, minister plenipotentiary of the Government of the Republic of Costa Rica, commissioned by our constituents to form a boundary treaty for both Republics, which may put an end to the differences which have retarded the better and more perfect understanding and harmony which should prevail between them, for their common security and aggrandizement; having exchanged our respective powers, after the examination made of them by the honorable Señor Don Pedro R. Negrete, minister plenipotentiary of the Government of the Republic of Salvador, in the exercise of his powers as brotherly mediator in these negotiations, who found them good and in due form; as in like manner were found by us those exhibited by the said minister; having discussed the respective points with due deliberation, with the aid and assistance of the representative of Salvador, we have agreed upon and drawn up the following:

Boundary Treaty between Nicaragua and Costa Rica.

ARTICLE I.

The Republic of Nicaragua and the Republic of Costa Rica declare in the most decided and solemn terms that if for a moment they were about to prepare to fight each

other on account of boundary controversies and for reasons which each one of the high contracting parties considered lawful and honorable, they now, after repeated proofs of good understanding, pacific principles, and true confraternity, desire and formally pledge themselves to endeavor that peace, happily re-established, may each year be more and more consolidated between the two Governments and between the two nations, not only for the benefit and welfare of Nicaragua and Costa Rica, but for the happiness and prosperity which in a certain sense redound to the advantage of the other, our sister Republics of Central America:

ARTICLE II.

The dividing line between the two Republics, beginning at the North Sea (Caribbean Sea,) shall start at the extremity of Punta de Castilla, at the mouth of river San Juan de Nicaragua, and shall run along its right bank to a point 3 English miles distant from Castillo Viejo, measured from the outside fortifications of said Castillo down to that point. Thence in a curve of 3 English miles distance, whereof the fortifications form the center to a point above Castillo 2 miles distant from the river's bank; thence following towards the river Sapoa that flows into Lake Nicaragua, running a line always 2 miles distant from the right bank of river San Juan with its windings to its origin from the lake and from the right bank of the lake to said river Sapoa, striking it parallel with the lake shore. From that point where river Sapoa is met, distant as aforesaid 2 miles from the lake, a straight astronomical line shall be drawn to the central point of Salinas Bay on the South Sea (Pacific Ocean), where the demarkation of the territories of the two contracting Republics shall end.

ARTICLE III.

Measurements corresponding to this dividing line shall be made, in whole or in part, by commissioners of the two Governments, these being agreed for fixing the time necessary for the operation. The said commissioners shall have the power to deviate somewhat from the curve around Castillo; from the line parallel

with the shores of the river and the lake, or from the straight astronomical line between Sapoa and Salinas, in case that they can agree upon this, in order to find natural landmarks.

ARTICLE IV.

The Bay of San Juan del Norte, as well as that of Salinas, shall be common to both Republics, and consequently so shall be their advantages and the obligation to unite in their defense. Costa Rica shall likewise be bound for the portion belonging to her on the shores of the river San Juan on the same terms that Nicaragua is by treaties to unite in guarding it, in the same manner that the two Republics shall unite in its defense in case of attack from without, and they shall do so with all the efficacy in their power.

ARTICLE V.

During the time that Nicaragua may not recover full possession of all her rights in the port of San Juan del Norte, the Punta de Castilla shall be used and possessed entirely in common by Nicaragua and Costa Rica alike, the whole passage of the Colorado River being designated as its boundary, so long as this community of use and possession lasts. It is further agreed that so long as the said port of San Juan may exist classified as *free*, Costa Rica shall not collect from Nicaragua port dues at Punta de Castilla.

ARTICLE VI.

The Republic of Nicaragua shall have exclusive dominion and supreme control of the waters of the river San Juan from its outlet from the lake until it empties into the Atlantic; but the Republic of Costa Rica shall have perpetual rights, in the said waters, of free navigation from the river's mouth to three English miles below Castillo Viejo for the purposes of commerce, whether with Nicaragua or the interior of Costa Rica, by way of the rivers San Carlos or Sarapiquí or any other route proceeding from the tract on the shores of San Juan that may be established as belonging to this Republic. The vessels of both countries may indiscriminately approach the shores (*atracar*) of the river

where the navigation is common to both, without the collection of any class of impost unless so established by the two Governments.

ARTICLE VII.

It is agreed that the territorial division made by this treaty shall in no wise be understood as counteracting obligations subscribed to, whether under political treaties or under contracts for a canal (*canalización*) or transit made on the part of Nicaragua before this present agreement; it shall rather be understood that Costa Rica assumes those obligations in the tract (*parte*) belonging to her territory without in any way interfering with the eminent domain and sovereign rights held by her over the same.

ARTICLE VIII.

If the contracts for a canal or for transit made before Nicaragua's knowledge of this agreement should become incapable of duration through whatever cause, Nicaragua binds herself not to conclude any other for the said objects without first having the opinion of the Government of Costa Rica in regard to the disadvantages that the negotiation might possess for the two countries, provided that this opinion be delivered within thirty days after the reception of the proposal. In case Nicaragua should state the proposition to be urgent and the natural rights of Costa Rica not to be injured by the negotiations, this advice shall be consultative (*este voto será consultivo*).

ARTICLE IX.

For no purpose, nor in the event of actual war, in which the two Republics of Nicaragua and Costa Rica should unhappily find themselves, shall they be permitted to practice any act of hostility towards each other in the port of San Juan del Norte, nor on the river of that name nor the Lake of Nicaragua.

ARTICLE X.

The stipulation in the foregoing article being essentially important for the protection of the port and river against foreign aggressions, which would affect the general interests of both countries, its strict fulfillment is

agreed to under the special guarantee, which, in the name of the mediating Government, its minister plenipotentiary here is directed to give, and in effect does give, by virtue of the powers which for this purpose he states have been conferred on him by his Government.

ARTICLE XI.

In testimony of the good and cordial understanding which is established between the Republics of Nicaragua and Costa Rica, they renounce all assets (*crédito activo*) that may exist between them, under whatever title, until the signing of the present treaty, and the high contracting parties likewise cancel all claims for indemnity to which they may consider themselves entitled.

ARTICLE XII.

This treaty shall be ratified and its ratifications exchanged within forty days after it is signed at Santiago de Managua.

In testimony whereof we sign this in triplicate, together with the honorable minister from Salvador, the respective secretaries countersigning, in the city of San José, the capital of Costa Rica, on the fifteenth day of April, eighteen hundred and fifty-eight.

MÁXIMO JEREZ.

JOSÉ M. CAÑAS.

PEDRO RÓMULO NEGRETE.

Secretary of the legation of Nicaragua,

MANUEL RIVAS.

Secretary of the legation of Costa Rica,

SALVADOR GONZALES.

Secretary of the legation of Salvador,

FLORENTIN SOUZA.

Additional Act.

The undersigned, ministers of Nicaragua and Costa Rica, desiring to give public testimony to their high esteem and their grateful sentiments for the Republic of Salvador and for its worthy representative, Señor Colonel Don Pedro R. Negrete, agree to annex to the treaty of territorial boundaries the following formal declaration:

The Government of Salvador having given to that of Costa Rica and that of Nicaragua the most authentic testimony of its noble sentiments and of its knowledge how fully to appreciate and to cultivate the fraternal sympathy which is shared by all these Republics, interesting itself so efficiently and amicably in the equitable adjustment of the differences which unfortunately have existed between the high contracting parties, and obtained this happy result through the legations of both, due in great measure to the estimable and active offices with which the honorable Señor Negrete, minister plenipotentiary of that Government, designated with the greatest fitness for using his generous mediation, has known perfectly how to meet its intentions, and due also to the important intelligence and impartial views of the said señor *ministro* in the discussion of the matters concerning the proper settlement: We, the chargés of the legations of Costa Rica and Nicaragua, in the name of our respective constituents, fulfill the pleasing duty of hereby declaring and subscribing to all the gratitude so justly merited by the patriotic zeal, enlightenment, fraternity, and benevolence which characterize the Government of Salvador.

In testimony whereof we sign these presents in triplicate, in the presence of the honorable minister from Salvador, the respective ministers countersigning, in the city of San José, the capital of Costa Rica, on the fifteenth day of the month of April, in the year of our Lord eighteen hundred and fifty-eight.

MÁXIMO JEREZ.
JOSÉ M. CASAS.

The Secretary of legation of Nicaragua,
MANUEL RIVAS.

The Secretary of legation at Costa Rica,
SALVADOR GONZALES.

APPENDIX "C."

Decree of the Constitutional Assembly of December 1, 1847, declaring its Legislative Faculties.

Sole Article—The Constitutional Assembly, in addition to those attributes with which it is invested to

BRITISH AND FOREIGN
STATE PAPERS.

1857—1858

VOL. XLVIII.

COMPILED BY THE LIBRARIAN AND KEEPER OF THE PAPERS,
FOREIGN OFFICE.

London:
WILLIAM RIDGWAY, 169, PICCADILLY.

1866.

TREATY of Territorial Limits between Costa Rica and Nicaragua.—Signed at San José, April 15, 1858.

[Ratifications exchanged at Rivas, April 26, 1858.]

(Translation.)

WE, Maximo Jerez, Minister Plenipotentiary of the Government of the Republic of Nicaragua, and Jose Maria Cañas, Minister Plenipotentiary of the Government of the Republic of Costa Rica, having been commissioned by our constituents to conclude a Treaty on the boundaries of the two Republics, which may put an end to the differences that have retarded the better and more perfect understanding and harmony which ought to prevail between them for their common security and aggrandizement, having interchanged our respective powers, which were examined by the Honourable Don Pedro Romulo Negrete, Minister Plenipotentiary of the Government of the Republic of San Salvador, in the exercise of the noble functions of fraternal mediator in these negotiations, and found by him in good and due form, as likewise those produced by that Minister were found on our part sufficient, and having in the presence and with the assistance of the Representative of San Salvador, discussed the different points with the necessary care and precaution, have agreed on, and concluded the following Treaty of boundaries between Nicaragua and Costa Rica:

ART. I. The Republic of Nicaragua and the Republic of Costa Rica declare in the most express and solemn terms, that if for a moment they were disposed to go to war with each other on account of differences about boundaries, and for reasons which to each of the High Contracting Parties seemed to be legal and honourable, they now, after repeated proofs of good understanding, of pacific principles and true confraternity, wish and formally engage so to proceed that peace, happily re-established, may be every day more and more consolidated between the two Governments, and the two nations, not only for the benefit and advantage of Nicaragua and Costa Rica, but likewise for the welfare and prosperity which must certainly accrue to our sister States, the rest of the Republics of Central America.

II. The boundary line between the two Republics, setting out from the Northern Ocean, shall commence at the extremity of Punta de Castilla, in the mouth of the River San Juan de Nicaragua, and shall continue, always following the right bank of the said river, up to a point distant from Castilla Viejo 3 English miles, measured from the outer fortifications of the said Castilla to the said point. From thence the line shall continue in a curve, the centre of which shall be the said fortifications, and from which it shall be distant 3

English miles throughout its course, until it arrives at a point two miles distant from the river bank above the Castilla. From thence it shall continue in a direction towards the River Sapoa, which falls into the Lake of Nicaragua, always two miles distant from the right bank of the San Juan River, with its circumvolutions, up to its origin at the Lake, and from the right banks of the lake itself, until it arrives at the above-mentioned River Sapoa, where this line, parallel to the said banks, shall end. From the point where this line meets the River Sapoa, and which must, according to the aforesaid, be two miles distant from the lake, a straight line shall be drawn to the centre of Salinas Bay on the Pacific, where the boundary-line between the two Contracting Republics ends.

III. This boundary line shall be measured entirely or in part by Commissioners of the two Governments, at a time which shall be fixed by them. The said Commissioners shall be at liberty to deviate from the curve round the Castilla, from the parallel along the shores of the river and lake, and from the straight line between Sapoa and Salinas, if they should agree thereon, for the purpose of finding natural landmarks.

IV. The Bay of San Juan del Norte as well as that of Salinas shall be common to both Republics, and so, consequently, shall be their advantages, and the obligation to defend them. Costa Rica shall also be obliged, for the part that belongs to her of the banks of the San Juan River, and in the same terms as Nicaragua is by Treaties, to contribute to the security thereof in the same manner as the two Republics shall contribute to its defence in case of aggression from abroad; and they shall do this as effectively as shall be in their power.

V. Until Nicaragua recovers entire possession of all her rights in the Port of San Juan del Norte, Punta Castilla shall be used and possessed by Nicaragua and Costa Rica in common, and for so long as this community lasts, the whole course of the Colorado River shall mark the limit thereof; and it is further stipulated that while the said port of San Juan del Norte shall remain a free port, Costa Rica cannot concede to Nicaragua rights of port at Punta Castilla.

VI. The Republic of Nicaragua shall have the exclusive dominion and sovereignty over the waters of the River San Juan from their issue out of the lake to their discharge into the Atlantic Ocean. But the Republic of Costa Rica shall have the perpetual right of free navigation in these waters from the mouth of the river up to 3 English miles below Castilla Viejo, for commercial purposes, whether with Nicaragua or with the interior of Costa Rica by the Rivers San Carlos or Sarapiquí, or any other route starting from any point on the bank of the San Juan River belonging to that Republic

Annex 8

Nicaragua-Costa Rica-F Belly, Convention relative to the Concession for an Inter-oceanic Canal by the River San Juan and the Lake of Nicaragua, Rivas, 1 May 1858, Article 1

Source: F. Belly, *Carte d'étude pour le trace et le profil de Canal de Nicaragua* (Paris: Chez Dalmont et Duod, Éditeurs, 1858), Document II, 19-27

CARTE D'ÉTUDE

POUR LE TRACÉ ET LE PROFIL.

DE

CANAL DE NICARAGUA

PAR M. THOMÉ DE GAMOND.

INGÉNIEUR CIVIL.

PRÉCÉDÉ

DE DOCUMENTS PUBLIÉS SUR CETTE QUESTION

PAR

M. FÉLIX BELY.

PARIS,

CHEZ DALMONT ET DUNOD, ÉDITEURS,

LIBRAIRES DES CORPS IMPÉRIAUX DES PONTS ET CHAUSSEES ET DES MINES.

Quai des Augustins, 49.

1858



ces deux gouvernements ont résolu d'apposer, par exception, leur propre signature sur l'acte qui constatera leurs engagements réciproques.

En conséquence, entre les soussignés :

Son Exc. le général don Thomas Martinez, président de la République de Nicaragua,

Et Son Exc. le capitaine général don Juan-Rafaël Mora, président de la République de Costa-Rica,

D'une part;

Et M. Félix Belly, publiciste, chevalier des ordres de Saint-Maurice et Lazare et du Medjidié,

D'autre part,

A été arrêtée la Convention suivante, qui fera loi désormais pour toutes les parties, sauf ratification des congrès respectifs de Nicaragua et de Costa-Rica :

ARTICLE PREMIER.

Les deux gouvernements de Nicaragua et de Costa-Rica accordent à M. Félix Belly et à la Compagnie qu'il constituera un privilège exclusif pour l'exécution et l'exploitation d'un canal maritime entre l'océan Atlantique et l'océan Pacifique, s'interdisant toute concession ultérieure de canal sur le territoire des deux républiques pendant toute la durée du privilège sus-indiqué.

ART. 2.

La durée de la concession accordée à M. Félix Belly et à ses associés sera de quatre-vingt-dix-neuf ans, à dater du jour de l'ouverture du canal.

Annex 9

Costa Rica-Nicaragua, Preliminary Convention on a Scientific Survey
(Volio-Zelaya)
San José, 13 July 1868, Article 1

Source: JM Bonilla, *Colección de Tratados Internacionales*.
(Managua: Tipografía Internacional, 1909), 365-366

TRANSLATION

Costa Rica-Nicaragua, Preliminary Convention on a Scientific Survey (Volio-Zelaya), San José, 13 July 1868

The Government of the Republic of Costa Rica and the Government of the Republic of Nicaragua, equally interested and wishing to unite their efforts to improve one of the Atlantic ports, the one in San Juan del Norte, or the one on the mouth of the Colorado, even if this leaves the other in a disadvantaged position, under the notion that any of them by itself is found insufficient to satisfy the needs of trade; and wanting to establish the preliminary basis for an agreement towards such an important objective, have granted full power as it follows:

The President of the Republic of Costa Rica to Julián Volio, Secretary of State at the Foreign Relations Office of the Republic of Costa Rica and

The President of the Republic of Nicaragua to José María Zelaya, Extraordinary Envoy and Plenipotentiary Minister of Nicaragua in Costa Rica.

Who, after having exchanged their respective full powers and having found them dutifully correct, have agreed the following:

Preliminary Convention

Article 1

A scientific analysis of the Colorado and San Juan rivers shall be performed, by means of a Commission composed by people appointed, one by the Government of Costa Rica and another by the Government of Nicaragua, for the purpose of examining which of the two ports would be easier to improve, by making the totality or part of the waters from both rivers, which diverge at the San Juan highland, follow a single course.

CONVENCIÓN

ENTRE

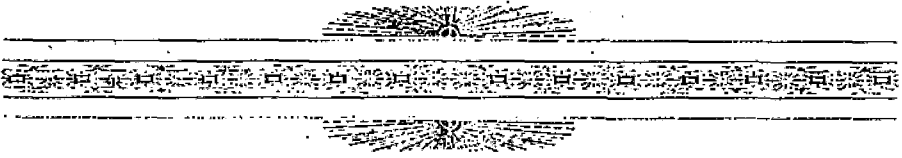
Nicaragua y Costa Rica,

PARA MEJORAR UNO DE LOS RÍOS
"COLORADO" O "SAN JUAN"



ZELAYA * VOLIO

1868



EL Gobierno de la República de Costa Rica y el Gobierno de la República de Nicaragua, igualmente interesados, y deseosos de unir sus esfuerzos para mejorar uno de los puertos del Atlántico, el de San Juan del Norte ó el de la Boca del Colorado, aunque sea el uno con detrimento del otro, supuesto que cualquiera de ellos por sí sólo se juzga deficiente para satisfacer á las necesidades del comercio; y queriendo fundar los preliminares de un arreglo con tan importante objeto, han conferido sus plenos poderes, á saber:

El Presidente de la República de Costa Rica, á Julián Volio, Secretario de Estado en el Despacho de Relaciones Exteriores de la República de Costa Rica y

El Presidente de la República de Nicaragua, á José María Zelaya, Enviado Extraordinario y Ministro Plenipotenciario de Nicaragua en Costa Rica.

Quienes, después de canjear sus respectivos Plenos Poderes, y de encontrarlos en buena y debida forma, han arreglado la siguiente

CONVENCION PRELIMINAR.

Artículo 1º

Se practicará un reconocimiento científico del río Colorado y del San Juan, por medio de una comisión compuesta de personas nombradas, una por el Gobierno de Costa Rica y otra por el Gobierno de Nicaragua, con el objeto de examinar cuál de los dos puertos sería más fácil mejorar, haciendo que el todo ó parte de las aguas de los dos ríos en que se divide el Alto San Juan, tome un solo cauce.

Annex 10

Costa Rica-Nicaragua, Treaty of Commerce (Volio-Zelaya)
San José, 14 August 1868, Articles 1, 2

Source: JM Bonilla, *Colección de Tratados Internacionales* (Managua:
Tipografía Internacional 1909), 386-39

TRANSLATION

Costa Rica-Nicaragua, Treaty of Commerce (Volio-Zelaya), San José, 14 August 1868

The Governments of the Republics of Costa Rica and Nicaragua, deeming it convenient for the impulse of their mutual interests to destroy the obstacles that impede the widening and progress of the trade of both nations, and being convinced that a commercial treaty that assures reciprocal advantages is the way to tighten and to make even more intimate the fraternal relations between both peoples, have with this objective granted full powers as it follows:

The President of the Republic of Nicaragua to José María Zelaya, Extraordinary Envoy and Plenipotentiary Minister of Nicaragua in Costa Rica and

The President of the Republic of Costa Rica to Julián Volio, Secretary of State at the Foreign Relations Office of the Republic of Costa Rica.

Who, after having exchanged their respective full powers, and having found them dutifully correct, have agreed the following articles:

Article 1

There shall be between the Republics of Costa Rica and Nicaragua a reciprocal freedom of trade in all the goods that are not prohibited by their respective laws. As a consequence, the citizens of any of the two parties may travel freely and safely by sea or by land with their ships and cargo, and enter through the ports, rivers and territories habilitated by the other party; the same as the nationals, they shall be able to do commerce, retail or wholesale, rent and occupy houses and warehouses, fix prices on their merchandise, doing this business by themselves or through consignataries, agents, or envoys that may be appointed to this effect; however, remaining subjects to the laws of the places where they travel performing these actions. –

Article 2

As the Republics of Costa Rica and Nicaragua cannot be strictly considered foreign nations, due to their common origin, their territorial, commercial and political ties and interests which have bound them, it is therefore declared and established, regarding their particular and own products: that the imports and exports that are made from one point to the other, either by sea or land, of the goods or natural or industrial products natural to the sender's country shall not pay rights or taxes of any kind.-

Unique.- To avoid any doubt as well as any fraud, it is agreed: that the items considered in this Article, when they enter the dominion or territory of one of the parties, shall be accompanied by a guide prepared by the competent authorities from the sender's party, in which it shall be certified the origin of the goods, this in regard to imports; nevertheless, in regard to exports, the party that verifies them shall have the obligation of submitting the corresponding guide within two months if that is required.

TRATADO
—DE—
COMERCIO

ENTRE
NICARAGUA Y COSTA RICA



ZELAYA * VOLIO

1868

“ Creyendo conveniente los Gobiernos de las Repúblicas de Nicaragua y Costa Rica, para el fomento de sus mútuos intereses, destruir los obstáculos que impiden el ensancho y progreso del comercio de ambas Naciones; y convencidos de que un Tratado mercantil, que asegure ventajas recíprocas, es el medio de hacer más estrechas é íntimas las relaciones fraternales entre ambos pueblos, han conferido con este objeto sus Plenos Poderes, á saber:

El Presidente de la República de Nicaragua, á José María Zelaya, Enviado Extraordinario y Ministro Plenipotenciario de Nicaragua en Costa Rica; y

El Presidente de Costa Rica, á Julián Volio, Secretario de Estado en el Despacho de Relaciones Exteriores de la República de Costa Rica.

Quienes después de canjear sus respectivos Plenos Poderes, y de encontrarlos en buena y debida forma, han convenido en los artículos siguientes:

Artículo I.

Habrá entre las Repúblicas de Nicaragua y Costa Rica una recíproca libertad de comercio, en todos los artículos no prohibidos por sus respectivas leyes. En consecuencia, los ciudadanos de cualquiera de las dos partes, podrán ir por mar y por tierra, libre y seguramente con sus buques y cargamentos, y entrar en los puertos, ríos y territorios habilitados de la otra; y lo mismo que los naturales, podrán hacer el comercio, por mayor ó por menor, alquilar y ocupar casas y almacenes, fijar los precios á sus mercaderías, haciendo por sí todos estos negocios, ó por medio de consignatarios, agentes ó encargados, que al efecto podrán nombrar; quedando, sin embargo, respectivamente, sujetos á las leyes y estatutos del lugar en donde pasaren estos actos.

Artículo II.

No pudiendo considerarse rigurosamente las Repúblicas de Nicaragua y Costa Rica, como Naciones extranjeras, por razón de su común origen, por las conexiones é intereses territoriales, comerciales y políticos que las han ligado, se declara y establece, respecto de sus particulares y propias producciones; que las importaciones y exportaciones que se hagan de uno á otro punto, ya sea por mar ó por tierra, de los artículos ó productos naturales ó industriales, propios

del país que los remite, no pagarán derechos ni impuesto de ninguna clase.

§ Unico—Para evitar toda duda, lo mismo que cualquier fraude, se conviene: que los efectos de que habla este artículo, en su introducción al territorio ó dominios de la una parte, deberán ir acompañados de una guía, expedida por las autoridades competentes de la otra, en que se hará constar, ser de ella el origen y procedencia de dichos efectos, esto por lo que hace á la importación; mas respecto de la exportación, el que la verifique tiene la obligación de presentar dentro de dos meses la correspondiente tornaguía, si ésta se le exigiere.

Artículo III.

Respecto al comercio y artículos extranjeros, ya sea en su importación ó en su exportación, por mar ó por tierra, los ciudadanos de las dos partes contratantes, no estarán sujetos, ni pagarán otros ni más altos derechos que los que correspondan pagar á los naturales; guardándose la misma regla en lo relativo á los otros impuestos que cada país tenga establecidos, según sus leyes, á que deberán sujetarse los ciudadanos del otro, respectivamente.

Artículo IV.

Se establece por punto general, que los nicaragüenses en Costa Rica y los costarricenses en Nicaragua, recíprocamente, serán considerados y tratados, por lo que hace al comercio extranjero, por mar ó por tierra, en cuanto á derechos y cualquiera clase de impuestos, como asimismo respecto á gracias, excenciones y privilegios, como la Nación más favorecida; de manera que no podrá ser concedido ningún favor á otra Nación por alguna de las partes contratantes, sin que se entienda, desde luego, común para la otra en el concepto, sin embargo, de que gozarán de aquel favor libremente, si la concesión fuese libre ó prestando la misma compensación, si la concesión fuese condicional.

Artículo V.

El presente Tratado permanecerá en su fuerza y vigor por el término de diez años, contados desde el día del canje de las ratificaciones. Sin embargo, si un año antes de espi-

Annex 11

Republic of Nicaragua-M. Chevalier, Contract for the Excavation of an
Interoceanic Canal across Central America (Ayon-Chevalier) Paris,
6 October 1868, Articles 53-56

Source: 61 BFSP 1266 (French)

BRITISH AND FOREIGN
~~VI—28~~
STATE PAPERS

1870—1871.

VOL. LXI.

COMPILED BY THE LIBRARIAN AND KEEPER OF THE PAPERS,
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1877.

LIII. L'Etat de Nicaragua s'engage à faire tous ses efforts pour obtenir, dans le plus bref délai possible, l'adhésion de l'Etat de Costa Rica à la présente Convention, en sorte que l'Etat de Costa Rica garantisse au concessionnaire, sur son propre territoire, et par rapport à la République de Costa Rica, les avantages stipulés par les Articles VI, XIV, XV, XVI, XVII, XIX, et XX combiné avec XXI; XXIV, et XXV combiné avec XXVI; XXVII, XXVIII; XXIX combiné avec XXX, XXXI, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII; XXXIX combiné avec XL; XLI, XLII, XLIII, XLIV, XLV, XLVI, XLIX, L, LII ainsi que des Articles LVII, LVIII, et LIX ci-après.

