



# INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands

Tel.: +31 (0)70 302 2323 Fax: +31 (0)70 364 9928

Website: [www.icj-cij.org](http://www.icj-cij.org) Twitter Account: @CIJ\_ICJ

## Press Release

Unofficial

No. 2015/32

16 December 2015

### **Certain Activities carried out by Nicaragua in the Border Area** **(Costa Rica v. Nicaragua)**

**The Court finds that Nicaragua has violated Costa Rica's territorial sovereignty and navigational rights, as well as the Court's Order of 8 March 2011 indicating provisional measures, but that it did not breach procedural or substantive environmental obligations through its dredging of the San Juan River**

\*

### **Construction of a Road in Costa Rica along the San Juan River** **(Nicaragua v. Costa Rica)**

**The Court finds that Costa Rica has violated its obligation to carry out an environmental impact assessment concerning the construction of Route 1856, but that it did not breach substantive environmental obligations**

THE HAGUE, 16 December 2015. The International Court of Justice (ICJ), principal judicial organ of the United Nations, today delivered its Judgment in the joined cases concerning Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).

In its Judgment, which is final, without appeal and binding on the Parties, the Court,

- (1) finds, by fourteen votes to two, that Costa Rica has sovereignty over the “disputed territory”, as defined by the Court in paragraphs 69-70 of the present Judgment;
- (2) finds, unanimously, that by excavating three caños and establishing a military presence on Costa Rican territory, Nicaragua has violated the territorial sovereignty of Costa Rica;
- (3) finds, unanimously, that by excavating two caños in 2013 and establishing a military presence in the disputed territory, Nicaragua has breached the obligations incumbent upon it under the Order indicating provisional measures issued by the Court on 8 March 2011;
- (4) finds, unanimously, that, for the reasons given in paragraphs 135-136 of the present Judgment, Nicaragua has breached Costa Rica's rights of navigation on the San Juan River pursuant to the 1858 Treaty of Limits;

- (5) (a) finds, unanimously, that Nicaragua has the obligation to compensate Costa Rica for material damages caused by Nicaragua's unlawful activities on Costa Rican territory;
- (b) decides, unanimously, that, failing agreement between the Parties on this matter within 12 months from the date of this Judgment, the question of compensation due to Costa Rica will, at the request of one of the Parties, be settled by the Court, and reserves for this purpose the subsequent procedure in the case concerning Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua);
- (c) rejects, by twelve votes to four, Costa Rica's request that Nicaragua be ordered to pay costs incurred in the proceedings;
- (6) finds, unanimously, that Costa Rica has violated its obligation under general international law by failing to carry out an environmental impact assessment concerning the construction of Route 1856;
- (7) rejects, by thirteen votes to three, all other submissions made by the Parties.

#### Procedural history

The Court recalls that, on 18 November 2010, the Republic of Costa Rica filed an Application instituting proceedings against the Republic of Nicaragua (hereinafter the "Costa Rica v. Nicaragua case"), alleging that Nicaragua invaded and occupied Costa Rican territory, that it dug a channel thereon, and that it conducted works (notably dredging of the San Juan River) in violation of its international obligations. On the same day, Costa Rica also submitted a Request for the indication of provisional measures. By an Order of 8 March 2011, the Court indicated provisional measures to both Parties. On 22 December 2011, Nicaragua filed an Application instituting proceedings against Costa Rica (hereinafter the "Nicaragua v. Costa Rica case") concerning the alleged breach by Costa Rica of both procedural and substantive obligations in connection with the construction of Route 1856 Juan Rafael Mora Porras (hereinafter the "road") along the San Juan River. By two separate Orders dated 17 April 2013, the Court joined the proceedings in the Costa Rica v. Nicaragua and Nicaragua v. Costa Rica cases. By an Order of 22 November 2013 rendered in the Costa Rica v. Nicaragua case, the Court reaffirmed the provisional measures indicated in its Order of 8 March 2011 and indicated new provisional measures addressed to both Parties.

Public hearings were held in the joined cases from 14 April 2015 to 1 May 2015.

#### Reasoning of the Court

##### **1. Jurisdiction of the Court**

The Court notes that, in each case, the respective applicant invokes, as bases of jurisdiction, Article XXXI of the Pact of Bogotá and the declarations by which the Parties have recognized the compulsory jurisdiction of the Court under paragraphs 2 and 5 of Article 36 of the Statute. The respective respondent in each case has not contested jurisdiction. The Court finds that it has jurisdiction in both cases.

