

**INTERNATIONAL COURT OF JUSTICE**

**DISPUTE CONCERNING THE CONSTRUCTION OF A ROAD IN  
COSTA RICA ALONG THE SAN JUAN RIVER**

**NICARAGUA *v.* COSTA RICA**

**COUNTER-MEMORIAL OF COSTA RICA**



**VOLUME III**

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**19 DECEMBER 2013**



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## **ANNEX 11**

*Costa Rica-Nicaragua Treaty of Limits (Cañas-Jerez)*

English Translation: Costa Rican version submitted to Cleveland

Source: P.Pérez Zeledón, *Argument on the question of the Validity of Limits between Costa Rica and Nicaragua* (Washington D.C., Gibson Bros Printers and Book binders 1887). Document No 1. pp 185-190

San José

15 April 1858



# ARGUMENT

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

AND

OTHER SUPPLEMENTARY POINTS CONNECTED WITH IT,

SUBMITTED TO THE

Arbitration of the President of the United States of America,

FILED ON BEHALF OF THE GOVERNMENT OF COSTA RICA,

BY

PEDRO PÉREZ ZELEDÓN.

ITS ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY  
IN THE UNITED STATES.

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

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

## DOCUMENTS.

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### No. 1.

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

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

#### ARTICLE I.

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

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

#### ARTICLE II.

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

## ARTICLE III.

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

## ARTICLE IV.

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

## ARTICLE V.

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

**ARTICLE VI.**

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

**ARTICLE VII.**

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

**ARTICLE VIII.**

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

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

#### ARTICLE IX.

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

#### ARTICLE X.

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

#### ARTICLE XI.

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

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

#### ARTICLE XII.

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

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

MAXIMO JEREZ.

JOSÉ M. CANAS.

PEDRO RÓMULO NEGRETE.

MANUEL RIVAS,

*Secretary of the Legation of Nicaragua.*

SALVADOR GONZALEZ,

*Secretary of the Legation of Costa Rica.*

FLORENTINO SOUZA,

*Secretary of the Legation of Salvador.*

#### ADDITIONAL ACT.

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

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



## **ANNEX 12**

*Photographs of transport of passengers and other Nicaraguan navigation on  
the San Juan River*

2012 - 2013



San Juan River, 12 January 2012



San Juan River, 22 February 2013



San Juan River, 13 November 2013





## **ANNEX 13**

United States National Oceanic and Atmospheric Administration

*Map of Historical Hurricane Tracks*

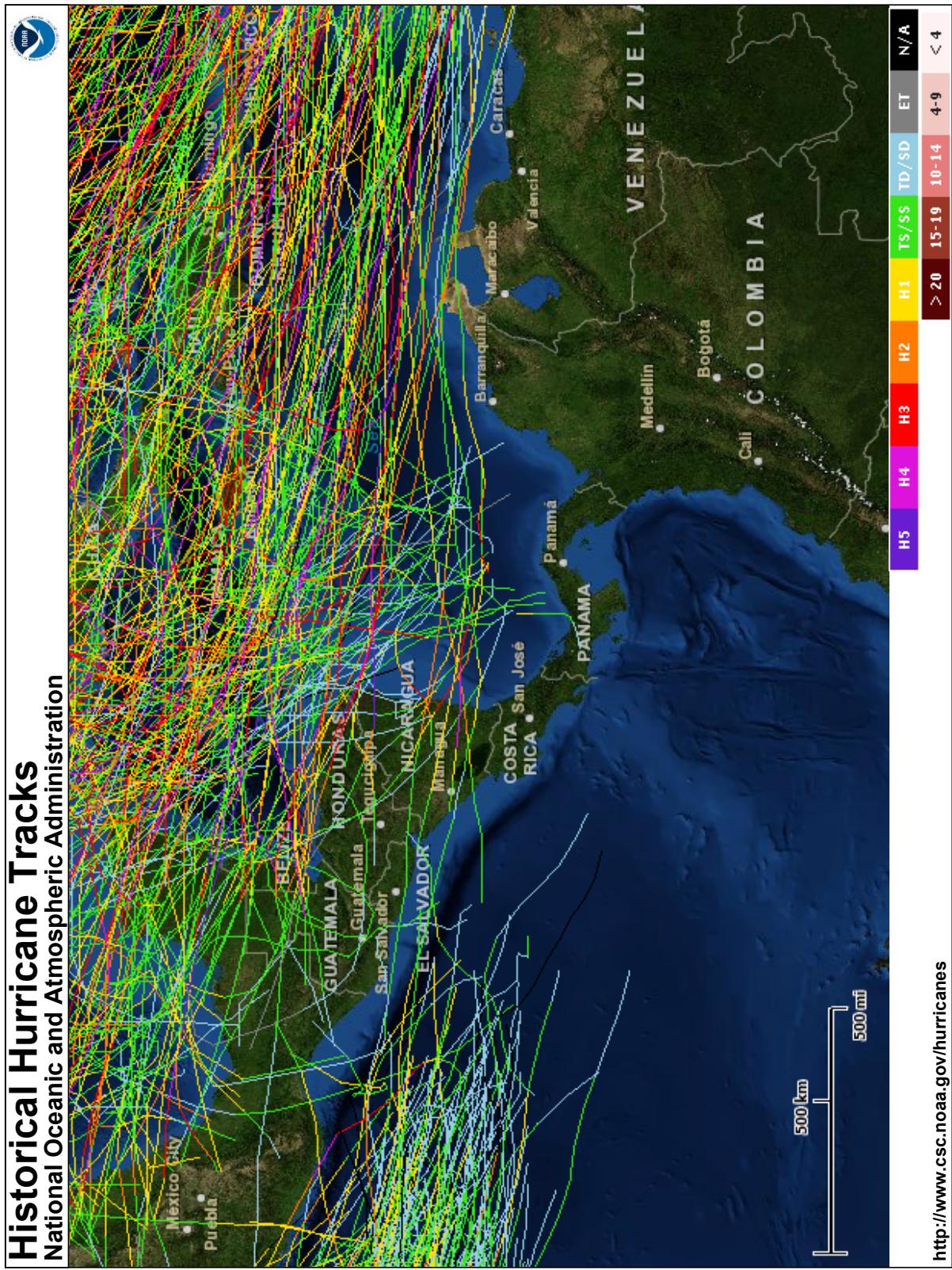
available at

<http://csc.noaa.gov/hurricanes>



# Historical Hurricane Tracks

National Oceanic and Atmospheric Administration





## **ANNEX 14**

### Press Release

*Ministry of Foreign Affairs and Worship Costa Rica stating its official position  
about the Central American Court of Justice Jurisdiction*

5 May 2009

English Translation and Spanish Original



*Translation into English*

**Ministry of Foreign Affairs  
Institutional Communications Department**

Phone number: (00 506) 22 56 65 61      Fax number: 22 56 67 37

Website: [www.rree.go.cr](http://www.rree.go.cr)      email: [comunicacion@rree.go.cr](mailto:comunicacion@rree.go.cr)

**Costa Rica categorically ratifies that it is not part of and it does not recognize any jurisdiction or legitimacy of the Central American Court of Justice**

The Government of Costa Rica ratified today, categorically, that it is not part of and does not recognize any jurisdiction or legitimacy of the Central American Court of Justice.

This is what the Minister of Foreign Affairs, Bruno Stagno, expressed during a Press Conference held at the Ministry of Foreign Affairs between 11.00 a.m. and 12.15 p.m.

The Ministry published the following communication:

Through the judicial notice delivered at the Attorney General's Office of the Republic of Costa Rica on 23 March 2009, the Secretary General of the Central American Court of Justice addressed a communication to the Attorney General's Office of the Republic of Costa Rica, intending to communicate the resolution of the Central American Court of Justice issued at five thirty p.m. on 24 October 2008, which admits a claim filed by the Costa Rican Association of Customs Agents (Asociación de Agentes de Aduana de Costa Rica) against the Republic of Costa Rica.

The Government of the Republic of Costa Rica considers irregular and void the referred communication of the Court, given that the Attorney General of the Republic of Costa Rica is not the legal representative of the Costa Rican State for international matters. Specifically, Costa Rican law does not grant it the authority to receive notification of international procedures arising from international institutions, as discussed below. In addition, international law indicates the manner in which States shall be represented, aspects that are ignored in the aforementioned communication.

The Government of the Republic of Costa Rica is not part of the Statute Agreement of the Central American Court of Justice. The legislative process for approval of this Agreement in 1995 resulted in a majority negative ruling of the Commission on Legal Matters, supported by the negative opinion of the Supreme Court of Justice (full court), among other, which deemed inconvenient for the country to become a party to

*Translation into English*

said Agreement as it violated aspects established in the Political Constitution of Costa Rica.

The fact that Costa Rica is not part of the Statute Agreement of the Central American Court of Justice is widely recognized by the other Central American States, the System for Central American Integration (SICA) and the Central American Court of Justice itself, which has recognized in several documents that Costa Rica is not part of it.

Nevertheless, although Costa Rica is not part of the Court, and it has never recognized its jurisdiction or consented to the application of the procedure established in its Statute, this institution, openly contravening international law, has endowed itself with the jurisdiction to hear cases against the Republic of Costa Rica.

In an attempt to assume more power and interfere in sovereign institutions of the States, the Central American Court of Justice is trying to become the Supreme Body of Central American Integration, a function that is reserved solely to the Presidents Meeting, thus forcing States to organize themselves institutionally based on a vision that this Court has of Central American integration. The effect of this policy of said Court would be disastrous for Costa Rica, given that the three branches of the Republic, meaning the Legislative, Executive and Judicial Branches, would be subject to a single institution that would dictate the plans and future of the Republic of Costa Rica. These faculties include interfering in the conflicts between State branches, and resolving constitutional matters, subordinating the authority of the Constitutional Chamber.

The Ministry of Foreign Affairs and the State of Costa Rica, in general, categorically reject this attempt. For that purpose, a document was sent to said institution yesterday, reaffirming the legal status of the Republic of Costa Rica before this Court, based on practice and international law. The country expects the Central American Court of Justice to have sufficient wisdom so as to recognize its mistake and forgo this dangerous attempt to attribute powers to itself which have not been granted to it. If this rectification does not occur, the Court endangers and would be solely responsible for the negative effects that its decision would have in relation to the System for Central American Integration.

Note: The full text (33 pages and appendixes) whereby Costa Rica rejects the competence and jurisdiction of the Central American Court of Justice is available at the website of the Ministry of Foreign Affairs ([www.rree.go.cr](http://www.rree.go.cr)).

The Minister of Foreign Affairs, Bruno Stagno, along with the Deputy Minister, Edgar Ugalde, delivered the text today to the President of the Legislative Assembly, Dr. Francisco Antonio Pacheco.

Institutional Communication  
1360 CCJ  
Tuesday, 5 May 2009.



**Ministerio de Relaciones Exteriores y Culto**

**Dirección de Comunicación Institucional**

TELEFONO (00 506) 22 56 65 61      FAX 22 56 67 37

Portal electrónico: [www.rree.go.cr](http://www.rree.go.cr) **Correo Electrónico:** comunicacion@rree.go.cr

**Costa Rica ratifica de manera categórica que no es parte, y no reconoce jurisdicción ni legitimidad de la Corte Centroamericana de Justicia.**

El Gobierno de Costa Rica ratificó hoy, de manera categórica, que no es parte y no reconoce ni la jurisdicción ni la legitimidad de la Corte Centroamericana de Justicia.

Así lo expresó el Ministro de Relaciones Exteriores, Bruno Stagno, durante una Conferencia de Prensa ofrecida en la sede de la Cancillería entre las 11.00 y las 12.15 horas.

El Ministerio hace público el siguiente comunicado:

Mediante cédula judicial entregada en la ventanilla única de la Procuraduría General de la República de Costa Rica el día 23 de marzo de 2009, el Secretario General de la Corte Centroamericana de Justicia dirigió una comunicación a la Procuradora General de la República de Costa Rica, por la cual se pretende comunicar la resolución de la Corte Centroamericana de Justicia dictada a las cinco y treinta minutos de la tarde del día veinticuatro de octubre de 2008, en la que se da trámite a una acción interpuesta por la Asociación de Agentes de Aduana de Costa Rica contra la República de Costa Rica.

El Gobierno de la República de Costa Rica considera irregular y nula la referida comunicación de la Corte, dado que la señora Procuradora General de la República de Costa Rica no es la representante legal del Estado Costarricense para asuntos de carácter internacional. En particular, la ley costarricense no le otorga ese carácter para que se le notifiquen procedimientos de carácter internacional o que emanen de instituciones de carácter internacional, como se verá a continuación. Adicionalmente, el derecho internacional prescribe la forma y por medio de quienes los Estados se hacen representar, aspectos ignorados en la referida comunicación.

El Gobierno de la República de Costa Rica no es parte del Convenio de Estatuto de la Corte Centroamericana de Justicia. El proceso de

aprobación legislativa de dicho Convenio, en 1995, culminó con el dictamen negativo de mayoría de la Comisión de Asuntos Jurídicos, apoyado, entre otros, de la opinión negativa por parte de la Corte Suprema de Justicia de Costa Rica (Corte Plena), que determinó inconveniente para el país suscribir dicho Convenio dado que éste violentaba aspectos establecidos en la Constitución Política costarricense.

El hecho que Costa Rica no es parte del Convenio de Estatuto de la Corte Centroamericana de Justicia es ampliamente reconocido por los otros Estados Centroamericanos, por el Sistema de la Integración Centroamericana (SICA) y por la propia Corte Centroamericana de Justicia, que en diversos documentos ha reconocido que Costa Rica no forma parte de ella.

No obstante, a pesar que Costa Rica no es parte de la Corte, ni ha aceptado nunca su jurisdicción, ni ha consentido que se le aplique el procedimiento establecido en su Estatuto; ésta institución, en abierta contravención al derecho internacional, se ha arrogado a sí misma jurisdicción para escuchar casos contra la República de Costa Rica.

En un intento para atribuirse cada vez mayores poderes e interferir en las instituciones soberanas de los Estados, la Corte Centroamericana de Justicia está tratando de convertirse en el Órgano Supremo de la Integración Centroamericana, función reservada únicamente a la Reunión de Presidentes; y en consecuencia, forzar a los Estados a organizarse institucionalmente a partir de la visión que dicha Corte tiene de la integración centroamericana. El efecto de ésta política de esa Corte para Costa Rica sería nefasto, pues los tres poderes de la República, es decir, el Poder Legislativo, el Poder Ejecutivo y el Poder Judicial, estarían sujetos a una sola institución que dictaría los designios y futuro de la República de Costa Rica. Estas facultades incluirían interferir en los conflictos entre los poderes del Estado, y resolver asuntos de carácter constitucional, subordinando los poderes de la Sala Constitucional.

El Ministerio de Relaciones Exteriores y Culto, y el Estado costarricense en general, rechazan categóricamente ese intento. A ese fin, el día de ayer se ha remitido un documento a dicha institución en el que se reafirma la condición jurídica de la República de Costa Rica frente a esa Corte, con base en la práctica y el derecho internacional. El país espera que la Corte Centroamericana de Justicia tenga la sabiduría suficiente para reconocer su error y retractarse de éste peligroso intento de atribuirse poderes que no se le han concedido. Si esta rectificación no ocurre, la Corte pone en peligro, y sería la única responsable, de los efectos negativos que su decisión tenga en relación con el Sistema de la Integración Centroamericana.

Nota: El texto completo (33 páginas y sus anexos) mediante el cual Costa Rica rechaza la competencia y jurisdicción de la Corte Centroamericana de Justicia, está disponible en el portal electrónico del Ministerio de Relaciones Exteriores ([www.rree.go.cr](http://www.rree.go.cr)).

El Canciller Bruno Stagno, en compañía del señor Viceministro, Edgar Ugalde, hizo entrega hoy dicho texto al señor Presidente de la Asamblea Legislativa, Dr. Francisco Antonio Pacheco.

Comunicación Institucional  
1360 CCJ  
Martes 5 de mayo de 2009.



## **ANNEX 15**

*Costa Rica, Minute of the National Security Council*

*Ordinary Session No. 3*

24 November 2010

English Translation and Spanish Original



(Costa Rican seal)

Presidency of the Republic

Office of the President of the Republic

**LAURA CHINCHILLA MIRANDA**

**PRESIDENT OF THE REPUBLIC**

**CERTIFIES:**

That in the Minutes of ordinary session number Three of the National Council on Public Security, held on November twenty-four, two thousand ten, article two reads exactly as follows: "**ARTICLE TWO: The Conflict for the Invasion of Nicaragua into Isla Calero.** / A report was received from employees of the Ministry of Public Security, and the National Security Intelligence Direction, in which they indicate that on October 9 an invasion by the Nicaraguan army into Costa Rican territory was denounced, information that was verified by the authorities of the Ministry of Public Security. The following were also confirmed: an invasion by armed persons, the entrance of a dredger into Costa Rican land, and the beginning of construction of a channel parallel to the San Juan River, taking a northeast direction and starting to enter into Isla Portillos, where there are traces of tree felling and of works that have been performed recently. / **The National Council on Public Security agrees:** / To maintain a very firm but fully diplomatic position regarding the management of this situation. / To ask the ministers to take the actions necessary to ensure accessibility to the area.".....

This certification was issued on the  
twenty-first of October two thousand  
thirteen.

(Signed - Laura Chinchilla)

(Stamped - The President of the Republic, San José Costa Rica)



**Presidencia de la República  
Despacho Presidenta de la República**

**LAURA CHINCHILLA MIRANDA  
PRESIDENTA DE LA REPÚBLICA**

**CERTIFICA:**

Que en el Acta de la sesión ordinaria número Tres del Consejo Nacional de Seguridad Pública, celebrada el veinticuatro de noviembre del dos mil diez, se encuentra el artículo segundo que textualmente dice: / **"ARTÍCULO SEGUNDO: El Conflicto Invasión de Nicaragua a Isla Calero.** / Se recibe informe por parte de funcionarios del Ministerio de Seguridad Pública, y de la Dirección de Inteligencia de Seguridad Nacional, en el que señalan, que el 09 de octubre se recibe una denuncia de la invasión por parte del ejército nicaragüense en suelo costarricense, información que fue verificada por las autoridades del Ministerio de Seguridad Pública. También se ha verificado además de la invasión de personas armadas, la incursión de una draga en suelo costarricense y el inicio de la construcción de un canal paralelo al Río San Juan, y toma una dirección noreste y se empieza a internar en isla Portillos, donde hay rastros de que ha empezado a talarse y que han estado realizando trabajos recientemente. / **El Consejo Nacional de Seguridad acuerda:** / Mantener una posición muy firme pero absolutamente diplomática en el manejo de esta situación. / Encargar a los señores ministros tomar las acciones necesarias para asegurar la accesibilidad a la zona". .....

Se extiende la presente a los veintiún días del mes de octubre del dos mil trece.



## **ANNEX 16**

Nicaragua, '*Inaugural Lesson of the Academic Year 2011, 6 April 2011*'

Transcript of public speech delivered by President Ortega

available at

[http://www.presidencia.gob.ni/index.php?option=com\\_content&view=article&id=358:leccion-inaugural-del-ano-academico-2011&catid=84:abril-2011&Itemid=54&showall=1](http://www.presidencia.gob.ni/index.php?option=com_content&view=article&id=358:leccion-inaugural-del-ano-academico-2011&catid=84:abril-2011&Itemid=54&showall=1)

English Translation and Spanish Original





[http://www.presidencia.gob.ni/index.php?option=com\\_content&view=article&id=358:lección-inaugural-del-ano-academico-2011&catid=84:abril-2011&Itemid=54&showall=1](http://www.presidencia.gob.ni/index.php?option=com_content&view=article&id=358:lección-inaugural-del-ano-academico-2011&catid=84:abril-2011&Itemid=54&showall=1)

Wednesday April 6, 2011 00:00

## Inaugural Lesson of Academic Year 2011



President-Commander Daniel gives the Inaugural Lesson of Academic Year 2011, Universidad Nacional Autónoma de Nicaragua, UNAN-León

### Master of Ceremony

We welcome our Guest of Honor, the Commander of the Revolution Daniel Ortega Saavedra, President of the Government of Reconciliation and National Unity

...

### Words of President Daniel Ortega

Dear brothers, comrades of this historical city of León Santiago de los Caballeros, which saw the birth of the first University of our country, which will celebrate 200 years next year; the bicentennial will be on January 10. Dear students, teachers, deans, employees of UNAN, Rector of the University Róger Gurián; dear General Julio César Avilés, Commander in Chief of the Army of Nicaragua; dear sister, comrade, First Commissioner Aminta Granera, National Chief of Police of Nicaragua; dear brother, Commander of the Revolution, Tomás Borge Martínez; dear Ambassadors here present, from Cuba, Mexico, Venezuela, Peru and our sister Republic of El Salvador.

...

We are speaking of 1856, the National War in full swing; and we are speaking of May, specifically Thursday May 21, 1856. We all know the risk that the Central Americans ran by joining Nicaragua in the fight against the Yankee invader, because they knew that if the Yankee dominated Nicaragua he would then dominate Costa Rica, El Salvador, Guatemala, Honduras. So they did it for survival, and many of these countries I would say, even the fighters, the soldiers of Costa Rica, acting in good faith.

The exception to all of this were the leaders of the capital and the Government of Costa Rica, because at that time they saw the opportunity to seize Guanacaste, which belongs to Nicaragua, even if it appears in Costa Rica it belongs to Nicaragua. All of the people there are Nicaraguans, even if they have a Costa Rican ID they are Nicaraguans. One day we could say: we're going to claim Guanacaste, which belongs to Nicaragua. We could perfectly decide it and launch an international initiative before the International Bodies that deal with International Law.

...



[http://www.presidencia.gob.ni/index.php?option=com\\_content&view=article&id=358:lección-inaugural-del-ano-academico-2011&catid=84:abril-2011&Itemid=54&showall=1](http://www.presidencia.gob.ni/index.php?option=com_content&view=article&id=358:lección-inaugural-del-ano-academico-2011&catid=84:abril-2011&Itemid=54&showall=1)

Miércoles, 06 de Abril de 2011 00:00

## Lección Inaugural del Año Académico 2011



Presidente-Comandante Daniel imparte Lección Inaugural del Año Académico 2011, Universidad Nacional Autónoma de Nicaragua, UNAN-León

### Maestro de Ceremonia

Le damos la bienvenida al Invitado de Honor, el Comandante de la Revolución Daniel Ortega Saavedra, Presidente del Gobierno de Reconciliación y Unidad Nacional.

...

### Palabras del Presidente Daniel Ortega

Queridos hermanos, compañer@s de esta histórica ciudad de León Santiago de los Caballeros, que vio nacer la primera Universidad de nuestro país, que ya el próximo año se estarán cumpliendo 200 años, será el Bicentenario, el 10 de Enero; queridos estudiantes, maestros, Decanos, traba-jadores de la UNAN; querido Rector Róger Gurián; querido General Julio César Avilés, Comandante en Jefe del Ejército de Nicaragua; querida hermana, compañera, Primer Comisionada Aminta Granera, Jefa Nacional de la Policía de Nicaragua; querido hermano, Comandante de la Revolución, Tomás Borge Martínez; queridos Embajadores aquí presentes, de Cuba, México, República Bolivariana de Venezuela, del Perú, y de la hermana República de El Salvador.

...

Fíjense bien, aquí estamos hablando del año 1856, ¡en plena Guerra Nacional! Y estamos hablando del mes de Mayo, exactamente el jueves 21 de Mayo del año 1856. Todos sabemos que corrieron los centro-americanos a unirse a Nicaragua frente al invasor yanqui, porque sabían que si el yanqui dominaba Nicaragua, después iba a dominar Costa Rica, El Salvador, Guatemala, Honduras. Entonces lo hicieron por una razón de sobrevivencia, y muchos de estos países, diría, incluso los combatientes, los soldados de Costa Rica, actuando de buena Fé.

La excepción en todo esto, fueron los dirigentes del capital y del Gobierno de Costa Rica, porque vieron la oportunidad de arrebatarlos el Guanacaste, que es de Nicaragua; aunque aparece en Costa Rica, es de Nicaragua. Todos los que están ahí son nicaragüenses, aunque tengan cédula tica, son nicaragüenses. Podríamos, un día de tantos, decir nosotros: vamos a reclamar el Guanacaste, que pertenece a Nicaragua. Perfectamente podría-mos decidirlo y lanzar una iniciativa en el campo internacional, en los Organismos Internacionales que tienen que ver con el Derecho Internacional.

...

## **ANNEX 17**

*Costa Rica, Statement given under oath by Mr. José María Tijerino, Minister of Public Security of Costa Rica, before the Permanent Special Commission for the Control of Public Revenue and Expenses*

Minutes of Extraordinary Session N° 50 (Extract)

29 January 2013

English Translation



Statement given under oath by Mr. José María Tijerino, Minister of Public Security of Costa Rica, before the Permanent Special Commission for the Control of Public Revenue and Expenses

Minutes of Extraordinary Session N° 50 (Extract)

29 January 2013

English Translation

"....To begin with the topic in question, we need to understand these events in light of their surrounding circumstances. There were five factors that supported the measures in favor of the country's security: One, the military invasion Calero Island. Two, the disregard to the lack of the right of free navigation of Costa Ricans on the San Juan River. Three, Ortega's threats to demand free navigation on the Colorado River, and the Annexation of Guanacaste by Nicaragua. All these openly displayed in the media. The Nicaraguan military deployment along the border and increasing military power of the Army of Nicaragua in the wake of these events. To these we should add a sixth factor, which is not less important: The deft maneuvering of the Government of Nicaragua to obtain the unanimous support of the various political forces and much of the population around the figure of the president.

To all of you, gentlemen, it is well known that our northern border is one of the less developed regions of the country. Terrestrial communications in the Northern Zone for decades had been a pending matter of all governments. Probably the right of free navigation on the San Juan River, which assists Costa Rica under international treaties, had made the need for road development in the region less pressing.

From the moment when Nicaragua started to ignore the right of free navigation, and to submit our fellow nationals who reside in the area to all sorts of indignities, reaching the extreme of preventing by force of arms any Costa Rican from navigating the waters of the river, it became urgent to build a road along the entire border, which would enable not only the exercise of sovereignty by the presence of the security forces in this area of the country threatened by a regime determined to ignore the existing borders for more than half a century, but also the everyday life, in all its aspects, of the Costa Rican inhabitants of the San Juan River.

The military invasion of a portion of the country and the threat that it could extend along the northern border, made imperative the government's decision to first, rehabilitate the existing roads to allow the reinforcement and supply our police posts; the expeditious evacuation of the residents, if necessary, due to an escalation of the conflict; medical assistance to those eventually wounded; and an orderly retreat against the onslaught of the invader.

Those are the circumstances under which my office issued note 2278-2012-DM on 1 December 2010, in which I ask the Minister of Public Works and Transport responsible at the time, Francisco Jiménez Reyes, his good offices for the repair of the roads leading to Delta Costa Rica and Boca del Rio Sarapiqui in the canton of Sarapiqui, to Puerto Lindo in Pococí, and the population of La Trocha in the canton of Los Chiles...

Later, in light of the persistence of the Nicaraguan military and political threat, no longer limited to the invaded zone or to the Colorado River and the south bank of the San Juan River, but that extended to the whole province of Guanacaste, claimed by the Commander Ortega during the opening of a university course in early 2011, there was clearly a need to unite repaired roads and construct a route from the Pacific Ocean to the Caribbean Sea parallel to the border with Nicaragua, to allow movement of the security forces and the evacuation of the inhabitants."

## **ANNEX 18**

Nicaragua, Ministry of Environment and Natural Resources (MARENA),

San Juan River Territorial Delegation,

*Technical Waterway Patrol on the San Juan River on October, 27 2013,*

Annexed to the Letter to the Registrar of the International Court of Justice from  
His Excellency Carlos Argüello Gomez, Agent of the Republic of Nicaragua,  
Reference HOL-EMB-220,

31 October 2013,

English translation





**EMBASSY OF NICARAGUA  
THE HAGUE**

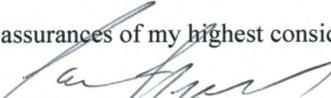
31 October 2013  
Ref: HOL-EMB-220

Excellency,

I have the honor to refer to Nicaragua's Request for the Indication of Provisional Measures dated 11 October 2013 in the case listed in the Court's docket as *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) Proceedings joined with Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica) on 17 April 2013* and to Nicaragua's letter of 29 October 2013, Ref: HOL-EMB-219.

Please find attached to this letter further evidence on which the Republic of Nicaragua intends to rely during the oral hearings. The Republic of Nicaragua will submit additional documents in due time and as soon as possible.

Please accept, Excellency, the assurances of my highest consideration.

