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Source: United Nations, *Reports of International Arbitral Awards*, Vol. XXVIII (2006) pp. 208-211

# REPORTS OF INTERNATIONAL ARBITRAL AWARDS

# RECUEIL DES SENTENCES ARBITRALES

Award in regard to the validity of the Treaty of Limits between Costa Rica and Nicaragua of 15 July 1858

> Decisions of 22 March 1888 30 September 1897 20 December 1897 22 March 1898 26 July 1899

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### AWARD OF THE PRESIDENT OF THE UNITED STATES IN REGARD TO THE VALIDITY OF THE TREATY OF LIMITS BETWEEN COSTA RICA AND NICARAGUA OF 15 JULY 1858, DECISION OF 22 MARCH 1888\*

### SENTENCE ARBITRALE DU PRÉSIDENT DES ÉTATS-UNIS RELATIVE À LA VALIDITÉ DU TRAITÉ DE LIMITES ENTRE LE COSTA RICA ET LE NICARAGUA DU 15 JUILLET 1858, DÉCISION DU 22 MARS 1888\*\*

Validity of treaty of delimitation – unconstitutionality of ratification process – statement in the Constitution of Nicaragua that the boundary is on the Southeast, the Costa Rica State, is not precise enough preclude further frontier delimitation – defects in ratification process – irregularities and defects in the formalities of ratification may be remedied by subsequent acquiescence in and approval of the treaty – the fact of approval being established, the time of approval is immaterial, provided the other party by its acquiescence has seen fit to waive the delay – acquiescence during several years in the validity of the treaty is a strong evidence of the contemporaneous exposition which has ever been thought valuable as a guide in determining doubtful questions of interpretation, even if such acquiescence is not a substitute for ratification by a Legislature – Nicaragua cannot seek to invalidate the treaty on any mere ground of irregularity in the order of its own proceedings.

Validity of treaty – treaty between two States which provides for a third State as a guarantor is not a tripartite treaty but a bilateral one with an independent and separable clause of guarantee as a feature of the arrangement – the lack of ratification by the guarantor does not preclude the validity of the treaty – in international law a guarantee is always subsidiary to the principal contract – acquiescence – failure of Government of Nicaragua to object prior to the ratification, resulted in waiver of the objection – facts which existed and were known at the time of the treaty ratification cannot be accepted as reasons for rescinding the treaty.

Boundary delimitation – interpretation of a treaty – rights of navigation on the River San Juan<sup>\*\*\*</sup> – Costa Rica has no right of navigation with vessels of war in the River San Juan, which belongs to Nicaragua – it has the right of navigation with vessels of the Revenue service for the sole purpose of commerce – Costa Rica is not bound to contribute financially to any work for the preservation and the improvement of the navigation of the river – Costa Rica may not prevent Nicaragua from undertaking work for the improvement of the River San Juan, provided that such work does not damage Costa Rican territory – Right to indemnification for transboundary harm or interference with right to navigation – Costa Rica can deny to Nicaragua the right of deviating the waters of River San Juan in case such deviation will result in the destruction or serious

<sup>\*</sup> Reprinted from John Basset Moore, *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. II, Washington, 1898, Government Printing Office, p. 1946.

<sup>\*\*</sup> Reproduit de John Basset Moore, *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. II, Washington, 1898, Government Printing Office, p. 1946.

<sup>\*\*\*</sup> Secretariat note: The territorial dispute between Costa Rica and Nicaragua remains a current issue as a case is pending in 2006 in front of the International Court of Justice, namely "Dispute regarding navigational and related rights". It has been submitted by Costa Rica on 29 September 2005 with regard to the infringement of its rights on the San Juan River, and in its application Costa Rica made due reference to the arbitral award of 22 March 1888.

to do so. It had a perfect right to waive this limitation of time. Either party to a Treaty may extend the time of the other, either by express agreement or by acts indicating acquiescence. Nicaragua cannot be permitted to say, as she does in effect say in this branch of her argument — "it is true that this Treaty was approved unreservedly by both the executive and legislative branches of the Government; but such approval is worthless, as it was expressed not forty but forty-three days after the signature of the Treaty."

The *fact* of approval being established, the *time* of approval is immaterial, provided the other party by its acquiescence has seen fit to waive delay.

I conclude therefore that the *third* ground of objection stated by Nicaragua is untenable.

And having examined in detail the three reasons urged by Nicaragua for holding the Treaty invalid, and finding all these reasons untenable, I conclude that the Arbitrator should decide in favor of the validity of this Treaty.

### The Award

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 Guatemala 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 cannot 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

### VALIDITY OF THE TREATY OF LIMITS OF 1858

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.

[SEAL.] Done in duplicate 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.

GROVER CLEVELAND.

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

### Convention on border demarcation concluded between the Republic of Costa Rica and the Republic of Nicaragua signed at El Salvador on 27 March 1896\*

The Presidents of Costa Rica and Nicaragua, having accepted the mediation of the Government of El Salvador in resolving the issue of demarcating the border between their two countries, have respectively designated as their extraordinary and plenipotentiary envoys, their Excellencies, Mr. Leonidas Pacheco and Mr. Manuel C. Matus. Following various meetings held in the presence of His Excellency, Mr. Jacinto Castellanos, Minister for Foreign Affairs of El Salvador, specially mandated representative of that Government, and their full powers having been found to be in good and proper form, the envoys have signed the following Convention. His Excellency, General Rafael A. Gutiérrez, President of the Republic of El Salvador, attended the signing ceremony to confer greater solemnity to the event.

ARTICLE I. — The Contracting Governments are bound to appoint a Commission, respectively, each composed of two engineers, or surveyors, for the purpose of duly defining and marking out the dividing line between the Republics of Costa Rica and Nicaragua according to the stipulations of the

<sup>\*</sup> Original Spanish version, translation by the Secretariat of the United Nations.

### ANNEX 47

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

Source: United Nations, *Reports of International Arbitral Awards*, Vol. XXVIII (2006) pp. 211-213

Annex 47

# REPORTS OF INTERNATIONAL ARBITRAL AWARDS

# RECUEIL DES SENTENCES ARBITRALES

Award in regard to the validity of the Treaty of Limits between Costa Rica and Nicaragua of 15 July 1858

> Decisions of 22 March 1888 30 September 1897 20 December 1897 22 March 1898 26 July 1899

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### VALIDITY OF THE TREATY OF LIMITS OF 1858

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ARTICLE I. — The Contracting Governments are bound to appoint a Commission, respectively, each composed of two engineers, or surveyors, for the purpose of duly defining and marking out the dividing line between the Republics of Costa Rica and Nicaragua according to the stipulations of the

<sup>\*</sup> Original Spanish version, translation by the Secretariat of the United Nations.

Treaty of 15 April 1858 and the award of the President of the United States of America, Mr. Grover Cleveland.

ARTICLE II. — The Commissions established under article I shall include an engineer appointed by the President of the United States of America at the request of the two Parties, whose mandate shall include the following: to resolve any dispute between the Commissions of Costa Rica and Nicaragua arising from the operations. He shall have broad powers to decide whatever kind of differences may arise in the course of any operations and his ruling shall be final.

ARTICLE III. — Within three months of the signing of this Convention, which shall be duly ratified by the respective Congresses, the Representatives of both Contracting Governments in Washington shall jointly request the President of the United States of America to appoint the aforementioned engineer and confirm such appointment. Should such joint request fail to be made by the Representative in Washington of either Government or for any other reason within the stipulated time limit, upon expiration of such time limit, the Representatives of either Costa Rica or Nicaragua in Washington may separately make such request, which shall be as valid as if it had been made jointly by both Parties.

ARTICLE IV. — Upon confirmation of the appointment of the United States engineer and within three months of such appointment, the engineer shall proceed with demarcations of the border line and such operation shall be completed within 20 months of its starting date. The Commissions of the Contracting Parties shall meet in San Juan del Norte as agreed and shall begin their work at the extremity of the border starting from the Atlantic coast, as provided for by the aforementioned Treaty and award.

ARTICLE V. — The Contracting Parties agree that if, on the scheduled start date of the work, either one of the Commissions of the Republics of Costa Rica or Nicaragua failed for any reason to appear at the designated venue, the Commission of the other Republic present shall begin the work with the agreement of the United States Government engineer and such work as shall have been done shall be valid and definitive and shall not be open to appeal by the Republic that failed to send its Commissioners. The same shall apply should any or all the Commissioners of either Contracting Republic be absent once the work starts or refuse to carry out such operations as provided for in the award and Treaty referred to herein or as decided by the engineer appointed by the President of the United States.

ARTICLE VI. — The Contracting Parties agree that the deadline for the completion of the boundary marking is not mandatory so that any operations carried out upon the expiration thereof shall be valid either because such operations could not have been completed within the deadline or because the commissioners of Costa Rica and Nicaragua have agreed together with the United States Government engineer to temporarily suspended such operations

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so that the time remaining would not allow for the completion of the operations.

ARTICLE VII. — Should the demarcation work be temporarily suspended, such work as has been completed until then shall be considered final and completed, with the borders being fixed at that particular location even where such suspension were to be extended indefinitely as a result of unforeseen and insuperable circumstances.

ARTICLE VIII. — The records of the operations shall be in triplicate and shall be duly signed and sealed by the commissioners and shall constitute the definitive demarcation document of the borders of the Republics with no approval or any other formality being required on the part of the signatory Republics.

ARTICLE IX. — The records to which reference is made in the foregoing article shall be prepared as follows: every day, at the end of operations, such operations as are completed shall be documented in a detailed manner, including the starting point of the operations of the day, the types of survey markers constructed, the distances separating them, the direction of the line as based on the common boundary. Any dispute arising between the Commissions of Costa Rica and Nicaragua with respect to any particular point shall be documented in the relevant record along with the ruling of the United States engineer. The records shall be in triplicate: the Commissions of Costa Rica and Nicaragua shall each keep a copy and the third copy shall be kept by the United States engineer to be deposited upon completion of the operations with the Department of State in Washington.

ARTICLE X. — The expenses relating to the travel and subsistence of the United States engineer as well as to the salary payable during his functions shall be defrayed equally by the signatory Republics.

ARTICLE XI. — The Contracting Parties undertake to cause this Convention to be ratified by their respective Congresses within six months starting from this date, even if such ratification were to require convening extraordinary sessions of the said Congresses, and the subsequent exchange shall take place within a month following the date of the last such ratification, at San José de Costa Rica or at Managua.

ARTICLE XII. — Failure to complete the acts to which reference is made earlier within the deadlines stipulated shall not render this Convention void and the Republic which failed to complete such act shall endeavour to do so as soon as possible.

In witness whereof, the parties have signed and sealed this Convention in duplicate, at the City of San Salvador on the twenty-seventh of March eighteen hundred and ninety-six.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> Memoria de Relaciones Exteriores (Costa Rica), 1897, p. 28.

### ANNEX 48

First Award of the Umpire EP Alexander in the boundary question between Costa Rica and Nicaragua, San Juan del Norte, 30 September 1897

Source: United Nations, *Reports of International Arbitral Awards*, Vol. XXVIII (2007), pp. 215-222

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First award under the Convention between Costa Rica and Nicaragua of 8 April 1896 for the demarcation of the boundary between the two Republics

30 September 1897

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- FIRST AWARD OF THE ENGINEER-UMPIRE, UNDER THE CONVENTION BETWEEN COSTA RICA AND NICARAGUA OF 8 APRIL 1896 FOR THE DEMARCATION OF THE BOUNDARY BETWEEN THE TWO REPUBLICS, DECISION OF 30 SEPTEMBER 1897\*
- PREMIÈRE SENTENCE ARBITRALE RENDUE PAR LE SURARBITRE INGÉNIEUR, EN VERTU DE LA CONVENTION ENTRE LE COSTA RICA ET LE NICARAGUA DU 8 AVRIL 1896 POUR LA DÉMARCATION DE LA FRONTIÈRE ENTRE LES DEUX RÉPUBLIQUES, DÉCISION DU 30 SEPTEMBRE 1897<sup>\*\*</sup>

Interpretation of treaty – treaty must be interpreted in the way in which it was mutually understood at the time by its makers – meaning understood from the language taken as a whole and not deduced from isolated words or sentences – the non use of some names may be as significant as the use of others – Treaty of limits of 15 April 1858.

Delimitation of boundary – a temporary connection between an island and mainland during the dry season may not change permanently the geographical character and political ownership of the island – the river being treated and regarded as an outlet of commerce in the Treaty; it has to be considered when it is navigable, with an average water level.

Interprétation des traités – un traité doit être interprété conformément à la conception mutuelle de ses auteurs au moment de son élaboration – le sens doit être dégagé du texte pris dans sa globalité et non déduit de termes ou de phrases isolés – le non emploi de certains noms propres peut être aussi significatif que l'emploi de certains autres.