##### **2. Geographical and historical context and origin of the disputes**

The Court then provides a brief overview of the geographical and historical context and origin of the disputes. It explains that the San Juan River, which runs from Lake Nicaragua to the

Caribbean Sea, divides into two branches at a point known as “Delta Colorado”: the Lower San Juan and the Colorado River (see sketch-map 1 annexed to the present press release). The area situated between the Colorado River and the Lower San Juan is broadly referred to as Isla Calero. Within that area, there is a smaller region referred to as Isla Portillos. In the north of Isla Portillos is a lagoon, referred to as Harbor Head Lagoon. There are two wetlands of international importance in the area: the Humedal Caribe Noreste in Costa Rica and the Refugio de Vida Silvestre Río San Juan in Nicaragua.

The Court recalls that the Parties concluded a Treaty of Limits in 1858 (hereinafter the “1858 Treaty”), which fixed the course of the boundary. The Court then briefly notes the 1888 Arbitral Award of United States President Grover Cleveland, which confirmed the validity of the 1858 Treaty and settled other “points of doubtful interpretation”, the appointment of national demarcation commissions in 1896, and the awards rendered by General Porter Alexander during this demarcation. It states that disagreements concerning Costa Rica’s navigational rights under the 1858 Treaty were settled in the Court’s 2009 Judgment in the case concerning Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua).

The Court observes that, on 18 October 2010, Nicaragua started dredging the San Juan River in order to improve its navigability. It also carried out works in the northern part of Isla Portillos. In this regard, Costa Rica contends that Nicaragua artificially created a channel (“caño”) on Costa Rican territory, in Isla Portillos between the San Juan River and Harbor Head Lagoon, whereas Nicaragua argues that it was only clearing an existing caño on Nicaraguan territory. Nicaragua also sent some military units and other personnel to that area. In December 2010, Costa Rica started works for the construction of the road, which runs in Costa Rican territory along part of its border with Nicaragua and follows the San Juan River for 108.2 km (see sketch-map 2 annexed to the present press release). On 21 February 2011, Costa Rica adopted an Executive Decree declaring a state of emergency in the border area, which Costa Rica maintains exempted it from the obligation to conduct an environmental impact assessment before constructing the road.

### **3. Issues in the Costa Rica v. Nicaragua case**

#### **A. Sovereignty over the disputed territory and alleged breaches thereof**

The Court recalls that it defined the “disputed territory” in its Order of 8 March 2011 on provisional measures as “the northern part of Isla Portillos, that is to say, the area of wetland of some 3 square kilometres between the right bank of the disputed caño [dredged by Nicaragua in 2010], the right bank of the San Juan River up to its mouth at the Caribbean Sea and the Harbor Head Lagoon”. The Court notes that this definition does not specifically refer to the stretch of coast abutting the Caribbean Sea which lies between the Harbor Head Lagoon and the mouth of the San Juan River; neither Party requested the Court to define the boundary more precisely with regard to this coast, and the Court refrains from doing so. Based on an analysis of the 1858 Treaty and the awards by President Cleveland and General Alexander, the Court concludes that sovereignty over the disputed territory belongs to Costa Rica.

In coming to this conclusion, the Court emphasizes that, under the 1858 Treaty, Costa Rica’s sovereignty extends to the right bank of the Lower San Juan River as far as its mouth in the Caribbean Sea. The Court addresses and rejects Nicaragua’s claim that the disputed caño is the “first channel met” mentioned in the First Alexander Award and thus forms part of the boundary between the two States. In this connection, the Court considers that satellite and aerial images provided by Nicaragua are insufficient to prove that a natural channel linked the San Juan River with the Harbor Head Lagoon following the same course as the caño that was dredged. It finds that affidavits of Nicaraguan State officials provide little support for Nicaragua’s claim to sovereignty. It also finds that the maps submitted by the Parties are of limited significance. As to the

effectivités invoked, which are, in any event, also of limited significance, they cannot affect the title to sovereignty resulting from the 1858 Treaty and the Cleveland and Alexander Awards.