LIV. L'Etat de Costa Rica sera ainsi invité à traiter l'entreprise exactement de la même manière que le fait l'Etat de Nicaragua par la présente Convention.

LV. La République de Nicaragua se réserve de traiter avec celle de Costa Rica afin de stipuler les avantages que Costa Rica retirerait de son adhésion à la présente Convention.

LVI. Le refus d'adhésion de la République de Costa Rica, entraînerait la nullité du présent Traité.

LVII. A dater du jour où l'Etat de Nicaragua aura donné sa ratification à la présente Convention, un délai de 3 ans est accordé pour la formation de la compagnie et le commencement des travaux et un délai de 12 ans pour l'établissement du canal de sorte qu'un navire venant de la haute mer puisse le parcourir de part en part.

LVIII. Toutefois s'il survenait des événements de force majeure, qui entravassent la construction des travaux, les délais devraient éprouver une prorogation proportionnelle.

LIX. La présente Convention serait nulle et non avenue, et la concession qu'elle porte tomberait en déchéance dans les cas suivants :

1. Si dans le délai de 3 ans, indiqué à l'Article LVII, la compagnie n'était pas formée et les travaux commencés.

2. Si à l'expiration des 12 années, les travaux n'étaient pas achevés de manière à ouvrir la communication maritime entre les deux océans, ou assez avancés pour donner lieu de croire à un achèvement peu éloigné. Dans ce dernier cas, en considération des grands capitaux que la compagnie aurait consacrés à l'entreprise et de bonne volonté et puissance qu'elle aurait montrées et des difficultés qu'elle aurait rencontrées, la République de Nicaragua s'engage à lui accorder une prorogation.

Fait en double à Paris le 6 Octobre, 1868.

Approuvés l'écriture,

MICHEL CHEVALIER,
TOMAS AYON.

Annex 12

Costa Rica-Nicaragua, Convention Additional to the Preliminary Convention on a Scientific Survey of 13 July 1868 relative to the improvement of the Colorado or San Juan Rivers (Esquivel-Rivas), San José, 21 December 1868 (unratified) Article 2

Source: JM Bonilla, *Colección de Tratados Internacionales*. (Managua. Tipografía Internacional 1909), p.369-371

TRANSLATION**Costa Rica-Nicaragua, Convention Additional to the Preliminary
Convention on a Scientific Survey of 13 July 1868 relative to the
improvement of the Colorado or San Juan Rivers (Esquivel-Rivas), San
José, 21 December 1868**

Article 2: The Government of Nicaragua, on its part, undertakes to stipulate, in case of subscribing a transit treaty, be it with nationals or with foreigners: that the tariffs for the shipment of products or merchandize for exportation or importation that may be established for Nicaragua, will be understood as established as well for Costa Rica, and that any gratitude, privilege or concession that Nicaragua obtains in regards to transportation on the San Juan River, will also be applied to Costa Rica, under equal terms.

COLECCION

DE

TRATADOS INTERNACIONALES

FORMADA POR

José María Bonilla *copy*

DE ORDEN DEL

EXCELENTISIMO SEÑOR PRESIDENTE CONSTITUCIONAL
DE LA REPUBLICA

GENERAL DON J. SANTOS ZELAYA



— MANAGUA —

TIPOGRAFIA INTERNACIONAL — 5ª CALLE SUR, NUM. 11

1909

GONVENCION

ENTRE

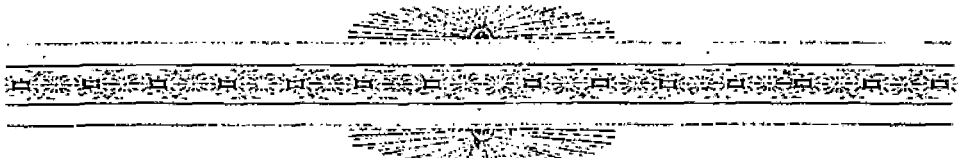
Nicaragua y Costa Rica,

ADICIONAL A LA DE 13 DE JULIO DE ESTE AÑO,
RELATIVA A LA MEJORA DE LOS RIOS
"COLORADO" O "SAN JUAN"



RIVAS * ESQUIVEL

1868



EL Gobierno de la República de Costa Rica y el Gobierno de la República de Nicaragua, para completar la Convención preliminar, celebrada en San José el trece de julio del corriente año, con relación á la mejora de uno de los dos puertos del Atlántico, nominados "San Juan del Norte ó Greytown" y "Boca del Colorado"; y habiendo los ingenieros de una y otra República hecho sus exploraciones y estudios competentes, y dado cuenta con los informes del caso, que han visto la luz pública; para resolver lo conveniente con el espíritu de la Convención referida, el Gobierno de Costa Rica ha conferido sus Plenos Poderes al señor Aniceto Esquivel, actual Secretario de Estado en el Despacho de Relaciones Exteriores, y el de la República de Nicaragua, al señor Anselmo H. Rivas, actual Secretario de Estado del mismo Gobierno.

Quienes, después de canjear sus respectivos Plenos Poderes, y de encontrarlos en buena y debida forma, han convenido en lo que sigue:

Artículo 1º

El Gobierno de Costa Rica concede al de Nicaragua las aguas del río Colorado, á fin de que, desviándolas de su curso actual en todo ó en parte, y echándolas sobre el río San Juan, pueda obtener el restablecimiento ó mejora del puerto de San Juan de Nicaragua.

Artículo 2º

El Gobierno de Nicaragua, por su parte, se compromete, en caso de celebrar algún contrato de tránsito, sea con naturales ó extranjeros, á estipular: que las tarifas sobre fletes de productos ó mercaderías de importación ó exportación que

se establezcan para Nicaragua, se entiendan hechas también en favor de Costa Rica, y que cualquiera gracia, privilegio ó concesión que Nicaragua obtuviere, en cuanto al transporte sobre el río San Juan, se haga extensivo á Costa Rica, bajo el pie de perfecta igualdad.

Artículo 3º

Los buques de Costa Rica, que arribaren al puerto de San Juan del Norte, no pagarán derecho alguno, que no esté establecido para los buques nacionales de Nicaragua.

Artículo 4º

En el caso en que San Juan deje de ser un puerto franco, y que el Gobierno de Nicaragua sujete á registro ó aforo las mercaderías que se importen, ó los productos que se exporten por él, quedarán libres de tales formalidades y del pago de cualesquiera derechos, las mercaderías y productos que Costa Rica importe ó exporte.

Artículo 5º

Si en el caso anterior llegare á suceder que el Gobierno de Nicaragua, por algún trastorno interior, ó por hallarse empeñado en una guerra, no pudiese dar eficaz protección al puerto de San Juan, se concede al Gobierno de Costa Rica el derecho de enviar á dicho puerto la fuerza necesaria, para proteger los intereses del comercio de Costa Rica, sin que el Gobierno de Nicaragua tenga que hacer ningún costo en esta guarnición.

Artículo 6º

El Gobierno de Nicaragua ratifica por esta Convención los Tratados que tiene celebrados sobre límites con el Gobierno de Costa Rica; y ambas partes se someten al arbitraje del Gobierno de los Estados Unidos de Norte América, para la decisión de cualquiera cuestión que se suscite, ya sobre aquellos Tratados ó bien sobre la ejecución del presente convenio.

Artículo 7º

Esta Convención será aprobada por el Presidente de la República de Costa Rica y por el Presidente de la República

Annex 13

Costa Rica-Nicaragua, Treaty for the excavation of an Interoceanic Canal
(Jiménez-Montealegre), San José, 18 June 1869, Article 1

Source: 61 BFSP 1144

BRITISH AND FOREIGN
~~VI—28~~
STATE PAPERS.

1870—1871.

VOL. LXI.

COMPILED BY THE LIBRARIAN AND KEEPER OF THE PAPERS,
FOREIGN OFFICE.

London:
WILLIAM RIDGWAY, 169, PICCADILLY.

1877.

dence that your combined action will be wise, statesmanlike, and in the best interests of the whole country.

U. S. GRANT.

TREATY between Costa Rica and Nicaragua, for the Excavation of an Interoceanic Canal.—Signed at San José, June 18, 1869.

[Ratified by the President of Costa Rica, February 21, 1870.]
(Translation.)

THE Republics of Costa Rica and Nicaragua, wishing to have the contract carried out that was made at Paris on the 6th of October, 1868,* between Dom Tomas Ayon, Representative of the Republic of Nicaragua, and M. Michel Chevalier, a French subject, for the excavation of an interoceanic canal, have agreed to conclude a Convention to determine the rights and obligations which are to appertain to Costa Rica for her accession to the said Contract. And for that purpose they have appointed their respective Plenipotentiaries, that is to say: His Excellency the President of the Republic of Costa Rica, Agapito Jimenez, Secretary of State in the Department of Foreign Affairs of this Republic; and

His Excellency the President of the Republic of Nicaragua, Mariano Montealegre, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua in the Republic of Costa Rica, who, after exchanging their full powers, and finding them in good and due form, have agreed upon the following Articles:

ART. I. The Republic of Costa Rica accedes to the Contract made at Paris on the 6th of October, 1868, between the Representative of the Republic of Nicaragua, Señor Dom Tomas Ayon, and M. Michel Chevalier, a French subject, for the excavation of an Interoceanic Canal; and Costa Rica guarantees to the Contractor (Concesionario) on her own territory, and in all that appertains to her, the same advantages as Nicaragua concedes to him, and which are stipulated in the following Articles.

II. The term of the concession shall be 99 years, reckoned from the day of the opening of the canal.

III. The Contractor is to choose the track which according to the investigations of those who understand the matter shall be considered most convenient; but it is declared at once that the canal must pass up the river San Juan to the Lake of Nicaragua, cross the lake, and terminate in the Pacific between the extreme points of Salinas and Realejo.

IV. The Republic of Costa Rica, the same as that of Nicaragua, shall have a right to be represented at the deliberations of the

* See page 1266.

Annex 14

Costa Rica-Nicaragua, Convention to submit to the arbitration of the
Government of the United States the question in regard to the validity of the
treaty of April 15, 1858 (Esquivel-Roman), Guatemala,
24 December 1886, Articles 6,7,10

Source: 168 CTS 371

Treaty between Costa Rica and Nicaragua
for the Arbitration of the Validity of the
Boundary Treaty of 15 April 1858,
signed at Guatemala City, 24 December 1886

THIS translation is reproduced from *British and Foreign State Papers*,
vol. LXXVII, p. 476.

The Arbitrator may delegate his duties, provided this does not interfere directly with the giving of his decision.

VI. If the decision of the Arbitration declares the validity of the Treaty, the same award shall declare whether Costa Rica has the right to navigate the River San Juan with ships of war or revenue boats. Also the decision aforesaid shall, in case of the validity of the said Convention, decide the other points of doubtful interpretation found by either of the Parties in the Treaty, and communicated to the other Party within 30 days from the exchange of the ratifications of this Convention.

VII. Whatever the decision of the Arbitration be, it shall be held to be obligatory between the Contracting Parties. No other recourse shall be admitted, and it shall come into force 30 days after it has been communicated to both Governments or to their Representative.

VIII. If the Treaty is declared invalid both Governments shall, within one year from the date of the receipt of the notification, come to an understanding on the demarcation of the boundary-line of their respective territories. If this understanding is not possible they shall conclude in the following year a Convention to submit the question of limits of both Republics to the decision of a friendly Government.

From the time the Treaty is declared invalid, and whilst there is no agreement between the Parties or there is no decision fixing the rights of both countries, those established by the Treaty of the 15th April, 1858, shall be respected.

IX. Pending the decision on the validity of the Treaty, the Government of Costa Rica consents to suspend the fulfilment of its Agreement of the 16th March last relative to the navigation of the River San Juan by a Government steamer.

X. In case the Arbitration decides that the Treaty of Limits is valid, the Contracting Governments shall, within the 90 days following the notification of this decision, name four Commissioners, two each, who shall take the proper measures with reference to the line of demarcation set forth in Article II of the said Treaty of the 15th April, 1858.

These measures, and the demarcation to which they refer, shall be done within 30 months from the date of the naming of the Commissioners.

These Commissioners shall be allowed to depart from the line laid down in the Treaty one mile in order to lay down natural lines or lines more distinguishable, but this deviation shall only be allowed when all the Commissioners are of one accord as to the point or points to be substituted.

XI. This Treaty shall be submitted for the approbation of the

Annex 15

Costa Rica-Nicaragua, Convention (Soto-Carazo), Managua, 26 July 1887
(unratified)

Source: *Memoria anual de la Secretaría de Relaciones Exteriores y Carteras
Anexas 1888* (San José: Imprenta Nacional, 1888)

TRANSLATION

Costa Rica-Nicaragua, Convention (Soto-Carazo), Managua, 26 July 1887

The Presidents of Costa Rica and Nicaragua, wishing to conclude all matters pending between the two Republics, and after having held talks in the presence of their respective Ministers of Foreign Affairs, have agreed to the following articles:

Article I.

The Government of Nicaragua withdraws its objections to the validity of the Treaty of Limits signed with the Government of Costa Rica on 15 April 1858, since it shall, for its part, obtain from Congress the second ratification, which it maintains is essential.

Article II.

In order to make the San Juan River navigable all year round, the Government of Costa Rica agrees that the waters required for this be taken from the Colorado River, in order to deposit them in the former and that the appropriate works be carried out for this purpose.

Article III.

The Government of Costa Rica shall contribute one fourth of the exact cost of improving navigation on the San Juan River, from its divide from the Colorado River to its mouth in the San Juan del Norte bay.

When the improvements are to be made, the contracting Governments shall appoint a scientific Commission to determine the extent of the work required and to present the corresponding budget. Once the sum of the cost is known, both Governments shall, likewise, agree upon how the necessary funds shall be provided and invested.

Article IV.

Nicaragua grants the Costa Ricans the perpetual right of free commercial navigation in the Lake of Nicaragua and in the part of the San Juan River where they do not currently possess that right.

The privilege granted by Nicaragua to Mr. F.A. Fallas, in the contract of 16th March 1877, to navigate steamships in the said waters shall, however, be respected.

Article V.

Costa Rica has the right to participate in the profits of the inter-oceanic canal that be constructed in the San Juan River; however, in regards to what part of the profits Costa Rica shall receive, the contracting Governments shall submit the matter to an arbitrator who shall make his decision based on the definitive boundary line adopted, and taking into account, on the one hand, the land and waters that Costa Rica concedes the company as well as the rights that the works could deprive from it, and, on the other hand, the land, waters and rights contributed by Nicaragua.

Once the definitive boundary line has been adopted for the canal, both Governments shall agree, at the request of either one, to appoint an arbitrator and establish the terms and procedures to be observed in the arbitration proceedings. Costa Rica shall, for its part, and with respect to its rights, accept the concession made by Nicaragua in the contract of 23 March 1887.

Article VI.

The aspects of questionable interpretation of the Treaty of 15 of April 1858 that have been presented to date are resolved in the following terms;

1°. -Punta de Castilla is currently understood as the furthest extreme of the right bank of the mouth of the San Juan River that is closest to the port of the same name. When the improvements mentioned in article two have been made to the river, Punta de Castilla shall be considered the furthest extreme point on the right bank of the San Juan River, once work has been carried out;

2°. -The centre point of the bay of Salinas shall be determined by the intersection of its larger and smaller axes;

3°. -The right, granted to Costa Rica, of navigation for purposes of commerce [*objetos de comercio*] in the San Juan River, from its mouth to three English miles before Castillo Viejo, does not include navigation with war or fiscal vessels exercising jurisdiction.

Article VII.

Nicaragua is free to make canal or transit concessions, provided they do not adversely affect the rights of Costa Rica, without the need to hear the consultative vote mentioned in article 8 of the Treaty of 15 April 1858, to which Costa Rica renounces.

Article VIII.

The Costa Rican fiscal vessels which need to transport guards to a point on the right bank of the San Juan River pertaining to it, or to a point on the Frio

River in the part that corresponds to it, or which have to transport relief to the established guard posts, may cross Nicaraguan waters, provided they do not exercise any jurisdictional act there.

Article IX.

In order to carry out the necessary measurements, establish the boundary line and make the appropriate demarcation, the Governments of both Republics shall, once this treaty has been exchanged, appoint the respective commissions, within a period of six months, in the manner that they agree upon.

The measurement and demarcation work should be concluded within ten years from the acceptance of the commissions.

Article X.

This treaty will be subjected to approval by Congress in both Republics, and its ratifications shall be exchanged in San Jose, Costa Rica or in Managua within a period of one hundred and twenty days as of this date or prior to this, if possible.

The arbitration convention held between the two Republics in Guatemala on 24th December 1886 shall remain in force until it is ratified and exchanged.

In witness whereof, the abovementioned Presidents of Costa Rica and Nicaragua sign and attach their seal to this document in duplicate, together with their Ministers of Foreign Affairs, in the city of Managua on 26 July eighteen eighty seven.

BERNARDO SOTO
E. CARAZO
CLETO GONZALEZ VIQUEZ
FERNDO. GUZMAN

San José, 28 de junio de 1887.

Señor Ministro:

Refiriéndome á mi nota del 10 de mayo último, hoy tengo la satisfacción de anunciar á V. E. que el señor Presidente de esta República se propone embarcarse, en unión de su comitiva, en el vapor que debe tocar en Puntarenas el día 12 del entrante julio. Efectuará su desembarco en el puerto de Corinto y con el fin de facilitar su entrevista con el Excelentísimo señor Presidente Carazo, seguirá hasta Managua.

Aprovecho esta oportunidad para repetirme de V. E. atento servidor.

CLETO GONZÁLEZ VÍQUEZ.

A Su Excelencia el señor Ministro de Relaciones Exteriores de la República de Nicaragua.

Managua.

—:O:—

Los Presidentes de Costa Rica y Nicaragua, en el deseo de concluir todas las cuestiones pendientes entre ambas Repúblicas y después de haber conferenciado, asistidos de sus respectivos Ministros de Relaciones Exteriores, han convenido en los artículos siguientes:

Artículo I.

El Gobierno de Nicaragua retira las objeciones presentadas á la validez del Tratado de límites firmado con el Gobierno de Costa Rica el 15 de abril de 1858, pues por su parte obtendrá del Congreso la segunda ratificación que ha sostenido ser indispensable.

Artículo II.

Para hacer navegable el río San Juan en toda estación del año, el Gobierno de Costa Rica consiente en que se tomen del río Colorado las aguas que se necesiten, para echarlas en aquel río, y en que se practiquen con tal objeto las obras convenientes.

Artículo III.

El Gobierno de Costa Rica contribuirá con una cuarta parte de los gastos precisos á mejorar la navegación del río San Juan, desde la separación del Colorado hasta su desembocadura en la bahía de San Juan del Norte.

Cuando se trate de efectuar esta mejora, los Gobiernos contratantes nombrarán una Comisión científica que determine las obras que es preciso llevar á cabo y levante el presupuesto correspondiente. Una vez conocido el monto del costo, convendrán asimismo ambos Gobiernos la manera de arbitrar é invertir los fondos necesarios.

Artículo IV.

Nicaragua concede á los costarricenses el derecho perpetuo de libre navegación comercial en el Lago de Nicaragua y en la parte del río San Juan donde hoy no tienen esa facultad.

Se respetará sin embargo, el privilegio concedido por Nicaragua al señor F. A. Pellas, en contrato de 16 de marzo de 1877, para navegar con buques de vapor en dichas aguas.

Artículo V.

Costa Rica tiene derecho á participar de las utilidades del canal interoceánico que se practique en el río San Juan; mas acerca de qué parte de provechos haya de recibir Costa Rica, los Gobiernos contratantes se someterán á la decisión de un árbitro, el cual fallará con vista del trazado definitivo que se adopte, y teniendo en cuenta por un lado los terrenos y aguas que Costa Rica dé para la empresa y los derechos de que pueda privarle la obra, y por otro los terrenos, aguas y derechos con que Nicaragua contribuya.

Una vez adoptado el trazado definitivo para el canal, ambos Gobiernos se pondrán de acuerdo, á solicitud de cualquiera de ellos, para nombrar árbitro y señalar los términos y procedimientos que deban observarse en el juicio arbitral. Costa Rica aceptará por su parte, y en lo que se refiera á sus derechos, la concesión hecha por Nicaragua en contrato de 23 de marzo de 1887.

Artículo VI.

Los puntos de dudosa interpretación del Tratado de 15 de abril de 1858, que hasta ahora se han presentado, quedan resueltos en los términos siguientes:

1º—Se entiende por Punta de Castilla en la actualidad el extremo de la margen derecha de la desembocadura del río San Juan más próxima al puerto de dicho nombre. Cuando se practique la mejora del río de que habla el artículo 2º, será considerado como Punta de Castilla el extremo de la margen derecha del río San Juan, una vez compuesto;

2º—El punto céntrico de la bahía de Salinas será determinado por la intersección de sus dos ejes, mayor y menor;

3º—El derecho concedido á Costa Rica de navegar con objetos de comercio en el río San Juan, desde su boca hasta tres millas inglesas abajo del Castillo Viejo, no comprende el de navegar con buques de guerra ni fiscales ejerciendo jurisdicción.

Artículo VII.

Nicaragua podrá libremente hacer concesiones de canal o de tránsito, cuando en ellas no se perjudiquen derechos de Costa Rica, sin necesidad de oír el voto consultivo de que habla el artículo 8º del Tratado de 15 de abril de 1858, y al cual renuncia Costa Rica.

Artículo VIII.

Las naves fiscales de Costa Rica que tuvieren que conducir resguardos á algún punto de la ribera derecha del San Juan que le pertenece ó al río Frío en la parte que le corresponde ó que tuvieren que llevar auxilios á los resguardos establecidos, podrán pasar por aguas de Nicaragua, siempre que en ellas no ejerzan acto alguno jurisdiccional.

Artículo IX.

Para llevar á cabo la mensura necesaria, fijar la línea de límites y amojonarla convenientemente, los Gobiernos de ambas Repúblicas nombrarán en un plazo que no exceda de seis meses, después de canjeado este tratado, las comisiones respectivas en la forma que para ello establezcan de acuerdo.

Los trabajos de medida y amojonamiento deberán concluirse dentro de diez años contados desde la aceptación de las comisiones.

Artículo X.

Este tratado será sometido á la aprobación de los Congresos de ambas Repúblicas, y sus râtificaciones serán canjeadas en San José de Costa Rica ó en Managua dentro de ciento veinte días contados de esta fecha ó antes si fuere posible.

Mientras no sea ratificado y canjeado, continuará en vigor y ejecución la convención de arbitraje celebrada entre ambas Repúblicas en Guatemala el 24 de diciembre de 1886.

En fe de lo cual, dichos Presidentes de Costa Rica y Nicaragua, firman y sellan el presente por duplicado, junto con sus Ministros de Relaciones Exteriores, en la ciudad de Managua, á veintiséis de julio de mil ochocientos ochenta y siete.

BERNARDO SOTO.

E. CARAZO.

CLETO GONZÁLEZ VÍQUEZ.

FERNDO. GUZMÁN.

Annex 16

Cleveland Award upon the validity of the Treaty of Limits of 1858 between
Costa Rica and Nicaragua, Washington, 22 March 1888

Source: *Papers relating to the Foreign Relations of the United States
transmitted to Congress, with the annual message of the President, Part I,*
December 3, 1888. (Washington, D.C.: Government Printing Office, 1889)

PAPERS
RELATING TO THE
FOREIGN RELATIONS
OF
THE UNITED STATES,
TRANSMITTED TO CONGRESS,
WITH THE ANNUAL MESSAGE OF THE PRESIDENT,

DECEMBER 3, 1888,

PRECEDED BY A

LIST OF PAPERS, WITH SYNOPSES OF THEIR CONTENTS, AND FOLLOWED
BY AN ALPHABETICAL INDEX OF SUBJECTS.

PART I.



WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1889.

COSTA RICA.

CORRESPONDENCE WITH THE LEGATION OF COSTA RICA
AT WASHINGTON.

No. 312.

*Mr. Rives to Señor Don Pedro Perez Zeledón.*DEPARTMENT OF STATE,
Washington, January 16, 1888.

SIR: I have the honor to inform you* that the President, having consented to act as arbitrator of the questions between Costa Rica and Nicaragua, presented under the convention of arbitration signed by the plenipotentiaries of these republics at Guatemala City on the 24th day of December, 1886, and having received within the periods named in the said convention the respective arguments of the parties to the arbitration, which have been duly communicated to the opposing parties as required by said convention, and further, the respective replies of each of the parties to the arguments of the other, has been pleased, under the power conferred upon him by the last paragraph of the fifth article of said convention by an act dated the 16th instant, a copy of which I have the honor to inclose herewith for your information, to delegate his powers as arbitrator aforesaid to me, to the end that the fullest examination of the point or points in dispute between the Governments of Costa Rica and Nicaragua shall be made to enable the arbitrator to reach a just and equitable conclusion in the premises and pronounce a final decision or award thereon.

Accept, etc.,

G. L. RIVES.

[Inclosure.]

Grover Cleveland, President of the United States.

Whereas, by a convention of arbitration between the Government of the Republics of Costa Rica and Nicaragua, signed at Guatemala City on the 24th day of December, 1886, the high contracting parties agreed to submit to arbitration the question pending between them in regard to the validity of the treaty of limits of 15th April, 1858, between the said Governments, together with such other points of doubtful interpretation as may require decision in the event of the said treaty of limits being found valid;

And whereas, under the terms of the said convention of arbitration, the contracting parties have solicited my acceptance of the office of arbitration to decide such question or questions, and the charge has been accepted by me;

And whereas, within the periods named in the said convention of arbitration, the parties to the arbitration have submitted to me their respective arguments, which have been duly communicated to the opposing parties as required by said convention; and, further, the respective replies of each of the parties to the argument of the other

* A similar note was addressed to the minister of Nicaragua.

have been laid before me in due time, so that all evidence and arguments necessary to a decision of the point or points in dispute are now before me as arbitrator thereof:

And whereas, by the final paragraph of the fifth article of the said convention of arbitration of December 24, 1886, it is provided that "the arbitrator may delegate his powers, provided that he does not fail to intervene directly in the pronouncement of the final decision":

Now, therefore, I, Grover Cleveland, President of the United States of America, in the capacity of arbitrator as aforesaid between the Governments of the Republics of Costa Rica and Nicaragua, and to the end that the fullest examination of the point or points in dispute between those Governments shall be made to enable me to reach a just and equitable conclusion in the premises and pronounce a final decision or award thereon, do by this present instrument delegate my powers to George L. Rives, Assistant Secretary of State, to the extent contemplated and permitted by the aforesaid convention of arbitration, hereby enjoining the said George L. Rives to use all due circumspection and diligence in examining the arguments and evidence submitted on both sides, and to make to me, as soon as may be, a report thereon for my consideration and upon which my decision of the matter in contention may rest.