Délimitation frontalière – une liaison temporaire pendant la saison sèche entre une île et le continent ne peut pas changer de façon permanente le caractère géographique et la possession politique de cette île – dans le traité, le fleuve étant désigné et envisagé comme une infrastructure commerciale, il doit être pris en compte lorsqu'il est navigable, c'est à dire avec un niveau d'eau moyen.

\* \* \* \* \*

<sup>\*</sup> Reprinted from John Basset Moore, *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. V, Washington 1898, Government Printing Office, p.5074.

<sup>\*\*</sup> Reproduit de John Basset Moore, *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. V, Washington , 1898, Government Printing Office, p. 5074.

### SAN JUAN DEL NORTE, NICARAGUA, September 30, 1897.

#### To the Commissions of Limits of Costa Rica and Nicaragua.

GENTLEMEN: 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 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 claim for a location of the initial point of the boundary line at a place which would give to its country great advantages. These 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 the 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 its 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 or 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 born 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 AWARD OF 30 SEPTEMBER 1897

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 northwest bank and headland.

This division brings the boundary line (supposing 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

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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 today 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 today, 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.

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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 Point 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 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 of April 1858".

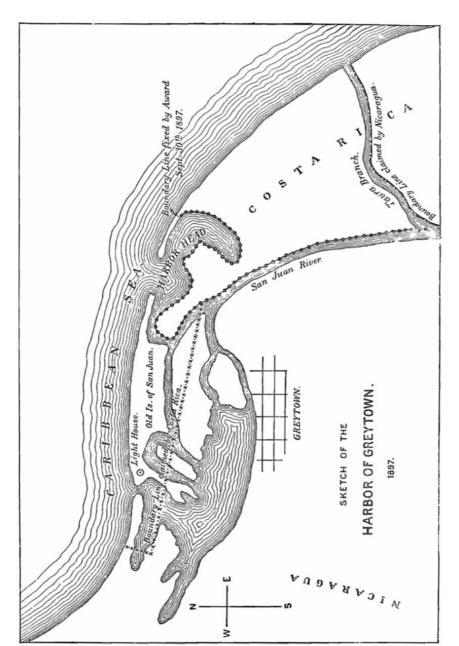
A careful study of all available maps and comparisons between those made before the treaty and those of recent date made by boards of engineers and officers of the canal company, and one of to-day made by yourselves to accompany this award, makes very clear one fact: The exact spot which was the extremity 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 1,600 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 treaty.

I am, gentlemen, very respectfully, your obedient servant,

E. P. ALEXANDER.



## SKETCH OF THE HARBOR OF GREYTOWN – 1897

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### ANNEX 49

Second Award of the Umpire EP Alexander in the boundary question between Costa Rica and Nicaragua, San Juan del Norte, 20 December 1897

Source: United Nations, *Reports of International Arbitral Awards*, Vol. XXVIII (2007), pp. 223-225

## REPORTS OF INTERNATIONAL ARBITRAL AWARDS

## RECUEIL DES SENTENCES ARBITRALES

Second award under the Convention between Costa Rica and Nicaragua of 8 April 1896 for the demarcation of the boundary between the two Republics

20 December 1897

VOLUME XXVIII pp. 223-225

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- SECOND AWARD OF THE ENGINEER-UMPIRE, UNDER THE CONVENTION BETWEEN COSTA RICA AND NICARAGUA OF 8 APRIL 1896 FOR THE DEMARCATION OF THE BOUNDARY BETWEEN THE TWO REPUBLICS, DECISION OF 20 DECEMBER 1897\*
- DEUXIÈME SENTENCE ARBITRALE RENDUE PAR LE SURARBITRE INGÉNIEUR, EN VERTU DE LA CONVENTION ENTRE LE COSTA RICA ET LE NICARAGUA DU 8 AVRIL 1896 POUR LA DÉMARCATION DE LA FRONTIÈRE ENTRE LES DEUX RÉPUBLIQUES, DÉCISION DU 20 DÉCEMBRE 1897\*\*

Interpretation of treaty of delimitation – during demarcation process, accuracy of the measurement of the border-line is not as important as the finding natural landmarks, provided there is agreement between the two Parties – in case of disagreement, the view of the party favouring greater accuracy must prevail.

International boundary – natural changes of the banks of a river serving as an international boundary – determination of future changes made easier thanks to measurement and demarcation.

Interprétation d'un traité de délimitation – durant la procédure de démarcation, l'exactitude du métrage de la ligne frontière est moins importante que l'établissement de repères naturels, sous réserve de l'accord des deux Parties – en cas de désaccord, la position de la Partie en faveur de la plus grande exactitude doit prévaloir.

Frontière internationale – altérations naturelles des rives d'un fleuve servant de frontière internationale – détermination des modifications futures facilitée par le métrage et la démarcation.

\* \* \* \* \*

#### Second award rendered, to San Juan del Norte, on December 20, 1897, in the boundary question between Nicaragua and Costa Rica.\*\*\*

In pursuance once again of the duties assigned me by my commission as engineer-arbitrator to your two bodies, I have been called upon to decide on the matter submitted to me in the record dated the 7th of this month, as per the following paragraph of that record: "The Costa Rican Commission proposed

Reprinted from H. La Fontaine, *Pasicrisie Internationale: Histoire Documentaire des Arbitrages Internationaux (1794-1900)*, Imprimerie Stampelli & CIE, Berne, 1902, p.532.

<sup>\*\*</sup> Reproduit de H. La Fontaine, Pasicrisie Internationale: Histoire Documentaire des Arbitrages Internationaux (1794-1900), Imprimerie Stampelli & CIE, Berne, 1902, p.532.

<sup>\*\*\*</sup> Original Spanish version, translated by the Secretariat of the United Nations.

that we proceed to the measurement of the line that ran from the starting point and continued along the shore of Harbor Head and thence along the shore around the harbor until it reaches the San Juan river proper by the first channel met and thence along the bank of the river to a point three miles below Castillo Viejo and that a map should be made of such line and that all of that should be set down in the daily record. The Nicaraguan Commission expressed the view that the measurement and mapping work on that portion of the line was pointless and worthless because, according to the Award by General E. P. Alexander, the left bank of the Harbor and of the river formed the boundary and that therefore the dividing line was subject to change and not permanent. Therefore, the map and any data obtained shall never correspond to the actual dividing line. To that end, the two Commissions have decided to hear the decision that the arbitrator would render within a week to their respective arguments submitted to him on that question."

The above-mentioned arguments of each party have been received and duly considered. It should be noted, for a clearer understanding of the question at hand, that the San Juan river runs through a flat and sandy delta in the lower portion of its course and that it is obviously possible that its banks will not only gradually expand or contract but that there will be wholesale changes in its channels. Such changes may occur fairly rapidly and suddenly and may not always be the result of unusual factors such as earthquakes or major storms. Examples abound of previous channels now abandoned and banks that are now changing as a result of gradual expansions or contractions.

Today's boundary line must necessarily be affected in future by all these gradual or sudden changes. But the impact in each case can only be determined by the circumstances of the case itself, on a case-by-case basis in accordance with such principles of international law as may be applicable.

The proposed measurement and demarcation of the boundary line will not have any effect on the application of those principles.

The fact that the line has been measured and demarcated will neither increase nor decrease any legal standing that it might have had it not been measured or demarcated.

The only effect obtained from measurement and demarcation is that the nature and extent of future changes may be easier to determine.

There is no denying the fact that there is a certain contingent advantage to being always able to locate the original line in future. But there may well be a difference of opinion as to how much time and expense needs to be spent in order to obtain such a contingent advantage. That is the difference now between the two Commissions.

Costa Rica wants to have that future capacity. Nicaragua feels that the contingent benefit is not worth the current expenditure.

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In order to decide which one of these views should hold sway, I have to abide by the spirit and letter of the 1858 Treaty and to determine whether there is anything in either point of view that is applicable to the question. I find both things in article 3.

Article 2 describes the entire dividing line from the Caribbean Sea to the Pacific and article 3 continues thus: "measurements corresponding to this dividing line shall be taken in whole or in part by the Government commissioners, who shall agree on the time required for such measurements to be made. The commissioners shall be empowered to diverge slightly from the curve around El Castillo, from the line parallel to the banks of the river and lake, or from the straight astronomical line between Sapoá and Salinas, provided that they can agree upon this, in order to adopt natural landmarks."

The entire article is devoted to prescribing how the Commissioners should perform their task. It allows them to dispense with a few details because it says that the whole or part of the line may be measured and implies that accuracy is not as important as finding natural landmarks. But the condition expressly stipulated in the latter case and clearly understood also in the former is that the two Commissions must agree.

Otherwise, the line in its entirety must be measured, following all the practical steps described in article 2.

Clearly, therefore, the consequence of any disagreement on the question of whether the measurement is more or less accurate must be that the view of the party favouring greater accuracy should prevail.

I therefore announce my award as follows: the Commissioners shall immediately proceed to measuring the line from the starting point to a point three miles below El Castillo Viejo, as proposed by Costa Rica.

### **ANNEX 50**

Third Award of the Umpire EP Alexander in the boundary question between Costa Rica and Nicaragua, San Juan del Norte, 22 March 1898

Source: United Nations, *Reports of International Arbitral Awards*, Vol. XXVIII (2007), pp. 227-230

Annex 50

# REPORTS OF INTERNATIONAL ARBITRAL AWARDS

# RECUEIL DES SENTENCES ARBITRALES

Third award under the Convention between Costa Rica and Nicaragua of 8 April 1896 for the demarcation of the boundary between the two Republics

22 March 1898

VOLUME XXVIII pp. 227-230

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### THIRD AWARD OF THE ENGINEER-UMPIRE, UNDER THE CONVENTION BETWEEN COSTA RICA AND NICARAGUA OF 8 APRIL 1896 FOR THE DEMARCATION OF THE BOUNDARY BETWEEN THE TWO REPUBLICS, DECISION OF 22 MARCH 1898\*

### TROISIÈME SENTENCE ARBITRALE RENDUE PAR LE SURARBITRE INGÉNIEUR, EN VERTU DE LA CONVENTION ENTRE LE COSTA RICA ET LE NICARAGUA DU 8 AVRIL 1896 POUR LA DÉMARCATION DE LA FRONTIÈRE ENTRE LES DEUX RÉPUBLIQUES, DÉCISION DU 22 MARS 1898\*\*

International boundary – necessity of stable boundaries – the bank of a river serving as boundary means the bank with the water at the ordinary stage – fluctuations in the water level do not alter the position of the boundary line – changes in the boundary can only occur when they affect the bed of the river.

Frontière internationale – nécessité de frontières stables – les berges d'un fleuve servant de frontière sont les berges correspondantes au niveau d'eau ordinaire – les fluctuations du niveau d'eau ne modifient pas la position de la ligne frontière – les modifications de lafrontière ne peuvent résulter que de changements dans le lit du fleuve.

\* \* \* \* \*

#### Third award rendered, to San Juan del Norte, on 22 March 1898, in the boundary question between Nicaragua and Costa Rica.\*\*\*

In indicating my reasons for the second award I referred briefly to the fact that, according to the well known rules of international law, the precise location of the dividing line on the right bank of the San Juan river that this Commission is now determining, may be altered in future by possible changes in the banks or channels of the river.

I am now being requesting by the current Nicaraguan Commissioner to complete this award with a more definitive statement as to the legal and permanent nature or stability of the border line, which is being demarcated on a daily basis.

<sup>\*</sup> Reprinted from H. La Fontaine, *Pasicrisie Internationale: Histoire Documentaire des* Arbitrages Internationaux (1794-1900), Imprimerie Stampelli & CIE, Berne 1902, pp -533-535. \*\* Reproduit de H. La Fontaine, *Pasicrisie Internationale: Histoire Documentaire des* 

Arbitrages Internationaux (1794-1900), Imprimerie Stampelli & CIE, Berne 1902, pp -533-535. \*\*\* Original Spanish version, translated by the Secretariat of the United Nations.

#### COSTA RICA/NICARAGUA

What is effectively being sought is that I declare that this line will remain as the exact dividing line only as long as the waters of the river remain at their current level and that in future the dividing line may be determined on the basis of the water level at any particular moment.

The commissioner for Nicaragua submits the following in support of his argument:

"Without engaging in a detailed discussion as to the meaning of a river bed or channel, which is the entire area of a territory through which a watercourse flows, I do wish to recall the doctrine of experts on public international law, which is summed up by Mr. Carlos Calvo in his work 'Le droit international théorique et pratique', [book 40, para. 295, page 385] thus: — 'Frontiers delimited by watercourses are subject to change when the beds of such watercourses undergo changes...'

I note that present-day codes are consistent with that doctrine in providing that land that a river or lake submerges and uncovers periodically does not accrue to the adjoining land because it is the watercourse bed. According to article 728 of the Honduran Civil Code, land submerged or uncovered by a watercourse from time to time during periods of ebb and flow in water level does not accrue to adjoining land.

It is therefore obvious that the mathematical line obtained and which continues to be obtained in the form to which reference is made, shall be used for illustrative purposes and as a possible reference point; however, that line is not the accurate measurement of the border line, which is and always shall be the right bank of the river as it may stand at any point in time."