  
Carlos J. ARGÜELLO GÓMEZ

Agent  
Republic of Nicaragua

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



**EMBASSY OF NICARAGUA  
THE HAGUE**

**CERTIFICATION**

The undersigned Agent of the Republic of Nicaragua certifies that the document annexed to this letter are true copies and conform to the original documents and that the translations into English made by Nicaragua are accurate translations. The documents annexed to this letter are the following:

**LIST OF ANNEX**

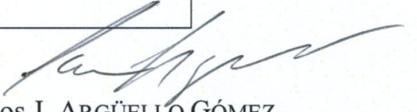
**Annex**

<b>Annex</b>	
<b>REPORT</b>	
1	Technical Waterway Patrol on the San Juan River on October 27, 2013, Ministry of Environment and Natural Resources (MARENA) San Juan River Territorial Delegation (with CD attached).
<b>DOCUMENTS ISSUED BY THE GOVERNMENT OF COSTA RICA</b>	
2	Government Strong on Comprehensive Development of the Boundary Strip Guarantees Conclusion of Route 1856. Design for the First Stretch Already Allocated ¢40.000 Million will be invested to Complete Tasks Mitigation Works Progress, 14 March 2013 available at <a href="http://www.presidencia.go.cr/index.php/prensa/prensa-presidencia/2123-gobierno-firme-en-desarrollo-integral-de-cordon-fronterizo-norte">http://www.presidencia.go.cr/index.php/prensa/prensa-presidencia/2123-gobierno-firme-en-desarrollo-integral-de-cordon-fronterizo-norte</a> .
3	Position of the Government of the Republic in Relation to Route 1856, 24 May 2013.
4	Safety Plan for the Northern Borderline Corridor available at <a href="http://www.presidencia.go.cr/index.php/prensa/prensa-presidencia/2123-gobierno-firme-en-desarrollo-integral-de-cordon-fronterizo-norte">http://www.presidencia.go.cr/index.php/prensa/prensa-presidencia/2123-gobierno-firme-en-desarrollo-integral-de-cordon-fronterizo-norte</a>
<b>NEWS REPORTS</b>	
5	Completion of Route 1856 Works Will be Undertaken with Five Bids, CRHOY, 22 October, 2012 available at <a href="http://www.crhoy.com/finalizacion-de-obras-de-la-ruta-1856-se-hara-con-cinco-llicitaciones/">http://www.crhoy.com/finalizacion-de-obras-de-la-ruta-1856-se-hara-con-cinco-llicitaciones/</a>



**EMBASSY OF NICARAGUA  
THE HAGUE**

6	Chinchilla Promises More than a Trail: To Develop Border, <i>La Nación</i> , 5 March 2013.
7	Contracts Entered into with Companies Involving Route 1856 Suspended Due to Irregularities, <i>El País</i> 9 May 2013.
8	Another bridge collapsed on the Trail Parallel to the San Juan River, <i>Noticia Contacto</i> , 15 July 2013.
9	Stretch from Pocosul up to Delta Costa Rica. MOPT will Tender New Designs for the Trail Works include gravel road design; also walls and drainage systems The head of MOPT expects to commence Works within a month, at the latest, <i>La Nación</i> , 22 July 2013.
10	MOPT Announces New Investment to Repair Borderline Trail, <i>La Nación</i> , 06 August 2013.
11	Route 1856; repairs on “the platen” and the Bernardo Soto arrangement , MOPT invested €33.000 million on three deficient road works, <i>La Nación</i> , 06 September, 2013.
12	Along with the Route parallel to the San Juan River, the dreams of peoples on the edge of the northern boundary also collapse, <i>Noticia Contacto</i> , 17 September 17, 2013 .
13	Two Charged for Trail Case Freed this Friday, <i>La Nación</i> , 11 October 2013.
14	Country Expects to Demonstrate that Trail construction did not damage the San Juan River , Hearings in the Hague begin on November 5 <sup>th</sup> Roverssi warns that trail Works will continue even it displeases Nicaragua, 28 October 2013 available at <a href="http://www.monumental.co.cr/noticia/pais-espera-demostrar-que-construccion-de-la-trocha-no-dano-el-rio-san-juan">http://www.monumental.co.cr/noticia/pais-espera-demostrar-que-construccion-de-la-trocha-no-dano-el-rio-san-juan</a>
15	Once Again, CONAVI's Carelessness Leaves Trail 1856 Without a Redesign, <i>El Guardian.cr</i> , 28 October 2013.

  
 Carlos J. ARGÜELLO GÓMEZ  
 Agent of the Republic of  
 Nicaragua

ANNEX

1

Ministry of Environment and Natural Resources  
(MARENA) San Juan River Territorial Delegation

Technical Waterway Patrol on the San Juan River on  
October 27, 2013

Official Letterhead

Handwritten: 2243 – Stamped Seal: Ministry of Foreign Affairs, Office of the Minister,  
Received at: 29-10-13- Hour: 3:43 pm; Received by Gabriela

*Office of the Minister  
Managua, October 29, 2013  
Ref: DM-JAS/1222.10.13*

*Colleague*

*Samuel Santos Lopez  
Minister – MINREX  
His Office*

*Dear Colleague Santos:*

*Receive fraternal Greetings on my behalf.*

*I address you in the most cordial manner to inform you that Engineer and Colleague Omar Brenes, Delegate in the San Juan River, reported today that last Sunday, October 27<sup>th</sup>, during the waterway patrol to safeguard the natural resources in this Biosphere Reserve, they found an 8 meter long x 1.5 meter wide culvert floating on the River, which broke off from the construction on the edge of the San Juan River, made by the Government of Costa Rica; according to the geo-reference, it was found between the coordinates X796908 Y1205634.*

*This detached (culvert) evidences great risks due to sedimentation received by the San Juan River, being an impact caused by the construction of that roadway along the San Juan River.*

*Herein is the waterway patrol report, as well as the CD containing photographs and videos for your information and monitoring.*

*Without further matters, I greet you with my utmost consideration and esteem.*

*Cordially,*

*Juanita Argeñal Sandoval*

*Minister, MARENA*

*Colleague Cesar Vega/ MINREX*

*Colleague, Coronel Nestor Lopez, Army of Nicaragua*



## **ANNEX 19**

*Costa Rica, Constitutional Court Judgment No 1992-3410 (Extract)*

10 November 1992

English Translation



## Constitutional Court Judgment N° 1992-3410 of 10 November 1992 (extract)

## English Translation

“Therefore, it must be born in mind that...there is no other room for legal interpretation as not to qualify ‘internal disturbance’, ‘riots’, ‘external aggression’, ‘epidemic’, ‘hunger’ and ‘other public calamities’, as manifestations of what in Public Law doctrine is known as ‘state necessity and urgency’ under the principle *salus populi est suprema lex*, meaning that the weaker legal interest (the preservation of the normal order of legislative competencies) must yield to the stronger legal interest (the preservation of the legal and social order, which sometimes cannot wait for a law to be approved); and in Criminal Law, as a ‘state of necessity’, i.e. ‘a situation which endangers a legal interest, which can only be saved by the violation of another legal interest’. And this is the same sense of the text of Article 180 of the Constitution.”



## **ANNEX 20**

Costa Rica, *Legislative Assembly Permanent Commission on Legal Matters*

### ***Majority Negative Vote***

Bill for Approval of the Statute of the Central American Court of Justice signed  
in Panama City, Panama on 1 December 1992

File Number 11.854

5 December 1998

English Translation



PERMANENT COMMISSION ON LEGAL MATTERS

MAJORITY NEGATIVE VOTE

BILL FOR APPROVAL OF THE CENTRAL AMERICAN COURT OF JUSTICE,

SIGNED IN PANAMA CITY, PANAMA, ON 1 DECEMBER 1992

FILE No. 11.854

SAN JOSÉ, 5 DECEMBER 1995

PERMANENT COMMISSION ON LEGAL MATTERS

MAJORITY NEGATIVE VOTE

APPROVAL OF THE STATUTE OF THE CENTRAL AMERICAN COURT OF JUSTICE SIGNED IN PANAMA  
CITY, PANAMA ON 1 DECEMBER 1992

FILE NUMBER 11.854

*Stamped: Legislative Assembly, San José, Costa Rica  
Commission on Legal Matters*

LEGISLATIVE ASSEMBLY:

The undersigned representatives, members of the Permanent Commission on Legal Matters, issue a MAJORITY NEGATIVE VOTE regarding the bill: "APPROVAL OF THE STATUTE OF THE CENTRAL AMERICAN COURT OF JUSTICE, SIGNED IN PANAMA CITY, PANAMA, ON 1 DECEMBER 1992," File Number 11.854, published in the Official Gazette, number 10 of 9 June 1994.

On 13 December 1991 the Presidents of the Central American countries signed the "Tegucigalpa Protocol," which contains amendments to the Charter of the *Organización de Estados Centroamericanos* (Organization of the Central American States), known as *Sistema de la Integración Centroamericana* (System for Central American Integration). The framework of this system contemplates the creation of a "Central American Court of Justice," whose functioning shall be regulated by a separate statute.

The bill regarding which we have issued a MAJORITY NEGATIVE VOTE has the fundamental purpose of approving the STATUTE OF THE CENTRAL AMERICAN COURT OF JUSTICE, in compliance with the agreement included in the amendments to ODECA indicated above.

The bill under consideration confers several powers to the Central American Court of Justice, including:

- Hearing the conflicts between States, except for that referring to border, territorial and maritime conflicts
- Hearing appeals for annulment and non-compliance of agreements of the bodies of the System for Central American Integration
- Hearing the lawsuits between individuals who reside in the area and the governments or bodies of the System for Central American Integration
- Hear and resolve, at the request of the victim, conflicts that may arise between the branches or fundamental bodies of the States, when judicial decisions are not respected

The last power granted to the Court is one of the main considerations why this bill has been rejected.

From a quick reading of the Minutes it can be concluded that subsection f) of Article 22 of this Bill is unconstitutional, as it would delegate authority that has been constitutionally assigned to the Constitutional Chamber. Article 10 of the Political Constitution confers the authority of resolving conflicts that may arise between the branches of the State, including the *Tribunal Supremo de Elecciones* and other entities and bodies indicated by the law, to a specialized chamber of the Supreme Court of Justice (*Sala IV*).

The Law on Constitutional Jurisdiction establishes some important legal instruments to make effective the Principle of Constitutional Supremacy prevailing in our body of law, expressly contemplated in Article 10 of the Constitution and reiterated in Articles 1 and 2 of the Law on Constitutional Jurisdiction.

Similarly, Article 3 of the Law on Constitutional Jurisdiction expressly indicates that: "The Political Constitution shall be deemed infringed when there is a conflict between the text of the norm or action in question, its effects or **its interpretation or application by the public authorities, and the constitutional standards and principles.**" (*highlighting not in the original*) In the foregoing case, there is a conflict between the authority granted to the Constitutional Chamber through Article 10 of the Constitution and that established in Article 22 subsection f) of the Statute of the Central American Court of Justice.

The constitutional article according to which Costa Rica is a Democratic Republic, free, independent and Sovereign, establishes a limitation to foreign policy in general. It is worth noting that, in a legal regime such as the Costa Rican one, Articles 1 and 2 of the constitution, which enshrine the freedom, independence and sovereignty, impose obligations on the Executive Branch, given that in the context of management of international relations both stipulations must be complied with, otherwise, the other branches, the Legislative and Judicial, must take part of this activity to control or punish the breach of the mandate, as applicable. It is through the management of international relations that the Executive Branch must work to achieve the national interests, through compliance with the foreign policy goals, without infringing the Political Constitution in those important aspects.

Article six of the Political Constitution establishes that the State exercises full and exclusive sovereignty over the airspace of its territory. Thus, it derives that the constitutional standards that enshrine the jurisdiction (power that derives from the sovereignty of the State) and legal ones that prescribe authority (within each State), cannot be modified by the Court, or by any other procedural party, given that the jurisdiction of the courts may not be extended. Consequently, from the point of view of the inability of waiving public powers and authorities, it is not possible to accept as valid that indicated in subsection f) of Article 22 of the Bill under consideration. If this Bill were approved as drafted it would represent a violation. The problem that we representatives, members of the Commission on Legal Matters who are issuing this Ruling, have found, is that the Statute establishes a restriction, given that pursuant to Article 48 it does not accept any

reservation; thus we must vote negatively, and we opt to respect the principle of constitutional supremacy.

Based on the foregoing, we submit for consideration of the Legislative Plenary, this MAJORITY NEGATIVE VOTE, for acceptance by the representatives.

Performed at the Sessions Chamber of the Permanent Commission on Legal Matters, on 5 December 1998.

*Signed:*

Gerardo Trejos Salas

Alvaro Azofeifa Astúa

Anabella Díez Marín

Teddy Cole Scarlett

Bienvenido Venegas Porras

MEMBERS OF CONGRESS

Commission on Legal Matters

## **ANNEX 21**

Costa Rica, *Constitutional Court Judgment No 2003-6322 (Extract)*

3 July 2003

English Translation



## Constitutional Court Judgment N° 2003-6322 of 3 July 2003 (extract)

## English Translation

**“6.-only the declaration of a state of necessity exempts the enforcement of environmental laws.** The state of emergency is a source of Law that entails, in some cases, a displacement, and in other cases an increase in public authority, specifically to be able to address the exceptional situation that arises (“urgent or unexpected needs in cases of war, internal turmoil or public disaster”); thus the Executive Branch is vested with the authority not to follow its normal procedures for its activities or formalities, as more expeditious and simplified exceptional procedures are contemplated for such cases. By definition, this encompasses transitory situations that are urgent and where it is necessary to preserve the continuity of public services, so that the Administration has a provisional basis of authority to serve the general interests that cannot be sacrificed by following a purely legalistic approach. Thus, the exceptional law – comprised of the practices carried out at the time of the emergency –, becomes unconstitutional in normal circumstances, hence it is essentially a temporary law, meaning that it is solely and exclusively in place to resolve the specific emergency at hand...”



## **ANNEX 22**

Costa Rica, *Constitutional Court Judgment No 2005-8675 (Extract)*

1 July 2005

English Translation



## Constitutional Court Judgment N° 2005-8675 of 1 July 2005 (extract)

## English Translation

**“III.- States of emergency and the exercise of exceptional powers.** The constitutional system is intended to regulate societies in situations of institutional normalcy, when the rights and interests of individuals in general are not threatened by extraordinary and uncontrollable events. The purpose of the State and the rules for the enjoyment of fundamental rights are premised on social progress taking place in normal conditions. Nevertheless, every constitutional system must have special rules to respond to emergency situations which present a serious risk to public and private legal interests, so as to enable action be taken with the swiftness and responsiveness required, and thereby eliminate or minimise the existing dangers, without undermining the rule of law. In a democratic society, confronted with a situation of disaster or calamity, the State reacts within the limits set by its own system. No emergency justifies the suspension of the constitutional order; at most it allows for extraordinary laws to take effect on a temporary basis, which, although it may imply an increase in official powers and the consequent restriction on the exercise of certain public freedoms, shall never represent a rupture in the order established by the Constituent Assembly. Regarding Costa Rica, the Constitution regulates states of emergency in articles 121 item 7) and 140 item 4) for the suspension of fundamental rights, rules that are also complemented by article 27 of the American Convention on Human Rights, a set of rules that was in turn extensively elaborated in advisory opinion number OC-8/87 of the Inter-American Court of Human Rights. The Constitution also regulates, in paragraph 180, emergency situations where, while it might be unnecessary to apply the exceptional competencies of constitutional articles 121 item 7) and 140 item 4), the Executive Branch is nevertheless allowed to change the object of budgetary items or authorise additional credits, in cases of war, internal turmoil or public disaster. Based on this rule, it is understood that there is an implicit authorisation for the Executive Branch to dictate emergency decrees that allows the rules in force to be adjusted in exceptional conditions, as a measure to combat the effects of the emergency. This last matter is the object of this inquiry. In any case, any restriction that arises as a result of the exercise of these powers must be absolutely necessary in order to address the dangers caused by the exceptional situation, and must endure only for the time that is strictly necessary for this purpose. Regarding the issue of states of emergency, the Constitutional Chamber has ruled on several occasions, recognizing the exceptional nature of the emergency measures, as well as the formal and material limits for the exercise of said competence. (Cf. Judgments of the Constitutional Court 03410-92, 02448-95, 02661-95 and 05966-99, amongst others)...”.



## **ANNEX 23**

Costa Rica, *National Law of Emergencies and Risk Prevention,*

*Law No. 8488 (Extract)*

11 January 2006

Article 4

English Translation



National Law on Emergencies and Risk Prevention, Law N° 8488 of 11 January 2006  
(extract)

English Translation

**“Article 4: Definitions:** For the purposes of clarity and interpretation of the present Law, the following concepts are defined:...

**State of Emergency:** Statement made by the Executive Branch, by executive decree, based on a state of necessity and urgency, caused by circumstances of war, internal unrest and public calamity. This declaration allows for the management, by way of exception, of the actions and the allocation of resources necessary to address the emergency, in accordance with Article 180 of the Constitution.”



## **ANNEX 24**

Costa Rica, *Constitutional Court Judgment No 2006-6336* (Extract)

10 May 2006

English Translation



Constitutional Court Judgment N° 2006-6336 of 10 May 2006 (extract)

English Translation

**“IX.- Regarding the Emergency Situation.-**

...It is therefore not contrary to the Law of the Constitution that the public institutions in question are exempted immediately at the relevant moment from the steps and procedures of the ordinary functioning of the Administration, which in this case refers to exemption from environmental regulations, such as, for example, the carrying out of an environmental impact assessment or providing technical reports by competent institutions due to the state of necessity and emergency, which made it impossible to wait for the conclusions of these reports.”



## **ANNEX 25**

Nicaragua, *Decree No 76-2006, 'Environmental Evaluation System'* (Extract)

Approved on 19 December 2006,

Published in La Gaceta No 248 of 22 December 2006, Article 12,

available at

[http://www.ine.gob.ni/DCA/leyes/decreto/Decreto\\_76-2006\\_SistemaEvaluacionAmbiental.pdf](http://www.ine.gob.ni/DCA/leyes/decreto/Decreto_76-2006_SistemaEvaluacionAmbiental.pdf)

English Translation



Nicaragua, Decree No. 76-2006, approved on 19 December 2006  
published in La Gaceta No. 248 of 22 December 2006  
available at [http://www.ine.gob.ni/DCA/leyes/decreto/Decreto\\_76-2006\\_SistemaEvaluacionAmbiental.pdf](http://www.ine.gob.ni/DCA/leyes/decreto/Decreto_76-2006_SistemaEvaluacionAmbiental.pdf) (extract)

“Article 12. Activities, Projects and Works of National Emergency. For reasons of force majeure, such as projects designed to mitigate disasters or projects of national interest or national security that respond to situations of national emergency and are classified in any of the environmental categories, the Ministry of Environment and Regional Councils may pass a resolution of exception from environmental impact study and may proceed with urgency projects or activities that require an environmental impact assessment or an environmental evaluation, by making a request to the National Centre for Disaster Prevention and Mitigation, through its executive secretary or the Ministry of Defense, as may be the case.”



## **ANNEX 26**

Nicaragua, Executive Decree No 79-2009 of 24 September 2009

*'Creation of the Inter-institutional Commission to Develop and Implement the Regulations Regarding Navigation on the San Juan River, specifically where the International Court of Justice Grants Limited Navigation Rights to the Republic of Costa Rica' (Extract)*

Published in the Gazette of 1 October 2009

English Translation



**DECREE N°79-2009**

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**DECREE:**

CREATION OF THE INTER-INSTITUTIONAL COMMISSION TO DEVELOP AND IMPLEMENT THE REGULATIONS REGARDING NAVIGATION ON SAN JUAN RIVER, SPECIFICALLY WHERE THE INTERNATIONAL COURT OF JUSTICE GRANTS LIMITED NAVIGATION RIGHTS TO THE REPUBLIC OF COSTA RICA

**Article 1.** Create the Inter-Institutional Commission to coordinate, develop and implement the regulations regarding navigation on San Juan River, in conformity with the Political Constitution, the laws on this matter, their rules, other provisions, the Treaty of Limits of 15 April 1858 between the Republic of Nicaragua and Costa Rica and the Judgment of the International Court of Justice of 13 July 2009.

**Article 2.** The Inter-Institutional Commission shall be comprised of representatives of the following institutions:

- a) Ministry of Foreign Affairs
- b) Ministry of Health
- c) Ministry of Agriculture and Forestry
- d) Ministry of Transportation and Infrastructure
- e) Ministry of Environment and Natural Resources
- f) Attorney General
- g) Nicaraguan Army
- h) National Police
- i) Nicaraguan Institute of Territorial Studies
- j) Nicaraguan Institute of Tourism
- k) Ministry of the Interior, Department of Immigration
- l) Customs Authority
- m) National Port Authority

**Article 3.** The Commission shall be coordinated by the Commander in Chief of the Nicaraguan Army, and it will be permanent. Its purpose will be to ensure compliance with the regulatory framework for navigation on San Juan River, mainly on the portion where Costa Rica has navigation rights for commercial purposes, and in conformity with the competencies of each institution, they must ensure compliance with the following provisions:

**a) Ministry of Foreign Affairs,** shall communicate to the Costa Rican Government the regulatory provisions contained in this decree and those that regulate navigation on San Juan River, and process official communications from the Costa Rican Government regarding navigation on the river.

**b) Nicaraguan Army**, through the Harbour Master's Offices, it shall enforce national and international laws regarding navigation, security, control and registration of vessels arriving and departing from the Checkpoints established on San Juan River.

Issue clearings, which shall be free of charge for Costa Rican vessels navigating for commercial purposes, based on the aforementioned treaty and judgment.

Require and control the use of the National Flag.

Guarantee that navigation on the portion of San Juan River authorized by the Treaty is performed only by Costa Rican vessels that have commercial purposes or by those included in the limited use granted to the population of the riverbanks, approximately 450 persons, as clearly established in the judgment.

Forbid the navigation of other Costa Rican vessels, particularly those that carry out police functions or transport security personnel and equipment on the river, with or without arms, provisions or munitions. Also forbid the navigation of official Costa Rican vessels that do not have the corresponding authorization from Nicaraguan authorities.

**c) Ministry of Environment and Natural Resources**, in conformity with the environmental laws in effect, enforce that established to guarantee the protection and conservation of the environment and natural resources of San Juan River and its surrounding areas. Monitor the watercourses to prevent contamination of the river.

Regulate subsistence fishing conducted by Costa Rican inhabitants of the riverbanks.

**d) Ministry of Health**, ensure the health conditions of the people and vessels travelling on San Juan River, apply the laws, regulations, standards, protocols, technical and administrative provisions, as well as the International Health Regulations.

**e) Ministry of Agriculture and Forestry**, protect and preserve the agricultural heritage of San Juan River, and prevent, handle, control and eradicate animal and plant plagues and diseases, and their products or sub-products that affect production on the river; ensure the regulation and control of pesticides and hazardous toxic substances and other similar substances, to protect human health and natural resources.

**f) Nicaraguan Institute of Tourism**, promote, develop and increase tourism on the San Juan River route, respecting legal, moral, cultural values and locations declared of National and Historical Heritage; promote national and foreign investment and the expansion and modernization of touristic locations in those areas as required and allowed by environmental conditions, contributing to the improvement of the living conditions of our fellow citizens in the area.

In conformity with the provisions of the judgment, waive the tourism card fee for people entering on Costa Rican vessels.

**g) National Police**, guarantee, in conjunction with the Nicaraguan Army, domestic order, the citizens' safety, and the prevention and prosecution of crime.

**h) Ministry of the Interior, Department of Immigration**, through clearance and immigration control inspectors, it shall guarantee that foreigners, upon entering and leaving through Checkpoints, comply with the laws of Nicaragua and properly identify themselves by presenting their passports, and for Costa Ricans, their national identity card or passport.

**i) Ministry of Transportation and Infrastructure**, ensure navigation safety and the prevention of water contamination from vessels; enforce compliance with regulations regarding the use of signs and the National Flag by the vessels.

**j) Customs Authority**, control and facilitate foreign trade and the management of government taxes over the international traffic of merchandise and derived legal relations.

**k) Attorney General**, in conformity with its powers and competencies, ensure measures against actions that diminish the State's heritage.

**l) National Port Authority**, guarantee port facilities and services related to navigation on San Juan River.

**m) Nicaraguan Institute of Territorial Studies**, in conformity with its powers, conduct an investigation, inventory and assessment of San Juan River's physical resources.

**Article 4.** In the exercise of Nicaragua's sovereign functions to regulate navigation on San Juan River, which were confirmed by the judgment of 13 July 2009, a specific prohibition is placed on the navigation of Costa Rican vessels if they have the following purposes:

a. Vessels that carry out police functions or of other entities of the same nature, which intend to transport security personnel and equipment on the river, with or without arms, provisions and munitions. Also, the navigation of official Costa Rican vessels that do not have the corresponding authorization issued by Nicaraguan authorities.

b. Fishing with traps, nets, gillnets, explosives or other means, except for subsistence fishing permitted to residents of the riverbanks.

c. Fishing for sports or commercial purposes.

d. Fishing by tourists or passengers while on vessels travelling on the river.

e. The docking of vessels with passengers or tourists or their entry into national territory, without proper authorization.

f. The transit of any type of cargo or merchandise for which it cannot be demonstrated, through the established documentation, that it is for commercial purposes.

- g. The transportation of persons or tourists on the river which have not been authorized at the corresponding checkpoints and who do not carry valid identification documents.
- h. The navigation of vessels, passengers and cargo that have not been reported or have not stopped at the corresponding checkpoints.
- i. The navigation of vessels whose physical structure does not comply with the provisions of the Ministry of Environment and Natural Resources and the Department of Water Transportation and that harm the environment and ecosystem of the river and its surroundings.
- j. The navigation of casino boats, hotel boats or vessels for radio and television transmission, and other similar vessels that travel on the river or just float on it.
- k. The navigation of vessels carrying passengers, cargo or goods that do not comply with health regulations and that are hazardous to people's health.

These prohibitions do not exclude, in any way, others established by the domestic laws and international rules approved by the State of Nicaragua.

**Article 5.** The Checkpoints at San Carlos, Boca de Sábalos, El Castillo, Bartola, Boca de San Carlos, Sarapiquí, El Delta, San Juan de Nicaragua and others established are in charge of complying with and enforcing the provisions of this decree and those derived therefrom.

**Article 6.** The provisions of this decree shall be applied in conformity with the laws and regulations in effect by the Inter-Institutional Commission for Navigation on San Juan River, in coordination with local governments.

The navigation schedule is from 05:00 to 17:00, and it may be changed for reasonable causes that affect navigational security, the environment, or for reasons of emergency or national security.

**Article 7.** Repeal Decree No. 65-2005, published in the Official Gazette No. 188, of September 29, two thousand and five.

**Article 8.** This Decree, along with the Regulations Regarding Navigation on San Juan River, specifically where the International Court of Justice grants limited navigation rights to the Republic of Costa Rica, shall enter into effect on the date of its publication in any means of communication, without detriment to its publication in the Official Gazette.

**Article 9.** This Decree shall enter into effect on the date of its publication in the Official Gazette.

Issued in the City of Managua, Presidential House, on September twenty-four of two thousand and nine. **Daniel Ortega Saavedra**, President of the Republic of Nicaragua. **Paul Oquist Kelley**, Private Secretary of National Policies.

## REGULATIONS REGARDING NAVIGATION ON SAN JUAN RIVER

### **SECTION I PURPOSE**

### **SOLE CHAPTER GENERAL PROVISIONS**

#### **Article 1.- Purpose**

The purpose of these regulations is to regulate navigation on San Juan River in conformity with the Political Constitution, national laws, international treaties and agreements to which Nicaragua is a State Party, the Judgment of the International Court of Justice of 13 July 2009, the present decree and other technical and administrative provisions.

#### **Article 2.- Enforcement Authorities**

The Maritime Authority, through the Harbour Master's Offices, and in coordination with the other corresponding entities of the Public Administration of the Republic of Nicaragua, will be in charge of enforcing the navigation activities referred to herein, in conformity with the national laws, applicable international agreements, and other legal provisions, particularly the rights granted to Costa Rica to navigate for commercial purposes including passengers and tourists.

#### **Article 3.- Nicaraguan Army**

The Nicaraguan Army, through the Harbour Master's Offices and the Vessel Checkpoint, is in charge of enforcing the following:

- a) National and international laws regarding navigation, security, control and registration of vessels arriving and departing from the Checkpoints established on San Juan River.
- b) Issuing clearings, which shall be free of charge for the navigation of Costa Rican vessels, based on the aforementioned treaty and judgment.
- c) Requiring and controlling the use of the National Flag.
- d) Guaranteeing that navigation on San Juan River is performed only by Costa Rican vessels that have commercial purposes or by those included in the limited use granted to the population of the riverbanks, approximately 450 persons, as clearly established in the judgment.
- e) Forbidding the navigation of other vessels, particularly those that carry out police functions or whose purpose is to transport security personnel and equipment on the river, with or without arms, supplies and munitions.

## **SECTION II** **RECEPTION, CONTROL AND DISPATCH OF VESSELS**

### Chapter I General Provisions

#### **Article 4.- Beginning of the Reception and Dispatch of Vessels.**

The formal reception will take place at the first Checkpoint of entry or arrival of the vessel, and the dispatch at the last Checkpoint of departure of the vessel, with the participation of the authorities that intervene in the controls that must be conducted in conformity with these regulations.

The arrival and departure checkpoints are: Boca de San Carlos, Sarapiquí and El Delta.

#### **Article 5.- Coordinating Authorities**

The Nicaraguan Army, through the Harbour Master's Offices and Checkpoints, will be in charge of coordinating the reviews and controls to which vessels must be subjected upon arrival or departure.

#### **Article 6.- General Declaration**

1. The General Declaration is the document that must be submitted by the captain or skipper of the vessel at the time that the vessel is received or dispatched.
2. This general declaration shall contain, based on whether it is a reception or dispatch, the following data:
  - a) Name and type of vessel
  - b) Nationality of the vessel
  - c) Port or Checkpoint of arrival or departure
  - d) Date and time of arrival or departure

- e) Port or Checkpoint of origin or destination
- f) Name of the shipowner and captain or skipper of the vessel
- g) Port and registration number of the vessel
- h) Gross and net register tonnage of the vessel
- i) Brief description of the cargo aboard the vessel, including dangerous goods (red flag), and their value based on the commercial invoice to determine which are for commercial purposes
- j) List of the crewmembers, including the captain or skipper
- k) Passenger list
- l) Main dimensions of the vessel

3. The general declaration must be signed by the captain or skipper. The authorities that intervened in the reception or dispatch of the vessel must leave evidence of their observations, if any, in the Book of Reception and Dispatch of Vessels of the Harbour Master's Offices or Checkpoint.

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#### **Article 9.- Obligation to Raise Flags**

1. All national vessels shall have the national flag raised, and the flag must be rectangular with proportional dimensions of three (3) feet wide by five (5) feet long, and they should be in good, clean condition at all times.
2. During navigation, the vessel's national flag shall be raised to the peak or at the halyard of the mast, except when the design lacks a mast or peak, in which case it will be raised at the mast located at the stern of the vessel.
3. All Costa Rican vessels or vessels of other nationalities entering a Checkpoint to navigate San Juan River must raise the Nicaraguan flag while on national territory. The Nicaraguan flag must be raised atop the highest mast.
4. The national flag will be lowered to half mast to signal mourning, when indicated by the Executive Branch or the Legislative Branch.
5. When the vessel does not have a superstructure, the vessel's national flag shall be visibly painted on both sides of the bow.