The Court therefore considers that the activities carried out by Nicaragua in the disputed territory since 2010, including the excavation of three caños and establishment of a military presence in parts of that territory, were in breach of Costa Rica's territorial sovereignty, and that Nicaragua consequently incurs the obligation to make reparation for the damage caused by its unlawful activities on Costa Rican territory. It considers, however, that there were no "hostile acts" entailing a violation of Article IX of the 1858 Treaty. Having determined the unlawful character of Nicaragua's activities, the Court does not further consider whether they constituted violations of the prohibition of the threat or use of force, or whether the conduct of Nicaragua gave rise to a military occupation.

## B. Alleged violations of international environmental law

### 1. Procedural obligations

The Court examines the alleged breach of the obligation to carry out an environmental impact assessment, observing that the principal risk cited by Costa Rica was the potential adverse impact of Nicaragua's dredging activities on the flow of the Colorado River, which could also adversely affect Costa Rica's wetland. The Court finds that the dredging programme was of a limited scope and that it was not such as to give rise to a risk of significant transboundary harm, either with respect to the flow of the Colorado River or to Costa Rica's wetland. In light of the absence of risk of significant transboundary harm, Nicaragua was not required to carry out an environmental impact assessment.

The Court then turns to the alleged breach of an obligation to notify and consult, finding that, since Nicaragua was not under an obligation to carry out an environmental impact assessment given the absence of risk of significant transboundary harm, it was not required to notify, and consult with, Costa Rica on this basis. The Court is also not convinced that Nicaragua breached any obligation to notify and consult in the Ramsar Convention (Convention on Wetlands of International Importance especially as Waterfowl Habitat, signed at Ramsar on 2 February 1971) or the Convention for the Conservation of Biodiversity and Protection of Priority Wildlife Areas in Central America.

### 2. Substantive obligations

With respect to substantive obligations, the Court considers that Costa Rica has not proved that the dredging programme caused harm to its wetland or resulted in a significant reduction in the flow of the Colorado River. It concludes that the available evidence does not show that Nicaragua breached its obligations concerning prevention of transboundary harm by engaging in dredging activities in the Lower San Juan River.

## C. Compliance with provisional measures

The Court recalls that, in its Order on provisional measures of 8 March 2011, it indicated that "[e]ach Party shall refrain from sending to, or maintaining in the disputed territory, including the caño, any personnel, whether civilian, police or security"; the Court also required each Party to "refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve". On the basis of the facts that have become uncontested, the Court finds that Nicaragua breached its obligations under that Order by excavating two new caños and establishing a military presence in the disputed territory in 2013. However, the Court finds no breach of obligations contained in its Order of 22 November 2013.

D. Rights of navigation

The Court finds admissible Costa Rica's claim relating to its navigational rights on the San Juan River. It observes that Costa Rica alleges that breaches of its navigational rights occurred in five instances and through the enactment of a 2009 Nicaraguan decree. The Court notes that none of the instances of interference with Costa Rica's rights of navigation specifically alleged by it relates to the application of this decree, which is therefore not examined further. The Court finds that Nicaragua did not provide a convincing justification for the conduct of its authorities in two incidents concerning navigation by inhabitants of the Costa Rican bank of the river. It concludes that the two incidents show that Nicaragua breached Costa Rica's navigational rights on the San Juan River pursuant to the 1858 Treaty, and that it is not necessary to consider the other incidents invoked by Costa Rica.

E. Reparation

Turning to the reparation requested by Costa Rica, the Court concludes that a declaration that Nicaragua breached the territorial sovereignty of Costa Rica by excavating three caños and establishing a military presence in the disputed territory provides adequate satisfaction for the non-material injury suffered on this account. The same applies to the declaration of the breach of the obligations under the Court's Order of 8 March 2011 on provisional measures. Finally, the declaration of the breach of Costa Rica's navigational rights provides adequate satisfaction for that breach.

The Court also finds that Costa Rica is entitled to receive compensation for the material damage caused by Nicaraguan breaches. It states that the Parties should engage in negotiation in order to reach an agreement on these issues. However, if they fail to reach such an agreement within 12 months of the date of the present Judgment, the Court will, at the request of either Party, determine the amount of compensation on the basis of further written pleadings limited to this issue.

The Court dismisses all other requests for reparation made by Costa Rica, as well as its request for costs.