The commissioner's argument, seen in the light of his mandate, as mentioned earlier, is born of a misconception which must be corrected.

While it is strictly speaking accurate that "the right bank of the river as it may stand at any point in time" shall always be the border line, the commissioner is obviously mistaken in believing that the legal location of the line defining the bank of a river will change in accordance with the river's water level.

Indeed, the word "bank" is often used loosely to refer to the first piece of dry land that emerges from the water; however the inappropriateness of such language becomes apparent if one considers instances where rivers overflow their banks for many miles or where their beds dry out completely. Such loose language cannot be entertained in interpreting a treaty on the demarcation of a border line. Borders are intended to maintain peace, thus avoiding disputes over jurisdiction. In order to achieve that goal, the border should be as stable as possible.

Obviously, such a state of affairs would be unacceptable to residents and property owners close to the borders of the two countries, if the line that determines the country to which they owe allegiance and must pay taxes, and whose laws govern all their affairs, was there one minute and not there the next, because such a border line would just generate conflicts instead of

#### AWARD OF 22 MARCH 1898

preventing them. The difficulties that would arise, for example, if certain lands and forests and their owners and residents or people employed in any capacity thereon, were required to be Costa Ricans in the dry season and Nicaraguans in the rainy season and alternatively of either nationality during the intermediate seasons are self evident. But such difficulties would definitely be inevitable if the border line between the two countries were subject to daily changes on the bank where land first rose above the water on the Costa Rican side, because in the rainy season, the river's waters submerge many miles of land in some localities.

It is for such reasons that writers on international law specifically maintain that temporary flooding does not give title to the submerged land. This is the real meaning of the language of the Honduran Code quoted by the Commissioner from Nicaragua. Transposed to the case at hand, it would read as follows: "Costa Rican land that Nicaraguan waters submerge or uncover from time to time, during periods of rise or fall in water level, does not accrue to adjoining (Nicaraguan) territory". As proof of that rule, I would like to cite examples of a host of cases in the United States of America where there are many ongoing law suits between states that have a river bank, and not the thread of a river channel, as one of their borders. I am personally familiar with one such case, where the left bank of the Savannah river is the boundary line between Georgia on the right bank and South Carolina on the left bank. During flooding, the river submerges miles of South Carolina territory, but this does not extend the power or jurisdiction of Georgia beyond the limits it had before with the water at ordinary stage. Thus, no advantage would be given to Georgia and it would be a great inconvenience to South Carolina. Nor do I believe that there is any example of such a mobile boundary in the world.

Clearly, therefore, wherever a treaty rules that the bank of a river shall be taken as a boundary, what is understood is not the temporary bank of land that emerges during exceptional high- or low-water stages, but the bank with the water at ordinary stage. And once defined by treaty, it will become permanent like the surface of the soil over which it flows. If the bank recedes the boundary line shrinks, if the bank expands towards the river, it moves forward.

The periodic rise and fall of the water level does not affect it. This is perfectly consistent with Carlos Calvo's rule quoted by the commissioner for Nicaragua that borders delimited by waterways are likely to change when changes occur in the beds of such waterways. In other words, it is the river bed that affects changes and not the water within, over or below its banks.

It would be useless to try to discuss all possible future changes in the bed or banks of the river and their impact just as it would be equally pointless to try to envisage future scenarios.

It is not this Commission's job to lay down rules for future contingencies but rather to define and mark out today's boundary line.

#### COSTA RICA/NICARAGUA

Let me sum up briefly and provide a clearer understanding of the entire question in accordance with the principles set out in my first award, to wit, that in the practical interpretation of the 1858 Treaty, the San Juan river must be considered a navigable river. I therefore rule that the exact dividing line between the jurisdictions of the two countries is the right bank of the river, with the water at ordinary stage and navigable by ships and general-purpose boats. At that stage, every portion of the waters of the river is under Nicaraguan jurisdiction. Every portion of land on the right bank is under Costa Rican jurisdiction. The measurement and delimitation work now being performed by the parties in the field every day defines points along this line at convenient intervals, but the border line between those points does not run in a straight line; as noted above, it runs along the banks of the river at the navigable stage in a curve with innumerable irregularities of little value which would require considerable expenditure to minutely demarcate.

Fluctuations in the water level will not alter the position of the boundary line, but changes in the banks or channels of the river will alter it, as may be determined by the rules of international law applicable on a case-by-case basis.

# ANNEX 51

Fourth Award of the Umpire EP Alexander in the boundary question between Costa Rica and Nicaragua, Greytown, 26 July 1899

Source: United Nations, *Reports of International Arbitral Awards*, Vol. XXVIII (2007), pp. 231-236

Annex 51

# REPORTS OF INTERNATIONAL ARBITRAL AWARDS

# RECUEIL DES SENTENCES ARBITRALES

Fourth award under the Convention between Costa Rica and Nicaragua of 8 April 1896 for the demarcation of the boundary between the two Republics

26 July 1899

VOLUME XXVIII pp. 231-236

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## FOURTH AWARD OF THE ENGINEER-UMPIRE, UNDER THE CONVENTION BETWEEN COSTA RICA AND NICARAGUA OF 8 APRIL 1896 FOR THE DEMARCATION OF THE BOUNDARY BETWEEN THE TWO REPUBLICS, DECISION OF 26 JULY 1899\*

## QUATRIÈME SENTENCE ARBITRALE RENDUE PAR LE SURARBITRE INGÉNIEUR, EN VERTU DE LA CONVENTION ENTRE LE COSTA RICA ET LE NICARAGUA DU 8 AVRIL 1896 POUR LA DÉMARCATION DE LA FRONTIÈRE ENTRE LES DEUX RÉPUBLIQUES, DÉCISION DU 26 JUILLET 1899\*\*

Interpretation of treaty – words must be taken in their first and simplest meanings, in their natural and obvious sense, according to their general use.

Lake boundary – bank of a lake – limit of water by dry land comprising some elements of permanency – natural, obvious and reasonable waterline preferable to technical one – water level for determining water boundary in the absence of an explicit level; general custom treats mean high water as the normal level and the assumed lake boundary, wherever wet and dry seasons prevail, in all ordinary topographical maps – exceptional situation of waterline used as starting point for boundary line rather than as boundary line – choice of the line of mean high water.

Interprétation des traités – les termes doivent être pris dans leur sens premier le plus simple, naturel et évident, conformément à leur emploi courant.

Frontière lacustre – rives d'un lac – limite de l'eau par un terrain sec comprenant des éléments de permanence – ligne de niveau d'eau naturelle, évidente et raisonnable, préférable à une ligne technique – ligne de niveau d'eau déterminant la frontière lacustre en l'absence de niveau explicite; pour les régions d'alternance de saisons sèches et humides, pratique générale de se référer dans les cartes topographiques ordinaires, à la ligne moyenne du niveau d'eau haut comme niveau normal et ligne de délimitation du lac – situation exceptionnelle où la ligne d'eau sert de point de départ de la ligne frontière au lieu d'être elle-même la ligne frontière – choix de la ligne moyenne du niveau d'eau haut.

\* \* \* \* \*

### Fourth Award made to Greytown, July 26, 1899, in the question of the limit between Costa Rica and Nicaragua.

As the arbitrator of whatever points of difference may arise between your two bodies in tracing and marking the boundary lines between the Republics you represent, I am called upon to decide the following question:

<sup>\*</sup> Reprinted from H. La Fontaine, *Pasicrisie Internationale: Histoire Documentaire des Arbitrages Internationaux (1794-1900)*, Imprimerie Stampelli & CIE, Berne 1902, pp.-535-537. (Only one of the maps mentioned in this award is reprinted)

<sup>\*\*</sup> Reproduit de H. La Fontaine, *Pasicrisie Internationale: Histoire Documentaire des Arbitrages Internationaux (1794-1900)*, Imprimerie Stampelli & CIE, Berne 1902, pp. 535-537.

### COSTA RICA/NICARAGUA

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What level of its waters shall be taken to determine the shore line of Lake Nicaragua, parallel to which and 2 miles distant therefrom the boundary line must be traced, from near the San Juan River to the Sapoa?

It will facilitate discussion to define in advance the principal levels which must be frequently referred to. Under the influence of rainy seasons of about seven months and dry seasons of about five the level of Lake Nicaragua is in constant fluctuation. We shall have to discuss five different stages.

First. Extreme high water, the level reached only in years of maximum rainfall or some extraordinary conditions.

Second. Mean high water, the average high level of average years.

Third. Mean low water, the average low level of average years.

Fourth. Extreme low water, the lowest level reached in years of minimum rainfall or other extraordinary conditions.

Fifth. Mean water, the average between mean high water and mean low water.

The argument presented to me in behalf of Nicaragua claims that the level to be adopted in this case should be the first level named, to wit extreme high water. It argues that this line and this alone, is the true limit of what the argument calls the bed of the lake. Costa Rica claims the adoption of the third level, to wit, mean low water. This is argued principally upon two grounds: First, it is shown by a great number of legal decisions that in most States all water boundaries are invariably held to run at either extreme or mean low water. Second, it is claimed that in case of any doubt Costa Rica is entitled to its benefit, as she is conceding territory geographically hers.

I will begin with Costa Rica's first argument. The equity of adopting a low water line in the case of all water boundaries is readily admitted, even though instances of contrary practice exist.

Between all permanent lands and permanent waters usually runs a strip of land, sometimes dry and sometimes submerged. We may call it, for short, semisubmerged. Its value for ordinary purposes is much diminished by its liability to overflow, but, as an adjunct to the permanent land, it possesses often very great value. If the owner of the permanent land can fence across the semisubmerged he may save fencing his entire water front. He also can utilize whatever agricultural value may be in the semisubmerged land in dry seasons. Both of these values would be destroyed and wasted if the ownership were conferred upon the owner of the water. Therefore equity always and law generally, confers it upon the owner of the permanent land.

I recognized and followed this principle in my award No. 3, where I held that the boundary line following the right bank of the San Juan River, below Castillo, follows the lowest water mark of a navigable stage of river. And, if now the lake shore were itself to be the boundary of Costa Rica, I would not hesitate to declare that the semisubmerged land went with the permanent land and carried her limits at least to the mean low water line.

But this case is not one of a water boundary, nor is it at all similar, or on all fours with one, for none of the equities above set forth have any application. It is a case of rare and singular occurrence and without precedent within my knowledge. A water line is in question, but not as a boundary. It is only to furnish starting points whence to mesure off a certain strip of territory. Clearly the case stands alone, and must be governed strictly by the instrument under which it has arisen. That is the treaty of 1858, and its language is as follows:

"Thence the line shall continue toward the river Sapoa, which discharges into the Lake Nicaragua, following a course which is distant always 2 miles from the right bank of the river San Juan, with its sinuosities, up to its origin at the lake, and from the right bank of the Lake itself up to the said river Sapoa, where this line parallel to the said bank will terminate."

The principles, upon which the language and intent of treaties are to be interpreted, are well set forth in the Costa Rica argument by many quotations from eminent authors. All concur that words are to be taken as far as possible in their first and simplest meanings — "in their natural and obvious sense, according to the general use of the same words", "in the usual sense, and not in any extraordinary or unused acceptation".

We must suppose that the language of the treaty above quoted suggested to its framers some very definite picture of the lake with its banks and of the 2 miles strip of territory. It evidently seemed to them all so simple and obvious that no further words were necessary. Let us first call up pictures of the lake at different levels and see which seems the most natural, obvious and reasonable.

The very effort to call up a picture of the lake at either extreme high water or at extreme low water seems to me immediately to rule both of these levels out of further consideration. Both seem unnatural conditions, and I must believe that had either been intended, additional details would have been given.

Next, is the mean low water mark the first, most obvious and natural picture called up by the expression "the bank of the lake"? It seems to me decidedly not. During about eleven months of the year this line is submerged, invisible and inaccessible. It seems rather a technical line than a natural one. The idea of a bank is of water limited by dry land with some elements of permanency about it. Even during the brief period when the line is uncovered the idea of it is suggestive far more of mud and aquatic growths than of dry land and forest growths.

To my mind, the natural, simple and obvious idea of the bank of a lake in this climate is presented only by the line of mean high water. Here we would first find permanent dry ground every day of an average year. Here an observer, during every annual round of ordinary seasons, would see the water advance to his very feet and then recede, as if some power had drawn the line and said to the waters, "Hitherto shalt thou come, but no further". Here the struggle between forest growths and aquatic vegetation begins to change the landscape. Here lines of drift, the flotsam and jetsam of the waves, naturally suggest the limits of the "bed of the lake".

One level of the lake remains for discussion, the mean level, or average of all waters. In a different climate, where the rainfall is more uniformly distributed throughout the year, the mean high water and mean low water lines, with all their respective features, would approach each other, tending to finally merge in the line of mean water. But, where wet and dry seasons prevail, as in the present case, the line of mean water is destitute of all obvious features, and is submerged for many months of the year. It is purely a technical and not a natural line, and is not to be understood where not expressly called for.