Given under my hand and the seal of the United States this 16th day of January, in the year of our Lord one thousand eight hundred and eighty-eight, and of the independence of the United States the one hundred and twelfth.

[SEAL.]

By the President:

T. F. BAYARD,
Secretary of State.

GROVER CLEVELAND.

No. 313.

Mr. Bayard to Señor Don Pedro Perez Zeledón.

DEPARTMENT OF STATE,
Washington, March 22, 1888.

SIR: I have the honor to inform you* that I have received from the President, in triplicate, his award and decision in regard to the validity of the treaty of limits made between the republics of Costa Rica and Nicaragua on April 15, 1858, and the other questions submitted in connection therewith to the President's arbitration.

I am directed by the President to deliver one original of this award to the representative of the Government of Costa Rica and one original thereof to the representative of the Government of Nicaragua, in compliance with the terms of the treaty signed at Guatemala on the 24th of December, 1886. The third original will be retained in the custody of the Secretary of State of the United States.

I have the honor therefore to name the Department of State, at 12 o'clock noon of Saturday, the 24th instant, as the place and time to so deliver the President's award and decision.

I have, etc.,

T. F. BAYARD.

No. 314.

Award of the Arbitrator, the President of the United States, upon the validity of the Treaty of Limits of 1858 between Nicaragua and Costa Rica.

Grover Cleveland, President of the United States, to whom it shall concern, greeting:

The functions of arbitrator having been conferred upon the President of the United States by virtue of a treaty signed at the City of Guate-

* A similar note was addressed to the minister of Nicaragua.

COSTA RICA.

made on the 24th day of December, one thousand eight hundred and eighty-six, between the Republics of Costa Rica and Nicaragua, whereby it was agreed that the question pending between the contracting Governments in regard to the validity of their Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight, should be submitted to the arbitration of the President of the United States of America; that if the arbitrator's award should determine that the treaty was valid, the same award should also declare whether Costa Rica has the right of navigation of the river San Juan with vessels of war or of the revenue service; and that in the same manner the arbitrator should decide, in case of the validity of the treaty, upon all the other points of doubtful interpretation which either of the parties might find in the treaty and should communicate to the other party within thirty days after the exchange of the ratifications of the said treaty of the 24th day of December, one thousand eight hundred and eighty-six.

And the Republic of Nicaragua having duly communicated to the Republic of Costa Rica eleven points of doubtful interpretation found in the said Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight; and the Republic of Costa Rica having failed to communicate to the Republic of Nicaragua any points of doubtful interpretation found in the said last-mentioned treaty;

And both parties having duly presented their allegations and documents to the arbitrator, and having thereafter duly presented their respective answers to the allegations of the other party as provided in the treaty of the 24th day of December, one thousand eight hundred and eighty-six;

And the arbitrator pursuant to the fifth clause of said last-named treaty having delegated his powers to the honorable George L. Rives, Assistant Secretary of State, who, after examining and considering the said allegations, documents and answers, has made his report in writing thereon to the arbitrator;

Now, therefore, I, Grover Cleveland, President of the United States of America, do hereby make the following decision and award:

First. The above-mentioned Treaty of Limits, signed on the 15th day of April, one thousand eight hundred and fifty-eight, is valid.

Second. The Republic of Costa Rica under said treaty and the stipulations contained in the sixth article thereof, has not the right of navigation of the river San Juan with vessels of war; but she may navigate said river with such vessels of the revenue service as may be related to and connected with her enjoyment of the "purposes of commerce" accorded to her in said article, or as may be necessary to the protection of said enjoyment.

Third. With respect to the points of doubtful interpretation communicated as aforesaid by the Republic of Nicaragua, I decide as follows:

1. The boundary line between the Republics of Costa Rica and Nicaragua, on the Atlantic side, begins at the extremity of Punta de Castilla at the mouth of the San Juan de Nicaragua River, as they both existed on the 15th day of April, 1858. The ownership of any accretion to said Punta de Castilla is to be governed by the laws applicable to that subject.

2. The central point of the Salinas Bay is to be fixed by drawing a straight line across the mouth of the bay and determining mathematically the centre of the closed geometrical figure formed by such straight line and the shore of the bay at low-water mark.

3. By the central point of Salinas Bay is to be understood the centre of the geometrical figure formed as above stated. The limit of the bay

towards the ocean is a straight line drawn from the extremity of Punta Arranca Barba, nearly true south to the westernmost portion of the land about Punta Sacate.

4. The Republic of Costa Rica is not bound to concur with the Republic of Nicaragua in the expenses necessary to prevent the bay of San Juan del Norte from being obstructed; to keep the navigation of the river or port free and unembarrassed, or to improve it for the common benefit.

5. The Republic of Costa Rica is not bound to contribute any proportion of the expenses that may be incurred by the Republic of Nicaragua for any of the purposes above mentioned.

6. The Republic of Costa Rica can not prevent the Republic of Nicaragua from executing at her own expense and within her own territory such works of improvement, *provided* such works of improvement do not result in the occupation or flooding or damage of Costa Rica territory, or in the destruction or serious impairment of the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same. The Republic of Costa Rica has the right to demand indemnification for any places belonging to her on the right bank of the river San Juan which may be occupied without her consent, and for any lands on the same bank which may be flooded or damaged in any other way in consequence of works of improvement.

7. The branch of the river San Juan known as the Colorado River must not be considered as the boundary between the Republics of Costa Rica and Nicaragua in any part of its course.

8. The right of the Republic of Costa Rica to the navigation of the river San Juan with men-of-war or revenue-cutters is determined and defined in the second article of this award.

9. The Republic of Costa Rica can deny to the Republic of Nicaragua the right of deviating the waters of the river San Juan in case such deviation will result in the destruction or serious impairment of the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same.

10. The Republic of Nicaragua remains bound not to make any grants for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in Article VIII of the Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight. The natural rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the river San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; and perhaps other rights not here particularly specified. These rights are to be deemed injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbors injurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same.

11. The Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight, does not give to the Republic of Costa Rica the right to be a party to grants which Nicaragua may make for inter-

oceanic canals; though in cases where the construction of the canal will involve an injury to the natural rights of Costa Rica, her opinion or advice, as mentioned in Article VIII of the treaty, should be more than "advisory" or "consultative." It would seem in such cases that her consent is necessary, and that she may thereupon demand compensation for the concessions she is asked to make; but she is not entitled as a right to share in the profits that the Republic of Nicaragua may reserve for herself as a compensation for such favors and privileges as she, in her turn, may concede.

In testimony whereof, I have hereunto set my hand and have caused the seal of the United States to be hereunto affixed.

Done in triplicate at the city of Washington, on the twenty-second day of March, in the year one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and twelfth.

GEOVER CLEVELAND.

By the President:
T. F. BAYARD,
Secretary of State.

Annex 17

Costa Rica-Nicaragua, Delimitation Convention (Pacheco-Matus) San
Salvador, 27 March 1896, Article 2

Source: 182 CTS 359

PAPERS

RELATING TO THE

FOREIGN RELATIONS

OF

THE UNITED STATES,

WITH

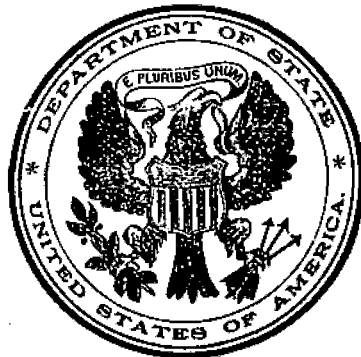
THE ANNUAL MESSAGE OF THE PRESIDENT

TRANSMITTED TO CONGRESS

DECEMBER 7, 1896,

AND THE

ANNUAL REPORT OF THE SECRETARY OF STATE.



WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1897.

COSTA RICA.

ARBITRATION OF THE BOUNDARY DISPUTE BETWEEN
NICARAGUA AND COSTA RICA.¹*Mr. Calvo to Mr. Olney.*

[Translation.]

LEGATION OF COSTA RICA,
Washington, May 1, 1896.

SIR: I had the honor to inform you, in the interview with which you were pleased to favor me yesterday, of a convention for the tracing and demarcation of the dividing line between the Republics of Costa Rica and Nicaragua having been signed the 27th of March last, in the capital of Salvador, with the honorable and fraternal mediation of the President of that State, conformably to the determination of the treaty of April 15, 1858, and the award of the President of the United States of America, Mr. Grover Cleveland; and of putting you in possession of the fact that, according to one of the stipulations of that convention, the two contracting Governments will proceed, by common consent, in regular course to request of the President of the United States of America that he consent to name an engineer who, representing the respective commissions of both countries and with the ample powers which will be conferred upon him by that convention, may decide any kind of difficulties which may arise in the indicated operation of fixing the boundary line.

It has been a source of the most pleasing satisfaction for me to note the good disposition shown by you in this matter, which could not have been settled in any other way, in treating by a final and amicable rule an important and vexatious question, finally decided in Washington, so far as the principle was concerned, for the good of the two nations interested; and, in conformity with your wish, I have the pleasure to send, inclosed, copy and translation of the convention in question, for your better information.

Be pleased, etc.,

J. B. CALVO.

[Inclosure.—Translation.]

Convention for the demarcation of the boundary line between the Republics of Costa Rica and Nicaragua, signed in the city of San Salvador on the twenty-seventh day of the month of March, of eighteen hundred and ninety-six.

The mediation of the Government of Salvador having been accepted by the Most Excellent the Presidents of Costa Rica and Nicaragua to settle the demarcation of the boundary line between the two Republics, they have named, respectively, as envoys extraordinary and ministers plenipotentiary, their excellencies Señors Don Leonidas Pacheco and Don Manuel C. Matus, who, after several interviews held in the presence of the minister of foreign relations, Señor Don Jacinto Castellanos, especially authorized to represent the Government of Salvador, their full powers being

¹ See also under the Greater Republic of Central America.

COSTA RICA.

101

found to be in good and .6 form, with the attendance of the Most Excellent the President of the Republic, General Don Rafael A. Gutierrez, who has condescended to be present to lend greater solemnity to the act, have concluded the convention following:

ARTICLE I.

The contracting Governments bind themselves to each name a commission composed of two engineers or surveyors for the purpose of properly tracing and marking the boundary line between the Republics of Costa Rica and Nicaragua, pursuant to the provisions of the treaty of April 15, 1858, and the arbitration award of the President of the United States of America, Mr. Grover Cleveland.

ARTICLE II.

The commissions created by the foregoing article shall be completed by an engineer whose appointment shall be requested by both parties of the President of the United States of America, and whose duties shall be limited to the following:

Whenever in the carrying out of the operations the commissions of Costa Rica and Nicaragua shall disagree, the disputed point or points shall be submitted to the judgment of the engineer named by the President of the United States of America. The engineer shall have ample authority to decide any kind of dispute that may arise, and his decision shall be final as to the operations in question.

ARTICLE III.

Within three months after the exchange of the present convention when once duly ratified by the respective Congresses, the representatives in Washington of both contracting Governments shall proceed, jointly, to request the President of the United States of America to agree to the appointment of the engineer heretofore referred to and to select the same. If, owing to the absence of a representative in Washington of either of the two Governments, or for any other reason whatsoever, the request shall not be made jointly within the time specified, after the expiration thereof the representative in Washington of either Costa Rica or Nicaragua may make the said request separately, which request shall have the same effect as though made by both parties.

ARTICLE IV.

The appointment of the United States engineer once made, and within three months after such appointment, the demarkation of the boundary line shall be entered upon, and shall be concluded within twenty months after the inauguration of the work. The commissions of the contracting parties shall meet in San Juan del Norte within the term designated for the purpose, and shall begin their work at the end of the boundary line, which, according to the treaty and award above mentioned, starts from the Atlantic Coast.

ARTICLE V.

The contracting parties stipulate that if from any cause either the commission of the Republic of Costa Rica or that of Nicaragua should fail to appear at the place designated, on the day named for the beginning of the work, this shall be begun by the commission that may be on hand, the engineer of the United States Government being present, and whatever may be so done shall be valid and final in so far as regards the Republic failing to send its commissioners. The same course shall be pursued should any or all of the commissioners of either of the contracting Republics absent themselves after the beginning of the work, or should they refuse to carry out the same in the manner laid down in the award and treaty herein referred to, or in accordance with the decision of the engineer appointed by the President of the United States.

ARTICLE VI.

The contracting parties stipulate that the time established for the conclusion of the demarkation is not absolute, and, therefore, whatever may be done subsequent to the expiration thereof shall be valid, either because the said term is insufficient for the carrying out of all the operations, or by reason of the commissioners of Costa Rica and Nicaragua agreeing among themselves, with the consent of the United States engineer, to temporarily suspend the work, the remaining time of that primarily designated being insufficient for finishing the same.

ARTICLE VII.

In case of the temporary suspension of the work of demarkation whatever may be done up to the time of suspension shall be held as final and conclusive, and the boundaries in the respective parts shall be deemed as materially established, even though owing to unexpected and insuperable circumstances such suspension should continue indefinitely.

Annex 18

First Award rendered by the umpire, EP Alexander, San Juan del Norte on Sep 30, 1897, in the boundary question, between Costa Rica and Nicaragua

Source: H. LaFontaine, *Pasicrisie Internationale 1794-1900: Histoire Documentaire des Arbitrages Internationaux* (1902, reprinted 1997, Martinus Nijhoff, The Hague), 529-532

H. LA FONTAINE

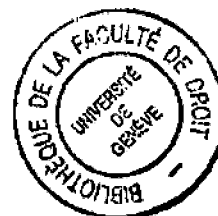
PASICRISIE INTERNATIONALE
1794 -1900

HISTOIRE DOCUMENTAIRE DES
ARBITRAGES INTERNATIONAUX

Préface par / Preface by

Pierre Michel Eisemann

BFDE 5202



MARTINUS NIJHOFF PUBLISHERS
THE HAGUE / BOSTON / LONDON

minado dentro de los veinte meses siguientes á la fecha de inauguración de los trabajos. Las Comisiones de las Partes Contratantes se reunirán en San Juan del Norte, dentro de los términos fijados al efecto, é iniciarán sus trabajos en el extremo de la línea divisoria que, según el Tratado y Laudo antes referidos, parte de la costa atlántica.

ART. V. — Las Partes Contratantes convienen en que si, por cualquier motivo, el día de iniciar los trabajos faltare en el lugar designado alguna de las Comisiones de las Repúblicas de Costa Rica ó Nicaragua, se dará principio á los trabajos por la Comisión de la otra República que se halle presente, con la concurrencia del señor Ingeniero del Gobierno norteamericano, y será válido y definitivo lo que en tal forma se haga, y sin lugar á reclamo por parte de la República que haya dejado de enviar sus Comisionados. Del mismo modo se procederá si se ausentaren algunos de los Comisionados, ó todos, de cualquiera de las Repúblicas Contratantes, una vez iniciadas las obras ó si rehuyeren la ejecución de ellas en la forma en que señalan el Laudo y Tratado aquí referidos ó con arreglo á la decisión del Ingeniero del señor Presidente de los Estados Unidos.

ART. VI. — Las Partes Contratantes convienen en que el plazo fijado para la conclusión del amojonamiento no es perentorio, y por tanto será válido lo que después de su vencimiento se hiciere, bien por haber sido aquel plazo insuficiente para la práctica de todas las operaciones, ó bien por haber convenido los Comisionados de Costa Rica y Nicaragua entre sí y de acuerdo con el Ingeniero norteamericano, en suspender temporalmente las obras y no bastar para concluir las el plazo que quede del fijado.

ART. VII. — Caso de suspensión temporal de los trabajos de amojonamiento, se tendrá lo hecho hasta entonces por definitivo y concluido, y por fijados materialmente los límites en la parte respectiva, aun cuando, por circunstancias inesperadas é insuperables, dicha suspensión continuase indefinidamente.

ART. VIII. — El libro de actas de las operaciones, que se llevará por triplicado y que firmarán y sellarán debidamente los Comisionados, será, sin necesidad de aprobación ni de ninguna otra formalidad por parte de las Repúblicas signatarias, el título de demarcación definitiva de sus límites.

ART. IX. — Las actas á que se refiere el artículo anterior se extenderán en la siguiente forma: se consignará todos los días, al concluir las obras, minuciosa y detalladamente todo lo hecho, expresándose el punto de partida de las

operaciones del día, la clase de mojones contruídos ó adoptados, la distancia á que queden unos de otros, el arribamiento de la línea que determina el común lindero, etc. Caso de que hubiere discusión entre las Comisiones de Costa Rica y Nicaragua respecto de algún punto, se consignará en el acta respectiva la cuestión ó cuestiones debatidas y la resolución del Ingeniero norteamericano. Las actas se llevarán por triplicado: la Comisión de Costa Rica conservará uno de los ejemplares, otro lo de Nicaragua, y el tercero el Ingeniero norteamericano, para depositarlo, una vez concluidas las operaciones, en el Departamento de Estado de Washington.

ART. X. — Los gastos que se ocasionen con motivo del envío y permanencia del señor Ingeniero norteamericano, así como los sueldos que le correspondan durante todo el tiempo que dure en el ejercicio de sus funciones, serán pagados, por mitades, por las dos Repúblicas signatarias.

ART. XI. — Las Partes Contratantes se comprometen á recabar las ratificaciones de esta Convención de sus respectivos Congresos, dentro de seis meses, á contar de esta fecha, aunque para ello deba hacerse convocatoria extraordinaria de aquellos Altos Cuerpos, y el canje subsiguiente se verificará dentro del mes siguiente á la fecha de la última de las ratificaciones indicadas, en San José de Costa Rica ó en Managua.

ART. XII. — El trascurso de los términos de que antes se ha hablado, sin la ejecución de los actos para los cuales han sido estipulados, no produce la caducidad de la presente Convención, y se tratará de llenar la omisión por parte de la República á que corresponda verificarlo, dentro del más breve término posible.

En fe de lo cual firman y sellan por duplicado la presente Convención, en la ciudad de San Salvador, á los veintisiete días del mes de marzo de mil ochocientos noventa y seis.¹

First award rendered, to San Juan del Norte, by the umpire, M. E. P. Alexander, on September 30, 1897, in the boundary question between Costa Rica and Nicaragua.

San Juan del Norte, Nicaragua,
September 30, 1897.

In pursuance of the duties assigned me by my commission as engineer-arbitrator to your two bodies, with the power to decide finally any points of difference, that may arise in tracing and marking out the boundary line between the two republics, I have given careful study and

¹ *Memoria de Relaciones exteriores* (Costa Rica), 1897, p. 28.

consideration to all arguments, counter arguments, maps, and documents submitted to me in the matter of the proper location of the initial point of the said boundary line upon the Caribbean coast.

The conclusion at which I have arrived and the award I am about to make do not accord with the views of either commission. So, in deference to the very excellent and earnest arguments so faithfully and loyally urged by each commission for its respective side, I will indicate briefly my line of thought and the considerations which have seemed to me to be paramount in determining the question; and of these considerations the principal and the controlling one is that we are to interpret and give effect to the Treaty of April 15, 1858, in the way in which it was mutually understood at the time by its makers.

Each commission has presented an elaborate and well argued contention that the language of that treaty is consistent with its claims for a location of the initial point of the boundary line at a place which would give to its country great advantages. The points are over six miles apart, and are indicated on the map accompanying this award.

The Costa Rican claim is located on the left-hand shore or west headland of the harbor; the Nicaraguan on east headland of the mouth of the Taura branch.

Without attempting to reply in detail to every argument advanced by either side in support of his respective claim, all will be met and sufficiently answered by showing that those who made the treaty mutually understood and had in view another point, to wit, the eastern headland at the mouth of the harbor.

It is the meaning of the men who framed the treaty which we are to seek, rather than some possible meaning which can be forced upon isolated words of sentences. And this meaning of the men seems to me abundantly plain and obvious.

This treaty was not made hastily or carelessly. Each State had been wrought up by years of fruitless negotiations to a state of readiness for war in defense of what it considered its rights, as is set forth in article 1. In fact, war had actually been declared by Nicaragua on November 25, 1857, when, through the mediation of the Republic of Salvador, a final effort to avert it was made, another convention was held, and this treaty resulted. Now, we may arrive at the mutual understanding finally reached by its framers by first seeking in the treaty as a whole for the general idea or scheme of compromise upon which they were able to agree. Next, we

must see that this general idea of the treaty as a whole harmonizes fully with any description of the line given in detail, and the proper names of all the localities used, or not used, in connection therewith, for the non use of some names may be as significant as the use of others. Now, from the general consideration of the treaty as a whole, the scheme of compromise stands out clear and simple.

Costa Rica was to have as a boundary line the right or southeast bank of the river, considered as an outlet for commerce, from a point 3 miles below Castillo to the sea.

Nicaragua was to have her prized *sumo imperio* of all the waters of this same outlet for commerce, also unbroken to the sea.

It is to be noted that this division implied also, of course, the ownership by Nicaragua of all islands in the river and of the left or north-west bank and headland.

This division brings the boundary line (supposed it to be traced downward along the right bank from the point near Castillo) across both the Colorado and the Taura branches.

It can not follow either of them, for neither is an outlet for commerce, as neither has a harbor at its mouth.

It must follow the remaining branch, the one called the Lower San Juan, through its harbor and into the sea.

The natural terminus of that line is the right-hand headland of the harbor mouth.

Next let us note the language of description used in the treaty telling whence the line is to start and how it is to run, leaving out for the moment the proper name applied to the initial point. It is to start at the mouth of the river San Juan de Nicaragua, and shall continue following the right bank of the said river to a point three English miles from Castillo Viejo.

This language is evidently carefully considered and precise, and there is but one starting point possible for such a line, and that is at the right headland of the bay.

Lastly, we come to the proper name applied to the starting point, «the extremity of Punta de Castillo». This name Punta de Castillo does not appear upon a single one of all the original maps of the bay of San Juan which have been presented by either side, and which seem to include all that were ever published before the treaty or since. This is a significant fact, and its meaning is obvious. Punta de Castillo must have been, and must have remained, a point of no importance, political or commercial, otherwise it could not possibly have so utterly escaped note or mention upon the maps. This agrees entirely with the characteristics of the mainland and the

headland on the right of the bay. It remains until to-day obscure and unoccupied, except by the hut of a fisherman. But the identification of the locality is still further put beyond all question by the incidental mention, in another article of the treaty itself, of the name Punta de Castillo.

In Article V Costa Rica agrees temporarily to permit Nicaragua to use Costa Rica's side of the harbor without payment of port dues, and the name Punta de Castillo is plainly applied to it. Thus we have, concurring, the general idea of compromise in the treaty as a whole, the literal description of the line in detail, and the verification of the name applied to the initial point by its incidental mention in another portion of the treaty; and by the concurrent testimony of every map maker of every nation, both before the treaty and since, in excluding this name from all other portions of the harbor. This might seem to be sufficient argument upon the subject, but it will present the whole situation in a still clearer light to give a brief explanation of the local geography and of one special peculiarity of this Bay of San Juan.

The great feature in the local geography of this bay, since our earliest accounts of it, has been the existence of an island in its outlet, called on some early maps the island of San Juan. It was an island of such importance as to have been mentioned in 1820 by two distinguished authors, quoted in the Costa Rican reply to Nicaragua's argument (page 12), and it is an island to-day, and so appears in the map accompanying this award.

The peculiarity of this bay, to be noted, is that the river brings down very little water during the annual dry season. When that happens, particularly of late years, sand bars, dry at all ordinary tides, but submerged more or less and broken over by the waves at all high ones, are formed, frequently reaching the adjacent headlands, so that a man might cross dry-shod.

Now, the whole claim of Costa Rica is based upon the assumption that on April 15, 1858, the date of the treaty, a connection existed between the island and the eastern headland, and that this converted the island into mainland, and carried the initial point of the boundary over to the western extremity of the island. To this claim there are at least two replies, either one seeming to me conclusive.

First, the exact state of the bar on that day can not be definitely proven, which would seem to be necessary before drawing important conclusions.

However, as the date was near the end of the dry season, it is most probable that there was such a connection between the island and

the eastern Costa Rican shore as has been described. But even if that be true, it would be unreasonable to suppose that such temporary connection could operate to change permanently the geographical character and political ownership of the island. The same principle, if allowed, would give to Costa Rica every island in the river to which sand bars from her shore had made out during that dry season. But throughout the treaty the river is treated and regarded as an outlet of commerce. This implies that it is to be considered as in average condition of water, in which condition alone it is navigable.

But the overwhelming consideration in the matter is that by the use of the name of Punta de Castillo for the starting point, instead of the name Punta Arenas, the makers of the treaty intended to designate the mainland on the east of the harbor. This has already been discussed, but no direct reply was made to the argument of Costa Rica quoting three authors as applying the name Punta de Castillo to the western extremity of the before-mentioned island, the point invariably called Punta Arenas by all the naval and other officers, surveyors, and engineers who ever mapped it.

These authors are L. Montufar, a Guatemalan, in 1887; J. D. Gamez, a Nicaraguan, in 1889, and E. G. Squier, an American, date not given exactly, but subsequent to the treaty. Even of these, the last two merely used, once each, the name Punta de Castillo as an alternate for Punta Arenas. Against this array of authority we have, first, an innumerable number of other writers clearly far more entitled to confidence; second, the original makers of all the maps, as before pointed out, and third, the framers of the treaty itself, by their use of Punta de Castillo in Article V.

It must be borne in mind that for some years before the making of this treaty Punta Arenas had been by far the most important and conspicuous point in the bay. On it were located the wharves, workshops, offices, etc., of Vanderbilt's great transit company, conducting the through line from New-York to San Francisco during the gold excitement of the early fifties. Here the ocean and river steamers met and exchanged passengers and cargo. This was the point sought to be controlled by Walker and the filibusters.

The village of San Juan cut no figure at all in comparison, and it would doubtless be easy to produce, by hundreds, references to this point as Punta Arenas by naval and diplomatic officers of all prominent nations, by prominent residents and officials, and by engineers and surveyors

Constantly investigating the canal problem, and all having a personal knowledge of the locality.