**4. Issues in the Nicaragua v. Costa Rica case**

A. Procedural obligations

With respect to the alleged breach of the obligation to carry out an environmental impact assessment, the Court finds that the construction of the road by Costa Rica carried a risk of significant transboundary harm. Therefore, the threshold for triggering the obligation to evaluate the environmental impact of the road project was met. The Court also finds that, in the circumstances of the case, Costa Rica has not shown the existence of an emergency that could potentially justify constructing the road without undertaking an environmental impact assessment. Turning to the question of whether Costa Rica complied with its obligation to carry out such an assessment, the Court observes that this requires an ex ante evaluation of the risk of significant transboundary harm, whereas the studies carried out by Costa Rica were post hoc assessments which evaluated the environmental impact of stretches of the road already built, not the risk of future harm. The Court concludes that Costa Rica has not complied with its obligation under general international law to carry out an environmental impact assessment concerning the construction of the road.

The Court then turns to the alleged breach of an obligation to notify and consult. It recalls that, if the environmental impact assessment confirms the existence of a risk of significant transboundary harm, the State planning the activity is required to notify, and consult with, the potentially affected State, where that is necessary to determine the appropriate measures to prevent or mitigate that risk. In the present case, since Costa Rica has not complied with its obligation to perform an environmental impact assessment prior to the construction of the road, the Court cannot determine whether Costa Rica was required under general international law to notify, and consult with, Nicaragua. The Court also finds that it is not established that Costa Rica violated any obligation to notify or consult pursuant to the 1858 Treaty or the Ramsar Convention.

#### B. Substantive obligations

The Court turns to the alleged breaches of substantive obligations, beginning with the obligation to exercise due diligence to prevent causing significant transboundary harm. The Court notes that the amount of sediment due to the construction of the road which is delivered to the river is at most 2 per cent of the river's total load. It considers that significant harm cannot be inferred therefrom, particularly taking into account the high natural variability in the river's sediment loads. The Court also finds that Nicaragua has not shown that sediment due to the construction of the road has caused significant harm to the morphology and navigability of the San Juan River and the Lower San Juan, that such sediment significantly increased Nicaragua's dredging burden, or that the construction of the road has caused significant harm to the river's ecosystem, its water quality or caused any other harm. The Court concludes that Nicaragua has not proved that the construction of the road caused significant transboundary harm.

The Court then considers Nicaragua's claims that Costa Rica violated substantive obligations contained in various treaties. The Court observes that Nicaragua simply makes assertions about Costa Rica's alleged violations and does not explain how the instruments invoked would have been breached, especially in the absence of proof of significant harm to the environment. It therefore dismisses these claims.

Concerning Nicaragua's claim that the dumping of sediment and creation of sediment deltas constituted a violation of its territorial integrity and sovereignty over the San Juan River, the Court considers this claim unconvincing, observing that Costa Rica did not exercise any authority on Nicaragua's territory and did not carry out any activity thereon. It therefore dismisses this claim.

#### C. Reparation

Turning to the reparation requested by Nicaragua, the Court concludes that a declaration of wrongful conduct in respect of Costa Rica's violation of the obligation to conduct an environmental impact assessment is the appropriate measure of satisfaction. The Court dismisses all other requests for reparation made by Nicaragua.

#### Composition of the Court

The Court was composed as follows: President Abraham; Vice-President Yusuf; Judges Owada, Tomka, Bennouna, Cançado Trindade, Greenwood, Xue, Donoghue, Gaja, Sebutinde, Bhandari, Robinson, Gevorgian; Judges ad hoc Guillaume, Dugard; Registrar Couvreur.

Vice-President YUSUF appends a declaration to the Judgment of the Court; Judge OWADA appends a separate opinion to the Judgment of the Court; Judges TOMKA, GREENWOOD, SEBUTINDE and Judge ad hoc DUGARD append a joint declaration to the Judgment of the Court; Judge CANÇADO TRINDADE appends a separate opinion to the Judgment of the Court; Judge DONOGHUE appends a separate opinion to the Judgment of the Court; Judge BHANDARI appends a separate opinion to the Judgment of the Court; Judge ROBINSON appends a separate

opinion to the Judgment of the Court; Judge GEVORGIAN appends a declaration to the Judgment of the Court; Judge ad hoc GUILLAUME appends a declaration to the Judgment of the Court; Judge ad hoc DUGARD appends a separate opinion to the Judgment of the Court.