In argument against Nicaragua's claim of the extreme high water line, Costa Rica appeals to the general custom of geographers and scientific men in making ordinary topographical maps, who never adopt the extreme lines of overflows for the outlines of lakes. This argument of general custom has great weight but it is equally against Costa Rica's claim for the mean low water line. Wherever wet and dry seasons prevail, general custom treats mean high water as the normal state, always to be understood where no other level is expressed, and the line is assumed as the lake boundary in all ordinary topographical maps. Two quotations from Commander Lull's report of his Nicaraguan Canal survey will illustrate "Report Secretary of the Navy, 1873, p. 187":

"In a survey made by Mr. John Baily, many years since, that gentleman professed to have found a pass with but 56 feet above the lake level, but the most of his statements are found to be entirely unreliable... For example, he finds Lake Nicaragua to be 121 feet above mean tide in the Pacific, while the true difference of level is but 107 feet." (Ibid., p. 199.)

"The surface of Lake Nicaragua is 107 feet above mean tide in either sea."

From comparison of this level with the levels found by other surveys, there is no question that this figure was Lull's estimate of mean high water, as shown by his line of levels.

From every consideration of the lake, therefore, I am driven to conclude that the shore line of the lake contemplated in the treaty is the mean high water line.

I am led to the same conclusion also from the standpoint of the 2 miles strip of territory.

The treaty gives no intimation as to the purpose of this concession, and we have no right to assume one, either political or commercial. We have only to observe the two conditions put upon the strip in the treaty. Under all ordinary conditions it must be land, and 2 miles wide. This would not be the case if we adopted the line of either mean low water or mean water. In the former case the strip would be too narrow for about eleven months of an ordinary year: in the latter case for about five months.

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Without doubt, then, I conclude that mean high water mark determines the shore of the lake and it now remains to designate that level and how it shall be found.

Several surveys of the proposed Nicaraguan Canal route besides that of Commander Lull above quoted, have been made within the last fifty years. Each found a certain mean high level of the lake, and it might seem a simple solution to take an average of them all, but, as each adopted its own bench mark on the ocean and ran its own line of levels to the lake, I have no means of bringing their figures to a common standard. It seems best, therefore, to adopt the figures of that one which is at once the latest and most thorough, which has enjoyed the benefit of all of the investigations of all of its predecessors, and whose bench marks on the lake are known and can be referred to. That is the survey, still in progress, under the direction of the United States Canal Commission. Its results have not yet been made public, but, by the courtesy of Rear Admiral J. G. Walker, President of the Commission, I am informed of them in a letter dated July 10, 1899, from which I quote:

"In reply I am cabling you to-day as follows: 'Alexander, Greytown, six,' the six meaning, as per your letter, 106 as mean high level of lake. This elevation of 106 is, to the best of our knowledge (Mr. Davis, our hydrographer) the mean high water for a number of years... The highest level of the lake in 1898 was 106.7, last of November. The elevation of our bench mark on inshore end of boiler at San Carlos is 109.37."

A complete copy of this letter will be handed you and also blue prints of the maps made by the Commission of the lower end of the lake, which may facilitate your work.

As this Commission is the highest existing authority, I adopt its finding and announce my award as follows:

The shore line of Lake Nicaragua, at the level of 106 feet, by the bench marks of the United States Nicaragua Canal Commission, shall be taken as the bank of said lake referred to in the treaty of 1858<sup>1</sup>.

<sup>&</sup>lt;sup>1</sup> Monthly Bulletin of the Bureau of the American Republics, 1899, vol. VII, p. 877.

# ANNEX 52

Proceedings of the Costa Rica-Nicaragua Demarcation Commission, 1897-1900 (extract of Proceedings X)

Source: Original Minutes, Ministry of Foreign Affairs and Worship of Costa Rica archives.

Spanish original and English translation

# Proceedings of inauguration of work on demarcation of limits between Costa Rica and Nicaragua

In San Juan del Norte of the Major Republic of Central America, on the fifteenth day of May of eighteen hundred and ninety-seven, the undersigned engineers Luis Matamoros and Leónidas Carranza, Commissioners of the Government of Costa Rica, and Salvador Castrillo and W. Climie, Commissioners of the Government of Nicaragua, assembled to permanently trace and mark the boundary line between these two countries, in accordance with the Treaty of limits of April 15, 1858 and the Arbitral Award of Grover Cleveland, President of the United States of America, assisted by the Engineer Arbiter, General E.P. Alexander, appointed by the abovementioned President of the United States in order to form said Commissions and to resolve the matters discussed in Article II of the Convention celebrated in San Salvador on May 2, 1896, after presenting their respective credentials, which we consider to be in order, we accept them and we declare the Commissions to be established; and we declare the duties that have been entrusted to us to be inaugurated on this date; and an agreement was reached to visit the places related to the initial point of the boundary line immediately as a preliminary proceeding for the establishment of the aforementioned initial point; and this act is entered in duplicate in the respective books, signed and provisionally sealed by each of the Commissioners and by the Engineer Arbiter; and one of the copies is in the English language. Luis Matamoros.- Leónidas Carranza. Salvador Castrillo and W. Climie.

E.P. Alexander

# **Proceedings X**

In the Town of San Juan del Norte, at eight o'clock in the morning, on March the second of the year eighteen hundred ninety eight, in the customary place= the Commissioners for the State of Nicaragua being absent, as per their document dated January seventh of year eighteen hundred and ninety-eight, Engineer Andrés Navarrete, Commissioner representing the Government of Costa Rica, requested that, in compliance with Article V of the Matus Pacheco Convention of March the 27<sup>th</sup> 1896, the Engineer Arbiter participate in the delimitation operations that should be carried out in the absence of those gentlemen= The delimitation Commissions, being reincorporated with the participation of the Engineer Arbiter, proceeded first and foremost to emplace the Monument that determined the Initial Point of the dividing line on the Coast of the Caribbean Sea, linking it with the center of Plaza Victoria in San Juan del Norte= To that end, the following operations were performed= Astronomical observations to determine the azimuths =

San Juan del Norte - January 1898

## TABLE

Note= The measurements taken on January the  $23^{rd}$  were recorded using a small Hildebrand theodolite, where the horizontal axis is adjusted directly; while measurements on January the  $30^{th}$  and  $31^{st}$  were recorded using a Salmoraghi tachymeter, where the horizontal axis is adjusted inversely= As geographic position for measuring these azimuths, the one corresponding to triangulation <u>pole M<sup>o</sup> III [sic]</u> described below was used. Said pole was placed in front of the location once occupied by the Church of San Juan del Norte, for which the <u>Tables of *Conaissance des Temps* (bureau des longitudes</u>), Paris, 1897, give: latitude:  $10^{\circ}-55^{\circ}-14^{\circ}$  N. and longitude  $86^{\circ}-02^{\circ}-19^{\circ}$ . Maxwell-1878-1895)= This Delimitation Commission

adopted the above mentioned position, under every reserve, and as mere approximation aimed at deducing, in the various points of the line of operations, the elements needed to guide the alignments= The average of the foregoing calculations gives for the azimuths of the side ( $\Delta$ -lighthouse) 153° 35' 50", therefore 153°-36' 00 is adopted as sufficient approximation"=These azimuths are measured according to Geodetic Datum in direction S.W.N.E., with zero at South= Triangulation aimed at linking the Initial Point Monument or first marker with the Center of Plaza Victoria in San Juan del Norte .

# TABLE

## **CHART**

## **TABLE**

The coordinates of the Monument or initial marker, taking as origin the center of Plaza Victoria in San Juan del Norte, therefore, are = x = 4268.28 East; y = 2004.54 North; astronomical Meridian; which results that the distance from the above mentioned center of the plaza to the aforementioned (marker) monument is 4715 - 55 (four thousand seven hundred fifteen meters fifty-five centimeters) with a geodetic azimuth of sexagesimal  $244^{\circ}$  50' 23" (two hundred forty-four degrees, fifty minutes, twenty-three seconds) = Therefore the bronze plate mentioned in Proceedings No. VI of October  $2^{nd}$  1897 shall be sculpted, bearing the marker's coordinates and the following inscription = "This monument is located at a distance of 4715 - 55 with a geodetic azimuth of sexagesimal  $244^{\circ}$  50' 23" from the center of Plaza Victoria in

Annex 52

San Juan del Norte" = It was also agreed to have reference markers emplaced in relation with the first monument, one on the opposite margin of the Harbor Head lagoon, at 1139 meters from the first in a location marked there, with an azimuth of 66° 41' 05"; and the other in the aforementioned center of Plaza Victoria in San Juan del Norte = The following type was agreed regarding the markers that will serve as reference points for the first monument, that is to say: for the first one on the right margin of the Harbor Head lagoon, an iron pipe, approximately 40 centimeters in diameter (filled with concrete) and two meters in length, buried one and a half meters and filled with concrete; for the second, in the center of Plaza Victoria in San Juan del Norte, the same iron pipe, buried so that its upper end appears at ground level = then, in compliance with the Award issued by the Engineer Arbiter on December the 20<sup>th</sup> of 1897, the boundary line was measured as described in the Award of September 30<sup>th</sup> of 1897, starting from the initial marker, following around the Harbor and through the first channel met up to the river proper, and through this until pole No. 40 next to the source of the Taura River = (then, in compliance with the Award of December 20<sup>th</sup> of 1897 by the Engineer Arbiter) Said operations and their results are shown in the following table = Survey of the right margin of the Harbor Head lagoon and of the San Juan River, which constitute the dividing line between Costa Rica and Nicaragua =

# **TABLE**

# **CHART**

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## **TABLE**

### **TABLE**

Note: The abscissas or X are considered from East to West, while the Y or ordinates from North to South.= It should be noted that in the columns entitled "Points observed) the Arabic numerals accompanied by the letter "b" (abbreviation of "bis") correspond to points located in the territory of Nicaragua that were surveyed solely for the purpose of aiding the operations: - points whose numerals are not accompanied by the letter "f" are located on the dividing line between both countries.- The angles were obtained by calculating the average of various observations".- It was pointed out that, for greater clarity and with the permission of the Engineer Arbiter, it was agreed to include the results of the dividing line survey in the official records in small segments, instead of daily, which will also facilitate correcting the operations as necessary; and to position each point of the polygonal directrix linking them directly with the initial marker by rectilinear coordinates, whose zero or origin is assumed to be that monument.- And for the purposes of Art. 8 of the Matus – Pacheco Convention, we confirm all of the foregoing in these proceedings, which we sign and approve under our seals.- Corrigendum = On page 28 line 23 between the words "geographic" and "the one corresponding", read "position of the observation".- On page 28 line 30, between the words "pole" and "was", read "No. III".- And on page 28 line 21 the words "filled with concrete" are void.- On page 31, line 32, up to 34, the words "(then... " up to "Arbiter") are void.- On page 31 line 41 the numerals "365.83" = 323.90 = 170.06 = written over what was erased are valid. On page 32 line 11 the numeral  $66^{\circ}10'00'' =$  written over what was erased is valid. On page 32

line 12 the "77°13′00" written over what was erased is valid = on page 32, line 13, amendment 46°37′00", is valid.= On page 35 line 26 in the "horizontal angles" column, read "189°31'40"" = In the following line of the same column read "323°08′40"", and in the following line of the same column read 345°38′40"- On page 36 line 7, 13, 14, of the azimuths column, the crossed out figures are void.\*\*\*\*