#### **Article 10.- Documentation**

The Harbour Master's Offices or Vessel Checkpoint will require, upon reception of all national and foreign vessels, submission of the following documents:

1. The ship's clearance from the port of origin
2. General declaration
3. Cargo manifest and declaration of dangerous goods
4. List of crewmembers and their licenses
5. Passenger list
6. Logbook
7. Insurance policy certificate set forth in these regulations

8. Certificate of registration and navigation permit of the vessel
9. Ship security certificate
10. Documents proving the lawfulness and commercial purposes of the merchandise transported

### **Chapter III** Dispatch of Vessels

#### **Article 11.- Departure**

In order to be able to depart from a Checkpoint, all vessels require prior authorization for departure, which shall be granted by the corresponding Harbour Master's Offices or Checkpoint. Said authorization is called a "clearance" and it is granted upon compliance with the requirements and formalities set forth in these regulations.

#### **Article 12.- General requirements**

For the dispatch, in addition to presenting the documentation indicated in the previous article, the captain or skipper must ensure that the vessel has all of its documents in order and that the security conditions necessary for navigation and protection of the environment comply with national regulations in effect.

#### **Article 13.- Documentation**

The Harbour Master's Offices or Checkpoints shall demand the following documents to dispatch vessels:

1. General declaration (set forth in article 6 of this decree)
2. Ship clearance issued by the competent authority
3. Cargo manifest and declaration of dangerous goods
4. List of crew members
5. List of passengers
6. Logbook
7. Insurance policy certificate set forth in these regulations
8. Certificate of registration and navigation permit of the vessel
9. Licenses of the crew members included in the crew member list
10. Ship security certificate.
11. Documents demonstrating the lawfulness of the merchandise transported

#### **Article 14.- Denial of clearance**

The Harbour Master's Offices or Checkpoints will not issue a ship clearance in the following cases:

1. Incomplete presentation of documents;
2. Justified existence of an imminent risk in terms of security in navigation and human life, as well as the prevention of contamination;
3. Knowledge of any accident, incident or situation of risk that happened to the vessel, involving danger for its navigation
4. When the vessel's crew is incomplete or unsatisfactory based on the security requirements for navigation due to incompetence
5. When the vessel exceeds its maximum amount of cargo or passengers

6. When there is official communication by a competent judicial authority
7. When there is an order from competent administrative authorities
8. When the vessel does not raise the national flag
9. When the vessel does not have signs
10. When the vessel does not carry security and salvage equipment
11. When the vessel does not carry the means to prevent contamination
12. When it is outside of the established navigation schedule
13. When cargo and passenger documents demonstrating that the vessel is a commercial vessel are not presented

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#### **Article 16.- Mandatory insurance**

1. Every ship owner that provides cargo and/or passenger transportation services must have the following insurance policies:
  - a) Personal accident for the passengers and crew
  - b) Death
  - c) Permanent disability
  - d) Temporary disability
  - e) Medical attention, hospital, surgical and pharmaceutical service expenses
  - f) Burial costs
2. Third party liability covering personal or material damage, contamination and salvage costs.
3. The Maritime Authority will establish, through a resolution, the minimum compensation amounts for the abovementioned insurance policies.

#### **Article 17.- Conditions of the vessels**

1. The passenger transportation service shall be provided by vessels that have adequate compartments, under security and comfort conditions, complying with the minimum security guidelines established in these regulations, as well as in other provisions issued by the Maritime Authority.
2. The cargo transportation service shall be performed with vessels that meet the technical characteristics adequate for the requirements of the type of cargo.
3. The passenger and cargo transportation service shall be provided by vessels that comply with the conditions established for the transportation of both cargo and passengers.
4. Vessels shall have at least two exits or emergency escapes, one located on the bow and the other on the stern of the passenger area. These exits will be at least 0.5 meters wide and have a height of at least 0.75 meters, and should be able to open from the inside and outside. They shall be adequately marked and free from any obstacles to reach or access them.
5. Vessels fitted to transport over 50 passengers shall have at least one toilet and drinking water service.
6. Vessels fitted to transport up to 50 passengers and that perform trips of 30 minutes or less, shall have one toilet as a minimum.

7. The passenger area must be properly ventilated by a natural or mechanic ventilation system sufficient to maintain fresh air and keep the passengers comfortable.

**Article 18.- Rendering of services**

1. The cargo and/or passenger transportation service will be provided by national shipowners, in the environment, traffic and modality indicated in the concession, after complying with the requirements and procedures established in the relevant laws, as well as in other provisions issued by the Maritime Authority.

Notwithstanding the provisions of the previous paragraph, vessels that raise the Costa Rican flag may provide cargo and/or passenger transportation services under the terms indicated in the Treaty of Limits of April 15, 1858 between Nicaragua and Costa Rica, the Cleveland Award of 1888, and the Judgment of the International Court of Justice of 13 July 2009, in compliance these regulations and other applicable provisions.

2. In the exercise of the right stated in the above paragraph, Costa Rican vessels authorized to navigate on San Juan River are forbidden from performing transfers of passengers or goods to another vessel during navigation and approaching or unauthorized running aground on any of the riverbanks when it is not a Checkpoint.

**Article 19.- Navigation Schedule**

The schedule established for navigation on San Juan River is from 5:00 to 17:00 hours. However, in the event of a clear need, the Harbour Master's Offices or Checkpoint may authorize navigation outside of this schedule, except for the limitations contained in article 14.

**Article 20.- Duty of communication.**

The captain or skipper of any Costa Rican vessel navigating on San Juan River shall maintain continuous contact with the radio station at the Harbour Master's Offices or Checkpoint, in order to report all events related to the trip, and to receive or request instructions when necessary.

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**Article 22.- Navigation of official vessels of the Republic of Costa Rica.**

Official Costa Rican vessels that need to conduct work related to their riverside inhabitants must request, through the established diplomatic channels, permission for arrival and navigation, reporting the following information:

1. Type of vessel and characteristics
2. List of the crew and their identification
3. Work to be conducted
4. Date and time of entry
5. Length of stay
6. Radio type and frequency
7. Point of arrival and departure
8. Amount of fuel

9. In case of an emergency, the Nicaraguan Army's checkpoints shall receive the information contained in numbers 1 to 8 of this article from Costa Rican authorities for their knowledge and control

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#### Article 24.- Inspection of the vessel

Upon arrival of a vessel to a Checkpoint, the Maritime Authority shall perform an inspection, which shall be limited to verifying that, in conformity with the following standards:

1. The registration and navigation documents are valid, as well as the ship security certificate.
2. The equipment and security means are on board, in a good state and in operation.
3. The navigation lights are in a good and functioning condition.
4. It has solid and liquid waste reception facilities.
5. It has a valid insurance policy or certificate, held on board.

#### Article 25- Measures to be taken by the Maritime Authority

In the event that the inspector from the Maritime Authority declares an inconsistency between that expressed in the documents or security certificates on board and the reality that he sees, he shall perform a more detailed inspection of all of the elements, equipment and means of the vessel, in order to guarantee compliance with the regulations in effect regarding security and prevention of contamination to the environment.

If as a result of the inspection or detailed review deficiencies are detected which put at risk the safety of the vessel, the persons or cargo, the inspector from the Maritime Authority shall deny navigation until the deficiencies found are corrected. If not possible, the vessel must return to the country of origin.

The measures taken shall be reported to the Ministry of Foreign Affairs.

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#### Article 27.- Measure to be taken by the Military Authorities

The Harbour Master's Offices, Checkpoints, surface units and Marine Infantry Units, which find arms, general undeclared goods, unauthorized fishing products, narcotics or psychotropic and other controlled substances, shall arrest and seize, as follows:

1. If the arrest is on the river, the vessel, persons and cargo will be led to the nearest control post and the corresponding national authority shall be informed.
2. Once all of the information regarding the arrest and seizure is obtained, if the vessel and persons are foreign the Ministry of Foreign Affairs will be notified through the Commander-in-chief of the Navy.
3. In all cases, the vessels will remain in custody of the Harbour Master's Office or Checkpoint until the competent authority issues the corresponding decision.
4. If restricted arms, means of communication, munitions or explosives are found these shall be seized and will remain in custody of the Nicaraguan Army, and the bearers shall be handed over to the competent authorities duly registered.
5. Restricted arms, military provisions and naval artefacts found in unlawful activities shall remain in custody of the Nicaraguan Army.

6. Upon finding general goods, money in amounts higher than that established in the standards in effect and undeclared personal objects these shall be seized and delivered duly registered to the Customs Authority.
7. If drugs are found these shall be seized and handed over, as well as the bearers thereof, duly registered to the competent authorities.
8. If unauthorized fishing products are found, these shall be seized and delivered to the competent authority.

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**Article 29.- Immigration controls by Nicaraguan Checkpoints on the entry and departure of foreigners in transit, coming from Costa Rica, in the area of common navigation**  
Foreigners that enter San Juan River, coming from Costa Rica, through the checkpoints at Boca de San Carlos, Sarapiquí, El Delta, must comply with the following:

1. Present a Passport with validity over six months, in good condition, without large stains or corrections.
2. Present embarking and disembarking cards
3. Costa Ricans over 16 years old may present the citizen ID, and minors under 16 years of age must present a valid Passport as ID.

#### **Article 30.- Reasons for Denial of Entry**

The Department of Immigration may deny entry to foreigners in the following cases:

1. For reasons of national security, public order and the environment;
2. Due to health regulations;
3. Due to immigration impediments of entry contained in the law on this matter.

### **CHAPTER III**

#### **Public Health and Sanitation Control**

#### **Article 31.- Sanitation Documents**

In conformity with the International Health Regulations, the following documents are required for the entry of persons or products:

1. International certificate of vaccinations (immunizations record), as applicable;
2. Maritime declaration of health for vessels;
3. Manifest or general declaration of the vessel;
4. Ship sanitation certificate;
5. International control sheet for deceased persons (see appendix).

#### **Article 32.- Medical Inspection**

A medical-sanitation inspection of the ships shall be performed, and a non-invasive medical examination shall be performed on passengers when it is suspected that their entry constitutes a risk to public health; routine medical examinations can be performed.

#### **Article 33.- Danger of contamination**

1. When signs or clinical symptoms are found on board a ship, as well as information based on facts or evidence of a risk to public health including sources of infection or contamination, the following procedure shall be performed:

- a) Disinfect, decontaminate and clear the vessel of insects or rats.
  - b) Decide on the technique to be employed to guarantee adequate control of the risk to public health.
  - c) Carry out the related actions to prevent risks of contamination according to the needs determined by the sanitation authorities.
2. The cost of the interventions indicated in letters a) and b) shall be assumed by the shipowners.

#### **Article 34.- Sanitation monitoring and control**

To ensure or guarantee sanitation control, the following actions will be performed:

1. Inspect means of transport that enter with processed foods, verifying compliance with the technical standards on labelling and sanitary registration.
2. Verify that the means of transport and facilities used by passengers are kept in hygienic conditions and exempt from sources of infection or contamination, including vectors and reservoirs;
3. Systematically inform the operators of the means of transport of the methods used for sanitation control of the ships, crew and passengers and the obligation to facilitate this control.
4. Monitor the sanitary conditions of the passengers, objects, cargo and ships.

#### **Article 35.- Sanitation measures**

Operators and shipowners must guarantee the following:

1. Individuals must be vaccinated in conformity with the official scheme of the Ministry of Health and the International Health Regulations, and must provide the corresponding documentation when requested by the sanitation authority.
2. Passengers must be given the immunizations determined in the event of sanitation emergencies by the Ministry of Health.
3. Crew members must bear sanitation certificates issued by the competent authority.
4. Report to the competent authorities whether passengers carry medications that are subject to sanitation control.
5. Have a first aid kit with sufficient materials to address passenger emergencies.
6. Place non-smoking signs in visible places.
7. Create facilities and provide adequate equipment and instruments that allow access, mobility and safety to disabled persons.
8. Do not allow the embarking of persons with behavioural disorders with expression of aggression or violence.

#### **Article 36.- Monitoring Human Health**

The captain or skipper must notify any event that constitutes a risk to public health, and must apply the sanitary recommendations given by the Nicaraguan sanitation authority.

#### **Article 37.- Declaration of a Health Emergency**

1. In the event of an epidemic or danger of an epidemic to the communities on the riverbanks, the Ministry of Health shall declare a Health Emergency and determine the measures to protect the population and the passengers, temporarily regulating the entry of passengers.

2. The institutions, tourism operators, vessels and general population have the obligation to comply with the recommendations and guidelines issued in order to prevent the spread or development of new outbreaks.

## **CHAPTER IV**

### Monitoring and Control of Plant Health and Animal Health

**Article 38.- Requirements for the entry or transit of products or subproducts of animal or plant origin**

The requirements are:

1. Health/phytosanitary import permit (original) which shall be requested 8 days in advance, prior to the entry of the vessel into national territory
2. Official health/phytosanitary certificate from the country of origin and/or country of departure (original)
3. Official certificate of origin of the exporting country (copy)
4. Cargo manifest (copy) bill of lading
5. Copy of commercial invoice
6. Negative results of official laboratories or certified by the competent authority of the country of origin and/or departure.
7. For products originating from countries in Central America, the Unique Central American Customs Form will be accepted as certificate of origin.

**Article 39.- Special Sanitary and Phytosanitary measures to prevent the introduction of Plagues and Diseases**

1. All merchandise on which there is a suspicion of plague or that it may cause disease may be subjected to the following measures:
  - a) Quarantine
  - b) Sanitary and phytosanitary control treatment
  - c) Quick tests or conventional lab tests
  - d) Confiscation
  - e) Rejection
  - f) Sanitary sacrifice
  - g) Any other duly justified sanitary or phytosanitary measure deemed pertinent.
2. The expenses related to the application of quarantine measures shall be assumed by the owner without rights to reimbursement.
3. When there is suspicion or initial confirmation of plague or exotic disease outbreaks, a state of alert shall be declared.

**Article 40.- Inspection of Animals, Products and Subproducts of Animal and Plant Origin**

All national or foreign vessels that transport and/or store animals, plants, plant parts, vegetable products and materials susceptible to spreading plagues or diseases shall be subjected to a sanitary and phytosanitary inspection.

**Article 41.- Control of supplies and products for Agricultural, aquaculture, fishing, forestry and agroforestry uses**

Supplies and products for Agricultural, aquaculture, fishing, forestry and agroforestry uses that enter through maritime or river ways shall be subject to inspection in order to

determine whether they comply with the requirements established in the law on this matter and ministerial resolutions.

#### **Article 42.- Confiscation and rejection of agrochemical products**

All importers who fail to comply with the requirements established, such as chemical properties, shall be subject to holding, confiscation and rejection of products which due to their state represent inadmissible risks to Public Health, Animal Health, Plant Health and the environment in general.

#### **Article 43.- Service charges**

Inspection and quarantine treatment shall be compulsory for all means of transport that intend to arrive or depart from national territory, which must pay for the services received, in conformity with Ministerial Agreement No. 15-2009 and the rate sheet issued for that purpose.

### **CHAPTER V**

#### Customs Controls and Regulations

#### **Article 44.- Transit of persons, merchandise and means of transport**

1. Passengers or carriers that transport merchandise on San Juan River for commercial purposes, shall present and declare them immediately to the Customs Authority at the checkpoints during the established hours, without modifying their state or conditions. For this purpose they must fill out and submit a customs declaration issued by the Customs Authority or, if applicable, submit a copy of the cargo manifest of the goods.
2. Companies dedicated to the international transport of persons have the obligation to collaborate with the Customs Authority in the exercise of control over passengers and their baggage, including providing the customs declaration. For a family group only one declaration needs to be submitted.

#### **Article 45.- Entry and departure of persons, merchandise and means of transport**

1. The entry or departure of persons, merchandise and means of transport from customs territory shall be performed at the established checkpoints and during the established hours. These must appear or be presented before the Customs Authority and comply with the control measures in effect.
2. Final import or export, and their modalities, or other customs regime, are subject to compliance with customs requirements and formalities, or of other nature, required in each case.

### **CHAPTER VI**

#### Preservation of Public Order and Citizen Safety

#### **Article 46.- Obligations of Vessel Operators**

At the Harbour Master's Office or Checkpoint vessel operators must:

1. Declare possession of firearms, munitions, explosives and other related materials, which must be duly registered and authorized in conformity with the law on the matter.
  2. Present the corresponding authorization for the transport of cattle.
- Present the authorization for the transport of timber.

**Article 47.- Measures to be taken by police authorities**

When the National Police presumes the commission of crimes it shall take the following measures in coordination with the Nicaraguan Army:

1. Inspect, in coordination with the Harbour Master's Offices and Checkpoints, the vessel, crew and passengers transported.
2. Detain the alleged perpetrators of the crimes caught in flagrante.
3. Confiscate merchandise on which there is suspicion of smuggling, goods, cultural heritage, flora and fauna.
4. Seize cash, securities, objects and precious metals introduced or intending to take from the country without the corresponding customs declaration.
5. Perform the necessary investigations and forward them to the competent authority.

**SECTION V**

**SAFETY STANDARDS**

**Chapter 1**  
**Safety and Rescue Measures**

**Article 48.- Safety Standards**

All vessels must comply with the following safety standards in the checkpoints and during navigation:

1. The gasoline tank of passenger vessels with outboard motor (s) must be isolated from the passenger area.
2. They shall have a superstructure according to the authorized number of passengers, be equipped with hardtop cabin, a central corridor for the movement of passengers and individual chairs with backrests, as well as compartments for hand luggage storage and curtains on the sides for protection from rain or sun.
3. The net width of each passenger seat shall not be less than 0.45 meters.
4. The net width of internal corridors for passenger use shall not be less than 0.50 meters.
5. Perpendicular to the backrests of the seats, each adult passenger will occupy a length of 0.62 meters; there shall be no less than 0.12 meters between the passenger and the backrest of the seat in front of him.
6. The minimum height of the passenger compartment is 1.70 meters.
7. Throughout the journey in the stretch of rapids, passengers and crew are required to wear a life jacket, which will be provided by the helmsman or captain.

8. When embarking and during the trip, passengers and crew are required to wear a life jacket.
9. Intoxicated passengers or crew shall not be allowed to board. Also, consumption of intoxicating beverages or hallucinogenic substances is not allowed during the trip.
10. Refuelling the vessel while passengers are on board is not allowed.
11. Passenger vessels shall not transport explosive, flammable, or toxic products and, in general, products that are dangerous to health, physical integrity and safety.
12. The maximum speed for the vessels navigating on San Juan River is six (6) knots.
13. All cargo and passenger vessels shall not carry more than their authorized capacity.

#### **Article 49.- Information on board**

Printed instructions about the maximum number of passengers allowed, minimum safety precautions on board and use of life jacket shall be located in a visible place in all vessels.

### **SECTION VII TOURISM SERVICES**

#### **SOLE CHAPTER REGARDING TOURISM SERVICES**

##### **Article 67.- Registration in the National Registry of Tourism**

Individuals or corporations, national or foreign, who want to operate in San Juan River and that engage in water transport tourism, tour guide, water vehicle rentals and tourist marinas shall register before the National Registry of Tourism or sign agreements with national companies of the same nature registered and authorized by the Nicaraguan Institute of Tourism.

##### **Article 68.- Tourist Card Payment**

In accordance with the provisions of the judgment, payment of the tourist card shall be waived to foreigners entering San Juan river on Costa Rican vessels.

All foreigners in Costa Rican vessels sailing in the stretch or route of San Juan River, in which Costa Rica can navigate for commercial purposes and while navigating determines to enter the country for tourism activities shall comply with the payment of the tourist card.

##### **Article 70.- Regarding the vessels, the following is not allowed:**

1. Navigation of casino vessels or hotel vessels.

2. To navigate outside normal hours, except in cases of emergency.
3. To perform cross-border movement of toxic waste in San Juan River.
4. The sale of alcoholic beverages without proper authorization.
5. The shipment of human remains without proper certificates issued by competent authorities and that do not meet international standards set for their transfer.
6. To transport animals with contagious diseases that pose a threat to people and wildlife.
7. To dock and disembark passengers or unload goods in unauthorized places.
8. To transport, trade and use the following pesticides as raw materials, formulated products or any other mixture in San Juan River: 2,4,5-T. (trichlorophenoxyacetic acid), aldrin, dieldrin, endrin, chlordane, Chlordimeform, DBCP (Dibromochloropropane-Nemagon), DDT (Dichloro Diphenyl Trichloroethane), Dinoseb, EDB (ethylene dibromide), Ethyl parathion, HCB (hexachlorobenzene), Heptachlor, Lindane, Pentachlorophenol, Perchloro Penta Cyclodecane (Dechlorane or Mirex), Toxaphene, methyl parathion, methamidophos (MTD) and Monocrotophos. Without prejudice to the prohibitions and restrictions established in official documents.

## **ANNEX 27**

Costa Rica, Ministerial Resolution 02572 of 2009,

*Technical Guide for an Environmental Diagnostic – EDA (Extract)*

2 November 2009

English Translation and Spanish Original



(MINAET logo) (SETENA logo)

**Ministry of the Environment (Ministerio de Ambiente, Energía y Telecomunicaciones)**

**National Environmental Technical Secretariat (Secretaría Técnica Nacional Ambiental (SETENA))**

Resolution N° 02752-2009 SETENA

The Ministry of the Environment (Ministerio de Ambiente, Energía y Telecomunicaciones) – National Environmental Technical Secretariat (Secretaría Técnica Nacional Ambiental), at 08 hours 00 minutes of 2 November 2009

**AGREEMENT OF THE PLENARY SESSION OF THE COMMISSION**

**TECHNICAL GUIDE FOR AN ENVIRONMENTAL DIAGNOSTIC - EDA**

In the Regular Meeting No. 0121-2009 of this Secretariat, held on November 02, 2009, Article No. 02, it was decided that:

1. What is an EDA?

An Environmental Diagnostic (*Estudio de Diagnóstico Ambiental*), hereinafter EDA, is an instrument for environmental assessment similar to an Environmental Impact Study (*Estudio de Impacto Ambiental*, EsIA), but instead of being based on predictions (when the project is in the planning or pre-investment stage), it is based on samples and measurements (since the activity subject to the EDA has already been built and is in the operating stage).

...

The EDA has two main goals: i) identifying and measuring the significant negative impacts and risks caused by an activity on the environment and the population, and ii) defining and establishing the “environmental control measures” necessary to prevent, mitigate or compensate those negative impacts originating from the activity, as well as the control of environmental risks, for which it shall propose the corresponding Environmental Modification Program (*Programa de Adecuación Ambiental*, PAA) and the Contingency and Accident Prevention Program (*Programa de Contingencia y Prevención de Accidentes*, PCPA).

The PAA and PCPA are the main products of the EDA, and will become key instruments for the environmental management of the activity or company which is granted the Environmental License, as they are based on the pillars of environmental commitments, seeking to guarantee compliance with the applicable environmental standard.

The PAA focuses on control and monitoring, by the developer, of the negative environmental impacts, especially those associated with water, air, soil and noise pollution, considering but not limited to: waste management and disposal, control of noise pollution. Similarly, the PCPA focuses on the risk generated by the activity subject to the EDA, and its content and scope will be based on the nature and size of the activity subject to the environmental assessment instrument, as well as the characteristics of the environment in which it is located.

...



**Ministerio de Ambiente, Energía y Telecomunicaciones**  
**Secretaría Técnica Nacional Ambiental**  
**SETENA**  
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## Resolución N° 02572-2009-SETENA

EL MINISTERIO DE AMBIENTE, ENERGÍA Y TELECOMUNICACIONES - LA SECRETARÍA TÉCNICA NACIONAL AMBIENTAL, A LAS **08** HORAS **00** MINUTOS DEL **02** DE NOVIEMBRE DEL **2009**.

# ACUERDO DE LA COMISION PLENARIA GUÍA TÉCNICA PARA ESTUDIO DE DIAGNÓSTICO AMBIENTAL - EDA

En sesión Ordinaria No. **0121-2009** de ésta Secretaría, realizada el **02** de noviembre del 2009, en el artículo N°. **02** se acuerda:

### 1. ¿Qué es el EDA?

El Estudio de Diagnóstico Ambiental, en adelante denominado EDA, es un instrumento de evaluación ambiental similar a un Estudio de Impacto Ambiental (EsIA), pero en vez de basarse en predicciones (dado que el proyecto se encuentra en fase de planificación o preinversión) se basa en muestreos y mediciones (dado que la actividad sujeta al EDA se encuentra ya construido y en etapa de operación o funcionamiento).

Su aplicación ante SETENA es voluntaria, para aquellas actividades o empresas que se encuentran **funcionando**, y que nunca realizaron una Evaluación de Impacto Ambiental (EIA) y por ende, nunca les fue aprobado su EsIA (con su correspondiente Plan de Gestión Ambiental - PGA) y nunca les fue otorgada una Viabilidad (Licencia) Ambiental. Muchas empresas en estas condiciones, están requiriendo actualmente una Licencia Ambiental, por ejemplo para fines de una transacción financiera ante un banco, o para efectos de una certificación de sistema de gestión a nivel internacional. Otras están requiriendo la Licencia Ambiental para efectos de trámites de permisos ante el Ministerio de Salud. Para todos estos casos, se ha incorporado el instrumento denominado EDA, aprobado en Resolución número 2286-2009-SETENA del 25 de setiembre del 2009.

El EDA tiene dos objetivos fundamentales: i. Identificar y cuantificar los impactos negativos significativos y riesgos que una actividad está ocasionando sobre el medio ambiente y la población, y ii. Definir y establecer las "medidas de control ambiental", necesarias para prevenir, atenuar o compensar dichos impactos negativos originados en el funcionamiento de la actividad, así como el control de los riesgos ambientales, para lo cual deberá proponer el correspondiente Programa de Adecuación Ambiental (PAA) y el Programa de Contingencia y Prevención de Accidentes (PCPA).

El PAA y el PCPA, son el principal producto del EDA y se convertirán en los instrumentos clave de la gestión ambiental de la actividad o empresa a la cual se otorga la Licencia Ambiental, ya que se constituyen en el pilar de los compromisos ambientales, dirigido a garantizar el cumplimiento de la normativa ambiental aplicable.

El énfasis del PAA es el control y seguimiento, por parte del desarrollador, de los impactos ambientales negativos, especialmente aquellos asociados a contaminación del agua, aire, suelo y ruido, pudiendo considerar pero no limitándose a: manejo y disposición de aguas residuales, control de emisiones atmosféricas y contaminación del aire, manejo y disposición de desechos sólidos, control de la contaminación sonora. De la misma manera, el énfasis del PCPA es el control de los riesgos generados por la actividad sujeta al EDA y su contenido y alcance, estará en función de la naturaleza y escala de la actividad sujeta al instrumento de evaluación ambiental, así como de las características del medio ambiente en que está inmersa.

## 2. Diferencias entre EDA y EsIA

Los consultores responsables de elaborar el EDA, deberán tener presentes las siguientes diferencias conceptuales y técnicas, con respecto de un Estudio de Impacto Ambiental:

VARIABLE	EsIA	EDA
Objetivo del estudio	Verificar la viabilidad ambiental y proponer las medidas de control ambiental antes de la decisión.	Identificar impactos negativos, énfasis en contaminación y riesgo, y proponer las medidas de control ambiental
Signo de los impactos	Se debe identificar y evaluar todos los impactos positivos y negativos, físico químico, socio económico, biológico – ecológico, estético, etc.	Sólo impactos negativos, énfasis en contaminación y riesgo ambiental. Casos excepcionales deberá incluir otros impactos.
Tipo de impactos	Se debe identificar y evaluar impactos directos e indirectos.	Únicamente impactos directos.
Área incluida en el estudio	AP, AID, AII, o sea, todos los factores ambientales que interactúan con el proyecto, dentro y fuera de la propiedad.	Salvo casos excepcionales, sólo considerar AP y AID, tratando de confinar la solución ambiental dentro de los límites de la propiedad o edificación, siempre que sea posible.
Medidas de control ambiental	De prevención, mitigación y compensación.	Dentro de lo posible, se debe priorizar el control ambiental directamente en la "fuente" que origina el impacto (el "aspecto ambiental" según ISO 14001), recomendable: medidas de Producción Más Limpia (P+L), enfoque eco-eficiente. El enfoque incluye el manejo de impactos y de riesgos.
Equipo	Necesariamente	No necesariamente interdisciplinario,

## **ANNEX 28**

Costa Rica, *Emergency Decree No. 36440-MP*

Published in the Official Gazette number 46 of 7 March 2011

English Translation and Spanish Original



**Supplement No. 14 to The Gazette No. 46  
Official Journal  
Decree No. 36440-MP  
Year CXXXIII  
La Uruca, San José, Costa Rica  
Monday, 7 March 2011**

**THE PRESIDENT OF THE REPUBLIC AND THE MINISTER OF THE  
PRESIDENCY**

In the exercise of the authority conferred on them by Articles 140, sections 3) and 18) and 180 of the Political Constitution, Articles 25 section 1), 2.7 section 1) 28 section b), of Law No 6227 of 2 May 1978 which is the General Public Administration Law, and Law No. 8488 of 11 January 2006 which is the National Law on Emergencies and Risk Prevention.

**Considering:**

I.- That the constitutional system provides for special rules that allow the Executive Branch to address emergency situations so that quick and decisive action can be taken as required by the circumstances so as to eliminate or minimize the consequences of natural and man-made disasters.

II.- That an essential function of the Costa Rican State is to protect of national sovereignty, and in its safeguarding and defence the State is called upon to exercise all necessary measures in observance of the civil and pacifist vocation that informs the Costa Rican State, particularly with regards to the abolition of the army, peace, neutrality and the peaceful settlement of disputes, by the use of the mechanisms provided by International Law.

III.- That the Ministry of Foreign Affairs is the means by which the State carries out all its tasks before any foreign Governments and institutions. Furthermore, the Ministry for Public Security is the entity responsible for the defence of the territorial integrity of Costa Rica. Equally, other entities of the State will be available to provide institutional support, in conformity with their powers and responsibilities for those purposes.

IV.- That the military invasion and occupation of Costa Rica by Nicaragua, since October 2010, with Nicaraguan troops occupying part of the territory of Costa Rica, in clear violation of its sovereignty, territorial integrity and national dignity.

V.- That the aforementioned has brought about a constant violation of the territorial, aerial and maritime spaces of Costa Rica, thus affecting not only its

national sovereignty, but also causing serious environmental damage through the destruction of fragile areas of national wetland duly registered and recognized at the international level.