In view of all these circumstances, the jealousy with which each party to the treaty defined what it gave up and what it kept, the prominence and importance of the locality, the concurrence of all the original maps in the name, and its universal notoriety, I find it impossible to conceive that Nicaragua had conceded this extensive and important territory to Costa Rica, and that the latter's representative had failed to have the name Punta Arenas appear anywhere in the treaty. And for reasons so similar that it is unnecessary to repeat them, it is also impossible to conceive that Costa Rica should have accepted the Taura as her boundary and that Nicaragua's representative should have entirely failed to have the name Taura appear anywhere in the treaty.

Having then designated generally the mainland east of Harbor Head as the location of the initial point of the boundary line, it now becomes necessary to specify it more minutely, in order that the said line may be exactly located and permanently marked. The exact location of the initial point is given in President Cleveland's award as the extremity of Punta de Castillo, at the mouth of the San Juan de Nicaragua River, as they both existed on the 15th day of April 1858.

A careful study of all available maps and comparisons between those made before the treaty and those of recent date made by boards of engineers and officers of the canal company, and one of to-day made by ourselves to accompany this award, makes very clear one fact: The exact spot which was the extremity of the headland of Punta de Castillo April 15, 1858, has long been swept over by the Caribbean Sea, and there is too little concurrence in the shore outline of the old maps to permit any certainty of statement of distance or exact direction to it from the present headland. It was somewhere to the northeastward, and probably between 600 and 1600 feet distant, but it can not now be certainly located. Under these circumstances it best fulfills the demands of the treaty and of President Cleveland's award to adopt what is practically the headland of to-day, or the northwestern extremity of what seems to be the solid land, on the east side of Harbor Head Lagoon.

I have accordingly made personal inspection of this ground, and declare the initial line of the boundary to run as follows, to wit:

Its direction shall be due northeast and southwest, across the bank of sand, from the Caribbean Sea into the waters of Harbor Head Lagoon. It shall pass at its nearest point, 300 feet on the northwest side from the small hut now standing in that vicinity. On reaching the waters of Harbor

Head Lagoon the boundary line shall turn to the left, or southeastward, and shall follow the water's edge around the harbor until it reaches the river proper by the first channel met. Up this channel, and up the river proper, the line shall continue to ascend as directed in the treaty¹.

Segundo Laudo sobre límites entre las Repúblicas de Nicaragua y Costa Rica, firmado en San Juan del Norte, Diciembre 20 de 1897.

En cumplimiento otra vez de mis deberes como Ingeniero Arbitro entre los dos Honorables Cuerpos de Ustedes, he sido llamado para decidir la cuestión sometida á mí en el acta del 7 del presente mes, como se manifiesta en el siguiente párrafo del libro de sesiones, á saber: «Propuso la Comisión Costaricense que se proceda á medir la línea que continúa desde el punto inicial y sigue por la margen de Harbour Head, y después por la del caño más próximo hasta encontrar el río propio de San Juan, siguiendo la de éste hasta el punto que diste tres millas abajo del Castillo Viejo; que se levante el plano de dicha línea y que se incorpore todo en las actas día por día en las sesiones. La de Nicaragua manifestó que el trabajo de la medida y levantamiento del plano en esa parte de la línea no tiene valor ni objeto útil porque, según el Tratado y el Laudo del General E. P. Alexander, el límite divisorio lo forma la margen derecho del Harbour y del río, y que siendo así, es variable y no línea fija; y por tanto el plano y los datos que se obtengan no corresponderán nunca á la verdadera línea divisorio. En tal estado determinan ambas Comisiones oír la decisión del señor Arbitro sobre este punto, á cuyo fin le presentarán sus respectivos fundamentos dentro del término de ocho días.»

Han sido recibidos y debidamente considerados los referidos argumentos de cada parte. Debe de hacerse notar para una clara inteligencia de la cuestión propuesta que en la parte baja de su curso el río San Juan corre al través de un delta llano y arenoso, y que son evidentemente posibles no solamente acrecimientos ó disminuciones graduales en sus márgenes, sino cambios enteros de sus caños. Estos cambios pueden ser más ó menos rápidos y repentinos por causas no siempre aparentes y aún sin la concurrencia de factores especiales tales como terremotos ó grandes tempestades. Son abundantes los ejemplos de caños anteriores ahora abandonados, y de márgenes que estan cambiando hoy día por graduales acrecimientos ó disminuciones.

Monthly Bulletin of the Bureau of the American Republics, 1897, vol. V, p. 909.

Annex 19

United States-Nicaragua, Convention for the construction of a Canal by the River San Juan (Chamorro-Weitzel), Washington, D.C., 8 February 1913

Source: Republic of Costa Rica, *Complaint before the Central American Court of Justice* (Washington, D.C.: Press of Gibson Bros., Inc. 1916)
Annex L, 82-86



Costa Rica

BEFORE THE

CENTRAL AMERICAN
COURT OF JUSTICE

THE REPUBLIC OF COSTA RICA

AGAINST

THE REPUBLIC OF NICARAGUA

COMPLAINT

OF THE REPUBLIC OF COSTA RICA GROWING OUT OF A CONVEN-
TION ENTERED INTO BY THE REPUBLIC OF NICARAGUA
WITH THE REPUBLIC OF THE UNITED STATES OF AMERICA
FOR THE SALE OF THE SAN JUAN RIVER AND OTHER
MATTERS.

WITH APPENDICES

(PRINTED AT THE NATIONAL PRINTING OFFICE
SAN JOSÉ, COSTA RICA)

TRANSLATION

WASHINGTON.
PRESS OF GIBSON BROS., INC.
1916

APPENDIX L.

TEXT OF THE CONVENTION BETWEEN THE UNITED STATES AND NICARAGUA FOR THE CONSTRUCTION OF A CANAL BY WAY OF THE SAN JUAN RIVER.

(As published in *La República*, No. 8810, of July 4, 1913, at San José de Costa Rica.)

IS IT AN "OPTION" OR A DEFINITIVE TRANSACTION?

The following is the text of a convention entered into between the United States and Nicaragua, against which the Government of Costa Rica protests, and which is called a simple "option" by the Nicaraguan Government. It is published so that the Costa Rican people may have an exact knowledge of that transaction.

CONVENTION.

The Government of the United States of America and the Government of Nicaragua being animated by the desire to strengthen their ancient and cordial friendship by the most sincere cooperation for all purposes of mutual advantage and interest to the two nations; and the Government of Nicaragua being desirous to promote in every way economic development and prosperity under orderly and lawful government and the maintenance of its rights as secured by the Washington Conventions; and the Government of the United States being in full sympathy with these aims and desiring to lend to the Government of Nicaragua all proper assistance in these matters and also in the furtherance of various public works and measures conducive to its welfare and economic

development; and it being the desire of both Governments to reaffirm the principle of the first paragraph of the Protocol of December 1, 1900, and to provide for the possible future construction of an interoceanic ship canal by way of the San Juan River and the Great Lake of Nicaragua or via any other route over Nicaraguan territory, whenever the construction of such canal shall be deemed conducive to the interests of both countries; and the Government of Nicaragua, wishing to facilitate in every way possible the successful construction, maintenance, and operation of such canal and also the maintenance and operation of the Panama Canal, the two Governments have resolved to conclude a convention to these ends, and have accordingly appointed as their plenipotentiaries, the Government of the United States, George T. Weitzel, Envoy Extraordinary and Minister Plenipotentiary of the United States of America; and the Government of Nicaragua, Diego Manuel Chamorro, Minister for Foreign Affairs of the Republic of Nicaragua, who, having exhibited to each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

The Government of Nicaragua grants in perpetuity to the Government of the United States the unencumbered exclusive rights necessary and convenient to the construction, operation, and maintenance of an interoceanic canal by way of the San Juan River and the Great Lake of Nicaragua, or by way of any other route over Nicaraguan territory, the details of the terms upon which such canal shall be constructed, operated, and maintained to be fixed by mutual consultation between the two Governments whenever the construction of such canal shall be decided upon.

ARTICLE II.

In order to facilitate the protection of the Panama Canal and of the canal, canal route, and the rights contemplated by the present convention and also to enable the United States to take any measure or to assist the Government of Nicaragua in any measures necessary to the ends contemplated herein, the Government of Nicaragua hereby leases for ninety-nine years to the Government of the United States the islands in the Caribbean Sea known as Great Corn and Little Corn Islands and covenants that, at such time and at such place on the Gulf of Fonseca as the Government of the United States may designate, the Government of the United States shall have the right to establish, operate and maintain for ninety-nine years a naval base.

The Government of the United States shall have the option of renewing either or both of the above grants contained in this article upon the expiration of the ninety-nine years aforesaid.

ARTICLE III.

The Government of Nicaragua hereby grants to the Government of the United States in perpetuity the right of ships of the merchant marine of the United States to engage in coastwise trade in Nicaragua, either by way of the aforementioned canal or otherwise, with a right to discharge or load in part or in whole at all Nicaraguan ports while engaged in any voyage on terms identical with those imposed on Nicaraguan citizens or vessels.

ARTICLE IV.

In consideration of the foregoing stipulations and of the purposes of this convention, the Government of the United

States shall pay, for the benefit of the Government of Nicaragua, the sum of three million dollars (\$3,000,000), United States Gold Coin of the present weight and fineness, such payment to be made to a depository, an American banking corporation designated by the Secretary of State of the United States, and to be disbursed in the construction of public works or for the benefit of public education or the advancement of the welfare of Nicaragua in a manner to be determined by the two High Contracting Parties, all such disbursements to be made by orders drawn by the Minister of Finance of the Republic of Nicaragua and approved by the Secretary of State of the United States or by such person as he may designate.

The payment above referred to shall be made within one year from the date of the exchange of ratifications of this convention.

ARTICLE V.

This convention shall be ratified by the High Contracting Parties according to their respective laws, and the ratifications thereof shall be exchanged at Washington as soon as possible.

In faith whereof we, the respective plenipotentiaries, have hereunto affixed our hands and seals.

Done in duplicate in the English and Spanish languages at Managua, this eighth day of February, nineteen hundred and thirteen.

GEORGE T. WEITZEL. [SEAL]
DIEGO MANUEL CHAMORRO. [SEAL]

The President of the Republic, having examined the foregoing convention and finding it to be in accordance with the instructions given to the Plenipotentiary charged with its negotiation,

BE IT RESOLVED,

That it be approved and submitted to the Assembly for action according to law. Executive Palace, Managua, February 9, 1913.

[SEAL]

A. DIAZ.

D. M. CHAMORRO,

Minister of Foreign Relations.

[SEAL]

* * * * *

The Congress of Nicaragua, as is well known, ratified this contract in all its parts.

Annex 20

United States-Nicaragua, Convention for the construction of a Canal by the
River San Juan (Bryan-Chamorro), Washington, D.C., 5 August 1914

Source: 220 CTS 215

5 August
Treaty between Nicaragua and the United States for the Construction of an Interoceanic Canal, signed at Washington
 English text—Malloy, 2740
 Also De Martens, 3, IX, 350—A.J.I.L., X, 258—Brit. For., CVIII, 520—U.S. Stat., XXXIX, 1661—Bevans, X, 379

Signed at Washington August 5, 1914; ratification advised by the Senate with amendments February 18, 1916; ratified by the President June 19, 1916; ratified by Nicaragua April 13, 1916; ratifications exchanged at Washington June 22, 1916; proclaimed June 24, 1916.

(Treaty Series, No. 624; 39 Statutes at Large, 1661.)

ARTICLES.

- | | |
|---|--|
| <p>I. Perpetual grant of interoceanic canal route by way of San Juan River and Lake Nicaragua.</p> <p>II. Ninety-nine year leases of Great and Little Corn Islands and of naval base rights on Gulf of Fonseca; leases renewable.</p> | <p>III. United States to pay Nicaragua \$8,000,000.</p> <p>IV. Ratification.</p> |
|---|--|

The Government of the United States of America and the Government of Nicaragua being animated by the desire to strengthen their ancient and cordial friendship by the most sincere cooperation for all purposes of their mutual advantage and interest and to

provide for the possible future construction of an interoceanic ship canal by way of the San Juan River and the great Lake of Nicaragua, or by any route over Nicaraguan territory, whenever the construction of such canal shall be deemed by the Government of the United States conducive to the interests of both countries, and the Government of Nicaragua wishing to facilitate in every way possible the successful maintenance and operation of the Panama Canal, the two Governments have resolved to conclude a Convention to these ends, and have accordingly appointed as their plenipotentiaries:

The President of the United States, the Honorable William Jennings Bryan, Secretary of State; and

The President of Nicaragua, Señor General Don Emiliano Chamorro, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua to the United States;

Who, having exhibited to each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

The Government of Nicaragua grants in perpetuity to the Government of the United States, forever free from all taxation or other public charge, the exclusive proprietary rights necessary and convenient for the construction, operation and maintenance of an interoceanic canal by way of the San Juan River and the great Lake of Nicaragua or by way of any route over Nicaraguan territory, the details of the terms upon which such canal shall be constructed, operated and maintained to be agreed to by the two governments whenever the Government of the United States shall notify the Government of Nicaragua of its desire or intention to construct such canal.

ARTICLE II.

To enable the Government of the United States to protect the Panama Canal and the proprietary rights granted to the Government of the United States by the foregoing article, and also to enable the Government of the United States to take any measure necessary to the ends contemplated herein, the Government of Nicaragua hereby leases for a term of ninety-nine years to the Government of the United States the islands in the Caribbean Sea known as Great Corn Island and Little Corn Island; and the Government of Nicaragua further grants to the Government of the United States for a like period of ninety-nine years the right to establish, operate and maintain a naval base at such place on the territory of Nicaragua bordering upon the Gulf of Fonseca as the Government of the United States may select. The Government of the United States shall have the option of renewing for a further term of ninety-nine years the above leases and grants upon the expiration of their respective terms, it being expressly agreed that the territory hereby leased and the naval base which may be maintained under the grant aforesaid shall be subject exclusively to the laws and sovereign authority of the United States during the terms of such lease and grant and of any renewal or renewals thereof.

ARTICLE III.

In consideration of the foregoing stipulations and for the purposes contemplated by this Convention and for the purpose of reducing the present indebtedness of Nicaragua, the Government of the United States shall, upon the date of the exchange of ratification of this Convention, pay for the benefit of the Republic of Nicaragua the sum of three million dollars United States gold coin, of the present weight and fineness, to be deposited to the order of the Government of Nicaragua in such bank or banks or with such banking corporation as the Government of the United States may determine, to be applied by Nicaragua upon its indebtedness or other public purposes for the advancement of the welfare of Nicaragua in a manner to be determined by the two High Contracting Parties, all such disbursements to be made by orders drawn by the Minister of Finance of the Republic of Nicaragua and approved by the Secretary of State of the United States or by such person as he may designate.

ARTICLE IV.

This Convention shall be ratified by the High Contracting Parties in accordance with their respective laws, and the ratifications thereof shall be exchanged at Washington as soon as possible.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done at Washington, in duplicate, in the English and Spanish languages, on the 5th day of August, in the year nineteen hundred and fourteen.

WILLIAM JENNINGS BRYAN [SEAL.]
EMILLANO CHAMORRO [SEAL.]

(Treaty Series, No. 624.)

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention between the United States of America and the Republic of Nicaragua granting to the United States the exclusive proprietary rights for the construction and operation of an inter-oceanic canal by a Nicaraguan route, the lease of certain islands, and the right to establish a naval base on the Gulf of Fonseca, was concluded and signed by their respective Plenipotentiaries at Washington, on the fifth day of August, one thousand nine hundred and fourteen, the original of which Convention, being in the English and Spanish languages is, as amended by the Senate of the United States, word for word as follows:

[The treaty as above.]

And whereas, the advice and consent of the Senate of the United States to the ratification of the said Convention was given with the following proviso: "Provided, That, whereas, Costa Rica, Salvador and Honduras have protested against the ratification of the said Convention in the fear or belief that said Convention might in some

respect impair existing rights of said States; therefore, it is declared by the Senate that in advising and consenting to the ratification of the said Convention as amended such advice and consent are given with the understanding, to be expressed as a part of the instrument of ratification, that nothing in said Convention is intended to affect any existing right of any of the said named States;"

And whereas, the said understanding has been accepted by the Government of Nicaragua;

And whereas, the said Convention, as amended by the Senate of the United States, has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Washington, on the twenty-second day of June, one thousand nine hundred and sixteen;

Now, therefore, be it known that I, Woodrow Wilson, President of the United States of America, have caused the said Convention, as amended, and the said understanding to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the City of Washington this twenty-fourth of June in the year of our Lord one thousand nine hundred and sixteen,
[SEAL] and of the Independence of the United States of America the one hundred and fortieth.

WOODROW WILSON

By the President:
ROBERT LANGING,
Secretary of State.

Annex 21

Republic of Costa Rica v Republic of Nicaragua, Central American Court of Justice, Opinion and Decision of the Court, 30 September 1916

Source: (1917) 11 *AJIL* 181-229

THE
AMERICAN JOURNAL
OF
INTERNATIONAL LAW



VOLUME 11

1917

PUBLISHED FOR
THE AMERICAN SOCIETY OF INTERNATIONAL LAW
BY
OXFORD UNIVERSITY PRESS: 35 WEST 32D STREET, NEW YORK, U.S.A.
Agent for Great Britain: Oxford University Press, Amen Corner, London
Agent for Toronto, Melbourne and Bombay: Oxford University Press

JUDICIAL DECISIONS INVOLVING QUESTIONS OF
INTERNATIONAL LAW

COSTA RICA *v.* NICARAGUA ¹

CENTRAL AMERICAN COURT OF JUSTICE

*San José de Costa Rica, on the thirtieth day of September, nineteen
hundred and sixteen, at seven o'clock, p. m.*

IN the action commenced and maintained by the Government of the Republic of Costa Rica against the Government of the Republic of Nicaragua, arising out of the conclusion of a treaty between the latter and the Government of the United States of North America, relating to the construction of an interoceanic canal, the Court, having considered the proceedings had herein, hereby renders its decision thereof.

PRELIMINARY CHAPTER

It appears:

That on the 24th of March of the current year the Licentiate don Luís Castro Urefia, appearing in the name, and as the representative, of the Government of Costa Rica, in accordance with powers to that end duly exhibited, brought before this Court a complaint against the Government of Nicaragua wherein were set forth the arguments of fact and law in support of his claims, together with the evidence he considered pertinent to the action.

SECTION I

The Court being without a full bench because of the absence therefrom of the member from Nicaragua, and being thereby disqualified to pass upon the first step in the proceedings invoked by

¹ Translation published by the Costa Rican Legation, Washington, D.C. The official text of the decision is contained in *La Gaceta* (Costa Rica), October 7, 1916.

the complaint, the Permanent Committee proceeded to prescribe the measures necessary for the immediate completion of the Court and to that end dispatched an urgent telegram to the absent member requesting him to forego the enjoyment of the balance of his vacation in view of the fact that the Government of Costa Rica had presented a complaint against the Government of his country. Anticipating, however, that the judge might not be able to return immediately to his place on the bench, the Permanent Committee also addressed itself to His Excellency the Minister of Foreign Relations of Nicaragua calling his attention to the situation and asking him to make the necessary dispositions for the completion of the Court by sending the substitute justice.

It appears:

That the absent justice, in reply to these urgent appeals, stated that he would make an effort to return to Costa Rica on the next steamer, and that, should this be impossible, he would immediately so notify the Minister of Foreign Relations of his country. That high functionary, on his part, in a telegraphic dispatch of April 1, stated that he had been advised of the complaint brought before the Court and that the telegraphic communication addressed to him by the Secretary of the Permanent Committee was answered by the reply he had given to His Excellency the Costa Rican Secretary of Foreign Relations when the latter, in his turn, had notified him of the presentation of the complaint and of the reasons that prompted the Costa Rican Government to bring that action.

In the reply alluded to, the Nicaraguan Chancellor stated, among other things, that his Government, in entering into the treaty with the United States, had confined itself exclusively to the territorial limits of Nicaragua that belonged to her as an independent state, seeking only to promote her welfare and progress and respecting in all ways the integrity and legitimate rights of the other Central American Republics;

That Nicaragua had been at all times perfectly qualified to enter into contracts of the character of the Chamorro-Bryan Treaty, and that she was by no means disposed to consent to a discussion of private rights pertaining to the inherent sovereignty of the state;

That with respect to Costa Rica all questions that had been rife

with Nicaragua at other periods relating to the frontier and to participation in the interoceanic canal had been decided once and forever by the award of President Cleveland;

That Nicaragua had strictly complied with that award, as she stood ready to do when the time should come for granting concessions for the construction of the interoceanic canal; but that, with respect to the rights which that award insured to Nicaragua as sole sovereign over the territory in which said canal was to be constructed, and as absolute owner of the benefits that she might derive in compensation for the favors and privileges to be conceded by her Government, she would not permit them to be made the subject of judicial determination, since the award, by its very nature, is not subject to revision or interpretation by any arbitral tribunal;

That the Central American Court of Justice was not competent to admit such a complaint as the one brought before it by the Government of Costa Rica, because, according to Article I of the Convention of Washington creating that Court, it could only be clothed with the character of an arbitral tribunal having jurisdiction over controversies or questions arising between the signatory parties when their respective chancelleries are unable to reach a settlement, and when, in conformity with the article cited, resort to that Court alone remains, in cases in which any settlement between the parties has become impossible after the failure of the requisite courses of diplomacy;

That the Costa Rican Secretary of Foreign Relations has at no time expressed to the Nicaraguan Foreign Office, either directly or indirectly, a single thought that would reveal his Government's opposition to the conclusion of the Bryan-Chamorro Treaty;

That for these reasons the Government of Nicaragua considers the complaint presented to be futile and outside the competency of the Central American Court of Justice, and, in the full security of its rights, believes it can count on complete concurrence in this viewpoint by the Court and on the refusal of that tribunal to entertain the proceeding; and —

That, since consideration of the action by the Central American Court of Justice would be without effect and a violation of the Convention of Washington of 1907, the Government of Nicaragua trusts that the Court will adhere to the clear, explicit, and positive letter of that pact and withhold its consideration of the case.

SECTION II

In its telegram dated the 26th of April of the present year, the Nicaraguan Chancellery transmitted to this Court a copy of its reply to another dispatch from the Costa Rican Chancellery. In that reply it confirmed and amplified the arguments contained in the document referred to in the preceding paragraphs, and added that Costa Rica prays the Central American Court of Justice to declare the legal incapacity of Nicaragua to enter into conventions of the nature of that which was signed on the 5th of August, 1914, between the latter Republic and the United States of America;

That on this point the Government of Nicaragua hastens to declare again that Nicaragua not only has always been, and will always be, possessed of full legal capacity to enter into and fulfill conventions of this character, but holds as offensive to her dignity as a free and independent nation any discussion of acts pertaining to her sovereignty — acts which in no case could become the subject of arbitrament;

That, with respect to the Cleveland Award, as to the interpretation of which Costa Rica believes differences exist that should be taken into account by the Central American Court in order to determine which of the two Governments is right, the Nicaraguan Chancellery asserts that that award, having once and forever resolved the differences that formerly existed between the two countries in relation to frontiers and to participation in the interoceanic canal, precludes absolutely and by its very nature the claim that it is subject to interpretation by any tribunal whatsoever, for if arbitral awards could be the subject of revision at the will of either of the parties, a decision of that kind could never be definitive in character and conflicts between nations would never end;

That the power possessed in certain cases by the Central American Court of Justice to act as an arbitral tribunal is confined expressly to those questions which may arise between states from and after the date on which the organic convention went into force among the contracting parties, but that under no conception could that power, even by violating the letter and spirit of the compact, extend to matters decided prior to the conclusion of that organic convention;

That, on the other hand, there has been no disagreement between the two Governments respecting the manner of interpreting the award of President Cleveland; and that, supposing the Costa Rican

Government should come to have doubts as to the validity and scope of that arbitral decision, this Court would not, in any case, be the forum charged with its interpretation, nor would those doubts affect the Chamorro-Bryan Treaty, which is wholly foreign to the matter;

And, finally, that for these reasons the complaint is wholly unreasonable and groundless, and that, in view of the foregoing, and of the points set forth in the telegram of April 1, the Central American Court of Justice should reject the complaint presented by the Government of Costa Rica; otherwise, it would flagrantly violate the convention that gave it life and its action in the case would be an absolute nullity.

SECTION III

Upon the return of the justice from Nicaragua, the Court regained its legal quorum on the 24th of April, and at its session of the 1st of May, following, took under consideration the complaint presented, which complaint contains the following elements set forth in two parts in Chapters I and II of this decision.

FIRST PART

CHAPTER I

ARGUMENTS OF FACT

It appears:

That the representative of the high party complainant has set forth in his complaint the following arguments of fact:

SECTION I

That in the beginning of April, 1913, his Government learned, through private sources, that the Legislative Assembly of Nicaragua had just given its approval, in secret session, to a treaty (also covered by secrecy) that had been concluded between the Government of the Republic of Nicaragua and the Government of the United States of America, among other things, for the opening of an interoceanic canal through Nicaraguan territory. That this news, the first it had received on the subject, moved the Costa Rican Government to

instruct its Minister in Nicaragua to present to the Government of that Republic a formal diplomatic protest against the execution of the canal pact referred to, on the ground that the Government of Costa Rica conceived, and would continue to conceive, such an act to constitute a flagrant violation of existing treaties between the two countries and of the Cleveland Award.

SECTION II

That at the same time that that diplomatic protest was being made, the Costa Rican plenipotentiary at Washington, following instructions from his Government, brought before the Government of the United States of America a similar diplomatic protest against the conclusion, on the part of Nicaragua, of the canal convention above mentioned, setting forth, as was done in the protest before the Nicaraguan Government, the conviction that the pact could only, at best, be held to be a nullity if account were taken of Nicaragua's legal incapacity to negotiate in the premises because of her failure previously to consult the opinion of Costa Rica regarding those negotiations and even to ask her acquiescence in the matter.

SECTION III

That His Excellency the Nicaraguan Minister of Foreign Relations, in his note of June 12, 1913, replied to the protest of the Costa Rican Minister, informing him that "the Government of Nicaragua exercised a right of incontestable sovereignty when it entered into the convention of February 8, 1913, with the United States, which convention has been kept secret for reasons of an international character that affect not it alone; but declares in the most positive manner that, in entering into that pact, it has not ignored any right that belongs to Costa Rica; nor has it committed any violation of the treaties existing between the two nations"; that "that convention . . . tends towards procuring, as far as possible, the construction of an interoceanic canal through a route exclusively Nicaraguan"; that the convention "merely deals with a preferential right, granted to the United States, to open an interoceanic passageway through a route to be designated out of national territory when it shall be decided, by agreement between the two Governments, to undertake the construction thereof, at which time the conditions under which the

canal shall be constructed, operated, and maintained will be determined by a further treaty or convention between the contracting parties"; that "therefore, dealing with a simple option for a canal concession, Nicaragua, as sole sovereign of the territory that will be the site of the great undertaking, is wholly within her incontestable rights in entering singly and alone into that engagement"; and that "in view of the foregoing, . . . the ideas expressed in the note to which this is an answer are in every regard unreasonable, for, as has been shown by an abundance of reasons and arguments, when the convention in question was entered into there was on the part of Nicaragua no violation of existing treaties nor discourtesy to Costa Rica, nor any disregard or forgetfulness of her legitimate rights."