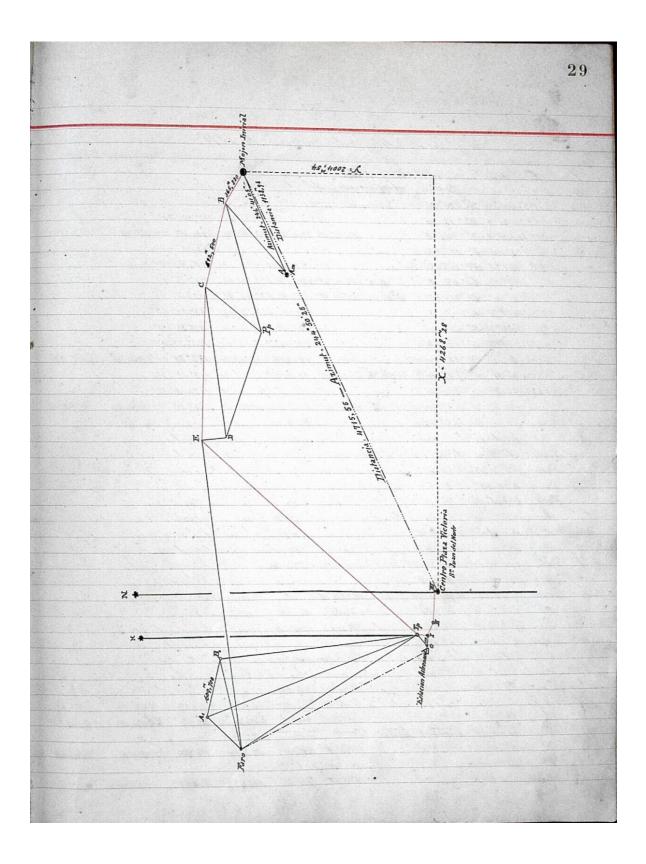
E.P. Alexander

Andrés Navarrete

Annex 52

27 propuso por bosta Prica : Say Denores may race de gales obediente Servidor (f.). E. P. Messa der = Ingeniero arbitro " 2º Concendose presence que en los trabajos que se van a practicar on el de linde y demas operaciones topograficas no sera pose He celebrar actas diariamente Convienen ambas Comisiones de acuerdo con el Senor Ingeniero arbi tro en que las operaciones que se incriban en las car teras de campo sean reasumidas y transcritas en los hibros de actas cada Semande - I para constancia formamos y autorijamos esta cheta con muestros Sellos-Note: la la linea treinta y mere de la progine vointicines des puis de la palabar que leare ella-8 P Meranden A. Climit Leonicarbananca Salvador Castratts Vauassel Acta X En la secudad de chin duan del clorte a las ocho de la mana na del dia dos de Marzo mil ochocientes noventa y ceho en el loca de costeembre = cestande ausentes los denires Comisionados por parte del Estado de Micaraqua, como resulta por el oficio de diches chieres secha 7 de Enero de 1898, el Seños pregeniero Se Andres Macarrote, Comitiona do en representacion por el Jobierno de Goeta Rica, pudio que en campli-miento del Articello V del Convenio Matus lacheco, de 24 de Maryo de 1896, el Señor Mageniero Abitrador Concurriera a las operaciones de destinde, que durante la ausencia de aquelles señeres debien cutarse : Apaintegradas de esta suerte, con el concurso del Añor Ingeniere Arbitico las Comisiones delemitadoras, a procedio primere exetuar la fijacion del monumento que determina el puento o partida de la línea divisiria en la Costa del mar Carto, punto de lacionandele con el centre de la Plaza Victoria de San Quan del Note : A tal efecto, se practicaron las siguientes operaciones = Observaciones Astronomicas para la determinación de los chimuts.

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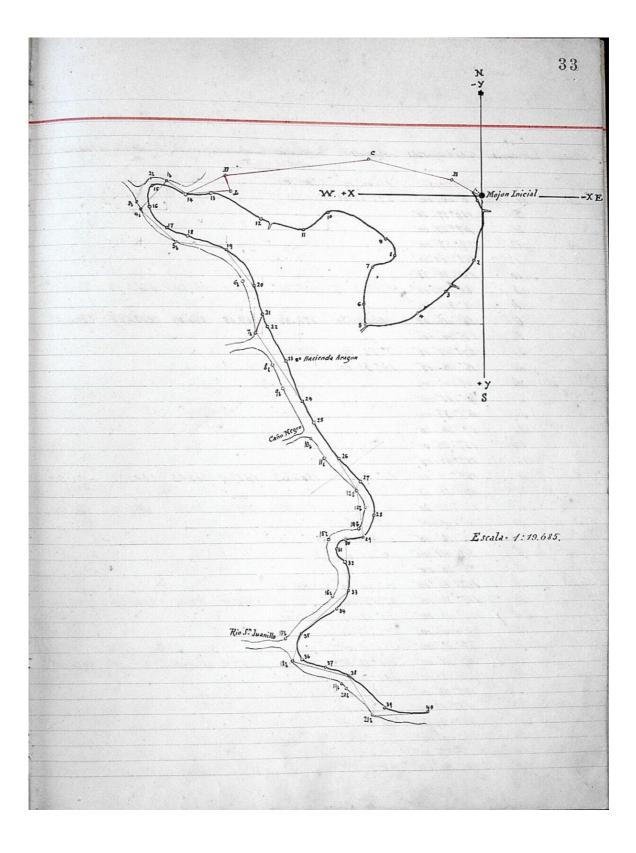


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31 Gas coordenadas del Monumento o' mojon inicial tomando por origon el centro de la Plaza Victoria de San Juan del Norte, son pues = x = d'268, 28 Cota; y = 2004. 54 Norte; Meridiana astronomica; de lo aval resulta que la distancia de dicho contro de la plaza al expresado (m jon monumento es de 4715."55 ( enatio mil, setecientos quince metros cincuenta y cinco centimetros) con chimut geodesico de 244.º 50. 23" (des cientos cuarenta y cuatro grados, cincuenta minutes, veinte y tres segundos sexagesimales = In consigniente, a manda esculpir en la placa de bronce de que se hace mencion en el acta nº VI de 2 de Octubre de 1897 y que debe llevar las coordenadas de dicho mojon la siguiente inseripcion : Dista este monumento del centro de la Plaga Victoria de San Cuan del Norte 4715.55, con Azimut geodesico de 244. 50, 23" seragesimales"= · Se convino tambien en mandar , construir puntos de referencia rela. cionados con el primer monumento, une en la margen opuesta de la laguna de Harbor Read, à 1139 metres del primer en un sitio alli marcado, cuyo Azimut resulte ser de 66° 41-05, y el otro en el expresado contro de la Para Victoria de San Juan del Norte - Se acun da el siguiente tipo para los mojones que serviran de puntos de referencia al primer monumento, es decir; para el primero en la margen derecha de la laguna de Carbor Head, un tubo de hierro, de unos cuarenta centimetros de diametro y (rellenado con concreto de cemento) y de des metros de longitud, enternado un metro y medio, y rellenado con con preto de comento: para el segundo, on el contro de la Plana Victoria de San Juan del Norte, el mismo tubo de hierro, enterrado hasta apa ver su estremidad superior al nivel del suclo = En seguida, en que cucion del bando enutido por el Senor Ingeniero Abitor, con fecha 20 de Diciembre de 1897, se procedir à la medicion de la linea pronten que segun esta descrita en el saudo de 30 de Atrembre de 1897, comenzando desde el mojon inicial, siguiendo al rededor del Karbor y subiendo por el primer caño que se encuentra hasta el rio propio y llegandose por este hasta la estaca M'HO inmediata de macimiento del Mo Caura = (En seguida en ejección del trans emitido por el Señor Ingeniero arbitro. Con secha 20 de Diciembre de 1897, a procedio ) Dichas operaciones y sus recultados aparecan en d cuadre Siguiente - Perantamiente de la margen derecha de la laguna de Marbor Head yhdel Nio Can Juan que constituyon la linea divisoria entre Costa Roica y Nicaragua-

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Annex 52

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# ANNEX 53

Letter from Costa Rica to Nicaragua, Reference DM-AM-107-13, 27 February 2013

English translation and Spanish original

#### TRANSLATION

#### The Minister of Foreign Affairs and Worship

27 February 2013 DM-AM-107-13

Dear Minister:

I refer to the announcement made in the media of your country, in regard to the sending of more Nicaraguan citizens to Isla Portillos, specifically in the area where the International Court of Justice banned their presence. According to what is emphasized in these reports, this is the 79th contingent of citizens who are sent as part of an academic program, which Costa Rica had protested in June 2012, and that Nicaragua did not respond.

Costa Rica is greatly concerned about the language used by one of the instructors of the state-sponsored program, who expressed that "we must act with belligerence, and I believe that this is an important mission of these young people, of us as a country ..." as was published in the official media El 19 Digital on 27 January. Incitement to belligerence is very serious, and Costa Rica expects Nicaragua to take actions to avoid such calls.

Furthermore, as shown in the accompanying photographs, there is permanent presence of Nicaraguan citizens in the territory designated by the Court in its Order of Provisional Measures of 8 March 2011. What is more, a new camp was erected in the northern sector of the Island.

These actions constitute serious violations of what was ordered by the Court, and my Government is once again forced to present the strongest protest against such events, while urging the Government of Nicaragua to fully comply with the said provisional measures, in particular, to keep clear the territory indicated by the Court's Order and to refrain from carrying out any activity there.

I take this opportunity to reiterate the assurances of my highest consideration.

Enrique Castillo Barrantes Minister

His Excellency Samuel Santos Lopez Minister of Foreign Affairs Republic of Nicaragua

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Recipido 28/2/2013 2:50 PM 200 El Ministro de Relaciones Exteriores y

27 de febrero de 2013 DM-AM-107-13

Estimado señor Ministro:

Hago referencia al anuncio hecho en medios de comunicación de su país, sobre el envío de más ciudadanos nicaragüenses a Isla Portillos, específicamente en la zona donde la Corte Internacional de Justicia prohibió su presencia. Según destacan esos informes, se trata del contingente número 79 de ciudadanos que son enviados como parte de un programa académico, el cual Costa Rica había protestado en el mes de junio de 2012, y sobre el que Nicaragua no respondió.

Preocupa mucho a Costa Rica el lenguaje utilizado por uno de los instructores estatales del programa, que manifestó que "se debe actuar de forma beligerante, y yo creo que esta es una misión importante de estos jóvenes, de nosotros como país...", según lo publicó medio oficialista El 19 Digital, el 27 de enero pasado. La incitación a la beligerancia es muy grave, y Costa Rica espera que Nicaragua tome acciones para que se eviten tales llamados.

Asimismo, tal y como se muestra en las fotografías anexas, hay permanente presencia de ciudadanos nicaragüenses en la zona objeto de las medidas provisionales impuestas por la Corte Internacional de Justicia el 8 de marzo de 2011. Incluso, también se hizo el levantamiento de un nuevo campamento en el sector norte de la Isla.

Estas acciones constituyen graves violaciones a lo dispuesto por la Corte, por lo que mi Gobierno se ve una vez más en la situación de presentar la más enérgica protesta por esos hechos, e insta al Gobierno de Nicaragua a cumplir a cabalidad con las medidas provisionales señaladas, en particular, que mantenga despejado el territorio objeto de la orden de la Corte y se abstenga de realizar cualquier tipo de actividad allí.

Aprovecho la ocasión para reiterar las seguridades de mi consideración.

Enrique Castillo Barrante

Excelentísimo señor Samuel Santos López Ministro de Relaciones Exteriores República de Nicaragua

# ANNEX 54

Letter from Costa Rica to the International Court of Justice, Reference ECRPB-016-13, 15 March 2013 (annexes omitted)

English original



Embajada de Costa Rica ante el Reino de los Laíses Bajos

> The Hague, 15 March 2013 ECRPB-016-13

Excellency.

I have the honour to refer to the Order of the Court of 8 March 2011 in the case concerning Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), as well as to the communication presented by Nicaragua dated 28 February 2013, transmitted to Costa Rica through note 28022013-01 of that same date.

in regard to the latter, Costa Rica observes that while Nicaragua's communication to the Court refers to purported breaches by Costa Rica of the Court's Order of 8 March 2011, all the allegations and purported events stated by Nicaragua concern claims made in the case concerning Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica). Therefore, if necessary, Costa Rica will refer to those allegations, as well as to the press notes included therein, in its Counter-Memorial in the case concerning Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica). For the avoidance of doubt and in any event, Costa Rica rejects the allegations made by Nicaragua in said communication. In particular. Costa Rica states that the construction of a road in its sovereign territory has not caused and is not causing harm to the San Juan River.

In relation to the Court's Order of 8 March 2011 in the case concerning Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Costa Rica is hereby submitting to the Court a copy of note DM-AM-107-13 dated 27 February 2013 and its complete annexes. In this note, Costa Rica protested, once again, against Nicaragua's State-sponsored program to maintain a constant presence of Nicaraguan nationals in the area indicated by the Court in its Order of 8 March 2011, which Nicaragua refers to as "Harbour Head". The note contains two photographs taken on 5 February 2013. One of the photographs shows new Nicaraguan camps set up in the area towards its northernmost point, while the other shows Nicaraguan citizens and infrastructure, including a barbed wire fence, at the mouth of the artificial caño. The original photographs are annexed to this report, together with a graphic that shows the precise areas to which they correspond.

Note DM-AM-107-13 also includes four media reports describing the latest events in relation to Nicaragua's State-sponsored program to ensure a constant presence of Nicaraguan nationals in the area indicated by the Court, as well as the activities they are carrying out in the area. Of particular relevance is the article written by the independent reporter Tim Rogers of the Nicaragua Dispatch on 26 September 2012 who, as a first-hand witness, describes what he saw during his visit to the area.

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First, Mr. Rogers confirms the presence of Nicaraguan officials in the area. The following two paragraphs refer to this:

"This is about creating ecological awareness, building nationalism and defense of the homeland," says head councilor Oscar Garcia, a forestry engineer with the Ministry of Environment and Natural Resources (MARENA)."...

"Garcia was the only adult present on the island during our visit, but he said two other government functionaries were en route from Managua and would be arriving shortly to give him a hand with the supervision."