VI.- That to this day Nicaragua continues to occupy and to damage a part of Costa Rican territory, with the presence of Nicaraguan armed forces in particular, in Isla Portillo-Isla Calero, and continues to carry out dredging works which have caused serious environmental damage to the area in question.

VII.- That as a result of actions carried out by the army of Nicaragua and the Government of that country, several Costa Rican communities along the border area, and Government institutions, have seen their normal functioning conditions disrupted, some even isolated as they lack the means to access basic services such as health, food, education, among others, and thus have been placed in evidently vulnerable conditions.

VIII.- That the area that has been affected by the actions of the Nicaraguan Government and Army is also under constant threat of natural phenomena that causes flooding among other effects.

IX.- That the National Law on Emergencies and Risk Prevention determines that "Those within the national territory must have their lives, their physical integrity, their property and the environment protected from dangerous disasters or events that may occur."

X.- That the National Law on Emergencies and Risk Prevention defines as a disaster a situation "or process that is brought about as the result of a phenomenon with a natural, technological or man-made origin where a population is brought under conditions of vulnerability, that causes intense disruption of the community's normal functioning conditions, such as the loss of lives and health within the population, destruction or loss of the collective's property and severe damage to the environment."

XI.- That the National Law on Emergencies and Risk Prevention understands an emergency to be the state of crisis created by the disaster.

XII.- That up until the present, attention to the disaster generated by the actions of the Army and Government of Nicaragua, has been enabled by the resources and ordinary procedures that regulate Public Administration; however, at the present moment it is necessary the use of the mechanisms of exception provided to the Estate by the Constitution and the Law.

**Therefore,**

**THEY DECREE:**

**"TO DECLARE THAT THE SITUATION BROUGHT ABOUT BY THE VIOLATION OF COSTA RICAN SOVEREIGNTY ON THE PART OF NICARAGUA CONFORMS A STATE OF EMERGENCY"**

Article 1- A State of Emergency is declared in the following cantons located on the border with Nicaragua: La Cruz, Upala, Los Chiles, Sarapiquí, San Carlos and Pocosi; and also the situations and/or processes that are being unleashed as a result of the activities illicitly carried out by Nicaragua on Costa Rican territory, which threaten the life, physical integrity and property of those within national territory, as well as the national sovereignty and the environment.

Article 2-. To that effect, the present declaration of a state of emergency includes the three phases established in the National Law on Emergencies and Risk Prevention which are as follow:

- a) Response phase.
- b) Rehabilitation phase.
- c) Reconstruction phase.

Article 3.- The present declaration of a state of emergency encompasses all the actions and projects necessary for the protection of life, physical integrity, property and the environment, as well as those necessary for attention, rehabilitation, reconstruction and restoration of infrastructure, housing, communications and disrupted production activities as well as all damaged public services within the zone covered under article 1) of this Decree, all of which actions should be included in the General Emergency Plan approved by the Governing Board of the National Commission on Risk Prevention and Attention to Emergencies, in order that such attention and projects take place in conformity with the concept of emergency.

Article 4.- In conformity with the stipulations of articles 15 and 38 and also the following articles of the National Law on Emergencies and Risk Prevention, the Ministry for Public Security will coordinate with the National Commission on Risk Prevention and Attention to Emergencies, the Center for Emergency Operations (COE by its Spanish acronym), and other coordination entities to facilitate the development of a General Emergency Plan.

Article 5.- In conformity with stipulations of the National Law on Emergencies and Risk Prevention, the Executive Branch, public institutions, autonomous and quasi autonomous entities, State corporations, municipalities, as well as any other entity or public organism are authorized

to contribute, donate, transfer, and lend the necessary help and collaboration to the National Commission on Risk Prevention and Attention to Emergencies.

Article 6.- For implementation of the present declaration of an emergency, the National Commission on Risk Prevention and Attention to Emergencies, in conformity with the National Law on Emergencies and Risk Prevention may assign funds and accept donations from public and private entities.

Article 7-. As part of its attention to the present emergency, the National Commission on Risk Prevention and Attention to Emergencies may use unassigned funds remaining from other resolved or remaining emergencies as determined by the Governing Board of this entity.

Article 8-. The grounds of private property situated in the geographic area defined by this declaration of an emergency state shall be bound to allow all the legal easements necessary for the execution of these actions, processes and projects to be carried by public entities in response to the emergency, as along as these are indispensable to the opportune attention to the emergency in conformity with the stipulations of the Phase 1 of the emergency.

Article 9-. The present declaration of a state of emergency will be in effect during the period of time determined by the Executive Branch, depending on reports issued by the National Commission on Risk Prevention and Attention to Emergencies, or during the maximum period of time established in Law 8488.

Article 10-. The present decree is in effect as of the moment of signature.  
[The present decree was] signed in the Presidency of the Republic the twenty-first of February of the year two thousand eleven.

LAURA CHINCHILLA MIRANDA. – The Minister for the Presidency, Marco A. Vargas Díaz. – 1 time. – O.C. No. 10971. – (Request No. 030-2011). – C-64820. – (D36440-IN2011016261).

**Alcance Nº 14 a La Gaceta Nº 46  
DIARIO OFICIAL  
La Uruca, San José, Costa Rica, lunes 7 de marzo del 2011**

**DECRETO Nº 36440-MP  
LA PRESIDENTA DE LA REPÚBLICA  
Y EL MINISTRO DE LA PRESIDENCIA**

En ejercicio de las facultades que les confieren los artículos 140, incisos 3) y 18) y 180 de la Constitución Política, artículos 25 inciso 1), 2.7 inciso 1), 28 inciso b), de la Ley Nº 6227 del 2 de mayo de 1978 que es Ley General de la Administración Pública, y la Ley Nº 8488 del 11 de enero del 2006, que es la Ley Nacional de Emergencias y Prevención del Riesgo.

**Considerando:**

I.—Que el sistema constitucional prevé reglas especiales que le permiten al Poder Ejecutivo atender situaciones de emergencia, de modo que se pueda actuar con la agilidad y energía que las circunstancias requieran, y así eliminar o minimizar las consecuencias de los desastres, naturales y antrópicos.

II.—Que es función esencial del Estado costarricense proteger la soberanía nacional, ejerciendo para su resguardo y defensa todas aquellas medidas requeridas en observancia con los principios de vocación civilista y pacifista que informan al Estado costarricense, particularmente los de abolición del ejército, la paz, la neutralidad y el arreglo pacífico de las disputas, en uso de los mecanismos previstos por el Derecho Internacional.

III.—Que el Ministerio de Relaciones Exteriores y Culto, es el medio por el cual el Estado realiza todas sus gestiones ante Gobiernos e Instituciones extranjeras. Asimismo, el Ministerio de Seguridad Pública es el responsable de la defensa de la integridad territorial costarricense. Asimismo, otras dependencias del Estado estarán en disposición de brindar el apoyo institucional, de acuerdo con sus competencias y responsabilidades para dichos fines.

IV.—Que con la invasión militar y ocupación realizada por Nicaragua en Costa Rica desde el mes de octubre del 2010, tropas nicaragüenses ocupan una parte del territorio de Costa Rica, en clara violación a la soberanía, integridad territorial y dignidad nacional.

V.—Que lo anterior ha generado una constante violación a los espacios terrestres, aéreos y marítimos de Costa Rica, afectando no solo la soberanía nacional sino que también ha generado una grave devastación ambiental al destruirse delicadas zonas de humedales nacionales, debidamente registradas y reconocidas a nivel internacional.

VI.—Que al día de hoy Nicaragua continua ocupando y dañando parte del territorio costarricense, con presencia de las fuerzas armadas nicaragüenses en particular en la

Isla Portillo-Isla Calero, así como continúa realizando los trabajos de dragado que han causado un gran daño ambiental a la zona en cuestión.

VII.—Que producto de las acciones ejecutadas por el ejército de Nicaragua y por el Gobierno de ese país, varias comunidades costarricenses, a lo largo de la zona fronteriza, y las instituciones del Gobierno, han visto alteradas sus condiciones normales de funcionamiento, quedando algunas, incluso, aisladas, sin contar con las vías que les permitan el acceso a los servicios básicos de salud, alimentación, educación, entre otros, y colocadas en evidentes condiciones de vulnerabilidad.

VIII.—Que la zona que se ha visto afectada por las acciones del Gobierno y el Ejército nicaragüense, se encuentra, además amenazada por constantes fenómenos naturales, que producen, entre otras afectaciones, inundaciones.

IX.—Que Ley Nacional de Emergencias y Prevención del Riesgo, establece que “Quienes se encuentren en el territorio nacional deben ser protegidos en su vida, su integridad física, sus bienes y el ambiente, frente a los desastres o sucesos peligrosos que puedan ocurrir”.

X.—Que la Ley Nacional de Emergencias y Prevención del Riesgo, define como desastre la situación “o proceso que se desencadena como resultado de un fenómeno de origen natural, tecnológico o provocado por el hombre que, al encontrar, en una población, condiciones propicias de vulnerabilidad, causa alteraciones intensas en las condiciones normales de funcionamiento de la comunidad, tales como pérdida de vidas y de salud en la población, destrucción o pérdida de bienes de la colectividad y daños severos al ambiente.”

XI.—Que la Ley Nacional de Emergencias y Prevención del Riesgo, entiende como emergencia el estado de crisis provocado por el desastre.

XII.—Que la atención del desastre producto de las acciones del Ejército y el Gobierno nicaragüense, hasta el momento se ha podido realizar con los recursos y por medio de los procedimientos ordinarios que regulan la Administración Pública; sin embargo, se impone en este momento, recurrir a los mecanismos de excepción que la Constitución y la Ley le dan al Estado.

**Por tanto,** Decretan:

**“DECLARAR ESTADO DE EMERGENCIA LA SITUACIÓN Y EL PROCESO DESENCADENADO ANTE LA VIOLACIÓN DE LA SOBERANÍA COSTARRICENSE POR PARTE DE NICARAGUA”**

Artículo 1º—Se declara Estado de Emergencia, en los cantones, limítrofes con Nicaragua, de La Cruz, Upala, Los Chiles, Sarapiquí, San Carlos y Pococí, las situaciones y/o procesos que se desencadenan como resultado de las actividades que ilícitamente Nicaragua realiza en territorio de Costa Rica, que atentan contra la vida, la integridad física y los bienes de quienes se encuentran en el territorio nacional, así como contra la soberanía nacional y el medio ambiente.

Artículo 2º—Para los efectos correspondientes, se tienen comprendidas dentro de la presente declaratoria de emergencia las tres fases que establece la Ley Nacional de Emergencias y  
Prevención del Riesgo a saber:

- a) Fase de respuesta.
- b) Fase de rehabilitación.
- c) Fase de reconstrucción.

Artículo 3º—Se tienen comprendidas dentro de esta declaratoria de emergencia todas las acciones y obras necesarias para la protección de la vida, la integridad física, los bienes y el ambiente, así como la atención, rehabilitación, reconstrucción y reposición de la infraestructura, las viviendas, las comunicaciones y las actividades productivas dañadas y en general todos los servicios públicos dañados que se ubiquen dentro de la zona de cobertura señalada en el artículo 1º de este Decreto, todo lo cual debe constar en el Plan General de la Emergencia aprobado por la Junta Directiva de la Comisión Nacional de Prevención de Riesgos y Atención de Emergencias, para poder ser objeto de atención conforme al concepto de emergencia.

Artículo 4º—De conformidad con las disposiciones de los artículos 15 y 38 y siguientes de la ley Nacional de Emergencias y Prevención del Riesgo, el Ministerio de Seguridad Pública, coordinará con la Comisión Nacional de Prevención de Riesgos y Atención de Emergencias, el Centro de Operaciones de Emergencia (COE) y las demás instancias de coordinación, para la elaboración del Plan General de la Emergencia.

Artículo 5º—De conformidad con lo dispuesto por la Ley Nacional de Emergencias y Prevención del Riesgo, el Poder Ejecutivo, las instituciones públicas, entidades autónomas y semiautónomas, empresas del Estado, municipalidades, así como cualquier otro ente u órgano público están autorizados para dar aportes, donaciones, transferencias y prestar la ayuda y colaboración necesaria a la Comisión Nacional de Prevención de Riesgos y Atención de Emergencias.

Artículo 6º—Para la atención de la presente declaratoria de emergencia la Comisión Nacional de Prevención de Riesgos y Atención de Emergencias, de conformidad con la Ley Nacional de Emergencias y Prevención del Riesgo, podrá destinar fondos y aceptar donaciones de entes públicos y privados.

Artículo 7º—La Comisión Nacional de Prevención de Riesgos y Atención de Emergencias, para la atención de esta emergencia podrá utilizar fondos remanentes no comprometidos de otras emergencias finiquitadas o vigentes, según disponga la Junta Directiva de este órgano.

Artículo 8º—Los predios de propiedad privada ubicados en el área geográfica establecida en esta declaratoria de emergencia, deberán soportar todas las servidumbres legales necesarias para poder ejecutar las acciones, los procesos y las obras que realicen las entidades públicas en la atención de la emergencia, siempre y cuando ello sea absolutamente indispensable para la atención oportuna de la misma, de conformidad con lo dispuesto en la primera fase de la emergencia.

Artículo 9º—La presente declaratoria de emergencia se mantendrá vigente durante el plazo que el Poder Ejecutivo disponga, según los informes que sean emitidos por la

Comisión Nacional de Prevención de Riesgos y Atención de Emergencias o en su defecto por el plazo máximo que establece la Ley 8488.

Artículo 10.—Rige a partir de su firma.

Dado en la Presidencia de la República, el veintiuno de febrero del año dos mil once.  
LAURA CHINCHILLA MIRANDA.—El Ministro de la Presidencia, Marco A. Vargas Díaz.—  
1 vez.—O. C. N° 10971.—(Solicitud N° 030-2011).—C-64820.—(D36440-IN2011016261).

## **ANNEX 29**

Nicaragua, Presidential Decrees Number 88-2009 of 2 April 2009 and Number 01-2012 of 10 January 2012 (Extracts)

*Appointment of Dr. Jaime Incer Barquero as Presidential Advisor for Environmental Issues and Natural Resources with the Rank of Minister*

English Translations



Presidential Agreement No 88-2009

The President of the Republic of Nicaragua

In use of the faculties that the Constitution gives him

**AGREES**

**Article 1.** To appoint Dr. Jaime Incer Barquero as Advisor to the President of the Republic for Environmental Issues and Natural Resources with rank of State Minister in accordance to Law 290 “Executive branch organization, competence and procedures law” published in La Gaceta No. 102 of 3 June 1998 and its amendment in Decree 23-2009, published in La Gaceta Official Diary of the State No. 63 of first April of the year two thousand and nine.

**Article 2.** This agreement has effect from the present date. Publish in La Gaceta, Official Diary.

**Article 3.** Given in the city of Managua, Casa de Gobierno, on the two of April of the year two thousand and nine. **Daniel Ortega Saavedra**, President of the Republic of Nicaragua. – **Salvador Venegas Guido**, Secretary of the Presidency in charge of the office of the Private Secretary for National Public Policies.

**Government of Reconciliation and National Unity**

**United Nicaragua Succeeds**

**Presidential Decree No. 01-2012**

The President of the Republic of Nicaragua

Commander Daniel Ortega Saavedra

Pursuant to the powers conferred by the

Political Constitution

**DECREES**

**Article 1.** The following comrades are appointed as members of the Government Cabinet, Ministers and Vice-Ministers, Attorney General, President, Vice-presidents, Directors, Sub-Directors, General Manager of Autonomous and Decentralized Entities, General Secretaries, Secretaries of the Presidency and Presidential Advisors:

...

**As Presidents, Vice-presidents, Directors, Sub-directors and General Manager:**

...

Edén Pastora Gómez, Delegate of the Presidency of the Republic to the Commission for the Development of the San Juan River. [Page 8.]

...

**As Secretaries and Advisors for the presidency:**

...

Jaime Francisco Incer Barquero, Advisor to the President of the Republic for Environmental Issues and Natural Resources, with the rank of Minister. [Page 9.]

...

**Article 3.** This Decree is effective as of this date; to be published in the Official Gazette.

Done at Managua, Government House, Republic of Nicaragua, on the tenth day of January two thousand twelve.

(Signed)

Daniel Ortega Saavedra

President of the Republic of Nicaragua

Paul Oquist Kelley

Private Secretary for National Policies

## **ANNEX 30**

Costa Rica, *Constitutional Court Judgment No 2012-8420* (Extract)

22 June 2012

English Translation



## Constitutional Court judgment N° 2012-008420 of 22 June 2012 (extract)

## English Translation

**“...IV. Regarding the power of the Government to issue the challenged Decree.** The Decree that is being challenged through these proceedings was issued in light of the concrete and exceptional situation in which the country finds itself due to the grave acts committed by the Government of Nicaragua against our national sovereignty, since rarely has a country experienced an invasion of its territory as has occurred in the northern zone. From this perspective, the Chamber considers that an external aggression of this severity which resulted in the request of measures before the Organization of American States as part of the Inter-American Treaty of Reciprocal Assistance [known by the Spanish acronym “TIAR”] and the adoption of said measures by the International Court of Justice in The Hague, is sufficient grounds to justify a national emergency in the terms that this Court has defined, since there has been a violation of territorial integrity as well as of Costa Rica’s national security. These real and objective circumstances, which given our country’s peaceful and democratic tradition and adherence to International Law, did not result in a war or in severance of diplomatic relations, constitute sufficient factual grounds to declare as a state of emergency the situation and the process triggered as a result of the violation of Costa Rica’s sovereignty by Nicaragua, as set out in the challenged Decree. Therefore, based on the abovementioned case law, it is evident that there is a legal basis for the Government to issue the challenged Decree in an attempt to give the country the necessary tools to take concrete measures in order to repel the interference in our territory, among them providing resources to effectively and rapidly address the situation. Thus, according to the Chamber, the challenged Decree is not unconstitutional since there has been a situation of a special, exceptional, urgent and necessary nature, given that the state of necessity requires a modification of the legal system in place for normal situations, in light of events of this magnitude, which jeopardize the purpose of the State and its very existence, which is [in furtherance of] the common good, in such a way that when one or several serious acts of considerable magnitude occur, the State must have the power to defend the fundamental rights that were infringed and the national sovereignty from imminent danger, in order to be able to return to a situation of normalcy (see judgment 2009-009427 issued at fifteen hours and twelve minutes on 18 June 2009)...”



## **ANNEX 31**

Costa Rica, *Constitutional Court Judgment No 2012-3266 (Extract)*

7 March 2012

English Translation



## Constitutional Court Judgment N° 3266-2012 of 7 March 2012 (extract)

## English Translation

**“II. Regarding the breach of the right to a healthy and ecologically balanced environment... [page 3]** Therefore, after having analysed the evidence provided, and having regard to the above quoted case law, this Court concludes that there has been no breach of the right to a healthy and ecologically balanced environment. This is because through the reports submitted by the representatives of the defendant authority...and the evidence provided for the resolution of this case, it has been duly determined that in the context of the Costa Rica-Nicaragua-Calero Island conflict and the proceedings initiated against Nicaragua before the International Court of Justice, the Executive Branch, in order to mobilise the necessary resources and to undertake a series of basic and fundamental infrastructure works, [which were] defensive measures of the country for the protection of its inhabitants (see the report by the Presidency of the Republic), issued a national emergency decree on the 21<sup>st</sup> of February 2011, that was published at *Alcance 14* of the Official Gazette 46 of 7 March 2011, Executive Decree number 36440-MP. Therefore, it is determined that the conduct of the Public Administration is supported by the issue of a national emergency decree. Thus, this decree fulfils the conditions set out in the Court’s reasoning set out above. In any event, it has not been proven before this Court that the construction of the aforesaid road has produced environmental damage. Therefore, it follows to declare that the claim is without merit in this respect...”



## **ANNEX 32**

Costa Rica, *Constitutional Court Judgment No 2013-8257 (Extract)*

21 June 2013

English Translation



Constitutional Court Judgment N° 2013-008257 of 21 of June 2013 (extract)

English Translation

“III. – Antecedent. Regarding the issue of a possible breach of the fundamental right to a healthy and ecologically balanced environment as result of the construction of the new road on the bank of the San Juan River, this Court had already heard case No. 11-016293-0007 - CO in which by Judgment No. 2012-03266 of sixteen hours and zero minutes of 7 March 2012 it considered the following as relevant:

II. – With regard to the breach of the right to a healthy and ecologically balanced environment. The Court has noted that the declared state of emergency exempts compliance with environmental laws. Thus, by Judgment number 2003-06322 of 14:14 hours of 3 July 2003, the Chamber established that the following is relevant:

(« ) 6. – Only the state of emergency exempts compliance with environmental laws [original emphasis]: The state of emergency is a source of Law that entails, in some cases, a displacement, and in other cases an increase in public authority, specifically to be able to address the exceptional situation that arises (“urgent or unexpected needs in cases of war, internal turmoil or public disaster”); thus the Executive Branch is vested with the authority to disregard its normal procedures or activities, contemplating for such cases exceptional procedures that are more expeditious and simplified. By definition, this encompasses transitory situations that are urgent and where it is necessary to preserve the continuity of public services, so that the Administration has authority on a provisional basis to serve the general interests that cannot be sacrificed in favour of a purely legalistic approach (...).

Therefore, after having analysed the evidence provided, and having regard to the above quoted case law, this Court concludes that there has been no breach of the right to a healthy and ecologically balanced environment.”...

It follows from the what has been partially transcribed above that the criterion about the enforcement of environmental standards during circumstances where a state of emergency has been declared is taken into account, in the sense that such declaration empowers the Executive Branch to disregard its normal procedures or activities, contemplating for such cases exceptional procedures that are more expeditious and simplified. Therefore, it follows to dismiss the present claim in this regard, since this Tribunal does not find reasons to depart from the criteria set forth in this previous resolution.”



## **ANNEX 33**

*Note from the Minister of Foreign Affairs and Worship of Costa Rica to the  
Central American Court of Justice*

Reference DM-AM-306-09

30 April 2009

English Translation and Spanish Original



## Translation into English

The Minister of Foreign Affairs

30 April 2009  
DM-AM-306-09

Central American Court of Justice  
Managua, Nicaragua

Dear Sirs:

On 23 March 2009 the Secretary General of the Central American Court of Justice sent a communication to the Attorney General's Office of the Republic of Costa Rica, intending to communicate the resolution of the Central American Court of Justice issued at five thirty p.m. on 24 October 2008, admitting a claim filed by the Costa Rican Association of Customs Agents (Asociación de Agentes de Aduana de Costa Rica) against the Republic of Costa Rica.

The Republic of Costa Rica does not recognize the jurisdiction or the legitimacy of the Central American Court of Justice to hear cases in which the Republic of Costa Rica is a party.

With the sole purpose of confirming the legal status of the Republic of Costa Rica, documenting the absolute legal inability of this Court to endow itself with jurisdiction and legitimacy to carry out judicial activity with regard to this Republic, I am attaching to this note an official document, comprised of 33 pages plus appendixes.

With the highest consideration,

Bruno Stagno Ugarte  
Minister of Foreign Affairs  
Republic of Costa Rica

CC. Mr. Oscar Arias Sánchez,  
President of the Republic of Costa Rica

Mr. Francisco Antonio Pacheco Fernández  
President of the Legislative Assembly

Mr. Luis Paulino Mora Mora  
President of the Supreme Court of Justice

Mr. Ana Lorena Brenes Esquivel  
Attorney General

*El Ministro de Relaciones Exteriores y Culto*

30 de abril de 2009  
DM-AM-306-09

Señores  
Corte Centroamericana de Justicia  
Managua, Nicaragua

Estimados señores:

El día 23 de marzo de 2009, el Secretario General de la Corte Centroamericana de Justicia dirigió una comunicación a la Procuradora General de la República de Costa Rica, por la cual se pretende comunicar la resolución de la Corte Centroamericana de Justicia dictada a las cinco y treinta minutos de la tarde del día veinticuatro de octubre de dos mil ocho, en la que se da trámite a una acción interpuesta por la Asociación de Agentes de Aduana de Costa Rica contra la República de Costa Rica.

La República de Costa Rica no reconoce ni la jurisdicción ni la legitimidad de la Corte Centroamericana de Justicia para conocer casos donde la República de Costa Rica es parte.

Con el único objetivo de reafirmar la condición jurídica de la República de Costa Rica, que documenta la absoluta imposibilidad legal para que dicha Corte se faculte a sí misma jurisdicción y legitimidad para conducir actividad procesal frente a esta República, se anexa a la presente nota un documento oficial que consta de 33 páginas y sus anexos.

Con la mayor consideración,

Bruno Stagno Ugarte  
Ministro de Relaciones Exteriores y Culto  
República de Costa Rica



CC: Señor Oscar Arias Sánchez  
Presidente de la República de Costa Rica,

Señor Francisco Antonio Pacheco Fernández  
Presidente de la Asamblea Legislativa,

Señor Luis Paulino Mora Mora  
Presidente de la Corte Suprema de Justicia,

Señora Ana Lorena Brenes Esquivel  
Procuradora General de la República



*Re\_*

## **ANNEX 34**

*Note from the Minister of Foreign Affairs and Worship of Costa Rica to the  
Minister of Foreign Affairs of Nicaragua*

Reference DM-AM-816-09

20 November 2009

English Translation and Spanish Original



## TRANSLATION

*The Minister of Foreign Affairs and Worship*

San José, 20 November 2009  
DM-AM-816-09

Samuel Santos López  
Ministry of Foreign Affairs  
Republic of Nicaragua

Honourable Minister,

I have the honour of addressing you in relation to Decree N° 79-2009 of the President of the Republic of Nicaragua, published in the Gazette of 1 October 2009, titled "CREATION OF THE INTER-INSTITUTIONAL COMMISSION TO DEVELOP AND IMPLEMENT THE REGULATIONS REGARDING NAVIGATION ON THE SAN JUAN RIVER, SPECIFICALLY WHERE THE INTERNATIONAL COURT OF JUSTICE GRANTS LIMITED NAVIGATION RIGHTS TO THE REPUBLIC OF COSTA RICA," which was communicated to us by means of Note MRE/DM/DJST/556/10/09.

For the reasons indicated in the annex to this document, the Government of Costa Rica considers that this Decree, which also contains the "REGULATIONS REGARDING NAVIGATION ON THE SAN JUAN RIVER," contravenes the judgment issued by the International Court of Justice on 13 July 2009 in the matter *Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*. The Decree under consideration not only directly disregards aspects clearly established in the aforementioned judgment, but also provisions of the Cañas-Jerez Treaty of 1858, the Cleveland Award of 1888 and the Fournier-Sevilla Agreement of 1956.

As you know, the judgment of the International Court of Justice is binding. Non-compliance entails a violation of an international obligation by the responsible State. Consequently, the Government of Costa Rica formally protests against the provisions of the Decree that contravene the decision of July 13, 2009 and the aforementioned instruments. In addition, my government requests the repeal and non-execution of said provisions.

Considering that both countries have expressed that we abide by International Law, and that we trust in the importance of diplomatic means as a means to resolve our differences, my

Government considers that it is appropriate to establish an honest and significant dialogue in order to fully comply with the obligations and enjoy the rights that both countries have separately and with each other.

To this end, Costa Rica proposes the creation of a binational commission, in order to discuss the modalities of application of the judgment of the International Court of Justice, so that both countries can fully enjoy the rights that have been internationally recognized.

If this proposal is accepted by the Government of Nicaragua, Costa Rica suggests holding a meeting on 28 and 29 January 2010, in Managua or in San José, to establish a dialogue leading to a tangible result. In the interim, my Government reiterates the need to not execute and to repeal the provisions of said Decree which are contrary to the judgment and to the other instruments mentioned above.

Please accept, Your Excellency, the assurances of my highest consideration.

(Signed)  
Bruno Stagno Ugarte  
Minister

(Stamped)  
Ministry of Foreign Affairs  
San José, Costa Rica

### Annex to Note DM-AM-816-09

#### **Decree N° 79-2009 of the President of the Republic of Nicaragua contravenes the judgment of the International Court of Justice of 13 July 2009**

This annex intends to provide details on the main provisions of Decree N°79-2009 of the President of the Republic of Nicaragua which contravene the judgment of the International Court of Justice of 13 July 2009, and the international instruments that establish the regime of Costa Rican navigation and related rights on San Juan River.

It is worth noting, firstly, that the title of said Decree is incorrect, given that Costa Rica's navigational rights over San Juan River were not "granted" by the Inter-American Court of Justice but by the international instruments that are binding on the parties, specifically the Cañas-Jerez Treaty of 1858 and its interpretation by the Cleveland Award of 1888, as well as the Fournier-Sevilla Agreement of 1956.

In paragraph 87 of the judgment, the International Court of Justice clearly established that Nicaragua's power to regulate the exercise by Costa Rica of its freedom of navigation under the Treaty of 1858 "*is not unlimited, being tempered by the rights and obligations of the Parties,*" and, in fact, it established in that same paragraph that any regulation established by Nicaragua must "*have the following characteristics:*

- 1. it must only subject the activity to certain rules without rendering impossible or substantially impeding the exercise of the right of free navigation;*
- 2. it must be consistent with the terms of the Treaty [...];*
- 3. it must have a legitimate purpose, such as safety of navigation, crime prevention and public safety and border control;*
- 4. it must not be discriminatory [...];*
- 5. it must not be unreasonable, which means that its negative impact on the exercise of the right in question must not be manifestly excessive when measured against the protection afforded to the purpose invoked."*

The Decree and Regulations contained therein openly disregard that established in the judgment of 13 July and in the other related legal instruments. The general aspects of the Decree will be highlighted below, as well as some of its specific standards.

#### **A. The Decree is discriminatory**

Firstly, it must be noted that, in general, the entire Decree violates principle 4 of paragraph 87 of the judgment, given that it was created with the intention of specifically regulating Costa Rican navigation

on San Juan River, as indicated by the title. Principle 4 clearly establishes that the regulations must not be discriminatory, thus they must apply equally to Nicaraguan and to Costa Rican navigation on the river. Since the Government of Nicaragua issued a decree exclusively to regulate Costa Rican navigation it is disregarding this rule. On the other hand, the Decree also limits its application to the geographical area where Costa Rica has navigational rights. This is also clear from the title, which demonstrates since the beginning the discriminatory spirit of the aforementioned Decree and its provisions.