SECTION IV

That *La Republica*, an independent newspaper of this city, in its issue No. 8810 of July 4, 1913, published the text of the treaty which, according to that paper, had been signed by the Governments of Nicaragua and the United States of America, relating to the opening of the canal just referred to; and that, although the Government of Costa Rica did not attribute authenticity to the publication, it desires to make known the fact that Nicaragua, who was aware of the publication, did not disavow it either through the press or otherwise; and that *La Republica* was a journal violently opposed to the Government of Costa Rica.

That the Minister of Costa Rica in Nicaragua, in obedience to the instructions of his Government, placed in the hands of the Nicaraguan Government a copy of the issue of the newspaper referred to, together with a note in which he requested to be informed "categorically whether the text of said convention as therein published is authentic, as well generally as in each of its paragraphs, and, if not, that you make the appropriate corrections."

That His Excellency the Nicaraguan Secretary of Foreign Relations, in his note of August 4, 1913, replied to the communication of the Costa Rican Minister, informing him, "in confirmation of the statements contained in my note of the 12th of last June, that for considerations of an international character that involve not alone my own Government, the latter is keeping secret the convention entered into with the United States on the 8th of last February; and

that, since it relates to a pact not yet perfected, it is not proper for the Government of Nicaragua, on its part, for the reasons contained in its said note, to make any official declaration regarding any of the steps in such negotiations."

SECTION V

That later, through the medium of the North American press, and not officially, his Government learned that the Senate of that country was considering a treaty which the Costa Rican Government assumed was the same that had been reproduced in the newspaper *La Republica*, to which reference has already been made, and the same alluded to by His Excellency the Nicaraguan Secretary of Foreign Relations, in his notes of June 12 and August 4, 1913, as having been signed by the Governments of Nicaragua and the United States of America, relating to the opening of a canal through Nicaraguan territory, and to other matters then unimportant to his Government; and his Government also learned of certain steps undertaken by private individuals, interested in behalf of Costa Rica, before different Senators, to the end that when the treaty should be debated in the Senate and the treaty ratified, the rights of that country in relation to the construction of any interoceanic canal should not only not be lost sight of but should be respected and guaranteed.

SECTION VI

That, unofficially, towards the middle of August, 1914, the Government of Costa Rica was assured that the treaty for a canal across Nicaragua had been in fact tacitly withdrawn from consideration by the Senate of the United States of America, but that that body had before it at the time another pact similar in groundwork at least (if not identical) as to a canal across Nicaragua and negotiated by the same high contracting parties that had concluded the first, that is, the one bearing date of February 8, 1913; but that the Government of Costa Rica received no official notice of the new pact, nor advices respecting the signature and contents of the other agreement; nor was it informed respecting the then status of the negotiations in progress, because these were consummated in the strictest secrecy, as well on the part of the United States of North America as on the part of Nicaragua.

SECTION VII

That for these reasons the Government of Costa Rica was unable to formulate exact objections against the treaty of February 8, 1913, relating to an interoceanic canal across Nicaraguan territory; nor could it attack, except in the most general way, *any analogous compact* entered into later by the same parties, for, against the solemn and explicit promises of Nicaragua, her first care on that occasion was to conceal at all hazards from Costa Rica her negotiations relating to the canal.

SECTION VIII

That the balance of the year 1914 and all of 1915 passed without action by the North American Senate in the matter of the Nicaraguan canal, or at least, the Government of Costa Rica never heard anything to the contrary; and that while Costa Rica's mind was at rest on the subject, the *Evening Star* of February 2, of the present year, announced that the Committee on Foreign Relations of the North American Senate had recommended to that body the ratification of the treaty that had been concluded more than a year before by the Government of the United States with the Government of Nicaragua, among other objects, for the construction of an interoceanic canal through Nicaraguan territory.

SECTION IX

That on reading the advices published in the *Washington Star*, the Costa Rican Legation at Washington hastened to dispatch to the State Department of North America a carefully thought out note in which the Government of the latter country was appealed to to prevent the ratification by the Senate of the pact in question, on the ground that it was openly opposed to existing treaties between Costa Rica and Nicaragua, to the Cleveland Award, and to the harmonious sentiments that animated His Excellency the Chief Executive of the United States towards all the peoples of the Americas according to the then recent public and official declarations that had been made by him before over a thousand delegates from different nations that make up the American continent; and that with the same object in view the attorney for the Costa Rican Legation at Washington, Harry W. Van Dyke, Esquire, published a memorandum addressed

to the American Senate; but that effort failed as did the efforts of Costa Rica's Diplomatic Representative at Washington, for the *Congressional Record* of the 18th of February of that year recorded the news that the United States Senate, in executive session of the same day, had ratified a convention between the said Republic and that of Nicaragua, which had been subscribed at Washington on the 5th of August, 1914, and which, with additions adopted by that body, as translated into Spanish by the personal attorney of Costa Rica (because it has been impossible for that Government to secure a copy of the original Spanish text), reads as follows:

The Government of the United States of America and the Government of Nicaragua being animated by the desire to strengthen their ancient and cordial friendship by the most sincere coöperation for all purposes of their mutual advantage and interest and to provide for the possible future construction of an interoceanic ship canal by way of the San Juan River and the great Lake of Nicaragua, or by any route over Nicaraguan territory, whenever the construction of such canal shall be deemed by the Government of the United States conducive to the interests of both countries, and the Government of Nicaragua wishing to facilitate in every way possible the successful maintenance and operation of the Panama Canal, the two Governments have resolved to conclude a convention to these ends, and have accordingly appointed as their plenipotentiaries:

The President of the United States, the Hon. William Jennings Bryan, Secretary of State; and

The President of Nicaragua, Señor General Don Emiliano Chamorro, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua to the United States:

Who, having exhibited to each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I. The Government of Nicaragua grants in perpetuity to the Government of the United States, forever free from all taxation or other public charge, the exclusive proprietary rights necessary and convenient for the construction, operation, and maintenance of an interoceanic canal by way of the San Juan River and the great Lake of Nicaragua or by way of any route over Nicaraguan territory, the details of the terms upon which such canal shall be constructed, operated, and maintained to be agreed to by the two Governments whenever the Government of the United States shall notify the Government of Nicaragua of its desire or intention to construct such canal.

ART. II. To enable the Government of the United States to protect the Panama Canal and the proprietary rights granted to the Government of the United States by the foregoing article, and also to enable the Government of the United States to take any measure necessary to the ends contemplated herein, the Government of Nicaragua hereby leases for a term of 99 years to the Government of the United States, the islands in the Caribbean Sea known as Great Corn Island and Little Corn Island; and the Government of Nicaragua further grants to the Government of the United States for a like period of 99 years the right to establish, operate, and

DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW 191

maintain a naval base at such place on the territory of Nicaragua bordering upon the Gulf of Fonseca as the Government of the United States may select. The Government of the United States shall have the option of renewing for a further term of 99 years the above leases and grants upon the expiration of their respective terms, it being expressly agreed that the territory hereby leased and the naval base which may be maintained under the grant aforesaid shall be subject exclusively to the laws and sovereign authority of the United States during the terms of such lease and grant and of any renewal or renewals thereof.

ART. III. In consideration of the foregoing stipulation and for the purposes contemplated by this convention and for the purpose of reducing the present indebtedness of Nicaragua, the Government of the United States shall, upon the date of the exchange of ratification of this convention, pay for the benefit of the Republic of Nicaragua the sum of \$3,000,000 United States gold coin, of the present weight and fineness, to be deposited to the order of the Government of Nicaragua in such bank or banks or with such banking corporation as the Government of the United States may determine, to be applied by Nicaragua upon its indebtedness or other public purposes for the advancement of the welfare of Nicaragua in a manner to be determined by the two high contracting parties, all such disbursements to be made by orders drawn by the Minister of Finance of the Republic of Nicaragua and approved by the Secretary of State of the United States or by such person as he may designate.

ART. IV. This convention shall be ratified by the high contracting parties in accordance with their respective laws, and the ratifications thereof shall be exchanged at Washington as soon as possible.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done at Washington, in duplicate, in the English and Spanish languages, on the 5th day of August, in the year 1914.

WILLIAM JENNINGS BRYAN. [SEAL.]
EMILIANO CHAMORRO. [SEAL.]

SECTION X

That as soon as the ratification of the Bryan-Chamorro Treaty by the United States Senate appeared in the *Congressional Record*, the Costa Rican Legation at Washington gave careful study to the document, and, having become convinced that its contents were notoriously contradictory of the unquestionable rights of Costa Rica established in the Cañas-Jerez Treaty, the Cleveland Award and the Central American Treaty of Washington, hastened to lay before the North American Foreign Office, under date of the 21st of February, of the present year, a protest, respectful but vigorous, against the action of the Senate—the only step which, at the moment, could have been taken by a country possessed of no forces or defense but the law.

That even up to this time, although the matter is no longer a secret of state, Nicaragua has not deigned to make any communication to Costa Rica concerning the great problem. Meanwhile His Excellency, the United States Minister Plenipotentiary in Costa Rica, did have the goodness, under instructions from his Government, to send to the Costa Rican Secretary of Foreign Relations a courteous note, in which, supposing evidently that Costa Rica was fully informed concerning all that had taken place, he advised him that the United States Senate, on the 18th of that month, had, by a vote of 55 to 18, consented to the ratification of the Nicaraguan Canal Treaty, and had made two amendments, copy of which he enclosed, together with copy of a resolution of the Senate that reads as follows:

Provided, That whereas Costa Rica, Salvador, and Honduras have protested against the ratification of said convention in the fear or belief that said convention might in some respect impair existing rights of said states, therefore it is declared by the Senate that in advising and consenting to the ratification of the said convention as amended, such advice and consent are given with the understanding to be expressed as part of the instrument of ratification that nothing in said convention is intended to affect any existing rights of any of the said named states.

The complaint adds that at the moment of receiving that communication from His Excellency the American Minister, the Government of Costa Rica was completely in the dark as to the language of the treaty in question.

CHAPTER II

LEGAL BASES

It appears:

That the high party complainant relies for support of its action upon the following legal antecedents:

SECTION I

The treaty of limits entered into between Costa Rica and Nicaragua on the 15th of April, 1858, and known as the Cañas-Jerez Treaty, stipulates in its conducive part as follows:

ART. 6. The Republic of Nicaragua shall have exclusive dominion and the highest sovereignty over the waters of the San Juan River from their issue out of

the lake to their discharge into the Atlantic; but the Republic of Costa Rica shall have in those waters perpetual rights of free navigation from the said mouth of the river up to a point three English miles below Castillo Viejo, for purposes of commerce, whether with Nicaragua or with the interior of Costa Rica, over the San Carlos or Sarapiquí rivers or any other course starting from the part which has been established as belonging to that republic on the banks of the San Juan. The vessels of either country may touch at any part of the banks of the river where the navigation is common without paying any dues except such as may be established by agreement between the two Governments.

ART. 8. If the contracts for canalization or transit entered into before the Nicaraguan Government had knowledge of this convention should for any cause cease to be in force, Nicaragua agrees not to conclude any others relating to the objects above stated without first hearing the opinion of the Costa Rican Government respecting the disadvantages that may result to the two countries, provided that opinion be given within thirty days after the request therefor shall have been received, in case that the Nicaraguan Government should indicate that a decision is urgent; and in the event that the enterprise should cause no injury to the natural rights of Costa Rica, that opinion shall be advisory.

SECTION II

By the Esquivel-Román Convention, entered into by Costa Rica and Nicaragua on the 24th of December, 1886, both Republics submitted to the unappealable arbitral decision of His Excellency, the President of the United States of America, the question that had long been rife between the two Republics above mentioned concerning the validity of the Cañas-Jerez Boundary Treaty, Article VII of which first-named treaty provides as follows:

The arbitral award, whatever it may be, shall be held by the contracting parties to be a perfect and obligatory treaty, it shall admit of no recourse whatsoever and its execution shall commence thirty days after having been notified to the two Governments or their representatives.

SECTION III

The Cleveland Award rendered on the 22d of March, 1888, as the outgrowth of the agreement contained in the Esquivel-Román Convention contains the following definite findings respecting the Cañas-Jerez Treaty of Limits and especially respecting the two articles transcribed from that pact:

First. The above-mentioned Treaty of Limits, signed on the 15th day of April, one thousand eight hundred and fifty-eight, is valid.

Second. The Republic of Costa Rica under said treaty and the stipulations contained in the sixth article thereof, has not the right of navigation of the River

San Juan with vessels of war; but she may navigate said river with such vessels of the revenue service as may be related to and connected with her enjoyment of the "purposes of commerce" accorded to her in said article, or as may be necessary to the protection of said enjoyment.

Third. With respect to the points of doubtful interpretation communicated as aforesaid by the Republic of Nicaragua, I decide as follows:

10. The Republic of Nicaragua remains bound not to make any grants for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in Article VIII of the Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight. The natural rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the river San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; and perhaps other rights not here particularly specified. These rights are to be deemed injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbors injurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same.

11. The Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight, does not give to the Republic of Costa Rica the right to be a party to grants which Nicaragua may make for interoceanic canals; though in cases where the construction of the canal will involve an injury to the natural rights of Costa Rica, her opinion or advice, as mentioned in Article VIII of the treaty, should be more than "advisory" or "consultative." It would seem in such cases that her consent is necessary, and that she may thereupon demand compensation for the concession she is asked to make; but she is not entitled as a right to share in the profits that the Republic of Nicaragua may reserve for herself as a compensation for such favors and privileges as she, in her turn, may concede.

SECTION IV

That the Cañas-Jerez Treaty (the Treaty of Limits) has preserved its full obligatory force and effect down to the present day, as well by virtue of the categorical holdings in the Cleveland Award, which are set forth in the complaint, as by virtue of the permanent character of its stipulations. Wherefore, in the absence of mutual consent by the contracting parties, the treaty cannot be lawfully denounced or held to be dead, nor can the agreements therein stipulated be avoided so long as Costa Rica and Nicaragua continue as free nations,

of commerce, whether with Nicaragua or the interior of Costa Rica, through any of the waterways of that country that flow or may flow into the San Juan; it also gives to Costa Rican vessels the right, exempt from imposts of any class, to touch at points on the Nicaragua banks of that river along the part thereof in which navigation is common, and puts Costa Rican vessels of the revenue service on the same footing with the merchant vessels of the same country (Costa Rica) in order that they may protect its rights or for the said purposes of commerce.

That, with regard to the San Juan River, the conventional rights of Costa Rica are, in a certain aspect, less than the corresponding rights of co-ownership (*condominio*): Costa Rica, for example, cannot ply that stream with war vessels as, of course, Nicaragua can do; but, on the other hand, those rights are greater than those of a mere co-owner (*copropietario*) because the Costa Rican vessels, as well merchantmen as revenue cutters, in the zone in which navigation is common, have a free course over the whole river, throughout its length and breadth, and free access, exempt from imposts, to any point on the Nicaraguan shore.

That, if the United States, under the authority of the Bryan-Chamorro Treaty, should construct the interoceanic canal over the San Juan River route—the absolute ownership of which has been unreservedly ceded to her by Nicaragua—it is easy to imagine the destiny in store for Costa Rica's rights to navigation of the San Juan River.

That, this being the case, Nicaragua forgot completely, in executing the treaty, that she could not dispose unrestrictedly of the San Juan River because in and to that gift of nature Costa Rica also possesses perfectly clear rights of a practical importance perhaps equal to that of Nicaragua's rights; this all the more so since she sought to cancel them absolutely by means of a conveyance that is a nullity in every aspect, in so far as it covers the rights of a third party—Costa Rica. A sale of a thing that does not belong to the seller is null. This is an eternal axiom of law, and, it may be said, of organic justice, among all peoples who hold themselves to be civilized.

That the canal, looking at the matter from another viewpoint, would result, in fact, in causing a diminution of Costa Rican territory that today reaches in reality, in a certain sense, from the Nicaraguan

bank of the San Jaun River, from a point three English miles below Castillo Viejo, following the current, as far as the Atlantic Ocean; and that, notwithstanding this, Costa Rica's opinion has not even been consulted in the matter.

(b) *Costa Rica's Assent*

That by virtue of the Cañas-Jerez Treaty and the Cleveland Award, Costa Rica has a *consultative* voice which Nicaragua *must* invoke in order to enter into any agreement that purposes to carry through a project for the construction of a canal on her soil; but that, if by the undertaking the natural rights of Costa Rica should be injured, that voice ceases to be consultative and becomes converted into a *decisive* voice. That is to say, he adds, if the work should portend any injury to Costa Rica, the latter must be brought in as a *party* to the undertaking.

That, even had there been no Cañas-Jerez Treaty or Cleveland Award, the last-stated conclusion would stand, since it is no more than a maxim of equity; but that this time Nicaragua was entirely led astray, and that in spite of the protests of Costa Rica, and against them, she permitted herself to contract alone with the United States in a canal project, thereby unquestionably trampling upon the rights of Costa Rica, which she more than any other was under obligation to safeguard.

That Nicaragua did not even invoke Costa Rica's consultative voice, which was mandatory in this emergency, and that the canal convention, which was guarded so carefully and for so long a time kept secret by the United States and Nicaragua, being now known in all its details, Costa Rica cannot remain quiet and speechless, because that pact, from the moment in which it virtually attacks her rights of navigation of the San Juan River and the integrity of her national territory in that direction, cannot pass unnoticed by Costa Rica, who, armed with her right, maintains that that convention cannot be a law to any party without her acquiescence in such clauses as gravely menace her interests.

(c) *Navigation of Nicaragua's Maritime Waters*

That the Central American Treaty of Washington provides that the merchant vessels of any of the signatory nations shall have equal

rights with the national vessels of each of the other contracting parties when in another's seas, coasts, or ports.

That Nicaragua thus limited, in favor of her sisters of the former Federation of the Center of America — as they in their turn did for her benefit — her enjoyment of her maritime waters, coasts, and ports, for the period of ten years, which period has not yet elapsed and which is prorogable indefinitely from year to year.

That in consequence Nicaragua had not the power to give to the United States for a term of years a valid conveyance of any part of her littoral and waters in the Gulf of Fonseca and of her Corn Islands in the Caribbean Sea, without the obligation stipulated in Article IX of the Treaty of Washington; nor could she kill the said treaty in fact without the concurrence of the will of the other contracting parties.

That an impediment of equal force exists to the sale of the territory that may be occupied or needed by the interoceanic canal whilst that section covers parts of Nicaraguan land or water affected by the Central American Treaty of Washington, since *no one can transfer more rights than he has nor those that he does not possess.*

That by Article IV of the Cañas-Jerez Treaty, Salinas Bay on the Pacific Ocean, and the Bay of San Juan del Norte in the Atlantic, are common to Costa Rica and Nicaragua; and that, in consequence, if the United States should elect the two bays mentioned as the heads or entrances of her canal, the rights of Costa Rica in those bays would vanish down the horizon of history unless right and justice should retain their sway over the conscience of the North American people.

That from the foregoing it is indisputable that in all that relates to a canal across her territory, and, in general, in what concerns the navigation of her waters, Nicaragua's sovereignty is limited by the treaties and conventions cited, which pacts necessarily modify her personality and restrict it within the limits prescribed by her solemn agreements.

That the complainant refrains from specially invoking any principles of international law because of the fact that, Costa Rica's rights being based upon perfect contracts signed with and by Nicaragua, it is to those instruments alone that she must have recourse for the solution of the difference that has arisen, for the contract is the supreme law between the parties whether they be simple individuals or collective political entities. That the case now before the

Court is one of pure civil law, and the legislation of Nicaragua as well as that of Costa Rica and all nations on the globe recognize the commanding status of the contract as the legal bond between the parties. That as between states, the contract is something more than an obligatory tie: "respect for what has been agreed upon, and the faithful fulfillment thereof, are the cornerstones of national honor and there is no defense effective enough to justify an evasion of that canon."

CHAPTER IV

COMPLAINT AND EVIDENCE

It appears:

That with the complaint, the contents of which have been set forth, the attorney for the high party complainant files duly legalized copies of the following documents:

- A. — Attorney's credentials.
- B. — Cañas-Jerez Treaty.
- C. — Esquivel-Román Convention.
- CH. — The Cleveland Award.
- D. — General Treaty of Peace and Friendship between the Republics of Central America.
- E. — Convention creating the Central American Court of Justice.
- F. — Costa Rica's protest lodged with Nicaragua on the 27th of April, 1913.
- G. — Costa Rica's protest lodged with the United States on the 17th of April, 1913.
- H. — Nicaragua's reply of June 12, 1913.
- I. — Inquiry addressed by Costa Rica to Nicaragua July 30, 1913.
- J. — Nicaragua's reply of August 4, following.
- K. — Report on the Foreign Relations of Nicaragua, 1914.
- L. — *La República*, No. 8810, containing Chamorro-Weitzel Treaty signed at Managua, February 8, 1913.
- LL. — Statement of Mr. John N. Popham before the Committee on Foreign Relations of the United States Senate.
- M. — Costa Rica's note of February 2, 1916, to the United States.

DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW 201

- N. — Memorandum of Harry W. Van Dyke, Esquire, before the United States Senate.
- M. — *Congressional Record*, No. 49, of Washington, containing Senate resolution ratifying Bryan-Chamorro Treaty.
- O. — Costa Rica's protest of February 21, 1916, lodged with the United States.
- P. — Note of same day from the United States Legation at San José de Costa Rica to the Costa Rican Government.
- Q. — The Cleveland Award (same as appendix CH).
- R. — Reply of the United States to the protests of Costa Rica.

And, after invoking Article 1st of the *General Treaty of Peace and Amity and of the Convention for the establishment of a Central American Court of Justice*, concluded on the 20th of December, 1907, by the five Central American Republics, for the purpose of showing the jurisdiction of this Court, the attorney for the high party complainant, for the reasons set forth in his complaint, and the resources of diplomacy having been exhausted, prays this Court to render final judgment after due legal procedure in this action which he has brought against the Government of the Nicaraguan Republic, as follows:

First.—That the Bryan-Chamorro Treaty, to which paragraph 15 of the foregoing arguments of fact relates, violates the rights of Costa Rica that were acquired under the Cañas-Jerez Treaty, the Cleveland Award, and the Central American Treaty of Washington, in that—

(a) Costa Rica was not consulted by Nicaragua in order to enter into that convention;

(b) The execution of that pact may deprive Costa Rica of her rights of free navigation in the San Juan River from its outlet in the Atlantic, up stream to within three English miles of Castillo Viejo, and may prevent Costa Rican vessels in the merchant or fiscal service from touching at points on the northern banks of that river along the line indicated;

(c) The execution of the pact may also damage and diminish the Costa Rican shores of the said river along that line, as well as the mouths of the Costa Rican rivers that empty into the San Juan, and the lands about said shores and river mouths;

(d) The execution of the pact may also prejudice the co-ownership of Costa Rica in San Juan del Norte Bay and Salinas Bay, and may nullify that co-ownership entirely;

(e) Because of the potential injuries indicated in (b), (c), and (d) the decisive opinion of Costa Rica is necessary and indispensable to the perfecting of the pact, and that opinion has neither been given or asked for; and

(f) The pact, with regard to the leasing to the United States of Nicaraguan territory for a naval base in the Gulf of Fonseca, and of Great Corn Island and Little Corn Island which Nicaragua possesses in the Caribbean Sea, makes no reservation whatever in favor of Costa Rica, whose vessels possess, in all the maritime waters, coasts and ports of Nicaragua, the right to be treated as national vessels of Nicaragua — an omission which *ipso facto* renders nugatory Article IX of the Central American Treaty of Washington.

Second. — That the violation of Costa Rica's rights in the particulars above set forth, or in any one of them, renders the said Bryan-Chamorro pact void, particularly in view of the fact that when it was signed both contracting parties well knew of Nicaragua's lack of legal capacity to sign unrestrictedly; that is, they knew of Nicaragua's incapacity to sign without holding harmless the rights which Costa Rica possesses in the waters and territories that are involved in the convention, and

Third. — That the acts and omissions set forth in the two preceding points render the said Bryan-Chamorro Treaty null and void and without effect, especially with respect to Costa Rica, and that the Court declare and adjudge said treaty to be null and void and without effect.

Finally, in an interlocutory petition, complainant's attorney prays the Court that, under the authority of Article XVIII of the convention creating this tribunal, in order to prevent damages and conflicts that may perhaps be irreparable later, and pending the final decision in the case, the Court will issue an appropriate decree —

(A) Ordering, with relation to a canal across Nicaraguan territory, and with relation to anything that may interfere generally with the navigation of the waters of that Republic, that the *status quo* of the right that existed in Costa Rica prior to the Bryan-Chamorro Treaty, which gives rise to this action, be maintained, and

(B) Directing that, in view of the urgency of the matter, a communication be sent by telegraph to the Most Excellent, the Governments of Nicaragua and the United States of America, to be followed immediately by confirmation by mail, notifying them, with all due formality, of the institution of this action and of the decree prayed for in the preceding paragraph (A), if, as I venture to hope, my prayer for such precautionary measure shall be acceded to.

That the complaint, then can only have been inspired by the Chamorro-Bryan Treaty; but that with respect to that pact, the party complainant confesses that it had not initiated, much less pursued and brought to an end, any steps through diplomatic channels. How, then, he continues, could it be said that it was impossible to reach a settlement between the Foreign Offices of the two countries if not a single effort thereto was made — a requisite *sine qua non* (Article 1 of the convention) — so that the claim could be established, once tentative diplomatic negotiations had been exhausted?

That this being so, it is idle to attempt deductions, since they could be based only on conjecture. The truth of the allegations of fact must be demonstrated by *acts* or other classes of authentic documents (Article XVII of the Rules of the Court); it is useless to say that the complaint relates to a similar convention. The rules prescribed under the authority of a treaty require proofs, not mere pretext that may be availed of by one party to elude the obligation imposed. That as those proofs do not exist, nothing has been adduced to establish the competency of the Central American Court of Justice. That tribunal cannot hold itself above the constituted law; it bears no legal mission in this affair.