Mr. Rogers' statement not only describes the presence of Nicaraguan officials in the area, but also confirms that the presence of members of the Sandinista Youth is organized and sponsored by Nicaragua. The following paragraphs describe the situation:

"Deep in the jungle on a marshy riverbank that's contentiously close to the Costa Rican border, the Nicaraguan government has created a Sandinista sleepaway camp for teens interested in environmentalism and national defense."

"Welcome to "Camp Harbour Head," the Nicaraguan government's self-styled ecological and national defense camp for Sandinista teens. The camp is free for all, thanks to subsidies provided by cash-strapped municipal budgets. This makeshift camp has been operating 24/7 since April 2011, three weeks after the Inter-American [sic] Court of Justice (ICJ) ordered Nicaragua and Costa Rica to withdraw their security personnel from the disputed border zone. More than 70 "environmental brigades" have passed through here on week-long shifts. The campers first spend a week of training in Managua, and then come to Harbour Head for eight days of fieldwork."...

Of particular concern is the confirmation made by Mr. Rogers that the Sandinista Youth are in fact performing works in the area indicated by the Court to ensure that the artificial *caño* dug by Nicaragua between November 2010 and January 2011 remains open. The following quotes taken from his article are of particular significance:

"The "campers"—members of a Sandinista Youth environmental brigade called "Guardabarranco" —spend a full week at the camp, working on environmental projects such as reforestation and river-dredging. They're also taught about homeland defense and border protection."...

"To protect the island, the campers are working constantly to keep the channels (caños, as they are known in Spanish) free of debris and sedimentation. As long as the river continues to flow around the island, the waters of the Río San Juan separate it from Costa Rica and protect Nicaragua's claim to the land, Garcia said. But if the channels silt up, Harbour Head ceases to be an island and starts looking like a peninsular extension of Costa Rica's Isla Calero, just south of the Río San Juan."... "Former Nicaraguan guerrilla leader and self-styled river-dredge captain Edén Pastora, who is reportedly earning a six-digit salary from the Sandinista government, famously dredged the disputed channels at the end of 2010. Costa Rica protested the move, saying Pastora was carving a new canal into Costa Rican territory to push the river south and usurp Tico territory.

Costa Rica likened Pastora's river-dredging efforts to a military invasion. Since then, the channels that Pastora cleared have again filled with sedimentation. That's where the campers at Camp Harbour Head come in.

'The Río San Juan feeds those channels, but because of the sedimentation that has fallen in the river, they have closed up again,' Garcia explained. 'These are natural channels, but they have been filled with 50 years of silt and been totally closed. So our job is to clean them and allow the water to rediscover its natural course.'

In addition to the normal sedimentation carried down river, the recently constructed Costa Rican river highway has had "a tremendous effect on the river," the MARENA official said.

'We are going to have to be cleaning this constantly. Once the river is fully dredged, it will flow strong enough to keep the channels naturally clean, but right now we need the efforts of the youths,' the councillor said."

It is clear that Nicaragua has maintained a policy of absolute disregard of the Court's Order of 8 March 2011. The fact that Nicaragua has been taking concrete actions to ensure that the artificial *caño* remains open is particularly grave. Under natural circumstances the artificial *caño* would close itself, but Nicaragua appears determined to keep it open.

The other three media reports included in note DM-AM-107-13, which are all taken from the official Nicaraguan digital media El 19 Digital, refer to the 79<sup>th</sup> "contingent" of Sandinista Youth that was sent to the disputed area in early February 2013. According to the press reports, on this occasion a group of youths from the Nicaraguan cities of Leon and Chinandega were dispatched, following a week of training, to reside for a week in the area indicated by the Court in its Order of 8 March 2011. According to these media reports, to date 6,000 Sandinista Youths have visited the area.

This and the other evidence previously submitted by Costa Rica to this Court unequivocally confirm that Nicaragua is sponsoring the continuous presence of Nicaraguan officials and nationals in the area indicated by the Court. In light of this, the recent response by Nicaragua to note DM-AM-107-13, made through note MRE-DM-AJ-127-03-13 of 5 March 2013—annexed to this report—openly contradicts what is by now an established fact: Nicaragua has breached and continues to breach the Court's Order of 8 March 2011. Indeed, Note MRE-DM-AJ-127-03-13 of 5 March states that that "the Government of Nicaragua ... has taken all necessary measures to ensure that the area is maintained free of any military or civilian Nicaraguan persons." Even less credible is Nicaragua's affirmation that "[i]n relation to the information about the environmentalist youth ... this work is of a private nature and it is not being directed or

coordinated by any government authority; therefore, it is not attributable to the Government of Nicaragua."

Costa Rica rejects these assertions made by Nicaragua, and asks the Court to take notice of the abundant and convincing evidence to the contrary.

Finally, as the Court was previously informed, on 7 March 2013 a team of nine professionals working with Costa Rica's Ministry of the Environment carried out a site inspection in the area indicated by the Court, in accordance with paragraph 86(2) of the Court's Order of 8 March 2011, as well as the Working Plan contained in the report presented by Costa Rica to the Ramsar Secretariat on 28 October 2011, which was approved by the Ramsar Secretariat on 7 November 2011. As the Court will recall, Nicaragua and the Ramsar Secretariat were informed of this site visit in advance of its taking place.

During the site visit, the Cost Rican environmental personnel encountered a group of approximately 15 Nicaraguan nationals in the area indicated by the Court. They also observed a fence which was constructed by Nicaraguan nationals in the area north of the mouth of the artificial *caño*, starting at the mouth of the artificial *caño* and extending along it towards the north-east. One of the photographs taken during the site visit to this Report is attached to this Note. This photograph contains a close-up view of the area depicted in one the photographs of 5 February 2013, showing clearly the infrastructure and barbed wire fence built by the Nicaraguan nationals at the mouth of the artificial *caño*, as well as the Nicaraguan flags planted thereon.

Costa Rica will continue to inform the Court of developments in relation to the situation in the northern area of Isla Portillos.

Accept, Sir, the assurances of my highest consideration,

oe Urbina

Ambassador of Costa Rica Kingdom of the Netherlands Co - Agent

His Excellency Mr. Philippe Couvreur Registrar International Court of Justice Peace Palace 2517 KJ The Hague



### ANNEX 55

Letter from Nicaragua to International Court of Justice, Reference HOL-EMB-252, 9 December 2013 (annexes omitted)

English original



EMBASSY OF NICARAGUA

THE HAGUE

The Hague, 9 December 2013 Ref:HOL-EMB-252

Sir,

I have the honour to refer to the to the Order of the Court of 22 November 2013 in the case concerning <u>Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)</u> and <u>Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica</u>) and in particular to paragraph 59 (2 B) of said Order that stipulates that :

"Notwithstanding the provisions of point 2 (A) above and paragraph 86 (1) of the Order of 8 March 2011, Nicaragua shall fill the trench on the beach north of the eastern caño within two weeks from the date of the present Order; it shall immediately inform the Court of the completion of the filling of the trench and, within one week from the said completion, shall submit to it a report containing all necessary details, including photographic evidence"

After the Court delivered its Order, the Republic of Nicaragua immediately announced that it would comply with the measures indicated in the Order<sup>1</sup>, and without delay proceeded to implement them. In that regard, the President of Nicaragua, Daniel Ortega Saavedra, instructed the Commander in Chief of the Army, General Julio Aviles Castillo, the speedy fulfillment of the provisions issue by the Court, particularly the facilitation of the filling of the trench on the beach north of the eastern *caño* within two weeks of the said Order by the National Port Company and the Ministry of the Environment and Natural Resources.<sup>2</sup> The Commander in Chief of the Army issued Order 37 dated 23 November 2013 informing the South Military Detachment of the instructions to be carried out.<sup>3</sup>

The same day, the Private Secretary of National Policies, Dr. Paul Oquist, addressed a letter to the Executive President of the National Port Company requesting it to proceed with the filling of the trench on the beach north of the eastern *caño* and to proceed with the elaboration of a report

<sup>&</sup>lt;sup>1</sup> See Press Release attached as Annex 1 to Letter of 3 December 2013 from Nicaragua to the Registrar.

<sup>&</sup>lt;sup>2</sup> Letter from the President of Nicaragua to the Army of Nicaragua, 23 November 2013. (Annex 3)

<sup>&</sup>lt;sup>3</sup> Order 37 by the Commander in Chief of the Army, 23 November 2013. (Annex 2A)



#### **EMBASSY OF NICARAGUA**

#### THE HAGUE

containing all the necessary details, including photographic evidence of such works.<sup>4</sup> In compliance with such instructions, the National Port Company proceeded with the filling of the trench on 28 November 2013 until 30 November.<sup>5</sup> Similarly, the Army proceeded with the dismantling of the military camp identified by the Court in paragraph 46 of the Order.<sup>6</sup>

The Republic of Nicaragua herewith attaches all the documents related to the filling of the trench on the beach north of the eastern caño, which contain all necessary details, including photographic evidence of the completion of the work that was carried out within the time frame indicated by the Court.

Accept, Sir, the assurances of my highest consideration.

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Ambassador Carlos José Argüello Gómez Agent of Nicaragua His Excellency

Mr. Philippe Couvreur Registrar International Court of justice Carnegieplein 2 2517 KJ, The Hague

<sup>&</sup>lt;sup>4</sup> Letter from the Private Secretary of National Policies to the National Port Company, 23 November 2013.

<sup>(</sup>Annex 4) <sup>5</sup> Technical Execution report Closure of the Trench to te North of the Eastern Chanel, San Juan de Nicaragua" National Port Authority Technical Management, December 2013 (Annex 1)

<sup>&</sup>lt;sup>6</sup> Letter from the Chief of the South Military Detachment to the Commander in Chief of the Army, 2 December 2013.(Annex 2B).

# ANNEX 56

Letter from Costa Rica to Nicaragua, Reference DM-AM-584-16, 14 November 2016

English translation and Spanish original

#### The Minister of Foreign Affairs and Worship

San José, 14 November 2016 DM-AM-584-16

Excellency,

I address you regarding the cases concerning "Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)" and "Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)".

Costa Rica has recently become aware of the new positioning of a Nicaraguan military camp from its previous location on the beach separating Los Portillos Lagoon from the Caribbean Sea, to a new location on the beach of Isla Portillos to the northeast of Los Portillos Lagoon, situated on Costa Rican territory as determined by the Court in its Judgment of 16 December 2015 in the *Certain Activities* case.

Costa Rica annexes the following images to this note:

- 1. Annex 1, a satellite image of 5 July 2016 which shows the previous location of the Nicaraguan military camp, circled in red;
- 2. Annex 2, an aerial photograph of 8 March 2016 which shows the previous location of the Nicaraguan military camp;
- 3. Annex 3, a satellite image of 14 September 2016 which shows the new location of the Nicaraguan military camp, circled in red;
- 4. Annex 4, a photograph of 7 November 2016 which shows the new location of the Nicaraguan camp;
- 5. Annex 5, a superimposition of two satellite images of 8 March [sic][5 July] and 14 September 2016, on which a red line shows the change of location of the Nicaraguan military camp.

His Excellency Samuel Santos López Minister of Foreign Affairs Republic of Nicaragua Costa Rica recalls that in its Judgment of 16 December 2015, at paragraph 229(1), the Court found that Costa Rica has sovereignty over the "disputed territory" defined by the Court at paragraph 69 of the same Judgment as comprising "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, the right bank of the San Juan River up to its mouth at the Caribbean Sea and the Harbor Head Lagoon", including "the beach".

In light of the above, Costa Rica vigorously protests this most recent Nicaraguan violation of its sovereignty and territorial integrity. Nicaragua's actions further constitute a violation of the Court's Judgment of 16 December 2015 in the *Certain Activities* case, which remains an active case whilst compensation from Nicaragua is pending.

Costa Rica requests Nicaragua to remove its military camp from the Costa Rican territory in question, and to abstain from taking any action that may aggravate the dispute that is the subject of the *Maritime Delimitation* proceedings pending before the Court, or which may make those proceedings more difficult to resolve.