**B. Official Costa Rican vessels do not require a navigation permit**

Articles 3 and 4 section a) of the Decree, as well as article 22 of the Regulations, stipulate that official Costa Rican vessels must have an authorization from Nicaraguan authorities to be able to navigate. However, this authorization is not necessary when the purpose of the navigation of official Costa Rican vessels is: a) for purposes of commerce as established by paragraph 80 of the judgment of 13 July; b) to provide services to the communities on the riverbanks, pursuant to the conditions set forth in paragraph 84 of the judgment; or c) when navigation is conducted with revenue service vessels as described in the Cleveland Award, established in paragraph 83 of the judgment.

Therefore, Costa Rica should not be asked in any of these cases to “request, through the established diplomatic channels, permission for arrival and navigation,” as indicated in Article 22 of the aforementioned Regulations. It is also unlawful to request the requirements established in said article, as they are not set forth in the 1858 Treaty of Limits or the judgment of 13 July, and they also fail to comply with the validity requirements indicated in paragraph 87 of the judgment.

**C. Costa Rican vessels cannot be prevented from docking at any point on the riverbanks**

Section e) of Article 4 of the Decree establishes a docking prohibition to ships with passengers or tourists, and Article 18 section 2 of the Regulations prohibits Costa Rican vessels navigating on San Juan River “from performing transfers of passengers or goods to another vessel during navigation and approaching or unauthorized running aground on any of the riverbanks when it is not a Checkpoint Post.” Similarly, subsection 7 of Article 70 of the Regulations prohibits “docking and unloading passengers or merchandise at unauthorized places.”

These provisions disregards that established in Article VI of the Treaty on Limits of 1858, which clearly determines that the vessels of both countries can dock anywhere on the riverbanks of the other. Therefore, Nicaragua cannot restrict Costa Rican vessels from performing transfers of goods or persons, whether on the river or any of its riverbanks, within the framework of respecting the conditions established by the decision of July 13, 2009. Similarly, Nicaragua cannot prohibit the approaching or running aground of Costa Rican vessels on any of the riverbanks and especially the right bank, which is sovereign territory of the Republic of Costa Rica. In addition, the fact that the

prohibition from docking or even approaching the riverbanks is applicable only to Costa Rican vessels highlights the discriminatory nature of this standard.

**D. Requirements related to the transport of merchandise contravene that established in the judgment of 13 July**

Letter f) of Article 4 of the Decree prohibits the transit of any type of cargo or merchandise for which it cannot be demonstrated through the established documentation that it is for commercial purposes. Subsection 10 of Article 10 of the Regulations also establishes as a requirement for navigation the presentation of documents that demonstrate the lawfulness and commercial purpose of the merchandise transported. Under these rules, most current cases of navigation would be prevented, for example merchandise for which the sale is not performed with documentation, or the case of persons living on the riverbanks that acquire merchandise for personal consumption and that of their families. This would constitute a violation of the requirement that the regulation must not render impossible or substantially impede the exercise of the right of free navigation (para. 87 (1) of the judgment).

The same can be said for articles 38 to 43 of Chapter IV of the Regulations, which establish a series of measures for “monitoring and control of plant and animal health.” Article 38 requires a “health/phytosanitary import permit (original) which shall be requested 8 days in advance,” “an official health/phytosanitary certificate from the country of origin and/or country of departure (original);” “an official certificate of origin of the exporting country (copy),” “a cargo manifest (copy),” “copy of commercial invoice” and “negative results of official laboratories or certified by the competent authority of the country of origin and/or departure.”

These requirements are not justified in any manner. Firstly, a high percentage of merchandise transported through San Juan River does not have and cannot have any documentation, given that in a large number of cases they correspond to products that families and producers from the area are transporting from one place in national Costa Rican territory to another for commercial purposes, such as fruit, vegetables, grains, eggs, fish and even cattle. Also, products acquired at small convenience stores and shops in the area are frequently transported. Requesting that persons transporting these types of products prove their commercial nature or comply with the drastic health and phytosanitary measures through documents that are impossible to obtain –especially since said requirements were never previously requested- makes this requirement contrary to the elements established by the Court as essential to any regulation. Specifically, it violates point 5 of paragraph 87 of the judgment, which establishes that the regulation cannot be unreasonable, meaning that its negative impact on the exercise of the right of free navigation in question must not be manifestly excessive when measured against the protection afforded to the purpose invoked. It is clear that these requirements are excessive and unreasonable, and have the practical effect of complicating, if not entirely impeding, the right of free navigation.

In addition, there is another aspect that must be considered in the transport of merchandise. In those cases where the merchandise was not purchased or it is not intended for sale it cannot be subject to the prohibition if their transport is paid. This is the same logic applied in the case of transport of passengers. The commercial operation for which a carrier is paid to transport merchandise complies with that mandated by the Treaty. In those cases, the commercial or non-commercial nature of the merchandise and goods transported cannot constitute a limitation for their transport on the river, except when they are clearly illegal, such as the transport of illegal arms or psychotropic substances.

It is largely evident that Nicaragua confuses the transit of merchandise on San Juan River, specifically the transfer from one place in Costa Rica to another, with the entry of merchandise into Nicaraguan territory. Even so, the requirements are disproportionate. For example, the requirement that a health/phytosanitary import permit must be requested 8 days in advance is not only senseless insofar as the merchandise is not for export to Nicaragua, but also because it constitutes an inadequate obstacle to the Costa Rican right to navigate on San Juan River. In addition, these are measures that had never been requested before, which demonstrates that these are unnecessary regulations created with a discriminatory character, given that to date Nicaragua had not considered establishing this type of restriction. Similarly, subjecting Costa Rican merchandise beforehand to compliance with "requirements established by the law on this matter and Ministerial resolutions" is unjustified, as it does not identify these regulations or distinguish between merchandise circulating in the exercise of free navigation and those intended for import into Nicaraguan territory. All of the foregoing contravenes the requirements of paragraph 87 of the judgment.

On the other hand, Article 43 establishes that Costa Rican carriers shall pay the costs of "inspection and/or quarantine treatment" which are mandatory according to this article. This clearly contradicts Article VI of the Treaty of Limits of 1858, given that this is a payment that Nicaragua is requesting unilaterally as a requirement for Costa Ricans to exercise their right of free navigation.

Similarly, subsection 2 of Article 44 obligates tourists and any other passenger transported by Costa Rican vessels to fill out a customs declaration. Again, this is an unnecessary procedure, given that these are persons whose final destination is not Nicaraguan territory. Subsection 4 of Article 47 also establishes another arbitrary rule, as it allows Nicaraguan police authorities "to seize cash, securities, objects and precious metals introduced... without the corresponding customs declaration."

Subsections 2 and 3 of Article 46 obligates vessel operators to present, among other requirements, the corresponding authorizations for the transfer of cattle and wood, the drafting and meaning of which are unclear. It is not clearly defined which authority must issue these authorizations, but in any case they cannot be Nicaraguan since these are goods transferred from one place in Costa Rica to another, and they are only transported on San Juan River to communicate between points on Costa Rican national territory.

## **E. Other wrongful obstacles to Costa Rican navigation**

There is another series of requirements established in the Decree and in the Regulations which, far from pursuing a reasonable purpose, constitute in practice wrongful and illegal obstacles to Costa Rican navigation. It is important to highlight some of these regulations, specifically in view of the requirements that Nicaragua establishes for its own vessels outside the geographic area of application of the Decree. Nicaragua does not require the same standards for vessels that navigate other sections of San Juan River, Lake Nicaragua or Coco River which constitutes the border with Honduras. In other cases, there are regulations addressed to Costa Rican vessels that only highlight the illegitimate and discriminatory nature of these regulations, as you will see below.

Articles 10 and 13 of the Regulations call for the presentation of a number of requirements, most of which fail to comply with the criteria of reasonableness; rather, they represent unnecessary obstacles to Costa Rica's right of free navigation. For example, requiring the ship's clearance (health and phytosanitary permit) from the port of origin or of departure established in subsection 1 of Article 10 and in subsection 2 of Article 13 generates a problem for those vessels which do not leave from a port. In any case, Costa Rica does not issue clearance documentation for vessels which do not depart from a port and that navigate on internal waters. Therefore, in practice this standard means that those individuals who live on the riverbanks cannot navigate San Juan River, or any other Costa Rican vessel. These requirements openly disregard the Treaty of Limits of 1858 and paragraph 87 of the judgment of 13 July, since they do not have a legitimate purpose, are discriminatory and unreasonable, and in practice they prevent Costa Rican navigation on San Juan River.

Regarding the cargo manifest and declaration of dangerous goods (red flag) established in subsection 3 of Articles 10 and 13, it has already been indicated that documents of this nature are hard to obtain for local carriers due to the nature of the goods transported. In addition, no objective parameters are established to determine when merchandise must be considered as dangerous, and even if those parameters existed they must agree with international agreements on this matter.

Regarding the establishment of the requirement to present licenses for the crew, according to subsection 4 Article 10 and subsection 9 of Article 13, which in principle are regulated by the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, such provisions are mainly intended for crews that navigate on the sea. In addition, Costa Rica is not a party to this Agreement. It is a new requirement; it was never requested previously by Nicaragua.

On the other hand, Costa Rica does not require a log book from vessels which navigate on domestic waters, and it does not understand why this requirement must be met in relation to navigation on San Juan River on the portion where Costa Rica has navigational rights. There is no explanation for which legitimate interest is met in relation to this requirement established in subsection 6 of Articles 10 and 13, other than adding to the large number of documents and requirements established by Nicaragua to substantially prevent, or completely inhibit, the navigation of Costa Rican vessels.

The request for an insurance policy certificate established in subsection 7 of Articles 10 and 13, later detailed in Article 16 of the Regulations, is a requirement that is impossible for Costa Rican vessel owners to comply with, which in the end translates into a full impediment on the enjoyment of the right of free navigation held by Costa Rica. In addition, Costa Rica considers that charging insurance, or any type of rate, independently from its purpose, breaches that set forth in Article VI of the Treaty of Limits, which indicates that neither country can charge navigation rates and establishes the free nature of Costa Rican navigation.

As regards to the certificate of registration and navigation permit of the vessel, set forth in subsection 8 of Articles 10 and 13, it is worth noting that Costa Rican vessels comply with this through the Title Deed issued by the National Registry. In addition, Costa Rica issues a Navigation Certificate that is valid for 12 months, which constitutes a navigation permit for Costa Rican vessels. The same navigation certificate complies with that set forth in subsection 9 of the same article regarding the health certificates of the vessel. Thus, there is no reason for Nicaraguan authorities to request certificates additional to those already issued by Costa Rican authorities.

Articles 17 and 48, by establishing the conditions to be met by vessels dedicated to the commercial transport of merchandise and persons, limit the type of vessels that can navigate for commercial purposes on San Juan River, something which neither the Treaty of Limits of 1858 nor the Cleveland Award of 1888 nor the judgment of July 13, 2009 do. The establishment of certain dimensions and characteristics of the vessels for the transport of passengers, including the fact that they must have a toilet and a drinking water system, and that the seats, back of the seats, compartments and hallways must have certain measurements, as desirable as they are, do not match the reality of the activities, which although they are commercial, they could be performed by persons with limited economic resources in a developing country. Furthermore, subsection 1 of Article 17 indicates that these vessels "must comply with the requirements established in these standards, as well as the provisions ruled by the Maritime Authority," which renders defenceless the boat owners dedicated to commercial transport of persons as it subjects them beforehand to provisions that do not exist yet.

A similar situation occurs in the case of vessels used for the transport of goods, given that subsection 2 of Article 17 indicates that this service "shall be performed with vessels that meet the technical characteristics adequate for the requirements of the type of cargo." This not only limits the type of vessel for the transport of goods, but also subjects it to criteria that have not been clearly defined.

Article 20 is also discriminatory, as it only establishes the obligation on Costa Rican vessels to maintain continuous radio contact with Nicaraguan authorities. In addition, it presumes that Costa Rican vessels must have high-power communication radios, which constitutes another irrational limitation that is difficult to comply with. Even further, it is ironic that on one hand the Decree requires Costa Rican vessels to carry radios, while on the other it establishes that the Nicaraguan Army can seize and keep the means of communication found on said vessels, in subsection 4 of Article 27.

This shows the inconsistency of the law and the clear purpose of limiting or preventing the exercise of the right of free navigation.

The same applies to the requirements of Article 24. Demanding navigation lights and guaranteeing their functioning is evidently contradictory if the same Decree prohibits navigation during the night. This same requirement is established in Article 58. What is the legitimate purpose of requiring lights on vessels to which night-time navigation has been prohibited?

Article 27, in relation to Chapter V of the Regulations, grants ample confiscation powers to the Army of Nicaragua. Merging the seizing of drugs and illegal arms with that of goods and private property of passengers and crew is a dangerous transformation of a legitimate purpose into an arbitrary, irrational and illegitimate measure, especially using terms as vague as “goods in general” or “personal items not declared.”

Regarding Article 29, Costa Rica highlights, in addition to the numerous other requirements, the establishment of the presentation of two additional documents called “tarjetas de embarque y desembarque” (embarking and disembarking cards), the characteristics and purpose of which have not been clearly defined and have never been required before.

Regarding the provision of ID documents, the International Court of Justice determined that persons can identify themselves with their passports or any other type of ID. In this regard, the Government of Costa Rica considers that any identity document accepted as such by its own authorities should be accepted as an ideal means of identification. Requiring minors less than 16 years of age to carry their passport –document which very few persons in the area have- is clearly a violation of the reasonableness of requirements established in the judgment of 13 July.

Article 30 of the Regulations establishes the denial of entry of foreigners to Nicaraguan territory. If this provision is applied only to the entry to Nicaraguan territory and not to transit on San Juan River by foreigners on Costa Rican vessels in the area where Costa Rica has navigational rights, Costa Rica will make no observations. However, if this provision intends to deny transit on San Juan River to foreigners who are exercising, in one way or the other, the right to free navigation enjoyed by Costa Rica, then Costa Rica would express its opposition.

In Chapter III, Articles 31 to 37, there is a series of requirements allegedly related to public health and sanitation control, most of which are abusive. For example, Article 31 includes the obligation to present “international vaccination certificates,” “maritime declaration of health for vessels,” “ship sanitation certificate” and an “international control sheet for deceased persons.”

All of these provisions disregard the terms of judgment of 13 July, given that they stipulate a number of requirements that have no grounds on the criteria presented in paragraph 87. Mainly, Nicaragua confuses transit on San Juan River, which is for the transfer of persons and goods from one place on

Costa Rica to another, with the entrance to Nicaraguan territory beyond San Juan River. Specifically, requiring the international vaccination certificate, or compliance with official Nicaraguan vaccination schemes, is pointless if those who transit San Juan River do not enter Nicaraguan land, other than their transit on the river. However, apart from the lack of reasoning it is clearly discriminatory, as this requirement is not even applied at immigration posts for persons who enter Nicaragua by air, water or land. These regulations are evidently irrational and discriminatory.

Regarding the maritime declaration of health for vessels and the ship sanitation certificate their function is also unclear, especially if listed as a maritime declaration. Once the ship has the Navigation Certificate, this indicates that the vessel complies with the requirements for operation; thus, it is unreasonable to require additional documents certifying the conditions that have already been confirmed. The legal authority to perform medical/sanitary inspections or non-invasive medical testing on passengers who do not intend to enter Nicaraguan territory or have contact with Nicaraguan people is also unreasonable.

It is worth noting that subsection 12 of Article 48 establishes a maximum navigation speed of 6 knots. This speed would make the trip from the mouth of San Carlos River to Colorado River last about 8 hours; and from Sarapiquí River and Colorado River about three hours, when generally these routes are covered in less than 3 hours for the first, and 1 hour for the second. The disproportionate nature of this measure affects expedite transit and completely discourages the use of this route as a means of communication. Furthermore, subsection 6 of Article 17 establishes that "vessels fitted to transport up to 50 passengers and that perform trips of 30 minutes or less, shall have one toilet as a minimum." In other words, the combination of both of these provisions compels all vessels, including those of inhabitants of the riverbanks, to have a toilet. This is unreasonable and it renders impossible the exercise of the right of free navigation.

Article 67 obligates Costa Rican tour operators that require using San Juan River as a means of communication between two points on Costa Rican territory to "register before the National Registry of Tourism or sign agreements with national companies of the same nature which are registered and authorized before the Nicaraguan Institute of Tourism." This is evidently an unnecessary, unreasonable and unlawful measure, as it fails to comply with all of the conditions established in paragraph 87 of the judgment. It is clear that the transport of passengers, even if they are tourists, falls under the commercial nature of the transport activity already defined by the Court. Requiring the registration of Costa Rican tour operators in Nicaragua does not fulfil any legitimate purpose and it is aimed at preventing the right of free navigation.

Subsection 1 of Article 70 prohibits "the navigation of casino boats or hotel boats." This is prohibition is illegal, given that these vessels would be navigating for commercial purposes, and they cannot be excluded from Costa Rica's right of free navigation. In the judgment of 13 July, the International Court of Justice determined that the important aspect for commercial navigation to adapt to that established in Article VI of the Treaty of 1858 is that the carrier "engages in the activity for profit-making

purposes." (Paragraph 71) The type of activity that the passengers perform on board is irrelevant as long as the operation of the vessel is for commercial purposes.

In addition, Costa Rica considers irrational and disproportionate the level of militarization imposed by Nicaragua on the control over Costa Rican civil navigation. It also opposes the extensive powers of inspection, seizure and hindering of Costa Rican navigation that Nicaragua has attributed to itself.

This list of provisions that contravene the judgment of 13 July 2009 is not exhaustive. Costa Rica reserves the right to challenge other provisions. In addition, Costa Rica reserves the right to expand on the comments and observations made through these means.

Although the judgment of 13 July established that Costa Rican vessels must comply with certain Nicaraguan requirements, it also established that Nicaragua's power to regulate is not unlimited, and that it is restricted by the rights and obligations of the parties as set forth in the Treaty of 1858. Therefore, Nicaragua cannot limit the type of Costa Rican vessels or establish characteristics that they must have for the exercise of the right of free navigation established in the Treaty of 1858, or subject their transit to compliance with measures that do not fulfil a legitimate purpose, are discriminatory, unreasonable, and that, considering the purpose invoked, partially or fully impede the exercise of the right of free navigation. Nicaragua has the rights that were specifically recognized by the Court, but these cannot be exercised in a way that their purpose is to discourage or deny the navigation rights held by Costa Rica.

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Based on the foregoing, Costa Rica considers that said Nicaraguan Decree disregards the judgment of the International Court of Justice of 13 July 2009, as well as the Treaty on Limits of 1858, the Cleveland Award of 1888 and the Agreement of 1956.



*El Ministro de Relaciones Exteriores y Culto*

San José, 20 de noviembre de 2009  
DM-AM-816-09

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

Excelentísimo señor Ministro,

Me permito saludar a Vuestra Excelencia con ocasión de referirme al Decreto N° 79-2009 del Presidente de la República de Nicaragua publicado en La Gaceta del 1 de octubre de 2009, titulado "DE CREACIÓN DE LA COMISIÓN INTERINSTITUCIONAL PARA DESARROLLAR E IMPLEMENTAR LA REGLAMENTACION DE LA NAVEGACION EN EL RIO SAN JUAN, ESPECIFICAMENTE, EN LA PARTE EN DONDE LA CORTE INTERNACIONAL DE JUSTICIA LE OTORGA DERECHOS LIMITADOS DE NAVEGACIÓN A LA REPUBLICA DE COSTA RICA", que nos fuera comunicado por Nota MRE/DM/DJST/556/10/09.

Por las razones que se exponen en el anexo que forma parte de la presente, el Gobierno de Costa Rica considera que este Decreto, el cual contiene igualmente las "NORMAS REGLAMENTARIAS PARA LA NAVEGACION EN EL RÍO SAN JUAN", es contrario al fallo emitido por la Corte Internacional de Justicia el pasado 13 de julio de 2009 en el asunto de la *Controversia Relativa a los Derechos de Navegación y Conexos /Costa Rica v. Nicaragua*. El Decreto en cuestión no sólo contraviene directamente aspectos claramente establecidos en el fallo antes mencionado, sino también disposiciones del Tratado Cañas-Jerez de 1858, del Laudo Cleveland de 1888 y del Acuerdo Fournier-Sevilla de 1956.

Como es de su conocimiento, el fallo de la Corte Internacional de Justicia es de acatamiento obligatorio. El incumplimiento del mismo implica la violación de una obligación internacional por parte del Estado responsable. En consecuencia, el Gobierno de Costa Rica protesta formalmente contra las disposiciones del Decreto contrarias al fallo del 13 de julio de 2009 y a los instrumentos antes mencionados. Asimismo, mi Gobierno solicita la abrogación y la no ejecución de dichas disposiciones.

Considerando que ambos países hemos expresado que nos guiamos por el Derecho Internacional, así como hemos manifestado que confiamos en la importancia de los medios diplomáticos como mecanismo para solucionar nuestras diferencias, mi Gobierno cree oportuno que ambos países establezcamos un diálogo franco y significativo en aras de cumplir cabalmente con las obligaciones y gozar de los derechos que ambos estados tienen para sí y frente a sí.

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San José, 20 de noviembre de 2009

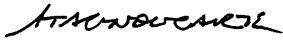
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A ese fin, Costa Rica propone la conformación de una comisión binacional, con el objeto de discutir las modalidades de aplicación del fallo de la Corte Internacional de Justicia, de forma tal que ambos países logremos gozar plenamente de los derechos que internacionalmente se nos ha reconocido.

Si ésta propuesta es de aceptación para el Gobierno de Nicaragua, Costa Rica sugiere una reunión a celebrarse el 28 y 29 de enero de 2010, sea en la ciudad de Managua o en la ciudad de San José, a fin de proceder a un diálogo conveniente con miras a un resultado tangible. En el interín mi Gobierno reitera la necesidad de no ejecutar y proceder a abrogar las disposiciones del Decreto contrarias al fallo y a los otros instrumentos arriba mencionados.

Le ruego aceptar, Excelencia, las seguridades de mi consideración.



Bruno Stagno Ugarte  
Ministro



**Anexo a la Nota DM-AM-816-09**

**El Decreto N° 79-2009 del Presidente de la República de Nicaragua es contrario al fallo de la Corte Internacional de Justicia del 13 de julio de 2009**

El presente anexo tiene por objeto detallar las principales disposiciones del Decreto N° 79-2009 del Presidente de la República de Nicaragua que son contrarias al fallo de la Corte Internacional de Justicia del 13 de julio de 2009 y a los instrumentos internacionales que establecen el régimen de navegación costarricense y derechos conexos en el río San Juan.

Corresponde destacar, en primer lugar, que el título de tal Decreto es incorrecto, pues los derechos de navegación que Costa Rica posee en el Río San Juan no han sido “otorgados” por la Corte Internacional de Justicia, sino por los instrumentos internacionales que vinculan a las partes, en particular el Tratado Cafías-Jerez de 1858 y su interpretación por el Laudo Cleveland de 1888, así como el Acuerdo Fournier-Sevilla de 1956.

En el párrafo 87 del fallo, la Corte Internacional de Justicia claramente estableció que la potestad de Nicaragua para regular el ejercicio de Costa Rica de su derecho a la libre navegación bajo el Tratado de 1858 “*no es ilimitada, por cuanto está subordinada a los derechos y obligaciones de las Partes*” y, de hecho, estableció en ese mismo párrafo que cualquier regulación que Nicaragua imponga “*debe tener las siguientes características:*

- 1. Debe solamente sujetar la actividad a ciertas reglas, sin hacer imposible ni entrablar de manera sustancial el ejercicio del derecho de libre navegación;*
- 2. Debe ser consistente con los términos del Tratado...;*
- 3. Debe tener un propósito legítimo, tal como la seguridad de la navegación, la prevención de la criminalidad, la seguridad pública o el control de las fronteras;*
- 4. No debe ser discriminatoria...;*
- 5. No debe ser irrazonable, lo que significa que su incidencia negativa sobre el ejercicio del derecho en cuestión no debe ser manifiestamente excesiva en relación con la protección buscada al propósito invocado.”*

El Decreto y las Normas Reglamentarias en él contenidas abiertamente van en contra de lo establecido en el fallo del 13 de julio y en los otros instrumentos jurídicos relacionados. A continuación se destacaán aspectos generales del Decreto, así como de algunas de sus normas específicas.

#### **A. El Decreto es discriminatorio**

En primera instancia, se debe hacer la observación que en general todo el Decreto viola el principio 4 del párrafo 87 del fallo, pues está concebido para regular en particular la navegación costarricense en el río San Juan, y de hecho el propio título así lo indica. El principio 4 establece claramente que las regulaciones no pueden ser discriminatorias, por lo que deben aplicar por igual a la navegación nicaragüense y costarricense en el río. En la medida que el Gobierno de Nicaragua emite un decreto

exclusivamente para regular la navegación costarricense está incumpliendo esta regla. Por otra parte, el Decreto también circunscribe su aplicación únicamente a la zona geográfica donde Costa Rica tiene derechos de navegación. Esto también se observa desde el título mismo, lo cual de antemano evidencia el carácter discriminatorio del espíritu del citado Decreto y sus disposiciones.

**B. Embarcaciones oficiales costarricenses que no requieren permiso para navegar**

Los artículo 3 y 4 inciso a) del Decreto, al igual que el artículo 22 de las Normas Reglamentarias, establecen que las embarcaciones oficiales costarricenses deben contar con una autorización de las autoridades nicaragüenses para poder navegar. No obstante, tal autorización no es necesaria cuando el propósito de la navegación de embarcaciones oficiales costarricenses sea: a) con objetos de comercio según lo establece el párrafo 80 del fallo del 13 de julio; b) con el fin de brindar servicios a las comunidades ribereñas en las condiciones fijadas por el párrafo 84 del fallo; o c) cuando la navegación se conduzca con embarcaciones del servicio fiscal de la manera descrita en el Laudo Cleveland, como lo establece el párrafo 83 del fallo.

Por lo tanto, en ninguno de dichos casos Costa Rica debe “solicitar a través de los canales diplomáticos establecidos el permiso para su arribo y navegación”, según establece el artículo 22 de las Normas Reglamentarias antes mencionado. Tampoco es lícito que se soliciten los requisitos establecidos en ese artículo, pues los mismos no están establecidos ni en el Tratado de Límites de 1858 ni en el fallo del 13 de julio, y además incumplen los requisitos de validez establecidos en el párrafo 87 del fallo.

**C. No se le puede impedir a las embarcaciones costarricenses que atraquen en cualquier punto de las riberas del Río**

El inciso e) del artículo 4 del Decreto establece la prohibición de atraque de embarcaciones con pasajeros o turistas, y el artículo 18, inciso 2 de las Normas Reglamentarias prohíbe a las embarcaciones costarricenses que naveguen en el río San Juan “efectuar trasbordos de personas o bienes a otra embarcación durante la navegación y el acercamiento o varado no autorizado a cualquiera de las riberas del río cuando este no sea un Puesto de Control.” De manera similar, el inciso 7 del artículo 70 de las Normas Reglamentarias prohíbe “atracar y desembarcar pasajeros o mercancías en lugares no autorizados”.

Estas disposiciones contravienen lo establecido en el artículo VI del Tratado de Límites de 1858, el cual determina claramente que las embarcaciones de ambos países podrán atracar indistintamente en las riberas del otro estado. En este tanto, Nicaragua no puede restringir a embarcaciones costarricenses el derecho de realizar transbordos de bienes y personas, sea en el río o en cualquiera de las riberas del mismo, en el marco del respeto de las condiciones fijadas por el fallo del 13 de julio de 2009. De igual forma Nicaragua no puede prohibir el acercamiento o varado de embarcaciones costarricenses a cualquiera de las riberas del río y en particular a la ribera derecha, que es territorio soberano de la República de Costa Rica. Además, el hecho de que la prohibición de atracar, o de siquiera acercarse a las riberas del río, sea aplicable solamente a embarcaciones costarricenses, subraya el carácter discriminatorio de esta norma.

**D. Los requisitos ligados al transporte de mercadería son contrarios a lo establecido en el fallo del 13 de julio.**

El inciso f) del artículo 4 del Decreto prohíbe el tránsito de cualquier tipo de carga o mercancía que no se demuestre, con la documentación establecida, que tiene un propósito comercial. El inciso 10 del artículo 10 de las Normas Reglamentarias también establece como requisito para navegar la presentación de documentos que muestren la legalidad y fin comercial de las mercancías transportadas. Bajo estas reglas, en la mayor parte de los casos la navegación actual se vería impedida, como por ejemplo en el caso de transporte de mercaderías cuya venta no se efectúa con documentación, o en el caso de los ribereños que adquieren mercaderías para su consumo personal o familiar. Ello constituiría una violación a la exigencia que la regulación “no haga imposible o impida sustancialmente el ejercicio del derecho de libre navegación” (par. 87 (1) del fallo).

Lo mismo puede decirse de los artículos 38 a 43 del Capítulo IV de las Normas Reglamentarias, que establecen una serie de medidas de “vigilancia y control de sanidad vegetal y salud animal”. El artículo 38 exige un “permiso sanitario/fitosanitario de importación (original) el cual deberá ser solicitado con 8 días de anticipación”; “certificado sanitario/fitosanitario oficial del país de origen y/o procedencia (original)”; certificado de origen oficial del país exportador (copia)”; “manifiesto de carga (copia)”; “copia de factura comercial” y “resultados negativos de laboratorios oficiales o acreditados por la autoridad competente del país de origen y/o procedencia”.