That, even on the supposition that the Chamorro-Bryan Treaty were not similar, but identical, in language with the Chamorro-Weitzel pact, the latter not having had any legal existence, is relegated to the category of a mere rejected project, and so true is this that it can be stated in all veraciousness that the effects produced with respect to Nicaragua and the United States by the Chamorro-Bryan pact arose or sprang into being from the exchange of ratifications of the latter. That, consequently, what should be, and must be, proven is that which has relation to the Chamorro-Bryan Treaty.

That the Central American Court of Justice could not, and cannot, legally prescind from that legal requirement without overstepping its powers, or, what amounts to the same thing, without bringing about the absolute nullity of all its acts; and that everything it shall decide, if it should reach the stage of decision, will be absolutely null and void for want of jurisdiction.

His Excellency the Nicaraguan Minister of Foreign Relations then refutes the votes of four of the members of the tribunal that were cast for the admission of the complaint; and afterwards he alleged that the other important element that must be considered in this

matter — and this throws into bold relief the incompetency of the Central American Court of Justice to take cognizance of the complaint — is that which is prayed in the complaint itself: "That therein, as though it were a matter that arose out of the relations between two states signatory to the convention that created this Court, the Court is requested to render a decision in a matter which in no way, and in none of its points, could be submitted to its cognizance." "We bid you enter," says the party complainant to the Central American Court of Justice, "we bid you enter upon a forbidden road which no one has opened to you; plunge your scythe into another's wheat; break an agreement signed by one who has entrusted to you no mission to take cognizance of his affairs." This and nothing else, he says, is what is asked when a decision in the following terms is prayed for:

That the violation of the rights of Costa Rica in the particulars heretofore imputed, or by any one of them considered by itself alone, nullifies the said Chamorro-Bryan pact, particularly because both contracting parties knew of Nicaragua's relative incapacity to execute the pact without restrictions — that is, without safeguarding the rights Costa Rica possesses in the waters and lands involved in the convention.

That, even limiting the viewpoint to the simple approval of a treaty by the Nicaraguan Congress — an approval given under the authority of the powers conferred upon that body by the political constitution — such pact could not come under the jurisdiction of the Central American Court, and even less a decision as to the validity of that act, emanating as it did from a governmental power exercising the sovereignty of the Republic. That the hypothesis might perhaps be admitted that sometimes the right exists to complain because of a violation, or for damages, or on some similar ground, but never could the legal impossibility of nullification of sovereignty be asked, much less the nullification of those acts in which a third high contracting party participates.

After other observations relating to this point, His Excellency the Nicaraguan Minister of Foreign Relations sets forth that his "Government believes, and, through him, so declares, that it is under no obligation to reply to the complaint of the Costa Rican Government because it cannot admit, even conditionally, the competency of the Court to take cognizance of, and to decide, that complaint."

DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW 209

Fifth Question. — Is it the duty of the Court, in view of the foregoing questions and decisions thereof, to declare the competency and jurisdiction of this Court to take cognizance of the complaint?

Answered affirmatively by Judges Medal, Oreamuno, Castro Ramírez, and Bocanegra, and negatively by Judge Gutiérrez Navas.

Sixth Question. — Is it the duty of the Court to declare its competency to take cognizance of and decide this cause on the merits?

Answered affirmatively by all of the judges, Judge Gutiérrez Navas concurring, however, only in so far as that the merits relate to differences between the Government of Costa Rica and the Government of Nicaragua.

Seventh Question. — Is the Court in duty bound to declare its competency to take cognizance of, and decide, this cause notwithstanding it relates to contractual interests of a nation not subject to the jurisdiction of this Court?

Answered affirmatively by Judges Medal, Oreamuno, Castro Ramírez, and Bocanegra, and negatively by Judge Gutiérrez Navas.

Eighth Question. — Was the Government of Nicaragua, by virtue of the eighth article of the Cañas-Jerez Treaty, under the obligation to consult, in advance, the opinion of the Government of Costa Rica respecting injuries that might result to the latter in connection with the concessions contained in the Bryan-Chamorro Treaty?

Answered affirmatively by Judges Medal, Oreamuno, Castro Ramírez, and Bocanegra, and negatively by Judge Gutiérrez Navas.

Ninth Question. — In the Bryan-Chamorro Treaty does Costa Rica possess the right to be heard decisively respecting the concession for a canal by way of the San Juan River and the Great Lake Nicaragua?

Answered affirmatively by Judges Medal, Oreamuno, Castro Ramírez, and Bocanegra, and negatively by Judge Gutiérrez Navas, who maintained that no evidence on this point appeared in the case.

Tenth Question. — In the Bryan-Chamorro Treaty does Costa Rica possess the right to be heard decisively respecting the canal concession in connection with any other point in Nicaraguan territory, provided the rights of Costa Rica specified in Point 10 of the Cleveland Award are not affected?

Answered negatively by all of the judges.

Eleventh Question. — Must it be taken as proven that in the said Bryan-Chamorro Treaty nothing is stipulated in protection of the rights of Costa Rica?

Answered affirmatively by Judges Medal, Oreamuno, Castro Ramírez, and Bocanegra, and negatively by Judge Gutiérrez Navas, who stated that in his opinion such stipulation was not necessary since the rights of a third party, which had not taken part in the treaty, nor assented to its negotiation, could not be affected; and that his opinion is based upon the doctrine of generality set up by the text writers on international law.

Twelfth Question. — Is it the duty of the Court to hold that the Bryan-Chamorro Treaty violated Costa Rica's rights to free navigation by the cession of a naval base in Fonseca Bay, and the cession of the islands known as Great Corn Island and Little Corn Island?

The Court, in view of the fact that it has agreed to the revision of the previous decision, accepted the proposition of Judge Oreamuno to substitute for the question immediately preceding, the following:

Shall it be understood that the Bryan-Chamorro Treaty violates the rights accorded to Costa Rica by Article Nine of the Treaty of Peace and Amity, of 1907?

Answered affirmatively by Judges Medal, Oreamuno, Castro Ramírez, and Bocanegra, and negatively by Judge Gutiérrez Navas.

Thirteenth Question. — Is it, consequently, the duty of the Court to hold and decide that the treaty that gives occasion for this complaint violates provisions of the Cañas-Jerez Boundary Treaty, the Cleveland Award, and the Treaty of Peace and Amity signed at Washington in 1907?

Answered affirmatively by Judges Medal, Oreamuno, Castro Ramírez, and Bocanegra, and negatively by Judge Gutiérrez Navas.

Fourteenth Question. — Can this Court decide the prayers contained in the second and third points of the complaint?

Answered negatively by all of the judges.

The cause is, therefore, decided as follows:

First. — The Court declares itself competent to decide the complaint presented.

Second. — The Court declares that the Government of Nicaragua has violated, to the injury of Costa Rica, the rights conferred upon the latter by the Cañas-Jerez Treaty of Limits of April 15, 1858, the Cleveland Award of March 22, 1888, and the Central American Treaty of Peace and Amity of December 20, 1907.

Third. — Respecting the prayer for the nullification of the Bryan-Chamorro Treaty, contained in the complaint, this Court can make no declaration whatsoever, because of the fact that the Government of the United States of North America is not subject to the jurisdiction of this Court.

THIRD PART

EXAMINATION OF FACTS AND LAW

CHAPTER I

CONCERNING THE PEREMPTORY EXCEPTION AS TO THE JURISDICTION OF THE COURT

Whereas:

The Government of Nicaragua, in its communication of August 1, last, answering the notification of the presentation of the complaint, having interposed a peremptory exception to the jurisdiction of the Court, and having also addressed itself to that point in its telegraphic despatches of the 1st and 26th of April, and 7th and 9th of Sep-

tember, instant, it is the duty of the Court to analyze the fundamentals of that exception and the evidence in support thereof, as well as the legal dispositions that govern the point, in order to determine whether or not this Court has the power to take cognizance of the cause.

Whereas:

It appears from the telegraphic despatches and the answer to the notification as to the complaint that the Nicaraguan Government rests its denial of the jurisdiction and competency of this Court on three grounds, to wit:

First. — That the negotiations with the Government of the United States concerning the interoceanic canal were conducted in the exercise of Nicaragua's unquestionable rights of sovereignty;

Second. — That she conducted those negotiations with a nation foreign to the jurisdiction of this Court, and

Third. — That although the Government of Costa Rica took certain diplomatic steps when the Chamorro-Weitzel Treaty was concluded — which instrument never went into effect — on the other hand it took absolutely no steps before the Nicaraguan Foreign Office in connection with the Chamorro-Bryan Treaty which gave rise to the present complaint, and that, consequently, the necessary prerequisite to the assumption of jurisdiction by this Court, prescribed by the organic convention, has not been fulfilled by the complainant Government.

Whereas:

With regard to the first of the foregoing allegations it is sufficient to observe that Article I of the convention that created this Court, and which constitutes its fundamental code, does not exclude from its cognizance any class of questions or differences that may arise between Central American states, whatever may be their origin and whatever their nature. Nothing exists to limit the jurisdiction of the Court by reason of the substance of the question in dispute, and it is, therefore, obvious that no Central American nation can exempt itself from the obligation to answer before this Court all actions brought by the other signatories to that convention, on the pretext that the injuries complained of are based upon acts performed in the exercise of sovereignty.

Whereas:

With regard to the allegation that the transaction out of which this complaint arose was concluded with a Power foreign to the jurisdiction of the Court, and that, consequently, the Court cannot decide the action brought by the Government of Costa Rica without entering a field foreign to it, and, therefore, forbidden ground, the Court is of opinion that, were that allegation sufficient to prevent the exercise of its function "to guarantee efficaciously the rights of the Central American Republics and maintain inalterably peace and harmony in their relations without being obliged to resort in any case to the employment of force"—the mission entrusted to it by the organic convention—a considerable number of controversies could arise amongst us that would have no other possible solution than through the resort to arms, and thus the most important element of finality sought to be fixed by the signatory states in instituting the Court, would be rendered nugatory. The Court can unquestionably carry out its functions without venturing upon forbidden ground, limiting itself, however, as in duty it is bound to do, to a determination of the juristic relations existing between Central American states engaged in controversy and to a declaration of the law with respect to them; but refraining absolutely from cognizance conditions of fact and law which their acts have created with respect to other nations not under the jurisdiction of this Court.

Whereas:

With regard to the allegation by the high party defendant that this Court is incompetent because "there is no consistent evidence, in acts or other classes of authentic documents, that, in order that the complaint might be admitted, the high party complainant had initiated—much less pursued and exhausted without reaching settlement—the diplomatic steps required by Article I of the convention creating the Court and its Seventeenth Rule," this Court, for its purposes in reaching a decision on this point, has before it the following facts:

First.—It appears in the record of this case, according to the statement of the high party complainant, that in April, 1913, it received private information that the Legislative Power of the Republic of Nicaragua had secretly approved a treaty, concluded also

in secrecy, between the Government of that Republic and the Government of the United States of America relating to the opening of an interoceanic canal through Nicaraguan territory, and that the Government of Costa Rica, acting on this information, instructed its diplomatic representatives at Managua and Washington to lodge protests against the conclusion of a convention which it conceived to be in violation of the rights vested in it by existing treaties between Costa Rica and Nicaragua and also by the Cleveland Award of March 22, 1888; and that, according to the evidence contained in the record, such protests were duly presented.

Second. — That the Government of Nicaragua, in its note of June 12, 1913, replied to the protest of Costa Rica, invoking the prerogatives of its sovereignty in justification of its conclusion of the treaty referred to and the necessity, for diplomatic reasons, of maintaining secrecy regarding the contents of that pact.

Third. — That the Government of Costa Rica, upon noting the text of the treaty as it appeared in a newspaper of this capital — which text was said to have been the same as that of the pact that prompted the protests referred to — repeated its demands upon the Nicaraguan Foreign Office and the latter replied insisting upon the necessity of maintaining secrecy regarding its diplomatic agreement with the United States of America; and that, with respect to its contents, it was impossible to make any statements whatever because the agreement had not yet been perfected.

Fourth. — That, having had notice that, although the treaty then in question had been withdrawn from the United States Senate, a new canal treaty was already under consideration by that body for ratification, and, considering, thereupon, that the road to a direct settlement with the Nicaraguan Foreign Office was already closed, the Government of Costa Rica undertook, before the Foreign Office of the United States of America and before the Senate itself, certain steps calculated to prevent the perfecting of the treaty; and that, finally, the pact received the supreme approval of the American Senate on the 18th of February of the present year.

Fifth. — That the high party defendant, in asserting that the necessary steps between the Foreign Offices had not been previously taken, seized upon the circumstance that the negotiations undertaken before it by the Costa Rican Foreign Office were prompted by the conclusion of the Chamorro-Weitzel Treaty which never reached the

stage of perfection, and not by the Bryan-Chamorro pact, which is the one that brought about the presentation of the complaint.

The calm examination this Court has made of the foregoing allegations enables it to avoid passing over unnoticed the dialectic error into which the High Party Defendant has fallen in mistaking the basis of the complaint; the Government of Costa Rica has not grounded its action specifically on the name by which the pact that gave rise to the complaint is known, but, instead, on the point that said pact refers to concessions for the construction of an interoceanic canal across Nicaraguan territory, with respect to which concessions it has consistently persisted in its protests ever since the year 1913.

This Court holds that it cannot accept as sufficient to support the exception respecting its competency to try this case the argument of the Nicaraguan Government that the Chamorro-Weitzel and Chamorro-Bryan treaties are two distinct negotiations and that Costa Rica's opposition to the first is of no avail against the second, because the negotiations being identical in their ultimate purpose to bring about the construction of an interoceanic canal—which is the desideratum against which, fundamentally, Costa Rica is complaining—it is impossible to avoid consideration of both negotiations as stages of the same transaction, for the arguments based exclusively on sovereignty and the necessity to safeguard a diplomatic secret, wherein the Nicaraguan Foreign Office takes refuge in its answer to the protests lodged by the Government of Costa Rica against the first pact, necessarily govern in respect to the other; and, therefore, the Court must be, and is, of the opinion that the Costa Rican Government did exhaust the requisite foreign office steps available to it for the purpose of reaching a settlement with the Republic of Nicaragua relating to the negotiations undertaken by the latter with the Government of the United States with the object of procuring the construction of an interoceanic canal; and, in view of the round affirmation of the Nicaraguan Foreign Office that its negotiations were covered by the attributes of national sovereignty, any new undertaking in the premises by the Costa Rican Government could with much more reason have been logically looked upon as futile.

The Court is furthermore of the opinion that it cannot under any theory admit as a correct interpretation the allegation that the final requisite of Article I of the Convention that gave life to this Court should be understood in the sense that the high parties here contend-

cionamiento" and "*servicio*" which are here given in the translator's version as "operation" and "maintenance" in his rendition of both Spanish texts] and variations appear in the preamble and in other parts of the canal stipulations. If any real innovation is to be noted in the later pact it would be that which leaves the construction of the canal to the free volition of the Government of the United States, whereas the first draft of a convention did not contain such an explicit right, but, on the contrary, left the details and terms of the undertaking to the mutual understanding of the two Governments "whenever the construction of the canal shall be decided upon," and remained silent as to whether, when that time arrived, the will of either or both should be necessary.

With these historic antecedents essential as they are to a precise establishment of the international legal effect of the first article of the pact known as the Bryan-Chamorro Treaty, it is possible to approach with intelligence a solution of the problem: "Is a simple option conveyed or is a sale consummated?" The doubt arises from the divergence on the opinions of the high parties litigant. On the one hand, counsel for the Costa Rican Government maintain that the contract constitutes a perfect sale, whereas, His Excellency the Nicaraguan Minister of Foreign Relations, in his communications to this Court, upholds the theory that a simple option was stipulated, calling for consummation in the future, when the preliminary studies for the location of the canal shall have been made and agreement shall have been reached as to where and when it would be most advantageous to begin operations.

There can be no doubt whatever that the Bryan-Chamorro Treaty effects a perfect sale of the ownership rights necessary for the construction of an interoceanic canal by way of the San Juan River and the Great Lake of Nicaragua, or by any other route over Nicaraguan territory. "To grant in perpetuity" is to alienate, to transfer ownership; it is a full manifestation of the will to divest with complete renunciation of all the incidents and elements that define and constitute ownership. Here also is present the *animus adquirendum* on the part of the purchaser who undertakes to pay the price of the sale. The indispensable legal conditions exist, therefore, to sustain the fact that the Bryan-Chamorro Treaty constitutes a sale, and, further, a conveyance of title and ownership with a certain and determined object, at least in relation to the real rights which Nica-

aragua alienates in the San Juan River and the Great Lake of Nicaragua in connection with the construction of an interoceanic canal.

The concept of an *option*, on the other hand, involves a wholly different idea. Here there is no actual alienation of ownership, but a mere expectancy, realizable only upon the fulfillment of certain stipulated circumstances and conditions. And in the Bryan-Chamorro Treaty, which is of an onerous and commutative character, there is a perfect obligation on the part of the Nicaraguan Government, subject simply to the determination of the United States Government as to the practical execution of the contract. The conveyance might be described as an alternative alienation, but not an option in the legal sense of the word. To concrete: by that diplomatic contract, Nicaragua alienated once and forever the necessary rights for the construction of an interoceanic canal by way of the San Juan River and Great Lake of Nicaragua or by any other route whatever through Nicaraguan territory, and she thereby made it impossible to recover those rights for herself or to make them the subject of other contracts.

Whereas:

With respect to the legal effects of the treaty in so far as they concern Costa Rica, a third party that took no part in its negotiation, consideration must be given to the situation existing between that country and Nicaragua in the sphere of territorial rights prior to the date on which the canal treaty was raised to the category of a law for the high signatory parties, in order to judge the full effect and scope of the violation of rights that is the subject of Costa Rica's action before this Court. The Cañas-Jerez Treaty, a perfectly valid contract still in force, contains, in the concrete, the following stipulations fixing the rights of both Republics in the said river:

ART. 6. The Republic of Nicaragua shall have exclusive dominion and the highest sovereignty over the waters of the San Juan River from their issue out of the lake to their discharge into the Atlantic; but the Republic of Costa Rica shall have in those waters perpetual rights of free navigation from the said mouth of the river up to a point three English miles below Castillo Viejo, for purposes of commerce, whether with Nicaragua or with the interior of Costa Rica, over the San Carlos or Sarapiquí Rivers or any other course starting from the part which has been established as belonging to that Republic on the banks of the San Juan. The vessels of either country may touch at any part of the banks of the river, where the navigation is common without paying any dues except such as may be established by agreement between the two Governments.

the Nicaraguan Government should indicate that a decision is urgent; and in the event that the enterprise should cause no injury to the natural rights of Costa Rica, *that opinion shall be advisory.*

Article X of the Cleveland Award provides:

The Republic of Nicaragua remains bound not to make any grants for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in Article VIII of the Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight. The natural rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the River San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; *and perhaps other rights* not here particularly specified. These rights are to be deemed injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbors injurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same.

These concomitant dispositions restrict Nicaragua's right to dispose freely of her ownership over the waters of the San Juan River, since it is indispensable to the legality of the contractual act first to consult the decisive opinion of Costa Rica in consideration of the fact that both Republics maintain perfect rights in that river, which, since ancient times, has been looked upon as the artery that would some day be availed of to give life to the long projected canal.

Whereas:

Examining the existing *statu juris* between the Republics of Costa Rica and Nicaragua in the light of the clear and positive provisions of the Cañas-Jerez Treaty and the Cleveland Award, declaration will now be made as to how the Bryan-Chamorro Treaty affects that legal status.

That treaty was concluded without official notice to the Government of Costa Rica, notwithstanding a solemn agreement imposed upon Nicaragua, the unescapable obligation to consult the opinion of the former before granting any concession for an interoceanic canal. This solemn agreement was enacted by the Cañas-Jerez

Treaty hereinbefore reproduced in its pertinent parts, in the preceding whereas; and it was confirmed by the arbitral award of President Cleveland as shown in its declaratory paragraph No. 10, also reproduced in the same whereas.

Costa Rica should have been consulted; and her voice could have been consultative or decisive as the case may be. If the concession is one that violates her "natural rights," "it would seem that her consent is necessary," says the Cleveland Award; and, in the event, continues the award, "that the concession does not affect such rights, her voice must be purely consultative."

In the case of the Bryan-Chamorro Treaty, the essential consultation was not had. This Court unanimously decided this point, supported by the Nicaraguan Government's own statement, wherein it explained that failure by attributing to itself sufficient power and authority to execute concessions of that kind in the exercise of its sovereignty unrestricted within its proper jurisdictional limits.

The Court, however, entertains a different opinion in deciding this point. The canal concession executed in favor of the Government of the United States of North America has two aspects: the alienation of the rights necessary for the construction of an inter-oceanic canal by way of the San Juan River, and the power conferred upon the purchaser to locate that passageway in any other point in Nicaraguan territory. In the first case Costa Rica ought to have been consulted and her voice would have been decisive in character, because any concession covering the San Juan River involves a violation of her "natural rights" specified in paragraph 10 of the Cleveland Award.

Costa Rica possesses undisputed title to the right bank of the river, to the land situated within her jurisdictional limits; she has joint ownership in the ports of San Juan del Norte and in Salinas Bay; she possesses the contractual right of perpetual navigation in the river, beginning at a point three miles below Castillo Viejo, accompanied by the full privilege of transit and commerce, and Nicaragua is impressed with the duty not to interfere with navigation, but, on the contrary, to keep the course of the river open; Costa Rica enjoys also the right to moor her vessels on both banks throughout the entire zone in which navigation is common, and the rights involved in guarding and defense "with all means within her reach."

Whereas:

Due account should be taken of the allegations of the Nicaraguan Foreign Office, that its Government, in concluding the Bryan-Chamorro Treaty, acted within its sovereign powers in contracting with relation to its exclusive territorial circumscription. The particular and general terms of that contract, however, go to establish the contrary.

From the face of Article 1 the conviction arises that the alienation affects lands and waters of the San Juan River, fluvial territory over which both countries are impressed with rights and obligations, and that neither is capable of contracting effectively with respect thereto independently of the other, and, even without a violation of the natural rights of Costa Rica, the contract would still lack the indispensable requisite of counting upon the consultative voice of that Republic, respecting "the disadvantages that may result to the two countries" from the convention.

From the tenor of the dispositions so many times invoked in this action, not a single case of concession for canal purposes could be considered that should not be submitted—to the cognizance of Costa Rica always—and to her decision when her rights are injured or affected.

The argument that it would be necessary to perfect the canal contract by means of a subsequent convention between the United States and Nicaragua, in order thereby to fulfill the unescapable requisite of consulting Costa Rica and to obtain, in that case, her consent, also fails to serve as a pretext in giving a just concordant interpretation to the Bryan-Chamorro Treaty in connection with the Cañas-Jerez Treaty of 1858. It has already been said that in the former is conveyed a perfect alienation, a transfer, in consideration of a fixed price, of the rights of ownership necessary and convenient for the canal route, of which route the Republic of the United States of North America is made owner in perpetuity and without limitation.

Neither the Cañas-Jerez Treaty nor the decision of its authorized interpreter favors that thesis. Those diplomatic instruments impose the obligation to consult Costa Rica as an act preliminary to all canal contracts, and they even prescribe the term within which that consultation shall take place in cases wherein an urgent decision may be necessary. Otherwise Costa Rica's right to be heard and to

give her decisive opinion would be wholly lacking in efficacy. This should be exercised on an occasion propitious for obtaining some practical result, not only in order to guarantee her territorial and contractual rights, but to lend to the common interest of both peoples the concurrence of her opinion and counsel.

To wait until the projected work shall have been located, until the "natural rights" of Costa Rica shall have suffered concrete and material injury, in order then to be able to determine whether the voice of the high party complainant must be consulted, is equivalent to ignoring that there are any acts, of nations or individuals, which, short of material realization, possess inherent powers to injure. The civil law provides a remedy against those acts that carry with them a menace to the rights of a private owner, and the same principle governs in interstate relations, which abound with cases wherein a state demands redress, in the name of its fundamental rights of existence and preservation, for an act that involves a simple menace or danger to the development of those rights.

Whereas:

The high party complainant is justified in impugning the Bryan-Chamorro Treaty as violative of its rights, compromised in an alienation made without its concurrence or consent, in order to convey material and moral interests that did not belong exclusively to the grantor, but were derived from a solemn contract that marked out the line of conduct that must be followed in the future in canal projects. And it is of no avail to allege that the American Senate, in ratifying the said treaty, enacted an additional amendment that contained the provision:

Provided, That whereas Costa Rica, Salvador, and Honduras have protested against the ratification of said convention in the fear or belief that said convention might in some respect impair existing rights of said states, therefore it is declared by the Senate that in advising and consenting to the ratification of the said convention as amended, such advice and consent are given with the understanding, to be expressed as a part of the instrument of ratification, that nothing in said convention is intended to affect any existing right of any of the said named states.

The intention here indicated is most noble and of high importance, since it establishes an obligation upon the United States; but it is without efficacy in so far as it deals with the legal relations between

the nations in litigation, for the injury to the rights of Costa Rica had been consummated and the amendment did not produce the effect of restoring things to the legal status created by the Cafias-Jerez treaty.

Besides, it appears from the Official Gazette of the Nicaraguan Government of August 24th of the present year, that the Nicaraguan Congress, in giving its approval to the Bryan-Chamorro Treaty, excluded the amendment of the American Senate, thus destroying the concert of action of the two Governments on a point of first importance and leaving to the Senate amendment only such moral force as it may have.

Whereas:

Article IX of the General Treaty of Peace and Amity subscribed at Washington stipulates as follows:

The merchant ships of the signatory countries shall be considered upon the sea, along the coasts, and in the ports of said countries as national vessels, they shall enjoy the same exceptions, immunities, and concessions as the latter, and shall not pay other dues nor be subject to further taxes than those imposed upon and paid by the vessels of the country.

The Bryan-Chamorro Treaty, in granting to the United States a lease of a naval base in the Gulf of Fonseca and of the islands known as Great Corn Island and Little Corn Island in the Caribbean Sea, did not reserve to the high party complainant the rights that are above set forth, and which, reciprocally, were granted by Nicaragua and Costa Rica, for a term of ten years, with an option of extension for a further term. That omission makes those rights uncertain, since those leased territories and the naval base that may be established will be exclusively subject to the laws and sovereign authority of the United States, a nation with which Costa Rica does not maintain the same legal relations, in the matter of navigation, as she does with Nicaragua.