Accept, Sir, the assurances of my highest consideration,

Manuel A.González Sanz Minister

Satellite Image, 5 July 2016

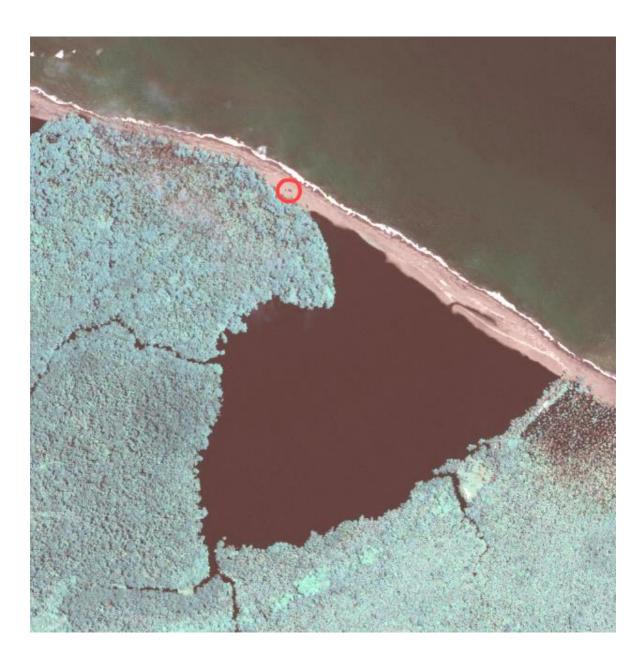


# Aerial photograph, 8 March 2016



Annex 3

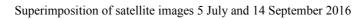
### Satellite image, 14 September 2016



Aerial photograph, 7 November 2016



#### Annex 5







El Ministro de Relaciones Exteriores y Culto

San José, 14 de noviembre del 2016 DM-AM-584-16

Su Excelencia,

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Me dirijo a usted con ocasión de referirme a los casos "Ciertas Actividades de Nicaragua en la Zona Fronteriza (Costa Rica c. Nicaragua)" y "Delimitación Marítima en el Mar Caribe y el Océano Pacífico (Costa Rica c. Nicaragua)".

Costa Rica recientemente ha tomado conocimiento del traslado del campamento militar nicaragüense desde su ubicación previa en la playa que separa la Laguna Los Portillos del Mar Caribe, hasta una nueva ubicación en la playa de Isla Portillos hacia el noroeste de la Laguna Los Portillos, situada en territorio costarricense tal como fue determinado por la Corte Internacional de Justicia en su sentencia del 16 de diciembre de 2015 para el caso "Ciertas Actividades".

Costa Rica anexa a esta nota las siguientes imágenes:

- Anexo 1, imagen satelital del 5 de julio de 2016 que muestra la ubicación anterior del campamento militar nicaragüense, señalado en un círculo rojo;
- Anexo 2, una fotografía aérea del 8 de marzo de 2016 que muestra la ubicación anterior del campamento militar nicaragüense;
- Anexo 3, imagen satelital del 14 de septiembre de 2016 que muestra la ubicación nueva del campamento militar nicaragüense, señalado en un círculo rojo;

Excelentísimo Señor Samuel Santos López Ministro de Relaciones Exteriores República de Nicaragua

14 de noviembre del 2016 DM-AM-584-16

El Ministro de Relaciones Exteriores y Culto

- 4. Anexo 4, una fotografía del 7 de noviembre de 2016 que muestra la ubicación nueva del campamento militar nicaragüense; y
- 5. Anexo 5, una superposición de las imágenes satelitales del 8 de marzo y 14 de setiembre de 2016 que muestra mediante una línea roja el cambio en la ubicación del campamento militar nicaragüense.

Costa Rica recuerda que en el párrafo 229 (1) de la sentencia del 16 de diciembre de 2015, la Corte determinó que Costa Rica tiene soberanía sobre el "territorio en disputa" definido por la Corte en el párrafo 69 de la misma sentencia como incluyendo "la parte norte de Isla Portillos, es decir, el área de humedal de unos 3 kilómetros cuadrados entre la margen derecha del caño en disputa, la margen derecha del río San Juan hasta su desembocadura en el Mar Caribe y la Laguna de Harbor Head", incluyendo "la playa".

Por lo anterior, Costa Rica presenta su más enérgica protesta por esta reciente violación de su soberanía e integridad territorial por parte de Nicaragua. Las acciones de Nicaragua adicionalmente violan la sentencia de la Corte del 16 de diciembre de 2015 en el caso "Ciertas Actividades", que se mantiene aún activo, cuya compensación por parte de Nicaragua está aún pendiente.

Costa Rica le solicita a Nicaragua que retire su campamento militar del territorio costarricense indicado, y que se abstenga de realizar cualquier acción que pueda agravar la disputa que es objeto del caso sobre "Delimitación Marítima" actualmente en curso ante la Corte o que pueda hacer el procedimiento más difícil de resolver.

Aprovecho la oportunidad para reiterarle las muestras de mi mayor consideración.

Manuel A. González Sanz

Ministro

Anexo 1 Imagen Satelital, 5 de julio de 2016

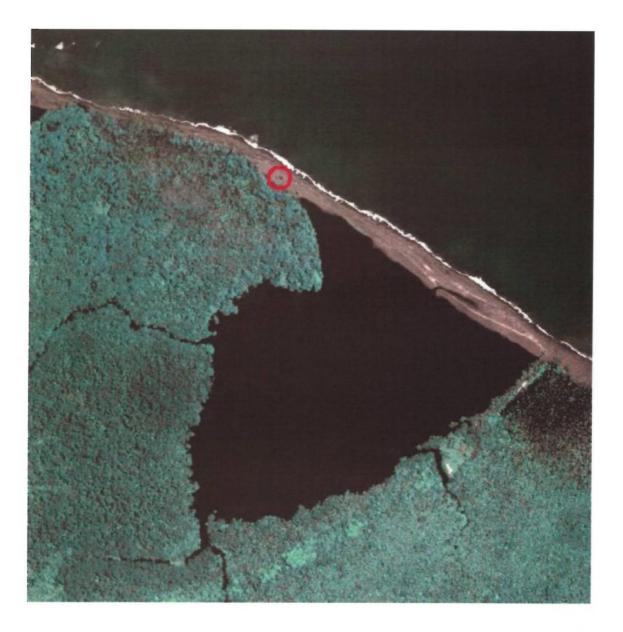


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# Anexo 2 Fotografía aérea, 8 de marzo de 2016



Anexo 3 Imagen Satelital, 14 de setiembre de 2016

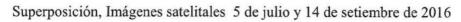


### Anexo 4

# Fotografía aérea, 7 de noviembre de 2016









# ANNEX 57

Letter from Nicaragua to Costa Rica, Reference MRE/DMC/250/11/16, 17 November 2016

English translation and Spanish original

#### MINISTRY OF FOREIGN AFFAIRS Managua, Nicaragua

Managua, 17 November 2016. MRE/DMC/250/11/16

Mr. Manuel A. González Sanz Minister of Foreign Affairs and Worship Republic of Costa Rica

Dear Minister:

I address you in reference to your note DM-AM-584-16, in which you express your protest regarding the presence of a Nicaraguan military camp which, according to your note, is located on Costa Rican territory and request its removal from said territory which, as further indicated in your note, was allegedly awarded to your country as a result of the judgment issued by the International Court of Justice on 16 December 2015.

Allow me to point out that Costa Rica knows first-hand that Nicaragua has always exercised sovereignty over the sandbar that separates Harbor Head Lagoon from the Caribbean Sea, and both the International Court of Justice and Costa Rica have had knowledge of the presence of a Nicaraguan military camp on that sandbar for a number of years, regardless of its exact location.

In this regard I must remind you that, contrary to what is alleged in your note, Costa Rica has recognized Nicaragua's sovereignty over that sandbar in front of the lagoon on numerous occasions, most recently during the Oral Hearings held in April 2015. At that time, Costa Rica noted that "the sandbar which separates the sea from Harbor Head Lagoon [...] can only be considered as land capable of appertaining to a State in so far as it remains permanently above water at high tide and, if it does, it appertains to Nicaragua." This was confirmed by the Judgment of 16 December 2015.

Consequently, this new claim by Costa Rica is unfounded and contradicts all actions and official statements made by your country.

On the other hand, as you are aware of, and as recorded in the official maps of Nicaragua and Costa Rica for a number of years now, both countries have always considered as part of Nicaraguan territory not only the sandbar in front of Harbor Head Lagoon but also the *entire stretch of coast abutting the Caribbean Sea which lies between Harbor Head Lagoon and the mouth of the river*.

Nicaragua cannot help but notice the particular moment in which Costa Rica has decided to make this new claim, especially taking into account the next on-site visit of the experts

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appointed by the International Court of Justice within the context of the case "*Maritime Delimitation in the Caribbean Sea and the Pacific Ocean*,", a case which does not address this topic and for which the stage for submission of written pleadings has ended.

Thus, the Government of Reconciliation and National Unity of Nicaragua rejects Costa Rica's gratuitous protest and new claims, as well as any legal sense intended for them.

I take this opportunity to reiterate the assurances of my consideration and appreciation.

Denis Moncada Colindres Minister Advisor to the President of the Republic on International Policies and Affairs

CC: File



Managua, Nicaragua

Managua, 17 de Noviembre de 2016. MRE/DMC/250/11/16

Señor Manuel A. González Sanz Ministro de Relaciones Exteriores y Culto República de Costa Rica

Señor Ministro,

Me dirijo a Usted en ocasión de hacer referencia a su nota DM-AM-584-16 en la que manifiesta su protesta por la presencia de un campamento militar nicaragüense ubicado, según afirma su nota, en territorio costarricense y solicita el retiro del mismo de dicho territorio que, según continúa afirmando su nota, fue presuntamente adjudicado a su país como resultado de la sentencia emitida por la Corte Internacional de Justicia el 16 de Diciembre de 2015.

Me permito señalar que Costa Rica conoce de primera mano que Nicaragua siempre ha ejercido soberanía sobre la barra de arena que separa la laguna de Harbour Head del Mar Caribe, y tanto la Corte Internacional de Justicia como Costa Rica han estado en conocimiento pleno de la presencia de un campamento militar nicaragüense en dicha barra desde hace muchos años, independientemente de la ubicación exacta del mismo.

Al respecto tengo a bien recordarle que contrario a lo que su nota alega, Costa Rica ha reconocido la soberanía de Nicaragua sobre esa barra frente a la laguna en numerosas ocasiones, más recientemente durante las Audiencias Orales celebradas en Abril de 2015. En esa ocasión, Costa Rica recalcó que la "barra de arena que separa el mar de la Laguna de Harbour Head [...] solamente puede ser considerada como territorio apropiable a un estado mientras el mismo permanezca sobre el agua durante la pleamar, y si esto es así, entonces *pertenece a Nicaragua*". Y así fue confirmado por la sentencia del 16 de Diciembre de 2015.

En concordancia, esta nueva pretensión de Costa Rica es infundada y se contradice con todo lo actuado y expresado oficialmente por su país.

Por otra parte, como es de su conocimiento y consta en los mapas oficiales de Nicaragua y de Costa Rica desde hace muchos años, ambos países siempre han considerado como parte del territorio Nicaragüense, no solo la barra de arena frente a la Laguna de Harbour Head, sino también el *total del* estrecho de costa colindante con el Mar Caribe que se encuentra entre la Laguna de Harbour Head y la boca del río.

Nicaragua no puede evitar notar la particularidad del momento en que Costa Rica ha decidido realizar este nuevo reclamo, especialmente teniendo en cuenta la próxima visita *in situ* de los expertos nombrados por la Corte Internacional de Justicia dentro del contexto del caso "Delimitación Marítima en el Mar Caribe y el Océano Pacífico"; caso que no abarca este tema y cuya etapa de alegatos escritos ha sido finalizada.

Así las cosas, el Gobierno de Reconciliación y Unidad Nacional rechaza la protesta gratuita y las nuevas pretensiones de Costa Rica, así como cualquier sentido legal que pretenda darse a las mismas.

Aprovecho la ocasión para reiterarle las muestras de mi consideración y estima.

Cro. Denis Moncada Colindres Ministro Asesor del Presidente de la República para Políticas y Asuntos Internacionales

CC: Archivo



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Letter from Costa Rica to Nicaragua, Reference DM-AM-628-16, 30 November 2016

English translation and Spanish original

#### The Minister of Foreign Affairs and Worship

#### San José, 14 November 2016 DM-AM-628-16

Excellency,

I refer to Nicaragua's note MRE/DMC/250/11/16 of 17 November 2016 concerning the military camp placed and maintained on the beach of Isla Portillos west of Harbor Head Lagoon, responding to *Costa Rica's note DM-AM-584-16 dated 14 November 2016.* 

Costa Rica regrets that Nicaragua has now made a new claim to Costa Rican sovereign territory, as determined by the International Court of Justice in its judgment of 16 December 2015. Costa Rica rejects in their entirety the arguments invoked by Nicaragua in its note. Nicaragua's attitude constitutes a rejection and a breach of said judgment.

Should Nicaragua persist in its claim to and occupation of Costa Rican territory, Costa Rica reserves all its rights in terms of the legal avenues available to it.

Accept, Sir, the assurances of my highest consideration.

Mario Alexander Montero Campos Acting Minister

His Excellency Samuel Santos López Minister of Foreign Affairs Republic of Nicaragua

El Ministro de Relaciones Exteriores y Culto

San José, 30 de noviembre del 2016 DM-AM-628-16 L

Su Excelencia:

Me dirijo a usted con ocasión de referirme a la nota de Nicaragua MRE/DMC/250/11/16 de fecha 17 de noviembre de 2016, en relación con el campamento militar establecido y mantenido en la playa de Isla Portillos, al oeste de la Laguna Los Portillos, que responde a la nota de Costa Rica DM-AM-584-16 del 14 de noviembre de 2016.