\*

A summary of the Judgment appears in the document “Summary No. 2015/3”. This press release, the summary, and the full text of the Judgment can be found on the Court’s website ([www.icj-cij.org](http://www.icj-cij.org)) under the “Cases” heading.

---

Note: The Court’s press releases do not constitute official documents.

---

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the “World Court”, it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court, established by treaty, which does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an international judicial body with an independent legal personality, established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

Information Department:

Mr. Andrey Poskakukhin, First Secretary of the Court, Head of Department (+31 (0)70 302 2336)

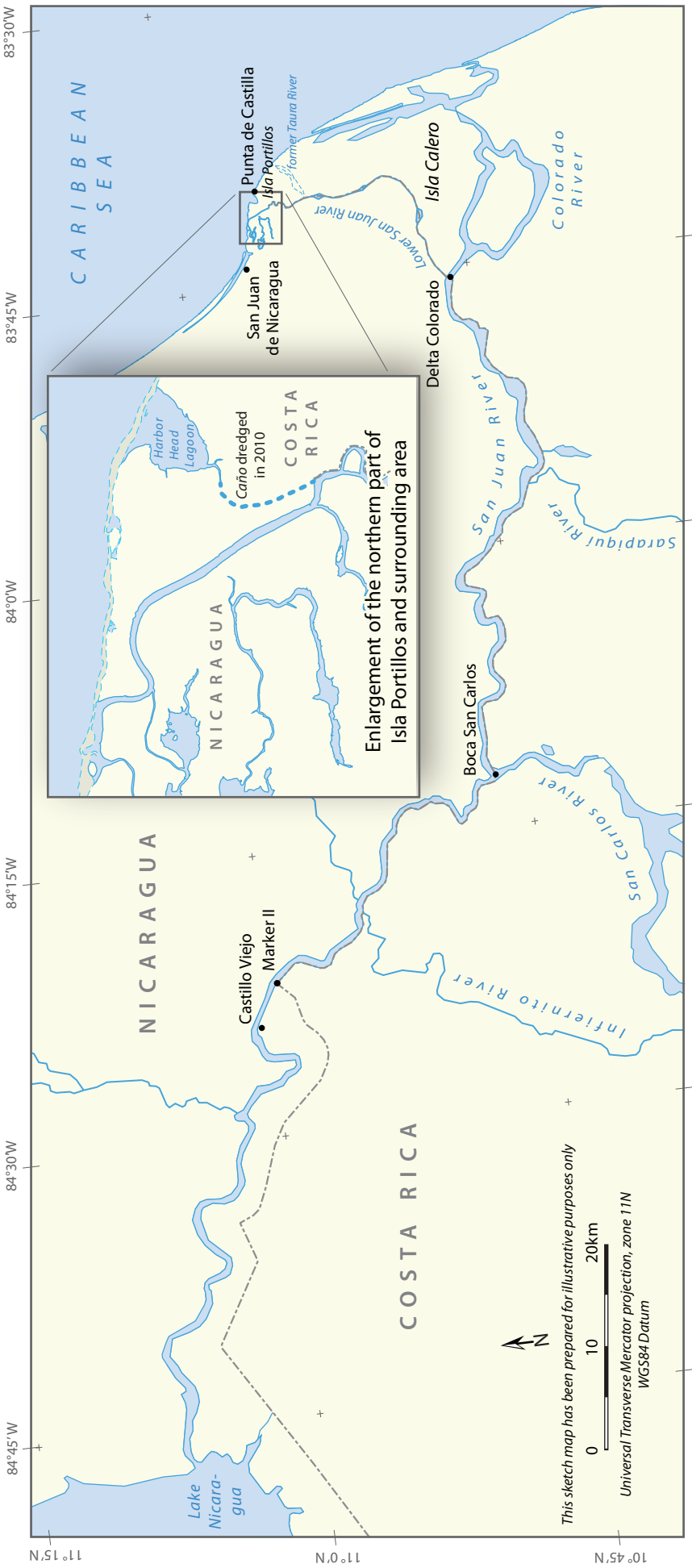
Mr. Boris Heim, Information Officer (+31 (0)70 302 2337)

Ms Joanne Moore, Associate Information Officer (+31 (0)70 302 2394)

Ms Genoveva Madurga, Administrative Assistant (+31 (0)70 302 2396)



Sketch-map No. 1:  
Geographical context



Sketch-map No. 2:  
Route 1856 Juan Rafael Mora Porras