Whereas, finally:

The moment has arrived in which to enter upon an examination of the prayers in the complaint, which are comprised in points second and third, and in which it is prayed that the Bryan-Chamorro pact be declared null and void, not only for the violation of Costa Rica's rights embodied in that treaty, but also on the ground that "when

it was signed both contracting parties well knew of Nicaragua's lack of legal capacity to sign unrestrictedly." The Court, in considering this point in the complaint, declared, upon the unanimous consensus of opinion of its members, that it could not render a decision thereon because of the fact that the Republic of the United States of North America was not subject to the jurisdiction of the Central American Court of Justice, a tribunal called upon exclusively to pass upon the laws enforceable among the Central American states in cases brought before it for the settlement of their conflicting interests and their controversies.

To judge of the validity or invalidity of the acts of a contracting party not subject to the jurisdiction of the Court; to make findings respecting its conduct and render a decision which would completely and definitely embrace it — a party that had no share in the litigation, or legal occasion to be heard — is not the mission of the Court, which, conscious of its high duty, desires to confine itself within the scope of its particular powers.

This doctrinary opinion is strengthened by the valuable opinion of the high party complainant as given forth by one of its counsel, the Licentiate don José Astúa Aguilar, who, in formulating his final argument at the public hearing on the 11th of the present month, presented a resumé and concrete statement of the concluding part of the complaint for the purposes of the final decision, as follows:

That the unquestionable rights of Costa Rica, established by the Cañas-Jerez Treaty, the Cleveland Award, and the General Treaty of Peace and Amity of Washington, have been violated by the high party defendant in the Bryan-Chamorro Treaty, and that, according to the texts of the said conventions and arbitral award, that party was legally incapacitated from concluding that pact without the intervention and consent of my Government.

The Court considered, discussed, and decided that all and each of those violations of right had occurred. As a faithful interpreter of the contractual obligations that bind the countries in dispute, and inspired by the universal doctrine that controls the harmonious existence of states, it declared that the Government of the Republic of Nicaragua committed upon the Government of Costa Rica the violations of legal rights claimed by the latter. Its decision could not be more fully stated, because such decision could have no binding force against a state foreign to the institutional system created by the Treaties of Washington.

Therefore:

This Court of Justice, in the name of the Republics of Central America, in the exercise of the jurisdiction that has been conferred upon it by the Convention of Washington of 1907, to which it owes its existence, and in conformity with the provisions of Articles I, XIII, XXI, XXII, XXIV and XXV of the said convention, and 6, 38, 43, 56, 76 and 81 of the Rules of Court, and also in accordance with the conclusions voted at the session of the 22d of the present month, and by a majority of four votes against the vote of Mr. Justice Gutiérrez Navas, who was not present, hereby renders the following

DECISION:

First. — It is declared that the peremptory exception interposed by the high party defendant is denied, and that, in consequence, this Court is competent to decide the complaint brought by the Government of the Republic of Costa Rica against the Government of the Republic of Nicaragua.

Second. — It is declared that the Government of Nicaragua has violated, to the injury of Costa Rica, the rights granted to the latter by the Cañas-Jerez Treaty of Limits of April fifteen, eighteen hundred and fifty-eight, by the Cleveland Award of March twenty-second, eighteen hundred and eighty-eight, and by the Central American Treaty of Peace and Amity of December twentieth, nineteen hundred and seven; and

Third. — That, respecting the prayer in the complaint asking that the Bryan-Chamorro Treaty be declared null and void, this Court can make no declaration whatsoever.

Let this decision be notified to the high parties in interest and to the other Central American Governments.

ANGEL M. BOCANEGRA,
DANIEL GUTIÉRREZ,
M. CASTRO R.,
NICOLÁS ORBAMUNO,
SATURNINO MEDAL,
MANUEL ECHEVERRÍA,
Secretary.

Annex 22

Costa Rica-Nicaragua, Convention for the Canalization of the San Juan River
(Cordero-Zúñiga), San José, 5 April 1940 (in force 21 June 1940),
Articles 3, 10

Source: Ministerio Relaciones Exteriores, *Convención para la canalización
del Río San Juan y otros particulares relacionados con dicha canalización*
(San José: Imprenta Nacional, 1940) 15-22

TRANSLATION

Costa Rica-Nicaragua, Convention for the Canalization of the San Juan River (Cordero-Zúñiga), San José, 5 April 1940

ARTICLE III


The Republic of Nicaragua recognizes the Costa Rican territorial and navigational rights, as they are defined and marked right now; but in order that the Republic of Costa Rica may take advantage of all the San Juan waterway for the economic development of the northern regions, which are near the Lake of Nicaragua and the San Juan River, Nicaragua agrees to extend to Costa Rica, once the works referred to on the previous Article are completed, the right of free navigation that Costa Rica has now on one part of the San Juan River, - from three English miles counted from the Castillo Viejo's outside fortifications downstream up to the San Juan River's outlet on the Atlantic-, to all said River's flow, from its origin in the Lake of Nicaragua to its outlet to the sea, also extending this right to all the flow of the channel referred to in the previous Article, from its separation from the San Juan River to its outlet to the Atlantic, whether in the San Juan del Norte Port or whatever port located on the Nicaraguan territory, according to what was stated above.

The concession of this right of navigation on the indicated part of the San Juan River, to wit: from the origin in the Lake of Nicaragua up to three English miles starting from the Castillo Viejo's outside fortifications downstream and in above channel, neither entails any limitation of the sovereignty, nor shall confer a right to Costa Rica to oppose or prevent the works that Nicaragua should see fit to implement on this part of the river - where Costa Rica was not entitled before to free navigation-, and in the river's channel to the Atlantic, referred above.

ARTICLE X

This Convention shall be null and void and the affairs will go back to the state they were before its signing and entry into force, in the case that Nicaragua fails to start the construction of the works, within the conditions herein stated, in a five years term after the last ratification.

Likewise, this Convention shall be null and void, and in such case the affairs shall return to the state they were before its signing and entry into force, in case that Nicaragua fails to complete the works, within the conditions herein stated, in a five years term after they were started.

BIBLIOTECA A.L.

23445

MINISTERIO DE RELACIONES EXTERIORES

CONVENCION
para la Canalización del Río San Juan
y otros particulares
relacionados con dicha canalización

EXPOSICION
AL CONGRESO CONSTITUCIONAL DEL
LIC. DON TOBIAS ZUNIGA MONTUFAR



341.026
C79 c

IMPRENTA NACIONAL
SAN JOSE COSTA RICA
1940

Artículo III

La República de Nicaragua reconoce los derechos territoriales y de navegación de Costa Rica, tal como están actualmente definidos y demarcados; pero a fin de que la República de Costa Rica pueda aprovechar toda la vía fluvial del San Juan para el desenvolvimiento económico de las regiones del Norte, cercanas al Lago de Nicaragua y río San Juan, Nicaragua conviene en extender a Costa Rica, una vez terminadas las obras a que se refiere el artículo anterior, el derecho de libre navegación que ahora tiene en una parte del río San Juan, —desde tres millas inglesas contadas de las fortificaciones exteriores del Castillo Viejo aguas abajo hasta su desembocadura en el Atlántico—, a todo el curso de dicho río, desde su origen en el Lago de Nicaragua hasta su salida al mar, haciendo extensivo también este derecho a todo el curso del canal de que se ha hablado en el artículo anterior, desde su separación del río San Juan hasta su terminación en el Atlántico, ya sea en el puerto de San Juan del Norte o en otro cualquiera situado en territorio nicaragüense, según se ha dicho.

La concesión de este derecho de navegación en la indicada parte del río San Juan, o sea desde su origen en el lago hasta tres millas inglesas a partir de las fortalezas exteriores del Castillo Viejo aguas abajo y en el canal mencionado, no entraña ninguna limitación de soberanía ni conferirá derecho a Costa Rica para oponerse o impedir las obras que Nicaragua tenga a bien hacer en esta parte del río,—en donde Costa Rica no tenía antes de ahora derecho de libre navegación—, y en el referido canal del río al Atlántico.

Artículo IV

Como consecuencia de lo estipulado en los artículos anteriores, una vez terminadas las obras de canalización de que se ha hablado, los buques o embarcaciones costarricenses podrán usar el puerto de San Juan del Norte y aquel en que terminare el canal del río, si no fuere el mismo; navegar en la bahía de este nombre y en la del nuevo puerto, en todo el curso del río San Juan y del canal referido y en la parte nicaragüense del río Frio, exactamente en los mismos términos y condiciones en que puedan hacerlo los buques o embarcaciones nicaragüenses, y sujetos a los mismos impuestos que éstos deban pagar. Del mismo modo, los buques o embarcaciones nicaragüenses, podrán navegar por el brazo del Colorado, y usar el puerto costarricense de la Boca del Colorado, en los mismos términos y condiciones, y sujetos a los mismos impuestos que los buques costarricenses.

Esta concesión de navegación no entraña ninguna limitación de soberanía y, por lo tanto, no confiere derecho a Nicaragua para impedir ni oponerse a las obras que Costa Rica tenga a bien hacer en el mencionado brazo del Colorado.

En caso de muerte, ausencia o incapacidad de un miembro de la Comisión o del Dirimente, o en caso de omisión, excusa o cesación en el desempeño de sus funciones, se procederá a sustituirlo inmediatamente en la forma antes indicada. Los fallos dictados por la mayoría de la Comisión o por el Dirimente serán definitivos.

Los avalúos de terrenos o propiedades particulares y de los daños o perjuicios causados a éstas, tendrán por base el valor que tenían los bienes antes de la firma de la presente Convención.

Mientras estén pendientes los procedimientos en averiguación y determinación de las indemnizaciones, no podrán impedirse, demorarse o estorbarse las obras de canalización.

Artículo IX

Ambas Repúblicas contratantes declaran: que las nuevas concesiones que recíprocamente se otorgan en la presente Convención, incluyendo la del artículo VI, tienen por único objeto aprovechar la vía fluvial del río San Juan, la bahía de San Juan del Norte y la del nuevo canal y puerto que se construyeren, para la expansión económica de las regiones vecinas a dicha vía en ambos países. En consecuencia, en el caso de que Nicaragua, de acuerdo con sus compromisos internacionales, celebre un tratado con un tercer Estado para la construcción, operación, mantenimiento y defensa de un canal mayor, de océano a océano, a través de su territorio, las concesiones que Costa Rica y Nicaragua se otorgan por este Convenio, no perjudicarán los derechos que ambos países tienen en virtud de tratados y laudos anteriores, y tales derechos serán en ese caso debidamente considerados. Quedan, por consiguiente, esos derechos, en la eventualidad de un canal interoceánico, tal como existían con anterioridad a la firma de la presente Convención.

Artículo X

La presente Convención quedará sin ningún valor ni efecto y las cosas volverán al estado que tenían antes de su suscripción y perfeccionamiento, si Nicaragua no hubiere principiado la construcción de la obra, dentro de las condiciones aquí consignadas, en un plazo de cinco años a partir de la última ratificación.

Igualmente, la presente Convención quedará sin ningún valor ni efecto, y en tal caso las cosas volverán al estado que tenían antes de su suscripción y perfeccionamiento, si Nicaragua no hubiese terminado la construcción de la obra, dentro de las condiciones aquí consignadas, en un plazo de cinco años después de comenzadas.

Annex 23

Costa Rica-Nicaragua, Pact of Amity (Sevilla-Esquivel)
Washington, D.C., 21 February 1949 (in force 15 July 1949)

Source: 1465 UNTS, 221

ANNEX

RESOLUTION OF THE COUNCIL OF THE ORGANIZATION OF AMERICAN STATES ACTING AS A PROVISIONAL ORGAN OF CONSULTATION APPROVED AT THE MEETING OF DECEMBER 24, 1948

The Council of the Organization of American States, acting as a Provisional Organ of Consultation, after studying the detailed report of the Committee that was in Costa Rica and Nicaragua for the purpose of investigating the facts and antecedents of the situation created between those sister Republics,

Resolves:

I. To request the Governments of Costa Rica and Nicaragua, in compliance with the Inter-American Treaty of Reciprocal Assistance, to give full assurances to the Provisional Organ of Consultation that they will immediately abstain from any hostile act toward each other.

II. To make known, with due respect to the Government of Nicaragua, that, in the light of data gathered by the Committee of Information especially appointed for the purpose, that Government could and should have taken adequate measures at the proper time for the purpose of preventing: (a) the development, in Nicaraguan territory, of activities intended to overthrow the present regime in Costa Rica, and (b) the departure from Nicaraguan territory of revolutionary elements who crossed the frontier and today are prisoners or are still fighting against the Government of Costa Rica.

III. To make known, with due respect to the Government of Costa Rica, that it can and should take adequate measures to rid its territory of groups of nationals or foreigners, organized on a military basis with the deliberate purpose of conspiring against the security of Nicaragua and other sister Republics, and of preparing to fight against their Governments.

IV. To request very respectfully that both Governments, by every available means, faithfully observe the principles and rules of non-intervention and solidarity contained in the various inter-American instruments signed by them.

V. To continue in consultation until positive assurances have been received from the Governments of Costa Rica and Nicaragua, that, as they are assuredly disposed to do, they will adhere strictly to the lofty principles and rules that constitute the juridical basis of American international life.

VI. To recommend that all American Governments actively co-operate toward the best observance of the principles which inspire this Resolution.

VII. To inform all States Members of the Organization of the steps taken in this case.

Annex 24

Costa Rica-Nicaragua, Agreement pursuant to Article IV of the Pact of Amity
(Fournier-Sevilla) Washington, D.C., 9 January 1956, Articles 1, 4

Source: 1465 UNTS 233,234

No. 24844

**NICARAGUA
and
COSTA RICA**

Agreement pursuant to article IV of the Pact of Amity, signed on 21 February 1949 (with a declaration by the Government of Costa Rica). Signed at Washington on 9 January 1956

Authentic text: Spanish.

Registered by Nicaragua on 1 July 1987.

**NICARAGUA
et
COSTA RICA**

Accord complémentaire à l'article IV du Pacte d'amitié, signé le 21 février 1949 (avec une déclaration du Gouvernement costa-ricien). Signé à Washington le 9 janvier 1956

Texte authentique : espagnol.

Enregistré par le Nicaragua le 1^{er} juillet 1987.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE GOVERNMENTS OF THE REPUBLICS
OF COSTA RICA AND NICARAGUA PURSUANT TO ARTICLE IV OF
THE PACT OF AMITY SIGNED ON 21 FEBRUARY 1949²

The Governments of the Republics of Costa Rica and Nicaragua, reaffirming their desire to maintain the close friendship as befits two fraternal and neighbouring peoples, and to avoid in future any dispute which may disrupt their fraternal relations; desiring to implement the provisions of article IV of the Pact of Amity of 21 February 1949² concerning the best manner of putting into practice the provisions of the Convention concerning the Duties and Rights of States in the event of Civil Strife³ through a bilateral agreement; recognizing the effective efforts to bring about peace made by the Council of the Organization of American States acting provisionally as the Organ of Consultation, which, in its resolution II of 24 February 1955, appealed to the two Governments to sign the aforesaid Agreement; have agreed to enter into this Agreement in the presence of the Chairman and other Members of the Council of the Organization of American States. To this end, His Excellency, the President of Costa Rica, Don José Figueres, and His Excellency the President of Nicaragua, General Anastasio Somoza, have designated the following Plenipotentiaries:

For the Republic of Costa Rica: His Excellency Ambassador Fernando Fournier,
Representative of Costa Rica on the Council of the Organization of American States;

For the Republic of Nicaragua: His Excellency Ambassador Dr. Guillermo Sevilla Sacasa,
Representative of Nicaragua on the Council of the Organization of American States;

who, having shown their full powers, found in good and due form, agree to sign this Agreement:

I

The two Parties, acting in the spirit which should move the members of the Central American family of nations, shall collaborate to the best of their ability in order to carry out those undertakings and activities which require a common effort by both States and are of mutual benefit and, in particular, in order to facilitate and expedite traffic on the Pan American Highway and on the San Juan River within the terms of the Treaty of 15 April 1858⁴ and its interpretation given by arbitration on 22 March 1888,⁵ and also in order to facilitate those transport services which may be provided to the territory of one Party by enterprises which are nationals of the other.

II

The two Parties shall, in so far as possible and with the utmost diligence, arrange for the supervision of their common border as a means of preventing the illegal entry

¹ Came into force on 25 May 1960 by the exchange of the instruments of ratification, which took place at Washington, in accordance with article XV.

² See p. 217 of this volume.

³ League of Nations, *Treaty Series*, vol. CXXXIV, p. 45.

⁴ *British and Foreign State Papers*, vol. 48, p. 1049.

⁵ *Ibid.*, vol. 79, p. 555.

of either weapons or armed groups from the territory of one of the Parties into the territory of the other. The authorities of the two Governments, and, in particular, the border authorities, shall exchange, as fully as possible, any information which may come to their attention and which might help to avoid such incidents.

III

Each Party undertakes to apply the necessary measures to prevent revolutionary movements from being fomented or from rising up in its territory against the other Party.

Each Party undertakes to apply all measures to prevent any person, national or alien, operating anywhere under its jurisdiction from participating in or abetting any subversive undertaking, terrorist act or attack against the Head of State of the other Party, the other members of the executive authorities, the high civil or military authorities, candidates for those positions and their immediate family members, irrespective of whether relations maintained are between the two Governments.

IV

The contribution, supply or provision of weapons, war material or equipment, the training, enlistment, organization or transport of personnel, or the acquisition or supply of monies for the aforesaid purposes, together with any other similar acts, shall be considered as participation for purposes of the preceding article.

V

The two Parties agree to apply, in respect of asylees, articles I, II, III, V, VI, VII, VIII, IX and X of the Convention on Territorial Asylum,¹ signed at the Tenth Inter-American Conference, the text of which follows:

“Article I. Every State has the right, in the exercise of its sovereignty, to admit into its territory such persons as it deems advisable, without through the exercise of this right, giving rise to complaint by any other State.”

“Article II. The respect which, according to international law, is due the jurisdictional right of each State over the inhabitants in its territory, is equally due, without any restriction whatsoever, to that which it has over persons who enter it proceeding from a State in which they are persecuted for their beliefs, opinions, or political affiliations, or for acts which may be considered as political offenses.

“Any violation of sovereignty that consists of acts committed by a government or its agents in another State against the life or security of an individual, carried out on the territory of another State, may not be considered attenuated because the persecution began outside its boundaries or is due to political considerations or reasons of state.”

“Article III. No State is under the obligation to surrender to another State, or to expel from its own territory, persons persecuted for political reasons or offences.”

“Article V. The fact that a person has entered into the territorial jurisdiction of a State surreptitiously or irregularly does not affect the provisions of this Convention.

¹ United Nations, *Treaty Series*, vol. 1438, No. I-24378.

Annex 25

Costa Rica-Nicaragua, Agreement of Understanding between the Ministries
of Tourism of the Republic of Costa Rica and the Republic of Nicaragua
(Roesch-Guzmán), Barra del Colorado, 5 June 1994

Source: Copy of the original

TRANSLATION

AGREEMENT OF UNDERSTANDING BETWEEN THE MINISTRIES OF TOURISM OF THE REPUBLICS OF NICARAGUA AND COSTA RICA

In strict compliance with the dispositions set forth by the Presidents of the Republics of Nicaragua and Costa Rica in their meeting of the twenty ninth of May, nineteen ninety four in San Juan del Sur, Nicaragua, and within the period stipulated by them, the Ministers of Tourism of those same countries, namely Lic. Fernando Guzmán C. and Ing. Carlos F. Roesch C., respectively, in a meeting held in Barra del Colorado, Costa Rica, on the fifth day of June, nineteen ninety four, decided on the following agreement of understanding

- 1- The Ministers express their decision to carry out a joint development of tourism between the two countries, at all possible levels and with particular emphasis on sustainable tourism. They will endeavour to immediately turn this economic activity into an irrefutable example of their governments' willingness to strengthen even more the economic and cultural ties and bond of friendship that have united them in the past.
- 2- In order to coordinate all matters related to the above, it is agreed that a permanent liaison commission be set up between the two ministries, to be presided over by the Ministers and made up of an equal number of members on both sides. The Ministers undertake to announce the names of the members in writing, within a period of no more than fifteen days from the signing of this agreement of understanding. This liaison commission will be responsible for both coordination between ministries and the coordination of all matters related to the other public and private sectors of their respective countries.
- 3- The Costa Rican Minister expresses his willingness to cooperate with Nicaragua, within his possibilities, in regard to all matters concerning training and tourism marketing, at every level, offering his support to Nicaragua in its efforts to obtain the necessary financial backing from the local and international organizations it deems appropriate.
- 4- The Costa Rican Minister likewise expresses his willingness to offer his assistance, within his possibilities, in the elaboration of tourism development strategies appropriate to Nicaragua, in order that it may take advantage of the success Costa Rica has achieved and, by the same token, avoid making the same mistakes.
- 5- With regard to the development of tourism in the border zones between the two nations, both Ministers reiterate their commitment to participate in and cooperate with the efforts of the Bi-national Yes-to-Peace Commission. In this manner, they will endeavour to assist in the

development and transit of tourism between the two countries and develop tourism that is sustainable between them, in close collaboration with the private sectors of both countries' tourist industries. To this end, they agree to sign a document, alongside this one, that deals specifically with this topic.

- 6- Both Ministers will take all the steps they consider necessary for securing the joint investment and tourist development of the tourist businesses in both nations.

We hereupon agree to sign on the fifth of June, nineteen ninety four in Barra del Colorado, Costa Rica.

(signature)

Mr. Fernando Guzmán Cuadra
Minister of Tourism
Republic of Nicaragua

(signature)

Mr. Carlos F. Roesch Carranza
Minister of Tourism
Republic of Costa Rica



INSTITUTO COSTARRICENSE DE TURISMO
 TELEFONO (506) 23-1733 FAX: (506) 55-4997 APARTADO. 777-1009
 SAN JOSÉ, COSTA RICA

**ACUERDO DE ENTENDIMIENTO
 ENTRE LOS MINISTERIOS DE TURISMO DE LAS
 REPUBLICAS DE NICARAGUA Y COSTA RICA**

En cumplimiento fiel a las disposiciones de los Presidentes de las Repúblicas de Nicaragua y Costa Rica, en su reunión del veinte y nueve de mayo de mil novecientos noventa y cuatro, en San Juan del Sur, Nicaragua, y dentro del plazo indicado por ellos, los Ministros de Turismo de estos países, Lic. Fernando Guzmán C. y el Ing. Carlos F. Roesch C., respectivamente, reunidos en Barra de Colorado, Costa Rica, el quinto día de junio de mil novecientos noventa y cuatro, convienen en el siguiente acuerdo de entendimiento:

1- Los Ministros manifiestan su decisión de realizar un desarrollo conjunto del turismo entre ambos países, a todos los niveles posibles y con particular énfasis en el turismo sustentable. Procurarán que esta actividad económica se convierta de inmediato en una muestra fehaciente de la voluntad de sus gobiernos, de estrechar aún más los lazos comerciales, culturales y de amistad que históricamente los ha unido.

2- Para coordinar todo lo pertinente al punto anterior, se acuerda conformar una comisión de enlace permanente entre los dos ministerios, presidida por los Ministros y conformada por un número igual de miembros por ambas partes. Los Ministros se comprometen a notificar por escrito los nombres de las personas integrantes, en un plazo no mayor a quince días de la firma de este acuerdo de entendimiento. Esta comisión de enlace tendrá, tanto la responsabilidad de la coordinación interministerial como la coordinación de todo lo pertinente con los otros sectores públicos y privados de sus respectivos países.

3- El Ministro de Costa Rica manifiesta su voluntad de cooperar, dentro de sus posibilidades, con Nicaragua en todo lo que corresponda a capacitación y mercadeo turístico, a todo nivel, dando su apoyo para que Nicaragua busque la financiación necesaria con los organismos locales e internacionales que considere pertinentes.

COSTA RICA SERA SIEMPRE NUESTRA MEJOR OPCION



INSTITUTO COSTARRICENSE DE TURISMO

TELÉFONO (506) 23-1733 FAX: (506) 55-4997 APARTADO. 777-1000
SAN JOSE, COSTA RICA

4- Así mismo, el Ministro de Costa Rica manifiesta su voluntad en facilitar, al grado de sus posibilidades, su asistencia en el diseño de las estrategias de desarrollo turístico oportunas para Nicaragua, para que se aproveche de los éxitos logrados en Costa Rica y, a su vez, procure no cometer los mismos errores.

5- En relación con el desarrollo del turismo en la zonas fronterizas entre las dos naciones, ambos Ministros reiteran su total voluntad de participar y cooperar con los esfuerzos de la Comisión Binacional Si-A-Paz. De esta manera, procurarán facilitar el desarrollo y tránsito del turismo entre las dos naciones y lograr un desarrollo de turismo sustentable entre ellas, en coordinación estrecha con los sectores privados de la industria turística de ambos países. Para ello, acuerdan firmar, paralelo a este, un documento que específicamente trate este tema.

6- Ambos Ministros efectuarán todas las acciones que consideren pertinentes para lograr la coíversión y desarrollo turístico conjunto de parte de los empresarios turísticos de ambas naciones.