Estos requisitos no tienen ninguna justificación. En primer lugar, un porcentaje alto de las mercaderías que son transportadas por el río San Juan no tienen y no pueden tener documentación alguna, pues se trata en muchos casos de productos que familias y productores de la zona están transportando de un lugar a otro en territorio nacional de Costa Rica para fines comerciales, como es el caso de frutas, verduras, granos, huevos, pescado, o incluso ganado. También frecuentemente se transportan productos adquiridos en pulperías o en comercios de la zona. Solicitar que personas transportando este tipo de productos prueben el carácter comercial de los mismos, o cumplan con las draconianas medidas sanitarias y fitosanitarias mediante documentos que son de imposible obtención—máxime cuando tales requerimientos nunca fueron antes solicitados—hace que tal requisito sea contrario a los elementos que establece la Corte como esenciales en cualquier regulación. En particular, se viola el punto 5 del párrafo 87 del fallo, que establece que la regulación no puede ser irrazonable, lo cual significa que su impacto negativo en el ejercicio del derecho de libre navegación en cuestión no puede ser manifiestamente excesivo cuando se mide frente a la protección obtenida según el propósito invocado. Es claro que estos requisitos son manifiestamente excesivos e irrazonables, y tienen el efecto práctico de dificultar, si no impedir del todo, el derecho de libre navegación.

Adicionalmente, hay otro elemento que debe considerarse en el transporte de mercaderías. En aquellos casos en que éstas no hayan sido compradas o cuyo objeto no sea ser vendidas, este tipo de mercaderías no pueden estar sujetas a prohibición si su transporte es pagado. Se trata de la misma lógica aplicada para el caso del transporte de pasajeros. La operación comercial por el cual se le paga a un transportista para el transporte de las mercaderías cumple lo preceptuado por el Tratado. En tales casos, el

carácter comercial o no de las mercaderías y los bienes transportados no puede ser una limitante para su transporte por el río, salvo cuando éstas sean claramente ilegales, como el transporte de armamento ilegal o de sustancias psicotrópicas.

Pero sobre todo se aprecia que Nicaragua confunde el tránsito de mercancías por el río San Juan, en particular para su traslado de un lugar de Costa Rica a otro, con el ingreso de las mercancías al territorio nicaragüense. Y aún así, los requisitos son desmedidos. Por ejemplo, el requisito del permiso sanitario/fitosanitario de importación nicaragüense que debe ser solicitado con 8 días de anticipación no sólo no tiene sentido en el tanto que las mercancías no son para exportación a Nicaragua, sino que además constituyen un obstáculo indebido al derecho costarricense de navegar por el río San Juan. Además, se trata de medidas nuevas que nunca antes habían sido solicitadas, lo cual evidencia que se trata de regulaciones innecesarias concebidas con un espíritu discriminatorio, pues hasta ahora nunca Nicaragua había considerado establecer este tipo de restricciones. De igual forma, sujetar de antemano las mercancías costarricenses al cumplimiento de “requisitos establecidos en la ley de la materia y las resoluciones ministeriales” no encuentra justificación en la medida en que no se identifican tales regulaciones y no se distingue entre las mercancías que circulen en el ejercicio del derecho de libre navegación y las que sean destinadas a la importación en territorio nicaragüense. Todo esto es contrario a los requerimientos del párrafo 87 del fallo.

Por otra parte, el artículo 43 establece que serán los transportistas costarricenses quienes tendrán que pagar los costos de “la inspección y/o tratamiento cuarentenario” que según este artículo son obligatorios. Esto claramente contraviene el artículo VI del Tratado de Límites de 1858, pues se trata de un cobro que Nicaragua está exigiendo unilateralmente como requisito para que los costarricenses ejerzan su derecho de libre navegación.

Asimismo, el inciso 2 del artículo 44 obliga a los turistas y a cualquier pasajero que sea transportado en embarcaciones costarricenses a llenar una declaración aduanera. Se trata nuevamente de un trámite innecesario, pues se trata de personas que no tienen como destino final el territorio nicaragüense. El inciso 4 del artículo 47 también establece otra norma arbitraria, pues permite a las autoridades policiales nicaragüenses “incautar dinero en efectivo, títulos valores, objetos y metales preciosos introducidos...sin la declaración aduanera correspondiente”.

En los incisos 2 y 3 del artículo 46 se obliga a operadores de embarcaciones a presentar, entre otros requisitos, las autorizaciones correspondientes para el traslado de ganado y madera, cuya redacción y significado son imprecisos. No está claro cuál es la autoridad que debe expedir tales autorizaciones, pero en todo caso no podrían ser nicaragüenses, pues se trata de bienes que son trasladados de un lugar de Costa Rica a otro, y que solamente son transportados por el río San Juan para comunicarse entre puntos del territorio nacional costarricense.

#### **E. Otros obstáculos indebidos a la navegación costarricense**

Existen otra serie de requisitos establecidos en el Decreto y en las Normas Reglamentarias que lejos de perseguir un propósito razonable, en la práctica constituyen obstáculos indebidos e ilícitos al derecho de navegación costarricense. Es necesario resaltar algunas de estas regulaciones, en particular frente a los requisitos que Nicaragua

impone a sus propias embarcaciones fuera del área geográfica de aplicación del Decreto de referencia. Nicaragua no exige los mismos estándares para el caso de embarcaciones que navegan otras secciones del río San Juan, el Lago de Nicaragua, o el río Coco, que constituye frontera con Honduras. En otros casos, se trata de regulaciones dirigidas a embarcaciones costarricenses y que sólo subrayan el objetivo ilegítimo y discriminatorio de estas regulaciones, como se verá a continuación.

En los artículos 10 y 13 de la Normas Reglamentarias se exige la presentación de una serie de requisitos que en su gran mayoría no cumplen con el criterio de razonabilidad, sino que más bien representan obstáculos innecesarios al derecho de libre navegación costarricense. Por ejemplo, exigir el despacho de salida o zarpe del Puerto de origen que se establece en el inciso 1 del artículo 10 y en el 2 del artículo 13 genera un problema para aquellas embarcaciones cuya salida no sea desde un puerto, aunque en todo caso el Estado costarricense no emite despacho de salida para embarcaciones que navegan por sus aguas interiores. Por ello, en la práctica esta norma significa que no sólo los ribereños no podrían navegar por el río San Juan, sino ninguna otra embarcación costarricense. Estos requisitos están en abierta contradicción con el Tratado de Límites de 1858 y el párrafo 87 del fallo del 13 de julio, ya que no cumplen un propósito legítimo, son discriminatorios e irrazonables, y en la práctica imposibilitan la navegación costarricense en el río San Juan.

En relación con el manifiesto de carga y el manifiesto de mercancías peligrosas que establece el inciso 3 de los artículos 10 y 13, ya se ha señalado que documentos de esta naturaleza son de difícil obtención para los transportistas locales por la naturaleza propia de los bienes transportados. Tampoco se establecen parámetros objetivos para determinar cuando una mercancía deba ser considerada como peligrosa, y aún si tales parámetros existieran, deben ser consecuentes con acuerdos internacionales sobre la materia.

En cuanto al establecimiento del requisito de aportar licencias de competencia por parte de la tripulación, según el inciso 4 del artículo 10 y en el inciso 9 del artículo 13, que en principio están reguladas por el Convenio Internacional de Titulación y formación de Gente de Mar, tales disposiciones están dirigidas principalmente a tripulaciones de embarcaciones que navegan en el mar. Además Costa Rica no es parte de ese Convenio. Se trata de un nuevo requisito que jamás había sido exigido antes por Nicaragua.

Por otra parte, Costa Rica no exige bitácoras o diarios de navegación a las embarcaciones que navegan sus aguas internas, y no comprende la razón por la cual deben cumplir este requisito en relación a la navegación en el río San Juan en la parte donde Costa Rica tiene derecho a navegarlo. No se explica qué interés legítimo se cumple con dicho requisito establecido en el inciso 6 de los artículos 10 y 13, más allá de engrosar el enorme número de documentos y requisitos que Nicaragua impone para substancialmente impedir, o del todo hacer imposible, la navegación de embarcaciones costarricenses.

La solicitud de un certificado de póliza de seguro establecido en el inciso 7 de los artículos 10 y 13, y que luego en el artículo 16 de las Normas Reglamentarias es detallado, es un requisito que es de imposible cumplimiento por parte de los boteros costarricenses, y que al final se traduce en un impedimento total al goce de los derechos

de libre navegación que tiene Costa Rica. Adicionalmente, Costa Rica considera que el cobro de un seguro, o de cualquier tipo de tarifa, independientemente del propósito de ésta, es violatorio de lo dispuesto por el artículo VI del Tratado de Límites, que señala que ambos países no pueden cobrarse tasas para la navegación, y que dispone el carácter de libre de la navegación costarricense.

En cuanto al certificado de matrícula y patente o permiso de navegación de la embarcación, dispuesta en el inciso 8 de los artículos 10 y 13, es pertinente señalar que esto es cumplido por parte de las embarcaciones costarricenses por medio del Título de Propiedad que emite el Registro Nacional. Costa Rica además emite el certificado de navegabilidad con una duración de 12 meses, el cual constituye el permiso de navegación de las embarcaciones costarricenses. Este mismo certificado de navegabilidad cumple con lo dispuesto en el inciso 9 del mismo artículo sobre los certificados de seguridad de la embarcación. No hay razón entonces para que las autoridades nicaragüenses soliciten un certificado adicional al que ya emiten las autoridades costarricenses.

Los artículos 17 y 48, al establecer condiciones que las embarcaciones que se dedican al transporte comercial de mercancías y personas deben cumplir, limitan el tipo de embarcaciones que pueden navegar con fines comerciales en el río San Juan, algo que ni el Tratado de Límites de 1858, ni el Laudo Cleveland de 1888 ni el fallo del 13 de julio de 2009 hacen. El establecimiento de ciertas dimensiones y características de las embarcaciones para el transporte de pasajeros, incluido el hecho que estas deban portar inodoro y sistemas de agua potable y que sus asientos, respaldos, compartimientos y pasillos deben contar con ciertas dimensiones, por más deseable que sea, no se ajusta a la realidad de las actividades, que si bien comerciales, puedan ser desarrolladas por personas con limitados recursos económicos de un país en vías de desarrollo. Más grave aún, el inciso 1 del artículo 17 dice que estas embarcaciones “deberán cumplir los requisitos establecidos en estas normas, así como las demás disposiciones que dicte la Autoridad Marítima”, lo cual pone en indefensión a los boteros que se dedican al transporte comercial de personas al sujetarlos de antemano a disposiciones que no existen todavía.

En el caso de las embarcaciones que se utilizan para el transporte de mercaderías se da una situación similar, pues el inciso 2 del artículo 17 dice que dicho servicio “será efectuado con embarcaciones de características técnicas adecuadas a los requerimientos del tipo de carga”. No sólo se está limitando el tipo de embarcación para el trasporte de mercaderías, sino que además se les sujeta a criterios que no están claramente definidos.

El artículo 20 igualmente es una medida discriminatoria, que obliga solamente a embarcaciones costarricenses a mantener contacto radial continuo con las autoridades nicaragüenses. Adicionalmente, esta medida presupone que las embarcaciones costarricenses deben portar consigo radios de comunicación de alto poder, lo cual constituye otra limitación irracional de difícil cumplimiento. Más aún, es irónico que por un lado el Decreto exija a las embarcaciones costarricenses portar radios, y por otro lado establezca que el Ejército de Nicaragua puede incautar y dejarse para sí los medios de comunicación que se encuentren en tales embarcaciones, según dispone el inciso 4 del artículo 27. Ello muestra la inconsistencia de la reglamentación y el claro propósito de limitar o impedir el ejercicio del derecho de libre navegación.

Lo mismo se aplica a la exigencia del artículo 24. Es flagrante la contradicción de exigir portar luces de navegación y garantizar su funcionamiento si la navegación en horario nocturno por el río está prohibida por el mismo Decreto. Este mismo requisito es también exigido en el artículo 58 ¿Cuál propósito legítimo se cumple demandando la portación de luces a embarcaciones a las que les es prohibido la navegación nocturna?

El artículo 27, en conexión con el Capítulo V de las Normas Reglamentarias, otorga un amplio poder de decomiso al Ejército de Nicaragua. Fusionar el decomiso de sustancias estupefacientes y de armas ilegales, por un lado, con el de bienes y propiedad privada de pasajeros y tripulantes, transforma peligrosamente un propósito legítimo en una medida arbitraria, irracional e ilegítima, sobre todo al usar términos tan vagos como “mercancía en general” u “objetos personales no declarados”.

En cuanto al artículo 29, Costa Rica llama la atención que, adicionalmente a los innumerables otros requisitos, se establezca la presentación de 2 documentos más denominados tarjetas de embarque y desembarque, cuyas características y propósito no están claramente definidos y que nunca antes habían sido exigidos.

En cuanto a la aportación de documentos de identificación, la Corte Internacional de Justicia determinó que las personas pueden identificarse por medio de sus pasaportes o cualquier otro documento de identidad. En ese tanto, el Gobierno de Costa Rica considera que cualquier documento de identidad aceptado como tal por sus autoridades, debe ser aceptado como un medio de identificación idóneo. Exigirle a los menores de 16 años portar su pasaporte—un documento que pocas personas de la zona tienen—es claramente violatorio de la razonabilidad que los requisitos deben tener según lo dispuesto por el fallo del 13 de julio.

El artículo 30 de las Regulaciones establece la denegación de ingreso a territorio nicaragüense a extranjeros. En el tanto esta disposición sea aplicada solamente al ingreso a territorio nicaragüense y no al tránsito sobre el río San Juan por parte de extranjeros en embarcaciones costarricenses donde Costa Rica tiene derecho a navegarlo, Costa Rica no hará observaciones. Si esta disposición estuviere dirigida a denegar el tránsito por el río San Juan a extranjeros que ejercen de una manera u otra el derecho a la libre navegación que goza Costa Rica, Costa Rica expresaría oportunamente su oposición a la misma.

En el Capítulo III, en los artículos 31 al 37 se establecen una serie de requisitos supuestamente relacionados con la salud pública y el control sanitario, muchos de los cuales resultan abusivos. Por ejemplo, el artículo 31 incluye la obligación de presentar “certificados internacionales de vacunación”, “declaración marítima de sanidad para embarcaciones”, “certificado de sanidad a bordo” y “Hoja de Control Internacional de Fallecidos”.

Todas estas disposiciones incumplen los términos del fallo del 13 de julio en el tanto que se están exigiendo una serie de requisitos que no encuentran fundamento en los criterios enunciados en el párrafo 87. De manera principal, Nicaragua confunde el tránsito por el río San Juan, que es para el traslado de personas y bienes de un lugar de Costa Rica a otro, con el ingreso al territorio nicaragüense más allá del río San Juan. En particular, exigir el certificado internacional de vacunas, o bien que se cumpla con esquemas oficiales nicaragüenses de vacunación no tiene sentido en el tanto que quienes

transiten por el San Juan no ingresarán a suelo nicaragüense, más allá del tránsito sobre el río. Pero además de ser una medida que no tiene sustento lógico, es claramente discriminatoria, por cuanto este requisito ni siquiera es exigido en los puestos migratorios a quienes ingresan a territorio nicaragüense por vía aérea, marítima o terrestre. Se trata de regulaciones que claramente no son razonables y son discriminatorias.

En el caso de la declaración marítima de sanidad para embarcaciones, y el certificado de sanidad a bordo, tampoco está claro qué función cumplen, sobre todo si se enuncia como una declaración marítima. Una vez que la embarcación cuenta con el Certificado de Navegabilidad, ello indica que la embarcación cumple con los requisitos para su operación, por lo que no es razonable exigir documentos adicionales que certifiquen las condiciones que ya han sido acreditadas. Tampoco tiene sentido establecer la potestad de realizar inspección médica-sanitaria o bien exámenes médicos no invasivos a pasajeros si su intención no es ingresar a suelo nicaragüense ni tener contacto con la población nicaragüense.

Es notable que el inciso 12 de artículo 48 establece una velocidad máxima de navegación de 6 nudos. Esta velocidad hace que un recorrido entre la boca del río San Carlos y el río Colorado pueda tener una duración de hasta 8 horas; y entre el río Sarapiquí y el río Colorado de unas tres horas, cuando por lo general esos trayectos se toman menos de 3 horas el primero, y de 1 hora el segundo. La desproporcionalidad de esta medida atenta contra el tránsito expedito y disuade enteramente el uso de esa vía como medio de comunicación. Más grave aún, el inciso 6 del artículo 17 establece que “las embarcaciones que estén habilitadas para transportar hasta 50 pasajeros y que realicen viajes de 30 minutos o más, tendrán como mínimo un servicio higiénico (inodoro)”. En otras palabras, la combinación de estas dos disposiciones obliga a toda embarcación, incluyendo la de los habitantes de la zona ribereña, a tener un servicio sanitario. Esto evidentemente es irracional y hace imposible el ejercicio del derecho de libre navegación.

El artículo 67 obliga a los operadores turísticos costarricenses que requieran utilizar el río San Juan como vía de comunicación entre dos puntos de territorio costarricense a “inscribirse en el Registro Nacional de Turismo o a suscribir convenios con empresas nacionales de la misma naturaleza registradas y autorizadas por el Instituto Nicaragüense de Turismo.” Se trata claramente de una medida innecesaria, irrazonable e ilegítima, pues no cumple ninguna de las condiciones establecidas en el párrafo 87 del fallo. Es obvio que el transporte de pasajeros, aunque éstos sean turistas, se rige por el carácter comercial de la actividad de transporte ya definido por la Corte. Exigir la inscripción en Nicaragua de los operadores turísticos costarricenses no cumple ningún propósito legítimo y está dirigido a obstaculizar el ejercicio de la libre navegación.

El inciso 1 del artículo 70 prohíbe “la navegación de barcos casinos o barcos hoteles”. Esta es una prohibición ilícita, pues se trata de embarcaciones que estarían navegando con propósitos comerciales y no pueden ser excluidas de los derechos de libre navegación de Costa Rica. En su fallo del 13 de julio, la Corte Internacional de Justicia determinó que lo importante para que la navegación comercial se ajuste a lo establecido en el artículo VI del Tratado de 1858 es que el transportista realice “la actividad con fines de lucro” (párrafo 71). El tipo de actividad que los pasajeros

realicen a bordo de la embarcación es irrelevante en el tanto la operación de la embarcación sea con fines comerciales.

Adicionalmente, Costa Rica considera irracional y desproporcionado el nivel de militarización impuesto por Nicaragua al control de la navegación civil costarricense. Asimismo se opone a los extensivos poderes de inspección, decomiso y de obstaculización a la navegación costarricense que Nicaragua se ha atribuido.

La presente lista de disposiciones contrarias al fallo del 13 de julio de 2009 no es exhaustiva. Costa Rica se reserva el derecho de objetar otras disposiciones. Asimismo, Costa Rica se reserva el derecho de ampliar los comentarios y observaciones que por este medio se han hecho.

Si bien el fallo del 13 de julio estableció que embarcaciones costarricenses debían cumplir con ciertos requisitos nicaragüenses, también estableció que este poder regulatorio nicaragüense no es ilimitado, y ésta restringido por los derechos y obligaciones que tienen las partes según lo dispuesto por el Tratado de 1858. Por ello, Nicaragua no puede limitar el tipo de embarcaciones costarricenses o establecer las características que éstas deban tener para el ejercicio del derecho de navegación establecido en el Tratado de 1858, o sujetar su tránsito al cumplimiento de medidas que no cumplan un propósito legítimo, que sean discriminatorias, irrationales, y que, frente al propósito invocado, resulten en la obstaculización, parcial o total del ejercicio del derecho de libre navegación. Nicaragua tiene los derechos que la Corte específicamente le reconoció, pero estos no pueden ser ejercitados de forma tal que su propósito sea la disuasión o la negación de los derechos de navegación que tiene Costa Rica.

\* \* \*

Por las razones arriba señaladas, Costa Rica estima que el referido Decreto nicaragüense contraviene el fallo de la Corte Internacional de Justicia de 13 de julio de 2009, así como el Tratado de Límites de 1858, el Laudo Cleveland de 1888 y el Acuerdo de 1956.



## **ANNEX 35**

*Note from the Minister of Foreign Affairs of Nicaragua, to the Minister of  
Foreign Affairs and Worship of Costa Rica*

Reference MRE/AJST/297/3/2010

25 March 2010

English Translation and Spanish Original



Translation into English

*Seal of the Republic of Nicaragua*

*The Minister of Foreign Affairs*

Managua, 25 March 2010

MRE/DM-AJST/297/3/2010

Dear Minister:

In relation to your communication DM-AM-816-09 of November 20, 2009, in which you attach an appendix with the goal of “describing in detail the main provisions of Decree No. 79-2009, of the President of the Republic of Nicaragua, which” –it reads- “are contrary to the decision of the International Court of Justice of 13 July 2009 and to the international instruments that establish the regime for Costa Rican navigation and related rights on San Juan River,” I would like to express that after careful consideration of the arguments mentioned in said appendix, the Government of Nicaragua considers groundless the observations made by the Government of Costa Rica.

Decree No. 79-2009 of the Government of Nicaragua exercises the sovereign right to regulate navigation in terms that are not discriminatory and that are reasonable, for purposes of security, public order, health, conservation of the environment and natural resources, as well as sustainable development, with utmost respect for the decision issued by the International Court of Justice on 13 July 2009, and the pertinent international instruments, namely the Jerez-Cañas Treaty of 1858 and the Cleveland Award of 1888.

In any case, Nicaragua and Costa Rica have a good relationship as neighbours, with adequate mechanisms to address any matter that may be of interest to the Parties.

I hereby express the assurances of my highest consideration.

Samuel Santos Lopez

His Excellency

**Bruno Stagno Ugarte**

Minister of Foreign Affairs

Republic of Costa Rica

His Office



*El Ministro de Relaciones Exteriores*

Managua, 25 de marzo del 2010  
MRE/DM-AJST/297/3/2010

Señor Ministro:

En relación con su comunicación DM-AM-816-09 de 20 de noviembre de 2009 a la que adjunta un anexo cuyo objeto es “detallar las principales disposiciones del Decreto No. 79-2009, del Presidente de la República de Nicaragua, que “-dice- son contrarias al fallo de la Corte Internacional de Justicia del 13 de julio de 2009 y a los instrumentos internacionales que establecen el régimen de navegación costarricense y derechos conexos en el río San Juan”, cúmpleme manifestarle que, tras una detenida consideración de los extremos que en el citado anexo se mencionan, el Gobierno de Nicaragua considera infundadas las observaciones del hermano Gobierno de Costa Rica.

Con el Decreto No. 79-2009 el Gobierno de Nicaragua ejerce como soberano el derecho de reglamentar la navegación en términos no discriminatorios y razonables, atendiendo a fines de seguridad, orden público, sanidad, conservación del medio ambiente y los recursos naturales, así como de desarrollo sostenible, en el más escrupuloso respeto del fallo de la Corte Internacional de Justicia, del 13 de julio de 2009, y de los instrumentos internacionales pertinentes, a saber, el Tratado Jerez Caña, de 1858 y el Laudo Cleveland de 1888.

En todo caso, Nicaragua y Costa Rica cuentan en sus relaciones de buena vecindad con los mecanismos adecuados para tratar cualesquiera cuestiones que interesen a las Partes.

Sin otro particular, hago propicia la ocasión para expresarle las muestras de mi alta estima y consideración.

Samuel Santos López



Al Excelentísimo Señor  
**Bruno Stagno Ugarte**  
Ministro de Relaciones Exteriores y Culto  
República de Costa Rica  
Su Despacho

## **ANNEX 36**

*Note from the Minister of Foreign Affairs and Worship of Costa Rica to the  
Minister of Foreign Affairs of Nicaragua*

Reference DM-AM-327-10,

22 April 2010

English Translation and Spanish Original



Translation into English

*The Minister of Foreign Affairs*

22 April 2010

DM-AM-327-10

Samuel Santos López  
Minister of Foreign Affairs  
Republic of Nicaragua

Honourable Minister,

It is my pleasure to greet Your Excellency in reference to your note MRE/DM-AJST/297/3/2010, dated March 25, 2010.

Regarding the contents of said note, I wish to express that my Government regrets that the Government of Nicaragua considers “groundless” the observations made by Costa Rica on Decree No. 79-2009, especially because it does not provide reasons to explain its position.

My government does not object to the right of the Republic of Nicaragua to regulate navigation on San Juan River, but it does object to –and continues to do so- that said regulation has the purpose of establishing discriminatory measures that are mainly aimed at preventing the exercise of Costa Rica’s right to free navigation.

In these circumstances, it is evident that there is a fundamental difference between the way in which Nicaragua interprets the judgment of the International Court of Justice of 13 July 2009 and its literal meaning, specifically the conditions established by the Court in paragraph 87 of said decision and later applied in its dispositive section, paragraph 156 of the judgment, which indicates the requirements that must be met by Nicaragua to be able to regulate navigation on the river. Consequently, this situation results in substantial differences between both countries regarding the scope of the Court’s judgment.

In order to establish a constructive diplomatic channel, Costa Rica reiterates to Nicaragua its proposal to create a bi-national commission, to establish a mechanism for dialogue to consider the regulation that Nicaragua deems necessary to protect its sovereign interests on San Juan River, but without negatively affecting the exercise of Costa Rica’s right to free navigation and related rights, pursuant to the decision of the International Court of Justice. My country believes that the Government of Nicaragua will agree with this proposal and thus prevent having to recourse to other mechanisms of international law.

Please accept, your Excellency, the assurances of my highest consideration.

(Signed) Bruno Stagno Ugarte

*Stamped Minister of Foreign Affairs*

*El Ministro de Relaciones Exteriores y Culto*

22 de abril de 2010  
DM-AM-327-10

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

Excelentísimo señor,

Me es grato saludar a Vuestra Excelencia en ocasión de referirme a su nota MRE/DM-AJST/297/3/2010, fechada 25 de marzo de 2010.

Sobre el contenido de la referida nota, deseo expresar que mi Gobierno lamenta que el de Nicaragua considere como "infundadas" las observaciones que Costa Rica hizo al decreto No. 79-2009, en particular porque no aporta razones que expliquen su posición.

Mi Gobierno no objeta el derecho de la República de Nicaragua a reglamentar la navegación en el Río San Juan, pero si objeta —y lo continuará haciendo—que dicha reglamentación tenga como propósito establecer medidas discriminatorias y que en gran medida estén dirigidas a impedir el ejercicio del derecho a la libre navegación costarricense.

En estas circunstancias, es evidente que existe una fundamental diferencia entre la forma como Nicaragua interpreta la sentencia de la Corte Internacional de Justicia de 13 de julio de 2009 y el significado literal de la misma, en particular las condiciones establecidas por la Corte en el párrafo 87 de dicho fallo, y aplicadas en el dispositivo, párrafo 156 de la sentencia, que señalan los requisitos que deben ser cumplidos por Nicaragua para que pueda reglamentar la navegación en el río. Por lo tanto, esta situación produce como resultado diferencias sustanciales entre ambos países sobre los alcances de la sentencia de la Corte.

A fin de establecer una vía diplomática constructiva, Costa Rica reitera a Nicaragua su propuesta de crear una comisión binacional que pueda establecer un mecanismo de diálogo por el cual se considere la reglamentación que Nicaragua estime necesaria para la salvaguarda de sus intereses soberanos en el Río San Juan, pero que no afecte negativamente el ejercicio del derecho a la libre navegación y derechos conexos que Costa Rica ostenta según la determinación de la Corte Internacional de Justicia. Mi país confía que el Ilustrado Gobierno de Nicaragua estará de acuerdo con esta propuesta y con ello se evitará tener que recurrir a otros dispositivos del derecho internacional.

Ruego aceptar, Excelencia, las seguridades de mi mayor consideración y estima.

*Bruno Stagno Ugarte*  
Bruno Stagno Ugarte



## **ANNEX 37**

*Letter from the Minister of Public Security of Costa Rica to the Minister of  
Public Works and Transportation of Costa Rica*

Reference 2278-2010

1 December 2010

English Translation and Spanish Original



Republic of Costa Rica  
Ministry of Governance, Police and Public Security  
Minister's Office

December 1, 2010

2278-2010 DM

Mr. Francisco Jiménez Reyes  
Minister  
Ministry of Public Works and Transport

Dear Minister:

The National Security Council (Consejo Nacional de Seguridad), in its last session, with the presence of the President of the Republic, performed an analysis of the important situation of the access routes in the Northern area of the country, especially those near the border with Nicaragua.

Situations of difficult access to the area have been detected, as specified below:

Sarapiquí Canton: Delta Costa Rica  
Mouth of Río Sarapiquí

Pococí Canton: Puerto Lindo

## Los Chiles Canton: La Trocha

For police logistics reasons these access routes must be in acceptable transport; consequently, I respectfully request that you repair these routes.

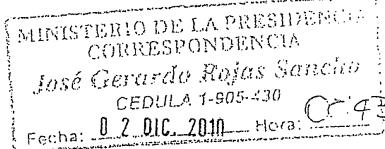
Please accept the assurance of my highest consideration,

(Signed)

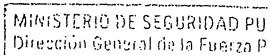
Jose María Tijerino Pacheco

Ministro de Gobernación, Policía y Seguridad Pública

Cc: Mrs. Laura Chinchilla Miranda, President of the Republic  
Police Inspector Walter Navarro Romero, Viceminister of Public Security  
Police Inspector Juan José Andrade Morales, General Director of the Public Forces



República de Costa Rica  
Ministerio de Gobernación, Policía y Seguridad Pública  
Despacho del Ministro



01 de diciembre de 2010  
2278-2010 DM

Señor  
Don Francisco Jiménez Reyes  
Ministro  
Ministerio de Obras Públicas y Transportes

Estimado señor Ministro:

El Consejo Nacional de Seguridad, en su última sesión, con la presencia de la señora Presidenta de la República, hizo un análisis de la situación imperante en las vías de acceso a la zona norte, especialmente aquellas próximas a la frontera con Nicaragua.

Se han detectado situaciones de difícil ingreso en la zona, las cuales me permito especificar a continuación:

Cantón de Sarapiquí: Delta Costa Rica  
Boca del Río Sarapiquí

Cantón de Pococi: Puerto Lindo

Cantón de Los Chiles: La Trocha

Por razones de logística policial estas vías de acceso deben estar en condiciones aceptables para el tránsito vehicular, por lo que le solicito interponer sus buenos oficios para la reparación de estas vías.