Costa Rica lamenta que Nicaragua haga ahora un nuevo reclamo sobre territorio soberano costarricense, tal como fue determinado por la Corte Internacional de Justicia en su sentencia del 16 de diciembre de 2015. Costa Rica rechaza en su totalidad los argumentos invocados por Nicaragua en la nota referida. La actitud de Nicaragua constituye un rechazo y una violación de lo establecido en dicha sentencia.

Si Nicaragua persistiese en mantener su reclamo y ocupación de territorio costarricense, Costa Rica se reserva todos sus derechos en cuanto a las opciones jurídicas que le sean disponibles.

Aprovecho la oportunidad para reiterarle las muestras de mi mayor consideración.

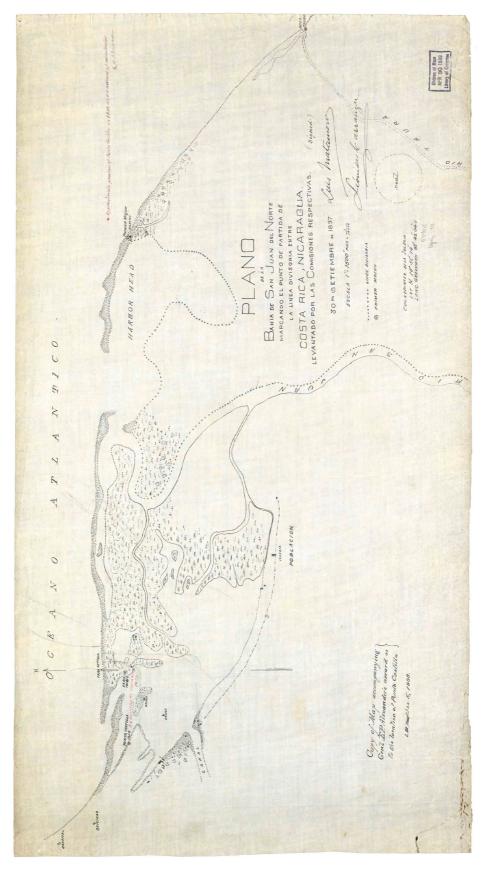
Alexa da Wonton Mario Alexander Montero Campos

Mario Alexander Montero Campos Ministro, a.i.

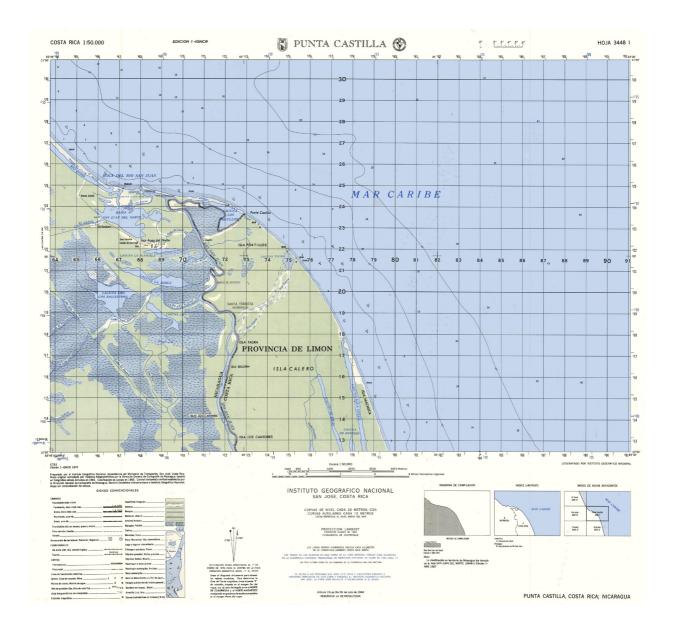
Excelentísimo Señor Samuel Santos López Ministro de Relaciones Exteriores República de Nicaragua

Map of the Bay of San Juan del Norte showing the starting point of the dividing boundary between Costa Rica [and] Nicaragua, compiled by the respective Commissions on 30 September 1897, signed by Luis Matamorros and Leónidas Carranza

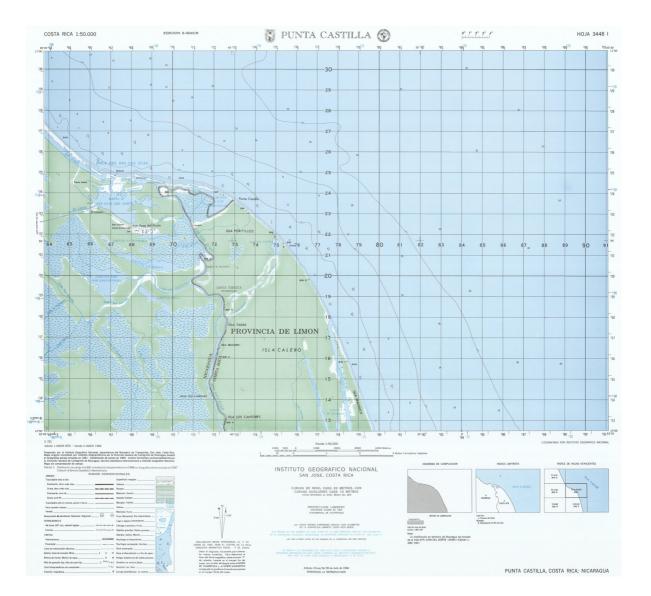
Source: Francisco Xavier Aguirre Sacasa, Un atlas histórico de Nicaragua (Managua, Nicaragua: Fundación Vida, 2002)



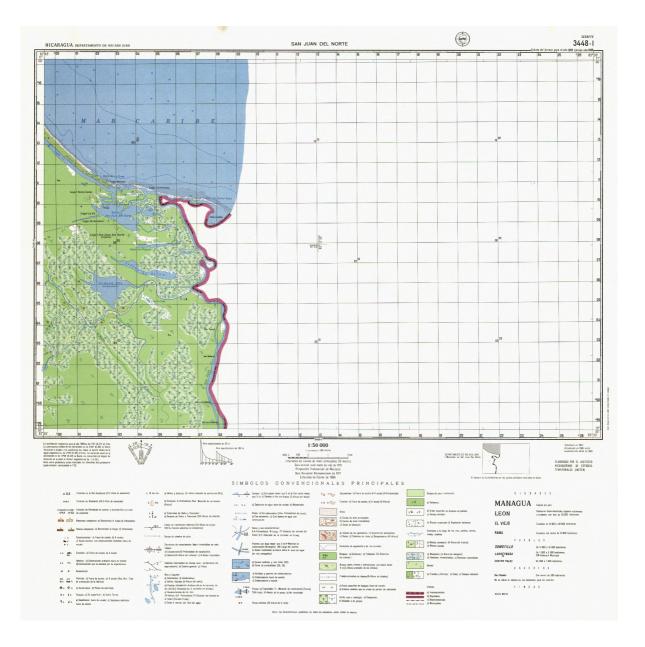
Cartographic sheet 1:50,000 of Punta Castilla, Instituto Geográfico Nacional, Costa Rica, 1970



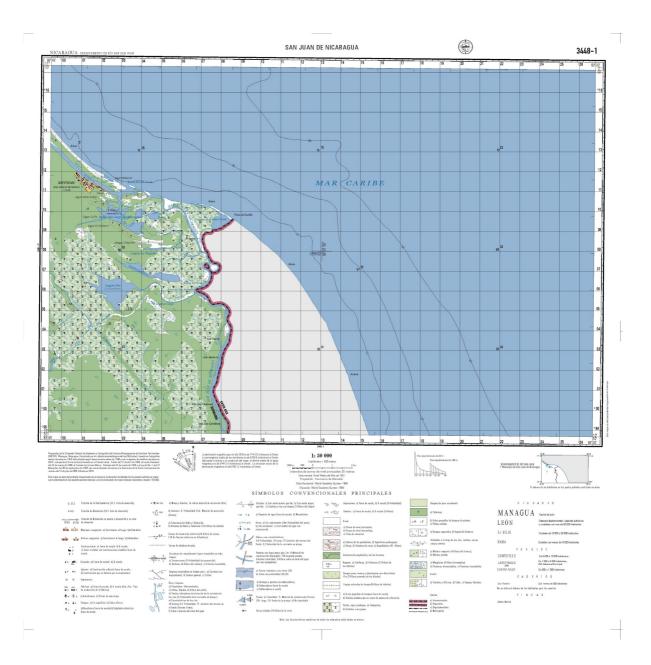
Cartographic sheet 1:50,000 *Punta Castilla*, Instituto Geográfico Nacional, Costa Rica, 1988



Cartographic sheet 1:50,000, *San Juan del Norte*, Instituto Nicaragüense de Estudios Territoriales, Nicaragua, 1988



Cartographic sheet 1:50,000, *San Juan del Norte*, Instituto Nicaragüense de Estudios Territoriales, Nicaragua, 2011



Aerial photograph of Laguna Los Portillos/Harbor Head Lagoon sandbar breach, 10 June 2012



Aerial photograph of Laguna Los Portillos/Harbor Head Lagoon sandbar breach, 3 August 2012



Aerial photograph of Nicaraguan camp, 8 March 2016



Aerial photograph of Nicaraguan camp, 7 November 2016



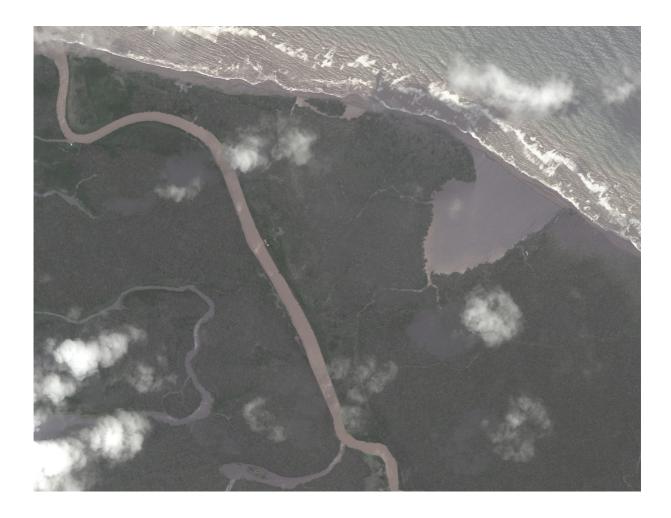
Aerial photograph of Nicaraguan camp, 14 February 2017



Satellite Image, 5 July 2016

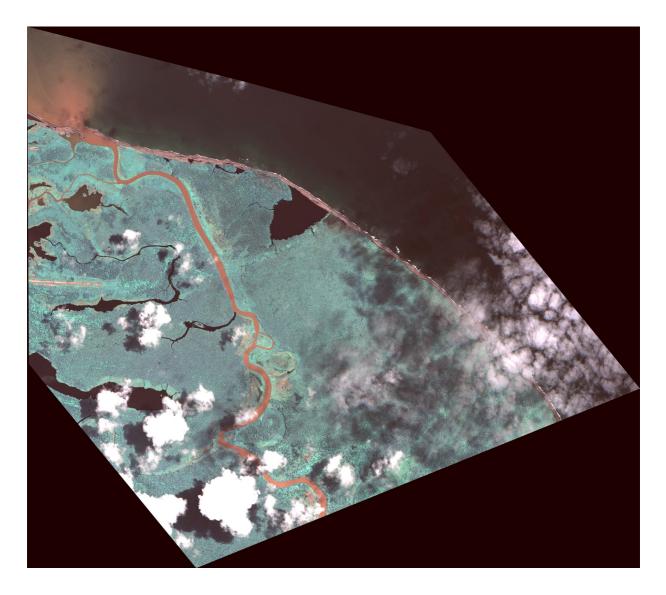
Full image and area enlargement



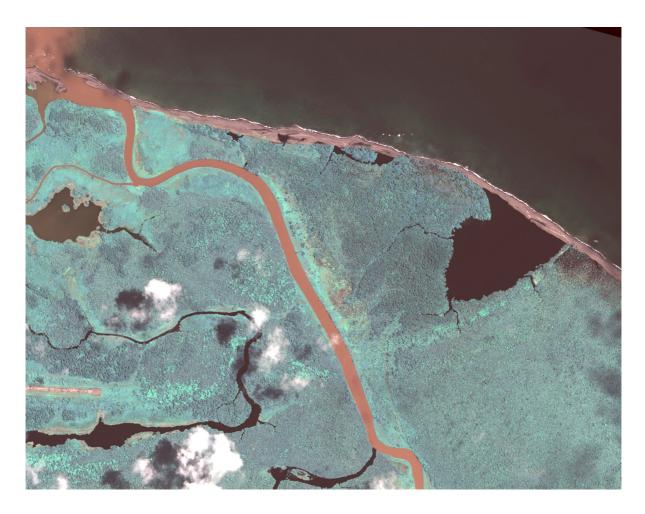


Satellite Image, 14 September 2016

Full image and area enlargement



Annex 70



Satellite Image, 3 October 2016

Full image and area enlargement