Firmamos de acuerdo, a los cinco días del mes de junio de mil novecientos noventa y cuatro en Barra de Colorado, Costa Rica,

Lic. Fernando Guzman Cuadra
Ministro de Turismo
República de Nicaragua

Ing. Carlos R. Roesch Carranza
Ministro de Turismo
República de Costa Rica

COSTA RICA SERÁ SIEMPRE NUESTRA MEJOR OPCION

Annex 26

Costa Rica-Nicaragua, Agreement of Understanding between the Ministries
of Tourism of the Republic of Costa Rica and the Republic of Nicaragua on
the Tourist Activity in the Border Zone of the San Juan River
(Roesch-Guzmán), Barra del Colorado, 5 June 1994

Source: Copy of the original

TRANSLATION

AGREEMENT OF UNDERSTANDING BETWEEN THE MINISTRIES OF TOURISM OF THE REPUBLICS OF NICARAGUA AND COSTA RICA ON THE TOURIST ACTIVITY IN THE BORDER ZONE OF THE SAN JUAN RIVER

In strict compliance with the dispositions set forth by the Presidents of the Republics of Nicaragua and Costa Rica in their meeting of the twenty ninth of May, nineteen ninety four in San Juan del Sur, Nicaragua, and within the period stipulated by them, the Ministers of Tourism of those same countries, namely Lic. Fernando Guzmán C. and Ing. Carlos F. Roesch C., respectively, in a meeting held in Barra del Colorado, Costa Rica, on the fifth day of June, nineteen ninety four, decided on the following agreement of understanding on the tourist activity in the border zone of the San Juan River:

- 1- Both Ministers expressed their wholehearted intention of developing joint sustainable tourism in the San Juan River zone, with the aim of establishing a fluid transit zone between the two countries and coordinate co-investment and development.
- 2- In order to coordinate all matters pertaining to the previous point, they agree to employ the commission of permanent liaison between the two ministries, which was set up in the agreement of understanding signed on this same day.
- 3- The Ministers, aware of the situation that exists within the area, agree to seek out and implement all the mechanisms at their disposal in order to promote the development of tourist activity. To this end, they agree to:
 - A- Carry out a detailed account of every tourist company operating in the zone, as well as of the ships used and their registration acronyms, and inform the other country of these.
 - B- Develop the necessary mechanisms, within the next thirty days, in order to be able to provide pre-registered companies with tourism cards, which the latter must purchase, fill in correctly and hand over to the relevant authorities. The Ministers will endeavour to ensure that the same tourist card will serve the tourists for multiple entries and exits during the thirty days of its validity and that the passports are not the tourists' only valid form of identification.
 - C- Develop the necessary mechanisms, within the next thirty days, for providing pre-registered companies with sports fishing licenses, which they must purchase, fill in correctly and hand over to the relevant authorities.
 - D- Undertake the necessary construction and improvements, within a period of six months, in order that the ships and the tourists may

comply with the required migration procedures efficiently, promptly and safely.

E- Coordinate with the Bi-national Commission of Yes-to-Peace, endeavouring that, insofar as it is possible, those in charge of dealing with tourists are park keepers or migration officials.

F- That the corresponding immigration authorities of both countries keep operating their respective offices during all the days and timetables that are deemed appropriate to maximize the tourist movement between both countries.

The Ministers agree to request SITCA that in its actions before the international community sustainable tourism be included as an alternative priority for the integral development of the zone.

We agree to sign on the fifth of June, nineteen ninety four in Barra del Colorado, Costa Rica.

(signature)
Lic. Fernando Guzmán Cuadra
Minister of Tourism
Republic of Nicaragua

(signature)
Ing. Carlos F. Roesch Carranza
Minister of Tourism
Republic of Costa Rica



INSTITUTO COSTARRICENSE DE TURISMO
 TELEFONO (506) 23-1733 FAX: (506) 55-4997 APARTADO. 777-1000
 SAN JOSE, COSTA RICA

**ACUERDO DE ENTENDIMIENTO
 ENTRE LOS MINISTERIOS DE TURISMO DE LAS
 REPUBLICAS DE NICARAGUA Y COSTA RICA
 SOBRE LA ACTIVIDAD TURISTICA
 EN LA ZONA FRONTERIZA DEL RIO SAN JUAN**

En cumplimiento fiel a las disposiciones de los Presidentes de las Repúblicas de Nicaragua y Costa Rica en su reunión del veinte y nueve de mayo de mil novecientos noventa y cuatro en San Juan del Sur, Nicaragua, y dentro del plazo indicado por ellos, los Ministros de Turismo de estos países, Lic. Fernando Guzmán C. y el Ing. Carlos F. Roesch C, respectivamente, reunidos en Barra de Colorado, Costa Rica, el quinto día de junio de mil novecientos noventa y cuatro, convienen en el siguiente acuerdo de entendimiento sobre la actividad turística en la zona fronteriza del Rio San Juan:

- 1- Ambos Ministros manifiestan su decidida intención de realizar un desarrollo turístico sustentable en conjunto en la zona del Rio San Juan, teniendo como meta alcanzar la conformación de una zona de tránsito fluido entre ambos países y de co-inversión y desarrollo coordinado.
- 2- Para coordinar todo lo pertinente al punto anterior, acuerdan utilizar la comisión de enlace permanente entre los dos ministerios, la cual fue creada en el acuerdo de entendimiento firmado este mismo día.
- 3- Los Ministros, concientes de la situación existente en la zona, acuerdan buscar e implementar todos los mecanismos a su alcance para facilitar el desarrollo de la actividad turística, por ello convienen en:
 - A- Realizar un registro detallado de cada compañía turística que opere en la zona, de los navíos utilizados y sus siglas de registro, y comunicarlo al otro país.
 - B- Desarrollar, dentro de los próximos treinta días, los mecanismos necesarios para que puedan entregarle tarjetas de turismo a las empresas pre-registradas, quienes tendrán la obligación de comprarlas, llenarlas correctamente y entregarlas a las autoridades correspondientes. Los Ministros procurarán que la misma tarjeta de turismo le sirva al turista para múltiples entradas y salidas durante los treinta días de su validez, así mismo, que el pasaporte no sea el único documento válido de identificación para los turistas.

AB

COSTA RICA SERA SIEMPRE NUESTRA MEJOR OPCION

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INSTITUTO COSTARRICENSE DE TURISMO

TELEFONO (506) 23-1733 FAX: (506) 55-4997 APARTADO. 777-1000
SAN JOSE, COSTA RICA

- C- Desarrollar, dentro de los próximos treinta días, los mecanismos necesarios para que puedan entregarse licencias de pesca deportiva a las empresas pre-registradas, quienes tendrán la obligación de comprarlas, llenarlas correctamente y entregarlas a las autoridades correspondientes.
 - D- Efectuar las construcciones y mejoras necesarias para que los navios y los turistas puedan cumplir con los trámites migratorios requeridos con eficiencia, rapidez y seguridad, para lo cual se establece un plazo de seis meses.
 - E- Coordinar con la Comisión Binacional de Si-A-Paz, procurando que, en la medida de lo posible, los responsables de atender a los turistas sean guarda parques u oficiales de migración.
 - F- Que las autoridades de migración de ambos países mantengan sus respectivas oficinas funcionando durante todos los días y horarios que se consideren pertinentes para maximizar el movimiento turístico entre los dos países.
- 4- Los Ministros acuerdan solicitarle a SITCA que, en sus gestiones ante la comunidad internacional, que se incluya al turismo sustentable como una alternativa prioritaria para el desarrollo integral de la zona.

Firmamos de acuerdo, a los cinco días del mes de junio de mil novecientos noventa y cuatro, en Barra de Colorado, Costa Rica,

Lic. Fernando Guzmán Cuadra
Ministro de Turismo
República de Nicaragua

Ing. Carlos E. Roesch Carranza
Ministro de Turismo
República de Costa Rica

COSTA RICA SERA SIEMPRE NUESTRA MEJOR OPCION

Annex 27

Army of the Republic of Nicaragua-Ministry of Public Security of the
Republic of Costa Rica, Joint Communiqué (Cuadra-Castro),
La Cruz, 8 September 1995

Source: Copy of the original

TRANSLATION**JOINT COMMUNIQUÉ
ISSUED BY THE ARMY OF THE REPUBLIC OF NICARAGUA AND
THE MINISTRY OF PUBLIC SECURITY OF THE REPUBLIC OF
COSTA RICA**

The Army of the Republic of Nicaragua and the Police Force of the Republic of Costa Rica, represented by the Commander-in-Chief of the Army of the Republic of Nicaragua, Army General Joaquín Cuadra Lacayo and the Minister of Public Security of the Republic of Costa Rica, Lic. Juan Diego Castro Fernández, in the exercise of their respective legal powers, issue the following communiqué:

With a view to complying with the National Defence missions, in addition to those of the Defence of Territorial Integrity, Independence and Sovereignty conferred by both countries' respective Constitutions and, with the aim of strengthening ties of friendship, respect, cooperation and the coordination of joint operations that contribute to the peace and stability of the border sectors common to both nations, the Nicaraguan Army and the Costa Rican Police Force inform the appropriate authorities and the general public of the following:

FIRST: In the interests of strengthening the National Security, sovereignty and independence of our countries, the Nicaraguan Army and the Costa Rican Police Force will coordinate, as of this date, the operational plans that involve our authorities and allow for the necessary development of joint, parallel patrolling at the border of both countries, thereby joining forces in the battle against the illegal trafficking of persons, vehicles, contraband of any nature and joint operations, following the exchange of information and planning carried out by both parties.

SECOND: As of this moment, the chiefs of the border units of both countries will coordinate and cooperate more closely in planning and carrying out joint parallel patrolling along our countries' common border, exchanging operative information of the common entities involved, with respect to all activities affecting the stability of the terrestrial and aerial border zone related to drug trafficking, arms trafficking, smuggling, rustling, naval piracy, illegal trafficking of persons and the presence and/or passage of criminal gangs.

THIRD: Both institutions will coordinate the training of guides and canine techniques in each country's national centres, in addition to exchanging experiences or seminars, in specialties related to dog training and the exchange of experiences in police teaching specialties. Meals, travel allowances, transport and accommodation expenses will be covered by the country hosting the training.

FOURTH: In the interests of developing cordial bilateral cooperation, a quarterly meeting will be held between:

- The (Northern) Border Police Commanders of the Republic of Costa Rica and the Nicaraguan Army's Chief of the Southern Military Detachment.
- The Border Police Commander of Santa Cruz, Costa Rica and the Chief of the 4th Regional Military Command of the Nicaraguan Army.
- To carry out meetings, after specifying both parties' points of interest on the agenda, with operations chiefs (Chief of Staff/Chief of Operations of First and Second Command)

We hereupon sign at "El Murciélago" Training Centre, La Cruz, Costa Rica on the eighth of September, nineteen ninety five.

(signature)
 JOAQUIN CUADRA LACAYO
 Army General
 Commander-in-Chief
 of the Nicaraguan Army

(signature)
 JUAN DIEGO CASTRO FERNANDEZ
 Minister of Public Security
 Republic of Costa Rica

(signature)
 FERNANDO CALDERA AZMITIA
 Chief of National Police
 Republic of Nicaragua
 Brigade Commander

(signature)
 JUAN FELIX BARRANTES ALFARO
 Colonel of the Costa Rican Police Force

**COMUNICADO CONJUNTO
DEL EJERCITO DE LA REPUBLICA DE NICARAGUA
Y EL MINISTERIO DE SEGURIDAD PUBLICA DE LA REPUBLICA DE
COSTA RICA**

El Ejército de la República de Nicaragua y la Fuerza Pública de la República de Costa Rica, representados por el Comandante en Jefe del Ejército de la República de Nicaragua, General de Ejército Joaquín Cuadra Lacayo y el señor Ministro de Seguridad Pública de la República de Costa Rica, Lic. Juan Diago Castro Fernández, en ejercicio de las facultades legales correspondientes, emiten el siguiente comunicado:

El Ejército de Nicaragua y la Fuerza Pública de Costa Rica, con el objetivo de dar cumplimiento a las misiones de Seguridad Nacional, Defensa de la Integridad Territorial, Independencia y Soberanía, conferidos por las respectivas Constituciones de ambos países y con el objetivo de fortalecer las relaciones de amistad, respeto, cooperación y coordinación de operaciones conjuntas que contribuyan con la paz y estabilidad en los sectores fronterizos comunes a nuestros Estados, damos a conocer a las autoridades competentes y ciudadanía en general lo siguiente:

PRIMERO: El Ejército de Nicaragua y la Fuerza Pública de Costa Rica, en interés de fortalecer la Seguridad Nacional, la soberanía e independencia de nuestros países, coordinarán a partir de esta fecha los planes operativos, que involucren a nuestras autoridades y permitan el desarrollo oportuno del patrullaje conjunto paralelo al borde fronterizo de ambos países, aunando esfuerzos en la lucha contra el tránsito ilegal de personas, vehículos, contrabando de todo tipo y operaciones conjuntas, previo intercambio de información y planificación de ambas partes.

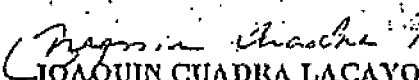
SEGUNDO: Los jefes de unidades fronterizas de ambos países, a partir de este momento, coordinarán y estrecharán la cooperación en la planificación y realización de patrullajes conjuntos paralelo al borde fronterizo común de nuestros Estados, intercambiando información operativa de los órganos comunes involucrados, en todas las actividades que afecten la estabilidad de la zona fronteriza terrestre y aérea, relacionadas al narcotráfico, tráfico de armas, contrabando, abigeato, piratería naval, tránsito ilegal de personas, presencia y/o movimiento de banda (s) de delincuentes.


TERCERO: Ambas instituciones coordinarán la instrucción de guías y técnicas canina, en los centros nacionales de cada país, así como realizar intercambio de experiencias o seminarios, en esas especialidades propias de la instrucción canina e intercambio de experiencia en especialidades docentes policiales. Los gastos de alimentación, viáticos, transporte y alojamiento, serán asumidos por el país sede de la instrucción.


CUARTO: En interés del armonioso desarrollo de cooperación bilateral, establecemos la realización de una reunión trimestral, entre:


- Los Comandantes de Policía de Fronteras (Norte) de la República de Costa Rica y el Jefe del Destacamento Militar Sur del Ejército de Nicaragua.
- El Comandante de Policía de Frontera de La Cruz, Costa Rica y el Jefe del 4to. Comando Militar Regional del Ejército de Nicaragua.
- Llover a cabo reuniones, previa puntualización de la agenda de interés de ambas partes con la representación de jefes al nivel operativo (Jefe de Estado Mayor/Jefe de Operaciones con Primer y Segundo Comandante).

Firmamos en el Centro de Entrenamiento "El Murociénago" La Cruz, Costa Rica a los 8 días del mes de setiembre de mil novecientos noventa y cinco.


JOAQUÍN CUADRA LACAYO
 General de Ejército
 Comandante en Jefe
 del Ejército de Nicaragua


JUAN DIEGO CASTRO FERNÁNDEZ
 Ministro de Seguridad Pública
 República de Costa Rica


FERNANDO CALDERA AZMITIA
 Jefe de la Policía Nacional
 República de Nicaragua
 Comandante de Brigada


JUAN FELIX BARRANTES ALFARO
 Coronel de la Fuerza Pública de
 Costa Rica

Annex 28

Ministry of Defence of Nicaragua- Ministry of Government, Police and
Public Security of Costa Rica, Joint Communiqué (Cuadra-Lizano),
Managua, 30 July 1998

Source: Copy of the original

TRANSLATION

JOINT COMMUNIQUÉ OF THE MINISTRY OF DEFENCE OF NICARAGUA AND THE MINISTRY OF GOVERNMENT, POLICE AND PUBLIC SECURITY OF COSTA RICA

The Ministers of Defence of Nicaragua and of Government, Police and Public Security of Costa Rica, aware of the needed cooperation between both neighbouring and bordering States for the development and security of their shared border zone and, in view of the recent differences that have occurred in the last days, declare the following:

FIRST: The Costa Rican Minister of Government, Police and Public Security expresses the respect of his country's authorities' for the dominion and sovereign jurisdiction of Nicaragua over the entire San Juan River, as set down in the international documents currently in force between the two States.

SECOND: The Nicaraguan Minister of Defence, for his part, expresses his respect for Costa Rica's navigation rights on the San Juan River, three English miles downstream from Castillo Viejo to its estuary at Punta Castilla in the Caribbean Sea, set down in the international instruments currently in force between the two nations.

THIRD: Both Ministers manifest their willingness to resolve the regrettable inconveniences that occurred over the past few days and, for this purpose, they are establishing the following orders for their respective subordinates:

1. The crew of the vessels of the Public Force of Costa Rica that carry out relief of police and the supply of the border posts located on the right bank of the San Juan River will navigate along the aforementioned river after having given the required notice carrying only their normal arms, and the Nicaraguan authorities may accompany the Costa Rican vessels making this journey along the San Juan River in their own separate means of transportation. Should the Nicaraguan vessel not accompany the Costa Rican vessels, the latter may carry out their rounds in keeping with the corresponding border post reports as indicated in this agreement.
2. The Costa Rican authorities must report to the Nicaraguan posts throughout their journey along the San Juan River.
3. The operational mechanics of this agreement will be defined and regulated in a subsequent meeting of senior officers from the Nicaraguan military authorities and the Costa Rican police force.

4. The Ministers of Defence of Nicaragua and of Government, Police and Public Security of Costa Rica agree to hold regular meetings in the interest of maintaining harmonious and mutually cooperative relations.

In witness whereof, we sign this agreement in Managua, Nicaragua on the thirtieth of July, nineteen ninety eight.

JAIME CUADRA S.
MINISTER OF DEFENCE
OF NICARAGUAPOLICE

JUAN RAFAEL LIZANO S.
MINISTER OF GOVERNMENT,
AND PUBLIC SECURITY

**“COMUNICADO CONJUNTO MINISTERIO DE DEFENSA DE
NICARAGUA Y MINISTERIO DE GOBERNACION, POLICIA Y
SEGURIDAD PUBLICA DE COSTA RICA**

Los Ministros de Defensa de Nicaragua y de Gobernación, Policía y Seguridad Pública de Costa Rica, conscientes de la necesaria cooperación entre ambos Estados fronterizos y hermanos para el desarrollo y seguridad de su zona fronteriza común y habida cuenta de las diferencias suscitadas en los últimos días, manifiestan lo siguiente:

Primero: El Ministro de Gobernación, Policía y Seguridad Pública de Costa Rica manifiesta el respeto de las autoridades de su país al dominio y sumo imperio de Nicaragua sobre la totalidad del río San Juan, tal y como lo definen los instrumentos internacionales vigentes entre ambos Estados.

Segundo: El Ministro de Defensa de Nicaragua manifiesta por su parte el respeto a los derechos de navegación de Costa Rica sobre el río San Juan, desde tres millas inglesas río abajo del Castillo Viejo hasta su desembocadura en Punta Castilla en el Mar Caribe, definidos por los instrumentos internacionales vigentes entre ambos Estados.

Tercero: Ambos Ministros manifiestan su plena voluntad de solución de los lamentables inconvenientes suscitados en días anteriores y para tal efecto adoptan las siguientes directrices para sus correspondientes subordinados:

1. Los tripulantes de las embarcaciones de la Fuerza Pública de Costa Rica que realizan los relevos de policía y el abastecimiento de los puestos fronterizos ubicados en la ribera derecha del Río San Juan, navegarán por el mencionado río, una vez hecho el aviso correspondiente, portando únicamente sus armas de reglamento, para lo cual las autoridades militares nicaragüenses podrán acompañar, en sus propios medios de transporte, a las embarcaciones costarricenses que realicen el recorrido por el río San Juan. Cuando la nave nicaragüense no acompañe las naves costarricenses, éstas podrá realizar el recorrido respetando los reportes correspondientes en los puestos fronterizos de conformidad con lo indicado en este acuerdo.
2. Las autoridades costarricenses deberán reportarse en los puestos nicaragüenses a lo largo del recorrido que realicen en las aguas del Río San Juan.

3. La mecánica operativa del presente acuerdo será definida y reglamentada en una reunión posterior entre los altos mandos de las autoridades militares nicaragüenses y de la fuerza pública de Costa Rica.
4. Los Ministros de Defensa de Nicaragua y de Gobernación, Policía y Seguridad Pública de Costa Rica, en interés de mantener una relación de armonía y mutua cooperación, acuerdan celebrar reuniones periódicas.

En fe de lo cual firmamos el presente acuerdo en la ciudad de Managua, Nicaragua, a los treinta días del mes de Julio de mil novecientos noventa y ocho.

JAIME CUADRA S.
MINISTRO DE DEFENSA DE
NICARAGUA

JUAN RAFAEL LIZANO S.
MINISTRO DE SEGURIDAD PUBLICA
DE COSTA RICA"

Annex 29

Costa Rica-Nicaragua, Agreement (Tovar-Caldera), Alajuela,
26 September 2002

Source: 2197 UNTS 78

[TRANSLATION - TRADUCTION]

THE MINISTERS FOR FOREIGN AFFAIRS OF THE REPUBLICS OF COSTA RICA AND NICARAGUA,

Expressing their unswerving will and determination to develop and strengthen their ties of brotherhood and good-neighbourliness, as countries united by strong historical, geographical, cultural and human ties,

Considering the importance to our peoples of economic integration projects such as the customs union, the free-trade agreement between Central America and the United States of America, the Puebla-Panamá Plan and the association agreement between Central America and the European Union, among other significant regional initiatives;

Noting the importance of deepening cooperation between the two States for the sustainable development of the border region, including the establishment of a special development fund;

Bearing in mind that the strengthening of our good-neighbourly relations is essential to the energetic promotion of Central American economic and cultural integration and the sustainable human development of our countries for the benefit of our peoples;

Convinced that economic integration projects and the creation of an appropriate climate for investment, trade and international cooperation can be further promoted insofar as both parties resort to peaceful means of settlement of any situations that may affect the successful course of their relations; and

Confident that the fraternal spirit that unites our peoples and the renewed bilateral relations will allow for the strengthening of a broad area of understanding and harmony to our mutual advantage,

Have agreed as follows:

1. The Governments of Costa Rica and Nicaragua shall, from today's date, as a matter of cross-border comity, eliminate any charge that might hinder free movement across their common border by means of a temporary entry or exit permit.
2. The Government of Costa Rica expresses its willingness to eliminate the fee for visas granted to Nicaraguan citizens carrying an ordinary passport as from 1 January 2003. If the elimination of the visa fee requires an amendment to the existing law, the Government of Costa Rica shall promote and support such an amendment, on the understanding that the Legislative Assembly shall take a decision in accordance with its sovereignty. As soon as the Government of Costa Rica eliminates the visa fee, the Government of Nicaragua shall also eliminate, at the national level, the charge for tourist cards and migratory services for Costa Rican citizens. To those ends, the Governments of Costa Rica and Nicaragua shall immediately undertake the appropriate technical studies.
3. The Government of Nicaragua undertakes to maintain, for a period of three years from today's date, the legal status existing on today's date with respect to its declaration of acceptance of the jurisdiction of the International Court of Justice. For its part, during the same period, the Government of Costa Rica will not engage in initiating any action or any

international protest against Nicaragua neither before the Court nor before any other authority on any matter or protest mentioned in treaties or agreements currently in force between both countries.

4. Nothing in the preceding paragraphs shall be interpreted or presumed to be a renunciation or as a diminishing of rights that each Party has and retains in accordance with treaties currently in force in the area of international law.

In witness whereof, we sign, with validity and immediate effect, in the city of Alajuela, Republic of Costa Rica, two original texts, both in the Spanish language and equally valid, on 26 September 2002.

ROBERTO TOVAR FAJA

Minister of Foreign Affairs and Worship of the Republic of Costa Rica

NORMAN CALDERA CARDENAL

Minister of Foreign Affairs of the Republic of Nicaragua

[SPANISH TEXT — TEXTE ESPAGNOL]

**Los Ministros de Relaciones Exteriores de
las Repúblicas de Costa Rica y Nicaragua:**

Manifestando su inquebrantable voluntad y determinación de desarrollar y fortalecer sus lazos de hermandad y buena vecindad, como corresponde a países unidos por recios vínculos históricos, geográficos, culturales y humanos;

Considerando la importancia que tienen para nuestros pueblos los proyectos de integración económica, como lo son la unión aduanera, el tratado de libre comercio de Centroamérica y los Estados Unidos de América, el Plan Puebla-Panamá y el acuerdo de asociación entre Centroamérica y la Unión Europea, entre otras importantes iniciativas regionales;

Destacando la importancia de profundizar la cooperación entre ambos estados para el desarrollo sostenible de la región fronteriza, incluyendo la creación de un fondo especial de desarrollo;

Teniendo presente que el fortalecimiento de nuestras relaciones de buena vecindad es fundamental para impulsar con gran dinamismo la integración económica y cultural centroamericana y el desarrollo humano sostenible de nuestros países, para el bienestar de nuestros pueblos;

Convencidos de que los proyectos de integración económica y la creación del clima adecuado para la inversión, el comercio y la cooperación internacional, podrán verse potenciadas en la medida en que ambos países recurran a los medios pacíficos de solución de aquellas situaciones que puedan afectar la buena marcha de sus relaciones,

y

Confiados en que el fraterno espíritu que une a nuestros pueblos y las renovadas relaciones bilaterales permiten fortalecer un amplio espacio de entendimiento y mutua concertación en beneficio recíproco,

Han convenido declarar lo siguiente:

1. Los Gobiernos de Costa Rica y Nicaragua, eliminarán a partir de esta fecha, cualquier cobro que afecte el libre tránsito vecinal fronterizo que se realiza a través de los permisos vecinales, como parte de las cortesías de frontera.
2. El Gobierno de Costa Rica manifiesta su disposición de eliminar el cobro de las visas que se otorgan a ciudadanos nicaragüenses portadores de pasaporte ordinario, a partir del día primero de enero del 2003. Si para eliminar el cobro de las visas se requiere modificar la legislación vigente, el Gobierno de Costa Rica promoverá y apoyará dicha modificación, en el entendido que la Asamblea Legislativa resolverá de conformidad con su soberanía. En el momento en que el Gobierno de Costa Rica elimine el cobro de las visas, el Gobierno de Nicaragua también eliminará a nivel nacional el cobro en concepto de tarjeta de turismo y de servicios migratorios a los ciudadanos costarricenses. A estos efectos los Gobiernos de Costa Rica y Nicaragua, promoverán, de inmediato los estudios técnicos respectivos.
3. El Gobierno de Nicaragua se compromete a mantener, durante un plazo de tres años a partir de hoy, la situación jurídica existente en esta fecha, respecto a su declaración de aceptación de la jurisdicción de la Corte Internacional de Justicia. Por su parte, durante dicho plazo, el Gobierno de Costa Rica se compromete a no iniciar ninguna acción o reclamación internacional contra Nicaragua, ante dicha Corte, ni en ninguna otra instancia internacional, respecto de cualquier asunto o reclamación referidos a Tratados o Acuerdos actualmente vigentes entre ambos países.
4. Nada de lo aquí dispuesto podrá interpretarse o prejuzgarse como renuncia de posiciones, o renuncia o menoscabo alguno de los derechos que tiene y conserva cada una de las Partes de conformidad con los Tratados vigentes, dentro del marco del Derecho Internacional.

En fe de lo cual, firmamos, para su validez y eficacia inmediata, en la ciudad de Alajuela, República de Costa Rica, en dos textos originales, ambos en idioma español, igualmente válidos, a los veintiséis días del mes de setiembre del año 2002.

Z. Tovar

ROBERTO TOVAR FAJA
Ministro de Relaciones Exteriores y Culto
de la República de Costa Rica

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[Firma manuscrita]

NORMAN CALDERA CARDENAL
Ministro de Relaciones Exteriores de la
República de Nicaragua

[Firma manuscrita]