Le reitero las muestras de mi más alta consideración,

José María Tijerino Pacheco  
Ministro de Gobernación, Policía y Seguridad Pública



cc: Señora Laura Chinchilla Miranda, Presidenta de la República  
Comisario Walter Navarro Romero, Viceministro de Seguridad Pública  
Comisario Juan José Andrade Morales, Director General de la Fuerza Pública

## **ANNEX 38**

*Note from the Minister of Foreign Affairs and Worship of Costa Rica to the  
Minister of Foreign Affairs of Nicaragua*

Reference DM-059-11

2 February 2011

English Translation and Spanish Original



## TRANSLATION

### **The Minister of Foreign Affairs and Worship**

San Jose, 2 February 2011  
DM-059-11

Your Excellency,

I address Your Excellency in reference to the public announcement made yesterday by the Nicaraguan Institute of Territorial Studies (INETER), in which it presented maps of Nicaragua recently produced by this institution, and that are currently available on its internet website.

The abovementioned maps, one of which is entitled “Administrative Political Division Map”, with a scale of 1:750000, and the other entitled “Topographical Map”, with a scale of 1:50000, include a modification of the land border that exists between and has been agreed upon by Costa Rica and Nicaragua, in particular with regard to the Isla Portillos sector, since 1897. In that sector a part of the national territory of Costa Rica has been represented as Nicaraguan.

Given that this error is manifest and deliberate, clearly intended to adjust Nicaraguan cartography to the false arguments presented before the International Court of Justice during the hearings held between the 11<sup>th</sup> and 13<sup>th</sup> of January, with the obvious intention of justifying the unlawful occupation and destruction of Costa Rican territory in that same area, Costa Rica voices its strongest protest to this situation. My country, likewise, rejects outright any attempt to attach any legal value to these maps, which were produced following the conclusion of the aforementioned hearings. These maps, as well as the illegal activity undertaken by Nicaragua in Costa Rican territory, are devoid today and in the future, of any legal value.

Finally, my Government wishes to remind Nicaragua that these acts exacerbate the dispute between the two nations, and are contrary to international law.

I avail myself of this opportunity to extend the assurance of my highest consideration.

Rene Castro Salazar  
Minister

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

*El Ministro de Relaciones Exteriores y Culto* *MV*

San José, 2 de febrero de 2011  
DM-059-11

Excelentísimo señor Ministro,

Me permito saludar a Vuestra Excelencia con ocasión de referirme al anuncio público hecho el día de ayer por el Instituto Nicaragüense de Estudios Territoriales (INETER), por el cual dio a conocer mapas de Nicaragua recientemente elaborados por esa institución, y que actualmente están disponibles en el sitio de Internet de la misma.

Los referidos mapas, uno titulado "Mapa de la División Política y Administrativa", con escala 1:750000, y el otro "Mapa Topográfico", con escala 1:50000, incluyen una modificación de la frontera terrestre existente y acordada entre Costa Rica y Nicaragua, particularmente en el sector de Isla Portillos, desde el año 1897. Así, en ese sector una porción del territorio nacional de Costa Rica ha sido representado como nicaragüense.

Dado que este error es manifiesto e intencionado, claramente dirigido a ajustar la cartografía nicaragüense a los falaces argumentos que Nicaragua presentó ante la Corte Internacional de Justicia durante las audiencias orales celebradas entre el 11 y 13 de enero pasados, con el claro objeto de justificar la ilegal ocupación y destrucción de territorio costarricense en esa misma zona, Costa Rica presenta su más enérgica protesta ante tal hecho. Asimismo, mi país rechaza enteramente cualquier valor jurídico que se le quiera dar a esos mapas, fabricados posteriormente a la conclusión de dichas audiencias. Tales mapas, así como la actividad ilegal que realice Nicaragua en territorio costarricense, carecen hoy y en el futuro de todo valor jurídico.

Finalmente, mi Gobierno recuerda al de Nicaragua que esos actos agravan la disputa entre ambos estados, y son contrarios al derecho internacional.

Hago propicia la ocasión para transmitirle las seguridades de mi consideración.

*René Castro S.*

René Castro Salazar  
Ministro



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

## **ANNEX 39**

*Note from the Minister of Foreign Affairs and Worship of Costa Rica to the  
Minister of Foreign Affairs of Nicaragua*

Reference DM-601-11

29 November 2011

English Translation and Spanish Original



The Minister of Foreign Affairs and Worship

29 November 2011  
DM-AM-601-11

Dear Minister:

I extend my compliments to Your Excellency on referring to the statements issued by senior authorities of the Nicaraguan Government claiming that a road being built by Costa Rica in a common border area will allegedly cause environmental damage to Nicaraguan territory.

With regard to this issue, the Government of Nicaragua is fully aware that the reasons which have forced Costa Rica to undertake this infrastructure work are related to Nicaragua's activities in the border area.

In turn, Costa Rica considers that these works are not affecting Nicaraguan territory. Nonetheless, in the interests of maintaining a policy of good neighbourliness, as well as of protecting the environment, and in compliance with agreements regarding this matter, the Government of Costa Rica is willing to hear Nicaragua's concerns in relation to this road.

In this respect, my Government invites Nicaragua to formally state the reasons why it considers environmental damage could be caused as a result or how it could affect Nicaraguan interests, and Costa Rica requests that it be sent objective and serious scientific information confirming Nicaragua's claims. Along these same lines, my country expects the same attitude from the Government of Nicaragua in relation to works that could affect Costa Rican territory.

Finally, and also within the framework of Facilitation provided by the Governments of Guatemala and Mexico, Costa Rica is more than willing to accept the participation of both nations in the discussion and analysis of common environmental issues.

Please accept, Minister, the renewed assurances of my consideration,

Enrique Castillo Barrantes  
Minister of Foreign Affairs and Worship  
San Jose, Costa Rica

His Excellency  
Samuel Santos Lopez  
Foreign Affairs Minister  
Republic of Nicaragua

*El Ministro de Relaciones Exteriores y Culto*

29 de noviembre de 2011  
DM-AM-601-11

Excelentísimo señor Ministro:

Saludo a Vuestra Excelencia en ocasión de referirme a las declaraciones emitidas por altas autoridades del Gobierno de Nicaragua, según las cuales un camino que Costa Rica construye en un sector de la frontera común supuestamente va a generar daño ambiental a territorio de Nicaragua.

En relación con este tema, el Gobierno de Nicaragua bien conoce que las razones que han obligado a Costa Rica a realizar esta obra de infraestructura están relacionadas con las actividades de Nicaragua en la zona fronteriza.

A su vez, Costa Rica considera que dicha obra no está causando afectaciones al territorio de Nicaragua. No obstante, el Gobierno de Costa Rica, en aras de mantener una política de buena vecindad así como de velar por la protección del medio ambiente, y en cumplimiento de acuerdos en esta materia, está dispuesto a escuchar las preocupaciones de Nicaragua sobre la construcción de este camino.

En este sentido, mi Gobierno invita al de Nicaragua para que exponga formalmente las razones por las cuales considera que podría darse daño ambiental o afectarse los intereses nicaragüenses, para lo cual Costa Rica solicita que se le haga llegar información científica objetiva y seria que compruebe lo alegado por Nicaragua. Con ese mismo espíritu, mi país espera igual actitud del Gobierno de Nicaragua en la realización de obras que podrían afectar territorio de Costa Rica.

Finalmente, también en el marco de la Facilitación dada por los Gobiernos de Guatemala y México, Costa Rica está en la mejor disposición de aceptar la participación de ambos Estados en la discusión y análisis de los temas ambientales comunes.

Reciba, señor Ministro, las muestras de mi consideración.

  
Enrique Castillo Barrantes  


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

EMBAJADA DE NICARAGUA  
SAN JOSE, COSTA RICA  
RECIBIDO  
Despacho del Embajador  
Fecha: 29/11/11  
Hora: 10:30  
Recibido por: Patricio [Signature]

## **ANNEX 40**

*Note from the Minister of Foreign Affairs and Worship of Costa Rica to the  
Secretary General of the United Nations*

Reference DM-AM-663-11

14 December 2011

English Translation and Spanish Original



(Translation from the Spanish text)

*The Minister of Foreign Affairs and Worship*

14 December 2011  
DM-AM-663-2011

His Excellency, the Secretary General,

Since the month of October 2010, the Republic of Costa Rica has been a victim of the violation of its territorial integrity by the action of the government of Nicaragua, who through the use of its armed forces, occupied the northern part of Isla Portillos, and then tried to justify its alleged territorial sovereignty over that territory. Isla Portillos is Costa Rican territory, recognized as such by an arbitration award issued by Edward Porter Alexander, an Engineer from the United States of America, dating from 1897. From then until the unlawful act of Nicaragua in 2010, cartography and the official conduct of the parties had always been in accordance to the provisions of the Arbitration Award.

As Your Excellency knows, the Republic of Costa Rica filed a case before the International Court of Justice against the Republic of Nicaragua on 18 November 2010, as a result of the activities carried out by Nicaragua in the border area between the two republics.

On 8 March 2011, the International Court of Justice issued an order prescribing Provisional Measures, most notably the withdrawal from the territory declared as "disputed" [ex hypothesi] of all civilian and security personnel of both states, and providing that Costa Rica, in consultation with the Secretariat of the Ramsar Convention, could send civilian personnel in charge of environmental protection to this area in order to avoid irreparable damage from occurring to the wetland located there.

As Costa Rica has reported to the Security Council, the Republic of Nicaragua, through civilians supported and organized by the Government of that country, sought to prevent, by physical acts of harassment, that technical personnel from the Ramsar Convention Secretariat and the Government of Costa Rica, could carry out a task mission between 5 and 6 April 2011, in order to prevent irreparable damage to the wetland, in compliance with the order of the International Court of Justice.

Since that time, organized and supported by the Government of Nicaragua, youngsters from that country who sympathize with the ruling party, have been settled by Nicaragua in the territory subject to the order of the International Court of Justice, in open violation of what has been provided for in the order. Keeping people in this area by Nicaragua is a clear violation not only of the territorial integrity of Costa Rica, but also of the obligations set for in the order of the International Court of Justice of 8 March 2011.

-2-

In view of the continuity of the hostile acts of the Government of Nicaragua, with special attention to those events that gave rise to the case filed by Costa Rica before the International Court of Justice, Costa Rica made a declaration of national emergency in order to facilitate actions to defend its territorial integrity.

Among the actions that the Republic of Costa Rica is carrying out, includes certain works in its territory to give security to the area disputed by Nicaragua, in accordance with paragraph 78 of the order of 8 March 2011.

Also, as part of these works is the construction of a road, parallel to the international border, and entirely within Costa Rican territory, with the purpose to allow the Republic of Costa Rica to fully exercise its sovereignty in the border areas, safeguard its territorial integrity, and to repel any hostile action against the nation.

This action is justified in Nicaragua's repeated violations to international order, and in the statements made by the authorities of that country, about their decision to ignore the current international border regime, and disregard the principle of stability and finality of borders.

Given a defamatory campaign against Costa Rica that Nicaragua is conducting as a result of these actions, which is carried out in the media of that country and in international organizations, Costa Rica considers necessary to inform the United Nations of the situation that has forced Costa Rica to carry out those actions of defense and to refute the accusations that are being proffered against the country.

Finally, I request that through your good offices, the Security Council be informed of this communication, which content and purpose is made under the provisions of Chapter VII of the Charter of the United Nations.

Excellency, please accept the assurances of my highest consideration,

Enrique Castillo Barrantes  
Minister of Foreign Affairs and Worship  
Republic of Costa Rica

His Excellency  
Ban Ki-Moon  
Secretary General  
United Nations  
City of New York

*El Ministro de Relaciones Exteriores y Culto*

14 de diciembre de 2011  
DM-AM-663-2011

Excelentísimo señor Secretario General,

La República de Costa Rica es víctima, desde el mes de octubre de 2010, del quebrantamiento de su integridad territorial por la acción del gobierno de Nicaragua, quien mediante el uso de sus Fuerzas Armadas, ocupó la parte norte de Isla Portillos, y luego trató de justificar su pretendida soberanía territorial sobre ese territorio. Isla Portillos es territorio costarricense, reconocido como tal por un Laudo Arbitral emitido por el Ingeniero de los Estados Unidos de América, Edward Porter Alexander, que data de 1897. Desde entonces y hasta el acto ilícito de Nicaragua en 2010, la cartografía y el comportamiento oficial de las partes siempre había sido conforme a lo dispuesto por el Laudo Arbitral.

Como Vuestra Excelencia conoce, la República de Costa Rica presentó una demanda contra la República de Nicaragua ante la Corte Internacional de Justicia, el 18 de noviembre de 2010, como resultado de tales actividades de Nicaragua en la zona fronteriza entre ambas repúblicas.

El 8 de marzo de 2011, la Corte Internacional de Justicia dictó una Providencia ordenando Medidas Provisionales, entre las que destaca el retiro de todo personal civil o de seguridad de la zona declarada “en disputa” [*ex-hypothesi*] de ambos estados, y disponiendo que Costa Rica podrá enviar personal civil a cargo de la protección ambiental a esa zona, con el objeto de evitar que se generen daños irreparables al humedal ahí localizado, en consulta con la Secretaría de la Convención Ramsar.

Como Costa Rica ha informado al Consejo de Seguridad, la República de Nicaragua, por intermedio de civiles apoyados y organizados por el Gobierno de aquel país, intentó evitar mediante actos físicos de hostigamiento que personal técnico de la Convención Ramsar y del Gobierno de Costa Rica realizaran una misión de trabajo con el objeto de prevenir daños irreparables al humedal, entre el 5 y 6 de abril de 2011, en cumplimiento con lo dispuesto por la Corte Internacional de Justicia.

Desde esa fecha, organizados y apoyados por el Gobierno de Nicaragua, jóvenes de aquel país afines al partido de gobierno han sido asentados por Nicaragua en el territorio sujeto a la Providencia de la Corte Internacional de Justicia, en abierta violación a lo ordenado en ésta. El mantenimiento de individuos en esa zona por parte de Nicaragua constituye una abierta violación no solo de la integridad territorial de Costa Rica, sino también de las obligaciones establecidas en la referida Providencia de la Corte Internacional de Justicia de 8 de marzo de 2011.

-2-

En vista de la continuidad de los actos hostiles del Gobierno de Nicaragua, con especial atención a aquellos actos que dieron origen a la demanda interpuesta por Costa Rica ante la Corte Internacional de Justicia, Costa Rica hizo una declaratoria de emergencia nacional, con el objeto de facilitar las acciones de defensa de la integridad territorial de Costa Rica.

Dentro de las acciones que la República de Costa Rica realiza, se incluye la conducción de obras en el territorio costarricense para dar seguridad a la zona disputada por Nicaragua, de conformidad con el párrafo 78 de la Providencia del 8 de marzo de 2011.

Asimismo, como parte de esas obras figura la construcción de una vía de comunicación, paralela a la frontera internacional, íntegramente en territorio costarricense, cuyo objeto es permitirle a la República de Costa Rica ejercer plenamente su soberanía en las áreas de frontera, resguardar su integridad territorial, y repeler acciones hostiles contra la Nación.

Esta acción se justifica en las reiteradas violaciones nicaragüenses al orden internacional, y en los pronunciamientos hechos por parte de las autoridades de aquel país, sobre su decisión de desconocer el régimen fronterizo internacional vigente, y desaplicar el principio de estabilidad y finalidad de fronteras.

Ante una campaña difamatoria que Nicaragua desarrolla contra Costa Rica por estas acciones, que se lleva a cabo en medios de prensa de aquel país y en organismos internacionales, Costa Rica estima necesario informar a la Organización de las Naciones Unidas de la situación que ha obligado a Costa Rica a realizar esas acciones de defensa, y desmentir las acusaciones que se profieren contra el país.

Finalmente, ruego que por su intermedio se le informe al Consejo de Seguridad de la presente comunicación, cuyo contenido y propósito se realiza con arreglo a lo dispuesto en el Capítulo VII de la Carta de las Naciones Unidas.

Excelencia, le ruego aceptar las seguridades de mi mayor consideración y estima.

  
Enrique Castillo Barrantes  
Ministro de Relaciones Exteriores y Culto  
República de Costa Rica



**Excelentísimo  
Ban Ki-moon  
Secretario General  
Organización de las Naciones Unidas  
Ciudad de Nueva York**

## **ANNEX 41**

*Note from the Viceminister of Foreign Affairs of Costa Rica to the Minister of  
Foreign Affairs of Nicaragua*

Reference DVM-AM-286-11

20 December 2011

English Translation and Spanish Original



*Vice Minister of Foreign Affairs*

December 20, 2011  
DVM-AM-286-11

Honourable Minister,

I hereby refer to the notes MRE/DVM/AJST/500/11/11 of November 29 and MRE/DVS/VJW0685/12/11 of December 10, both of the current year.

In relation to both of these notes, the Government of Costa Rica rejects the assertions that the construction of a road in the Northern area of Costa Rica “gravely [affects] the environment and Nicaragua’s rights.” The listing of the alleged “consequences” of these works, presented by the Government of Nicaragua, does not constitute evidence that detriment has been caused to Nicaragua; consequently, we fully reject the intended complaint. Costa Rica is still waiting for Nicaragua to provide reliable evidence of the location of the alleged irreversible damages that Nicaragua claims are being caused to San Juan River.

It is contradictory that Nicaragua asks Costa Rica “to submit to Nicaragua, before beginning the road, the Environmental Impact Assessment and the Environmental Management Plan,” when Nicaragua has systematically refused to inform Costa Rica and to present the studies corresponding to all of the works that it carries out in the border area, including the dredging of San Juan River, which has included the cutting of meanders and altering the course of the river from its natural flow. I call to mind that Nicaragua continues with the dredging of San Juan River, which according to Nicaraguan studies entails the removal of over 3 million cubic metres of sediment, all of which is currently being dumped in the Refugio de Vida Silvestre Río San Juan wetland, a Ramsar site, in addition to the sediment already deposited in the Caribe Noreste Wetland in Costa Rica, also a Ramsar site.

It is also worth noting that Nicaragua built a 2-kilometre long airport directly on Refugio de Vida Silvestre Río San Juan wetland, in an area adjacent to Costa Rican territory and to Bahía San Juan del Norte, jointly owned by Costa Rica. For both of these works, the dredging and subsequent dumping of sediment in the wetland as well as the construction of the airport, Nicaragua failed to comply with its international obligations to notify the Secretariat of the Ramsar Convention and to inform Costa Rica.

Nicaragua is also building quite a large bridge on San Juan River, and it has announced the construction of a dam which, in the words of President Ortega’s advisor, will have a devastating impact on the environment for the region. Costa Rica has not been notified of studies for these works either.

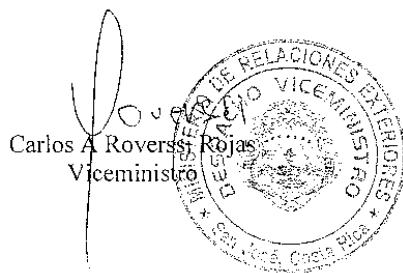
The works carried out by Costa Rica, pursuant to a National Emergency Decree, are solely for the purpose of protecting the integrity of its territory and to bring development to that area of the country. These works, which are being carried out with the minimum impact possible, are a consequence of the grave actions that Nicaragua has performed and continues to perform in the border area, including the continued violation to the Order that indicated Provisional Measures, issued by the International Court of Justice on March 8, 2011, by sponsoring the constant

presence of members of Juventud Sandinista (Sandinista Youth) in Costa Rican territory, in the northern sector of Isla Portillos known as Finca Aragón; the foregoing without mentioning the destruction of several hectares of primary forest and the construction of an artificial canal in the Caribe Noreste Wetland in Costa Rican territory.

Although it is clear that the reasons for Nicaragua's aggressive campaign against Costa Rica are not environmental, Costa Rica, nevertheless, maintains its willingness to hear any legitimate concern which is duly supported by evidence. In this regard, and since Nicaragua claims that damages could be caused to San Juan River, Costa Rica requests that all existing studies regarding the river be forwarded immediately, especially those dealing with the historical records of the turbidity of its waters, chemical makeup, historical sediment load, and all scientific data pertinent to the assessment of the river's condition and to detect possible effects.

Lastly, considering its relation with the Nicaraguan policy of disregarding the established border and threatening Costa Rican national security, the Government of Costa Rica takes this opportunity to strongly condemn the facts occurred yesterday, Monday December 19, in which a group of 15 Nicaraguan soldiers entered approximately one kilometre into Punta Castilla area, expressing threats against officers of the Costa Rican Public Forces who were in the area. This fact, which has been documented, is an unacceptable violation of Costa Rican sovereignty and it confirms that Costa Rica has sufficient reasons to take the measures granted by international law for the protection of its territorial integrity, as well as the civil works that allow ensuring the full exercise of its territorial sovereignty and the monitoring of actions performed by foreign forces in our country, and that enable us to demonstrate these violations before the corresponding international bodies.

Please accept the assurances of my highest consideration.



Your Excellency  
Samuel Santos López  
**Minister of Foreign Affairs**  
Republic of Nicaragua

A handwritten signature and date are written over a large redacted area. The signature appears to read "Roversi". Below the signature, the date "20/12/11" is written, followed by "09:10 p.m.".



*El Viceministro de Relaciones Exteriores y Culto*

20 de diciembre de 2011  
DVM-AM-286-11

Excelentísimo señor Ministro:

Saludo a su Excelencia en ocasión de referirme a las notas MRE/DVM/AJST/500/11/11 de 29 de noviembre y MRE/DVS/VJW0685/12/11 de 10 de diciembre, ambas del año en curso.

En relación con ambas notas, el Gobierno de Costa Rica rechaza las afirmaciones de que la construcción de un camino en la zona norte costarricense afecte “gravemente el medio ambiente y los derechos de Nicaragua”. La enumeración de supuestas “consecuencias” de esa obra por parte del Gobierno de Nicaragua, de ninguna forma es prueba de que se haya causado perjuicios a Nicaragua y, por lo tanto, se rechaza de plano la pretendida protesta. Costa Rica todavía está a la espera de que Nicaragua aporte pruebas fehacientes de la localización de los supuestos daños irreversibles que Nicaragua alega se le está causando al río San Juan.

Es contradictorio que Nicaragua exija a Costa Rica “presentar a Nicaragua, previo al inicio de la carretera, el Estudio de Impacto Ambiental y el Plan de Gestión Ambiental”, cuando Nicaragua misma se ha negado sistemáticamente a informar a Costa Rica y a presentar los estudios correspondientes a todas las obras que desarrolla en la zona limítrofe, incluyendo el dragado del río San Juan, que además ha incluido la corta de meandros y la desviación del río de su caudal natural. Me permito recordar que Nicaragua continua con trabajos de dragado en el río San Juan, que de acuerdo a los propios estudios nicaragüenses, suponen la remoción de más de 3 millones de metros cúbicos de sedimento, todo lo cual se lanza actualmente al humedal Refugio de Vida Silvestre Río San Juan, un sitio Ramsar, además de los sedimentos que ya lanzaron en el Humedal Caribe Noreste de Costa Rica, también un sitio Ramsar.

Recuerdo, asimismo, que Nicaragua también ha construido un aeropuerto de unos 2 kilómetros de extensión, directamente en el mismo humedal Refugio de Vida Silvestre Río San Juan, en una zona adyacente al territorio de Costa Rica y a la Bahía San Juan del Norte, propiedad costarricense. En ninguna obra, tanto el dragado con el consecuente lanzamiento de sedimentos al humedal, o la construcción del aeropuerto, Nicaragua cumplió con sus obligaciones internacionales de notificarle a la Secretaría de la Convención Ramsar, y mucho menos ha informado a Costa Rica.

Nicaragua también construye un puente de gran envergadura en el río San Juan, y ha anunciado la construcción de una represa que, en palabras de un asesor del propio Presidente Ortega, sí tendrá impactos devastadores para el medio ambiente de la región. Tampoco a Costa Rica se le ha notificado estudios de ningún tipo de estas obras.

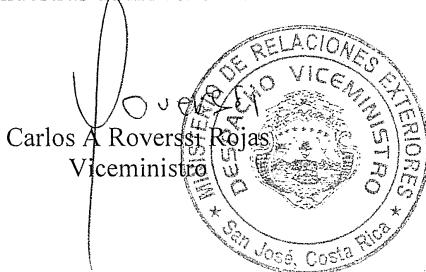
Las labores que Costa Rica realiza, bajo el amparo de un Decreto de Emergencia Nacional, se hacen con el único propósito de salvaguardar la integridad de su territorio y de llevar desarrollo a esa zona del país. Estas obras, que se llevan a cabo con el mínimo de impactos posibles, son consecuencia de las graves acciones que Nicaragua realizó y continúa realizando en

la zona limítrofe, incluida la continua violación a la Providencia que dicta Medidas Provisionales, emitida por la Corte Internacional de Justicia el 8 de marzo de 2011, mediante el patrocinio de la presencia constante de miembros de la Juventud Sandinista en el territorio costarricense del sector norte de Isla Portillos conocido como Finca Aragón. Lo anterior sin mencionar la devastación de varias hectáreas de bosque primario y la construcción de un canal artificial en el Humedal Caribe Noreste en territorio costarricense.

A pesar de que es evidente que las razones que impulsan a Nicaragua a lanzar esta campaña agresiva contra Costa Rica no son ambientales, Costa Rica no obstante mantiene la disposición de escuchar cualquier inquietud que sea legítima y que esté debidamente respaldada. En ese sentido, y dado que Nicaragua alega que se podrían causar daños al río San Juan, Costa Rica solicita que se le remitan inmediatamente todos los estudios existentes sobre dicho río, en especial aquellos que tengan que ver con el registro histórico de la turbidez de sus aguas, su composición química, su carga histórica de sedimentos, y todos aquellos datos científicos que sean pertinentes para la evaluación de la condición del río y detectar posibles afectaciones.

Por último, y dada su relación con la política nicaragüense de desconocer las fronteras establecidas y de amenazar la seguridad nacional costarricense, el Gobierno de Costa Rica se vale de esta ocasión para presentar su más enérgica protesta por los hechos acaecidos el día de ayer, lunes 19 de diciembre, dado que un grupo de unos 15 soldados nicaragüenses penetraron aproximadamente un kilómetro en territorio costarricense en el sector de Punta Castilla, profiriendo amenazas contra oficiales de la Fuerza Pública costarricense que se encontraban en la zona. Este hecho, que se encuentra documentado, es una violación inaceptable de la soberanía costarricense y viene a confirmar que Costa Rica tiene razones suficientes para tomar las medidas que el derecho internacional provee para la protección de su integridad territorial, así como aquellas obras civiles que le permitan asegurar el pleno ejercicio de su soberanía territorial y el monitoreo de las acciones que se llevan a cabo por fuerzas extranjeras en nuestro país y que nos permitan demostrar esas violaciones ante los organismos internacionales respectivos.

Reciba, señor Ministro, las muestras de mi consideración.



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

*[Handwritten signature]*  
Roviedo.  
20/12/11  
04:10. f.m.

## **ANNEX 42**

*Note from the Minister of Foreign Affairs and Worship of Costa Rica to the  
Minister of Foreign Affairs of Nicaragua*

Reference DM-AM-045-12

26 January 2012

English Translation and Spanish Original



*Minister of Foreign Affairs*

January 26, 2012  
DM-AM- 045-12

Honourable Minister:

I am addressing your Excellency in relation to note DVM-AM-286-11, dated December 20, 2011.

In the referred note my Government requested yours to forward all existing studies regarding San Juan River, especially those dealing with the historical records of the turbidity of its waters, chemical makeup, historical sediment load, and all scientific data pertinent to the assessment of the river's condition, in order to assess its current situation.

In the same note Nicaragua was asked to submit all studies regarding the impact on San Juan River that is being caused the construction of a bridge on a sector near San Carlos de Nicaragua, so as to determine joint courses of action, if necessary.

Technical and environmental information was also requested regarding the construction of an airport near Bahía de San Juan del Norte, at Refugio de Vida Silvestre Río San Juan wetland, to determine whether the bay is being affected, as it is jointly owned by Costa Rica.

Since Costa Rica has not received any information in this regard, I reiterate our interest in receiving it promptly.

Please accept the assurances of my highest consideration.



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

*El Ministro de Relaciones Exteriores y Culto*

26 de enero de 2012  
DM-AM- 045-12

Excelentísimo señor Ministro:

Saludo a su Excelencia en ocasión de referirme a la nota DVM-AM-286-11, fechada 20 de diciembre de 2011.

En la referida nota mi Gobierno solicitó al suyo que se le remitieran todos los estudios existentes sobre el río San Juan, en especial aquellos que tengan que ver con el registro histórico de la turbidez de sus aguas, su composición química, su carga histórica de sedimentos, y todos aquellos datos científicos que sean pertinentes para la evaluación de la condición del río, con el objeto de valorar científicamente la situación del mismo.

En la misma nota se solicitó a Nicaragua remitir todos los estudios sobre los impactos que se le están generando al río San Juan por la construcción de un puente, en un sector cercano a San Carlos de Nicaragua, para así determinar cursos de acción conjunta, en caso que fueran necesarias.

También se solicitó la información técnica y ambiental sobre la construcción de un aeropuerto en las cercanías de la Bahía de San Juan del Norte, en el Humedal Refugio de Vida Silvestre Río San Juan, con el objeto de determinar si están ocurriendo impactos a esa bahía, de la cual Costa Rica es co-propietaria.

Dado que Costa Rica no ha recibido ninguna información al respecto, reitero nuevamente nuestro interés de recibir la misma prontamente.

Le ruego aceptar las muestras de mi consideración.

JOAQUÍN ROVERSSI ROJAS  
Carlos A. Roverssi Rojas  
Ministro a.i.  


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

*Recibido  
28.  
Enero 26 de 2012.  
5:17 PM*

## **ANNEX 43**

*Note from the Minister of Foreign Affairs and Worship of Costa Rica to the  
Secretary General of the Ramsar Convention*

Reference DM-110-12,

28 February 2012

English Translation and Spanish Original



## TRANSLATION

### **The Minister of Foreign Affairs and Worship**

28 February 2012  
DM-110-12

Mr Anada Tiega  
Secretary General  
Convention on Wetlands [of International Importance (Ramsar)]  
Gland, Switzerland

Honourable Secretary General,

As you know, the Government of the Republic of Costa Rica is constructing a road in the northern border area, the purpose of which is to facilitate the security and defence of the territorial integrity of Costa Rica as a result of the actions of Nicaragua in the border area, which is the object of proceedings before the International Court of Justice.

In recent months my Government has been carrying out basic infrastructure works to improve a local road in the border area that, in accordance with the technical description of the Northeast Caribbean Wetland, means that these works are taking place in a sector of the area that forms part of the said wetland. My country is complying with the obligation imposed on it by the Ramsar Convention on Wetlands, to notify the Secretariat of these works.

In my note sent last January I informed you that the road is not being constructed in the said wetland. An update of this information allows me to inform you that some works to improve pre-existing roads, namely basic civil engineering works, are being undertaken in the wetland as part of the emergency plan to facilitate national security and also to benefit the local population.

I reiterate that these works are taking place in a sector that historically had already been impacted. It is considered that the works entail no new impacts, and if there are any such impacts the Secretariat will be duly informed of these and of any mitigating measures that the Minister of the Environment and Energy would implement.

Finally, my Government formally invites the Secretariat to carry out a technical visit to the Northeast Caribbean Wetland, if considered necessary at a convenient date.

Please accept the assurances of my highest consideration.

Enrique Castillo Barrantes  
Minister of Foreign Affairs and Worship

*El Ministro de Relaciones Exteriores y Culto*

28 de febrero de 2012

DM-110-12

Señor  
Anada Tiega  
Secretario General  
Convención sobre los Humedales  
Gland, Suiza

Estimado señor Secretario General,

Como es de su conocimiento, el Gobierno de la República de Costa Rica construye un camino en un sector de su frontera norte, cuyo propósito es facilitar la seguridad y defensa de la integridad territorial de Costa Rica como consecuencia de las acciones de Nicaragua en la zona fronteriza, y que es objeto de un litigio ante la Corte Internacional de Justicia.

Dado que en los últimos meses mi Gobierno ha realizado algunas actividades básicas de mejora de infraestructura en un camino vecinal existente en una zona fronteriza que, de acuerdo con la ficha técnica del Humedal Caribe Noreste, ubicarían esas actividades en un sector de la zona incluido como parte del referido humedal, mi país cumple con la obligación que le impone la Convención Ramsar sobre Humedales, de informar a la estimable Secretaría sobre la conducción de esas labores.

En mi comunicación del mes de enero pasado informé que no se construyó un camino en dicho humedal. Con el ánimo de actualizar esa información, me permito comunicar que se han realizado algunas obras de mejora en los caminos ya existentes, así como algunas obras civiles básicas, como parte del plan emergencia para facilitar la seguridad nacional y además en beneficio de los pobladores de la zona.

Es propicio reiterar que esas obras han tenido lugar en un sector que históricamente ya había sido impactado. Aunque se estima que no hay nuevos impactos, si estos llegasen a ser determinados, esta estimable Secretaría será debidamente informada sobre estos y sobre las medidas de mitigación que el Ministerio de Ambiente y Energía implementaría.

Finalmente, mi Gobierno extiende formal invitación a la Secretaría para que, si lo considerara pertinente, envíe una misión técnica al Humedal Caribe Noreste, en la fecha que estime conveniente.

Le ruego aceptar las seguridades de mi consideración.



Enrique Castillo Barrantes  
Ministro de Relaciones Exteriores y Culto

Recibido  
Jaime Díaz G.  
28-02-12



## **ANNEX 44**

*Note from the Secretary General of the Ramsar Convention to the Minister of  
Foreign Affairs and Worship of Costa Rica*

6 June 2012

English Translation and Spanish Original



## TRANSLATION

[Ramsar Logo]

The Ramsar Convention on Wetlands  
From the Secretary General

H.E.

Enrique Castillo Barrantes  
Minister of Foreign Relations and Worship  
Republic of Costa Rica  
Casa Amarilla  
Avenida 7 and 9 streets 11 and 13  
San José, Costa Rica

Gland, 6 June 2012

Excellency,

The Secretariat thanks you for your letters of 17 January and 28 February 2012 in which you informed us about the road that the Republic of Costa Rica is constructing parallel to the San Juan River in the framework of the request made by this Secretariat on 19 December 2011.

In the note of 28 February you indicated that some of the infrastructure works connected to the construction of the road are taking place within the Northeast Caribbean Wetland and you invited the Secretariat to undertake a technical visit to the area if necessary. In this vein, and on the basis of the information provided, the Secretariat considers it appropriate to undertake a technical visit to examine the works in question and to make recommendations that would allow any impacts, if there are any, on the Ramsar site and/or on other wetlands situated where the construction work is taking place to be minimised in accordance with the framework of the [Ramsar] Convention.

In view of the above, the Secretariat could visit the area between 35 and 28 June 2012 prior to the Ramsar COP11 [11<sup>th</sup> meeting of the Conference of the Contracting Parties], or afterwards between 23 and 26 July. However, taking into account that we are at the end of the triennium, on this occasion the costs of the visit would have to be covered by the Government of Costa Rica, with respect to which we await your directions.

Please accept expressions of my consideration and esteem.

Anada Tiega  
Secretary General  
Ramsar Convention on Wetlands



*Del Secretario General*

S. E.

**Enrique Castillo Barrantes**

Ministro de Relaciones Exteriores y Culto  
República de Costa Rica  
Casa Amarilla  
Avenida 7 y 9 calles 11 y 13  
San José, Costa Rica

Gland, 6 de Junio de 2012

Su excelencia,

La Secretaría agradece sus comunicaciones del 17 de enero y 28 de Febrero de 2012 en las cuales nos informan sobre el camino que la República de Costa Rica construye paralelo al Río San Juan en el marco de la solicitud realizada por esta Secretaría el pasado 19 de diciembre de 2011.

En la comunicación del 28 de febrero se indica que algunas de las actividades de infraestructura de construcción de la vía se ubicarían al interior del sitio Ramsar Caribe Nordeste así como la invitación de la Secretaría a realizar una visita técnica si se considera pertinente. En este sentido, y con base en la información suministrada esta Secretaría estima conveniente la realización de una misión técnica que evalúe las obras en mención y genere recomendaciones que permitan minimizar si él es el caso los impactos sobre el sitio Ramsar y/o otros humedales que puedan estar localizados en la obra en construcción como se estipula en el marco de la Convención.

Para lo anterior, la Secretaría podría visitar el área del 25 al 28 de Junio de 2012 previo a la COP11 de Ramsar o posteriormente del 23 al 26 de Julio. No obstante, teniendo en cuenta que estamos cerrando el trienio en esta oportunidad los costos de la misión tendrían que ser asumidos por el Gobierno de Costa Rica, para lo cual quedamos atentos a sus indicaciones.

Con sentimiento de consideración y estima,

**ANADA TIEGA**  
Secretario General  
Convención Ramsar sobre los Humedales

c.c. Sr. Manuel Dengo, Embajador Representante Permanente de Costa Rica ante las Naciones Unidas y otras Organizaciones Internacionales en Ginebra  
Sra. Ana Lorena Guevara, Viceministra de Ambiente  
Sr. Jorge Gamboa, Autoridad Administrativa Ramsar Costa Rica

## **ANNEX 45**

*Letter from the Agent of Nicaragua to the Registrar of the International Court  
of Justice*

Reference 02-19-12-2012,

19 December 2012





**EMBASSY OF NICARAGUA  
THE HAGUE**

19 December 2012

Ref: 02-19-12-2012

Excellency,

With reference to the proceedings instituted by the Republic of Nicaragua against the Republic of Costa Rica on 22 December 2011, in the case concerning *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, I have the honour to draw the attention of the Court to the section A of Chapter 6 of its Memorial in this case, deposited today with the Registry. Under the title “Urgently needed Immediate Remediation Measures”, this section sets out the most urgent remediation measures to be taken in order to avoid continuous and irreparable harm to Nicaragua’s territory.

As the Court is aware, Costa Rica has repeatedly refused to give Nicaragua appropriate information on the road works and has denied that it has any obligation to prepare an Environmental Impact Assessment or to provide such a document to Nicaragua. Furthermore, as was confirmed by a team of environmental scientists and road construction experts<sup>1</sup> following their personal inspection of the River, Costa Rica has taken no measure to stop or even mitigate the serious harms caused to the San Juan de Nicaragua River.

The situation remains alarming and, as the Court will see, the harms caused and the urgency of taking measures to alleviate them is fully documented not only by the Kondolf Report, but also by Costa Rican institutions.

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<sup>1</sup> G. Mathias Kondolf, Danny Hagans, Bill Weaver and Eileen Weppner, “Environmental Impacts of Juan Rafael Mora Porras Route 1856, Costa Rica, on the Río San Juan, Nicaragua,” December 2012 (“Kondolf Report”),(NM, Vol. II, Annex 1).



**EMBASSY OF NICARAGUA  
THE HAGUE**

In light of these circumstances, Nicaragua considers that the Court has been provided with the necessary information in order to decide "*proprio motu* whether the circumstances of the case require the indication of provisional measures", without having to go through the costly and lengthy exercise of public hearings.

Please accept, Excellency, the assurances of my highest consideration.

Carlos J. ARGÜELLO GÓMEZ  
Agent  
Republic of Nicaragua

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

## **ANNEX 46**

*Note from the Minister of Foreign Affairs and Worship of Costa Rica to the  
Minister of Foreign Affairs of Nicaragua*

Ref. DM-AM-063-13,

6 February 2013

English Translation and Spanish Original



*The Minister of Foreign Affairs and Worship*

San José, 6 February 2013  
**DM-AM-063-13**

Dear Minister,

As your Government is aware, Costa Rica has been building a road in northern Costa Rica, entirely on its national and sovereign territory. Nicaragua, for reasons discussed in the case concerning *Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, has indicated that said work seriously affects the San Juan River. Costa Rica, however, does not find any of the adverse impacts that your government has indicated.

Despite the request for technical information requested by Costa Rica last year, which Nicaragua did not provide, and in order to establish with certainty the situation of the San Juan River in an objective and scientific manner, within the framework of the procedure initiated by your Government before the International Court of Justice, Costa Rica plans to undertake a series of complementary actions to determine the true situation.

To that end, first, with the purpose of verifying the situation of the right bank of the river, Costa Rican technicians propose to navigate the San Juan from marker II to the intersection of the San Juan River and the Colorado River. This navigation will be carried out by paying for the services of a private boatman, in the exercise of the right of perpetual navigation established by the Treaty of Limits Cañas-Jerez, in accordance with the decision of the International Court of Justice in its Judgment of 13 July 2009.

Second, Costa Rica wishes to take discharge measurements and collect water samples from the San Juan River on a monthly basis, to establish its chemical quality and to measure the sediment load that the River carries. To this end, Costa Rica proposes the following gauging sites along the river: 1) 200 metres upstream from the town of San Carlos de Nicaragua, 2) at marker II, 3) 200 metres upstream from the mouth of the San Carlos River, 4) 300 metres downstream from the mouth of the San Carlos River, 5) 200 metres upstream from the mouth of the Sarapiquí River, 6) 300 metres downstream from the mouth of the Sarapiquí River, and 7) 300 metres upstream from the intersection of the Colorado River and the San Juan River.

These samples, taken each month over the course of a year, will establish scientific criteria for determining the physical-chemical quality of the waters of the River, and verify, also by reference to scientific criteria, whether or not there is serious harm to the River as a result of the building of the road. Furthermore, it will be necessary to undertake monthly gauging measurements of the San Juan River, in locations that will be reported promptly to Nicaragua. Naturally, the information obtained would be transmitted to your country.

**DM-AM-063-13**

-page 2-

Costa Rica hopes to have the agreement of your Government to undertake the actions referred to in paragraph 4 of this note, in which case the respective dates of entry into the San Juan River for the aforesaid purpose, would be communicated through official channels. In order to organize and carry out the actions thus identified, my Government would appreciate receiving a prompt response from you.

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

**Enrique Castillo Barrantes  
Minister**

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

*El Ministro de Relaciones Exteriores y Culto*

San José, 6 de febrero de 2013  
DM-AM- 063-13

Estimado señor Ministro:

Como su Gobierno conoce, Costa Rica ha venido construyendo un camino en la zona norte, enteramente en su territorio nacional y soberano. Nicaragua, por razones que se discuten en el caso denominado "Construcción de un Camino en Costa Rica a lo largo del Río San Juan (Nicaragua v. Costa Rica)", ha manifestado que esa obra afecta seriamente al río San Juan. No obstante, Costa Rica considera que no existen las afectaciones que su Gobierno ha señalado.

A pesar de la solicitud de información técnica realizada por Costa Rica el año pasado, que Nicaragua no facilitó, y con el propósito de establecer de forma cierta, objetiva y científica la situación del río San Juan, en el marco del proceso iniciado por su Gobierno ante la Corte Internacional de Justicia, Costa Rica se propone realizar una serie de acciones complementarias para determinar la verdadera situación.

En ese sentido, primero, técnicos especialistas costarricenses se proponen navegar el San Juan, desde el mojón II hasta la bifurcación del río San Juan y el Río Colorado, con el fin de evaluar la situación de la ribera derecha del río. Esta navegación se hará contratando los servicios de un botero privado, en ejercicio del derecho perpetuo de libre navegación establecido por el Tratado de Límites Cañas-Jerez, de conformidad con lo dispuesto por la Corte Internacional de Justicia en su fallo de 13 de julio de 2009.

Segundo, Costa Rica desea realizar mediciones y tomar muestras de las aguas del río San Juan de forma mensual, para establecer su calidad química así como para medir la carga de sedimentos que dicho río acarrea. Para ese fin, Costa Rica propone tomar muestras en los siguientes lugares a lo largo del río: 1) 200 metros aguas arriba de la localidad de San Carlos de Nicaragua, 2) en el mojón II, 3) 200 metros aguas arriba de la desembocadura del río San Carlos, 4) 300 metros aguas abajo de la desembocadura del río San Carlos, 5) 200 metros aguas arriba de la desembocadura del río Sarapiquí, 6) 300 metros aguas abajo de la desembocadura del río Sarapiquí, y 7) 300 metros aguas arriba de la bifurcación del río Colorado y el río San Juan.

DM-AM- 063-13  
-pág 2-

Estas muestras, tomadas cada mes por espacio de un año, permitirán establecer criterios científicos para determinar la calidad físico-química de las aguas del río, y verificar, también con criterios científicos, si existe o no una afectación de importancia producto de la construcción del referido camino. Asimismo, será necesario realizar aforos mensuales del río San Juan, en lugares que se informarán oportunamente a Nicaragua. Naturalmente la información obtenida sería transmitida a su país.

Costa Rica espera contar con la anuencia de su Gobierno para la realización de las acciones descritas en el párrafo cuarto de esta nota, en cuyo caso se comunicaría, por las vías oficiales respectivas, las fechas de ingreso al río San Juan para ese propósito. Con el fin de poder organizar y llevar a cabo las acciones señaladas, mi Gobierno apreciará la pronta respuesta del suyo.

Aprovecho la ocasión para reiterar las seguridades de mi consideración.

  
Enrique Castillo Barrantes  
Ministro  
  
MINISTERIO DE RELACIONES EXTERIORES  
Y CULTO A  
SAN JOSÉ, COSTA RICA

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

## **ANNEX 47**

*Letter from the Co-Agent of Costa Rica to the Registrar of the International  
Court of Justice*

Reference ECRPB-005-13

7 February 2013





7 February 2013  
ECRPB-005-13

Sir,

I have the honour to refer to your letter, dated 15 January 2013, requesting Costa Rica to inform the Court of its views on:

1. the joinder of the case *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)* with *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*; and
2. Nicaragua's request that the Court, acting *proprio motu*, decide whether the circumstances of the *Road* case require the indication of provisional measures without a hearing.

Costa Rica opposes both the joinder of the *Road* case with the *Certain Activities* case and the indication of provisional measures *proprio motu* in the *Road* case, for the following reasons.

#### 1. Joinder

In its first letter dated 19 December 2012, Nicaragua 'draws the attention of the Court to the need to join the proceedings, and formally requests the Court to decide on this matter in the interest of the proper administration of Justice and in accordance with Article 47 of the Rules of Court.'<sup>1</sup> Nicaragua supplemented its submissions on joinder in its Written Observations on the Admissibility of its Counter-Claims, filed on 30 January 2013 in the *Certain Activities* case.<sup>2</sup>

The two cases should not be joined for the reasons already indicated in paragraphs 2.30 to 2.34 of Costa Rica's Written Observations on the Admissibility of Nicaragua's Counter-Claims, filed

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<sup>1</sup> Letter from Nicaragua to the ICJ, 19 December 2012, reference 01-19-12-2012, p. 2.

<sup>2</sup> Written Observations of Nicaragua on the Admissibility of its Counter-Claims, 30 January 2013, paras 3.1-3.12.

on 30 November 2012 in the *Certain Activities* case.<sup>3</sup> It may be noted that the Court has never before joined cases where that course of action was opposed by a party.<sup>4</sup> In any event, joinder will not contribute to the proper administration of justice. To opposite effect, Nicaragua's request is clearly intended to delay the prompt resolution of the *Certain Activities* case.

Nicaragua characterises Costa Rica's right to have the *Certain Activities* case promptly resolved as "quibbl[ing]" and argues that joinder "would not unduly delay the settlement of the dispute".<sup>5</sup> This is not correct. The parties agree that no second round of written pleadings is needed in the *Certain Activities* case; consequently, subject to the Court's order as to the admissibility of Nicaragua's counterclaims, the *Certain Activities* case is ready for hearing, as Nicaragua accepts.<sup>6</sup> In contrast, the first round of written pleadings in the *Road* case will not be completed until the end of this calendar year, after which the parties may require a second round of written pleadings. Until the Court takes a view on whether a second round is required (which it cannot do before December this year), it is impossible to predict when the *Road* case will be ready to proceed to oral hearing. Moreover, until the *Certain Activities* case is resolved, Costa Rica is prevented from exercising sovereignty over part of its territory (territory presently occupied under controversial circumstances). There is thus urgency demanding the swift determination of the dispute in the *Certain Activities* case.

Nicaragua seeks to buttress its position by citing three orders of the Court which referred to "procedural economy".<sup>7</sup> Each of those orders concerned the admission of counter-claims which were not already before the Court in a separate proceeding. Here the question to be resolved by the Court is not whether a party to a proceeding may make a counter-claim which is not otherwise before the Court, but whether a different dispute which is before the Court in another proceeding should be compulsorily joined to the first proceeding, over the objection of a party and in circumstances where to do so would result in considerable delay in the resolution of a dispute as to territorial sovereignty. The tests for admissibility of a counter-claim and joinder of proceedings are not identical and should not, as Nicaragua urges, be conflated.

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<sup>3</sup> Written Observations of Costa Rica on the Admissibility of Nicaragua's Counter-Claims, 30 November 2012, paras 2.30-2.34.

<sup>4</sup> See for example *Fisheries Jurisdiction (United Kingdom v. Iceland)*, Merits, Judgment, I.C.J. Reports 1974, p. 6, para. 8, where in deciding not to join the cases, the Court 'took into account the fact that... joinder would be contrary to the wishes of the two Applicants'. See also *Legality of Use of Force (Serbia and Montenegro v. Belgium)*, Preliminary Objections, Judgment, I.C.J. Reports 2004, pp. 286-287, paras. 17-18; and S. Rosenne, *The Law and Practice of the International Court, 1920-2005* (2006), vol. III, pp. 1209 and 1219.

<sup>5</sup> Written Observations of Nicaragua on the Admissibility of its Counter-Claims, 30 January 2013, para 3.8.

<sup>6</sup> Written Observations of Nicaragua on the Admissibility of its Counter-Claims, 30 January 2013, para 3.7.

<sup>7</sup> Written Observations of Nicaragua on the Admissibility of its Counter-Claims, 30 January 2013, para 3.8, referring to *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Counterclaims, Order of 17 December 1997, I.C.J. Reports 1997, p. 257, para. 30; *Oil Platforms (Iran v. United States of America)*, Order of 10 March 1998, I.C.J. Reports 1998, p. 205, para. 43; and *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Order of 29 November 2001, I.C.J. Reports 2001, p. 680, para. 44.

Moreover, as the Court has emphasized, a decision to admit claims to existing proceedings must “be subject to conditions designed to prevent abuse”,<sup>8</sup> and must take account “of the interest of the Applicant to have its claims decided within a reasonable period of time.”<sup>9</sup> Such considerations must also apply to requests for joinder, particularly in circumstances where joinder is opposed by a party which would suffer considerable delay in the resolution of its application.

Furthermore, as Nicaragua accepts, the *Certain Activities* case concerns an area geographically distant from the road the subject of the present dispute. In its Memorial in the *Road* case, Nicaragua acknowledges that the road is ‘far removed from’, ‘does not extend to’, ‘is not situated anywhere near’, has a ‘lack of proximity to’ and is ‘far away from’ the area in dispute in the *Certain Activities* case.<sup>10</sup> This suggests that there is not a close connection between the two cases such as might justify joinder. It is not sufficient that both cases are related – although in very different respects – to the San Juan River, which is more than 205 km in length (and the southern or right bank of the River constitutes the common border between the two States for a distance of approximately 150 km).

## **2. Provisional Measures in the *Road* case**

In its second letter dated 19 December 2012, Nicaragua requested that the Court ‘decide *proprio motu* whether the circumstances of the case require the indication of provisional measures’, without having to go through the costly and lengthy exercise of public hearings.<sup>11</sup> This request is elaborated in Section A of Chapter 6 of Nicaragua’s Memorial.

Nicaragua has explicitly declined to make a formal request for provisional measures.<sup>12</sup> It has instead requested that provisional measures be indicated pursuant to Article 75 of the Rules of the Court.<sup>13</sup>

It is not for Nicaragua to request the Court to exercise its power to indicate provisional measures *proprio motu*. The Rules clearly set out the procedure that Nicaragua is to follow if it wishes to request provisional measures. In particular:

1. Nicaragua is to make a written request;<sup>14</sup>

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<sup>8</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Counterclaims, Order of 17 December 1997*, I.C.J. Reports 1997, p. 257, para. 30.

<sup>9</sup> *Oil Platforms (Iran v. United States of America), Order of 10 March 1998*, I.C.J. Reports 1998, p. 205, para. 43.

<sup>10</sup> NM, paras. 1.7, 2.18, 5.16, 5.17 and 5.20.

<sup>11</sup> Letter from Nicaragua to the ICJ, 19 December 2012, reference 02-19-12-2012, p. 2.

<sup>12</sup> NM, para. 6.6.

<sup>13</sup> NM, para. 6.3.

<sup>14</sup> Article 73(1) of the Rules of the Court.

2. the ‘request shall specify the reasons therefor, the possible consequences if it is not granted, and the measures requested’;<sup>15</sup> and
3. there is to be a ‘hearing which will afford the parties an opportunity of being represented at it. The Court shall receive and take into account any observations that may be presented to it before the closure of the oral proceedings.’<sup>16</sup>

Nicaragua accepts that it has not made a formal request in accordance with these procedural requirements.<sup>17</sup> The proper administration of justice dictates that Nicaragua not be permitted to bypass these requirements. In the circumstances, it is evident that Nicaragua’s request is an attempt to deny Costa Rica its fundamental right to be heard on the question of provisional measures.

Costa Rica respectfully suggests that in any event this is not an appropriate case for the Court to exercise its power to indicate provisional measures *proprio motu*. In particular, Nicaragua has failed to demonstrate that there is a situation of urgency requiring the Court to take exceptional action.

The Court has indicated provisional measures without an oral hearing in only one case, *LaGrand*.<sup>18</sup> As stated by the Court in that case, it may indicate provisional measures without holding oral hearings ‘in the event of extreme urgency’.<sup>19</sup> The *LaGrand* case concerned the imminent loss of life. Germany’s Application and Request for the Indication of Provisional Measures were filed on 2 March 1999, in relation to the execution of Walter LaGrand planned for the following day.<sup>20</sup> It was not possible to follow the normal procedure in that case as, as the Court stated, ‘the sound administration of justice requires that a request for the indication of provisional measures founded on Article 73 of the Rules of Court be submitted in good time’.<sup>21</sup> The *LaGrand* decision was an exceptional departure from the Court’s previous position that its ‘powers under Article 75, paragraph 1, of the Rules of Court... do not in any event extend to indicating measures without affording both Parties the opportunity of being heard’.<sup>22</sup>

In contrast to the *LaGrand* case, there is no situation of urgency – still less extreme urgency – in the present case. Nicaragua’s election to spend 12 months preparing its Memorial is a sufficient demonstration of that fact.

<sup>15</sup> Article 73(2) of the Rules of the Court.

<sup>16</sup> Article 74(3) of the Rules of the Court.

<sup>17</sup> NM, para. 6.6.

<sup>18</sup> *LaGrand (Germany v. United States of America), Provisional Measures, Order of 3 March 1999, I.C.J. Reports 1999*, p. 9.

<sup>19</sup> *LaGrand*, p. 14 para. 21.

<sup>20</sup> *LaGrand*, p. 11, para. 6, and p. 12, para. 8.

<sup>21</sup> *LaGrand*, p. 14, para. 19.

<sup>22</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993*, p. 334, para. 13.

Accept, Sir, the assurances of my highest consideration.



Jorge Urbina  
Ambassador to the Kingdom of the Netherlands  
Co-Agent of Costa Rica

His Excellency  
Mr. Philippe Couvreur  
Registrar  
International Court of Justice  
Carnegieplein 2  
2517 KJ The Hague



## **ANNEX 48**

*Note from the Minister of Foreign Affairs of Nicaragua to the Minister of  
Foreign Affairs and Worship of Costa Rica*

Reference MRE/DM-AJ/129/03/13

5 March 2013

English Translation and Spanish Original



**Minister of Foreign Affairs****Managua, March 5, 2013****MRE/DM-AJ/129/03/13**

Honourable Minister,

I am addressing you in reference to your note DM-AM-063-13 dated February 6, 2013, which indicates that “in the exercise of the perpetual right of free navigation,” Costa Rican specialists intend to navigate San Juan de Nicaragua River in order to assess the river’s situation, and also request Nicaragua’s consent to perform measurements and take samples of the waters of San Juan River on a monthly basis to determine its chemical quality and to measure the silt load.

In this regard, the Government of Reconciliation and National Unity of the Republic of Nicaragua, which loyally complies with decisions of the International Court of Justice, wishes to recall to the illustrious Government of Costa Rica that based on the unanimous decision of the Court in its judgment of July 13, 2009, in relation to the case “Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua),” the right of free navigation of this country is limited solely and exclusively to navigation “for commercial purposes” and to the space where navigation is common. Thus, your government’s intention to navigate San Juan River for scientific purposes disregards that set forth by the Court in conformity with that established in the Jerez-Cañas Treaty of Limits.

The Government of Nicaragua equally wishes to reiterate that the Government of Costa Rica has the obligation to present technical information regarding the construction of the highway, and that to date Costa Rica has not only failed to comply with said obligation but has also announced that the work on Highway 1856 is about to be renewed, as confirmed by the Minister of Public Works, Pedro Castro, and is expected to be significantly completed by May 2014.

The renewal of the works has been announced despite the evident negative impact that the construction of the 1856 Highway has caused, causes and continues to cause to San Juan de Nicaragua River, which is detailed in the technical information annexed to the Counter-Memorial presented by the Republic of Nicaragua in the case “Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)” and in the Memorial presented by the Republic of Nicaragua in the case “Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).” As Costa Rica is aware, this technical information was prepared by internationally renowned experts, environmental organizations and non-governmental organizations of Nicaraguan as well as Costa Rica origin, in addition to Costa Rican and Nicaraguan institutions.

Minister of Foreign Affairs

Page No. 2  
March 5, 2013

Based on the foregoing, and specifically on the announcement that the works will be continued, your illustrious government's proposal to perform scientific studies to determine the situation of San Juan de Nicaragua River is contradictory and anachronistic, especially considering that the results of a potential study would be ready once the works are completed. On the other hand, and considering that navigation for scientific purposes is not included in the right of free navigation of Costa Rica clearly defined by the Court, even if Nicaragua were to authorize this study it would have to be performed under the supervision and logistics parameters that Nicaragua considers convenient.

Consequently, Nicaragua considers that a study performed jointly in Nicaragua and Costa Rica could be an effective mechanism, mutually beneficial, and that it would serve to implement the order of the Court of 8 March 2011, provided that prior to the study Costa Rica immediately cease the works and present the corresponding technical information.

In this regard, and seeking to protect San Juan de Nicaragua River, in conformity with that established by international law, conventions, bilateral, regional and multilateral treaties, as well as in compliance with that established by the order of the International Court of Justice of 8 March 2011, as well as to what was indicated in the Judgment of the Central American Court of Justice of 21 June 2012, the Government of Nicaragua emphatically reiterates to the Republic of Costa Rica the request to immediately suspend the construction of Highway 1856 and to present the Environmental Impact Study and Mitigation Plan due, among others, to the Republic of Nicaragua for its analysis and response.

Please receive, Honourable Minister, assurances of my highest consideration.

(Signature)

Samuel Santos López

Honourable Minister  
Enrique Castillo Barrantes  
Minister of Foreign Affairs  
Republic of Costa Rica



*El Ministro de Relaciones Exteriores*

Managua, 5 de marzo de 2013  
MRE/DM-AJ/129/03/13

Señor Ministro:

Me dirijo a usted en ocasión de hacer referencia a su nota DM-AM-063-13 de fecha 6 de febrero de 2013, mediante la cual indica que, "en ejercicio del derecho perpetuo de libre navegación", especialistas costarricenses se proponen navegar el Río San Juan de Nicaragua con el fin de evaluar la situación del río, y además solicita la anuencia de Nicaragua para realizar mediciones y tomar muestras de las aguas del Río San Juan de Nicaragua de forma mensual para establecer su calidad química y medir la carga de sedimentos.

Al respecto el Gobierno de Reconciliación y Unidad Nacional de la República de Nicaragua, como fiel cumplidor de las decisiones de la Corte Internacional de Justicia, desea recordarle al ilustre Gobierno de Costa Rica que en virtud de la decisión unánime de la Corte en su sentencia del 13 de Julio 2009, en relación al caso "*Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*", el derecho de libre navegación de dicha nación se limita única y exclusivamente a la navegación con "fines de comercio" y al espacio donde la navegación es común. En ese sentido, la intención de su gobierno de navegar el Río San Juan de Nicaragua con fines científicos representa un desconocimiento a lo dispuesto por la Corte en concordancia con lo establecido en el Tratado de Límites Jerez-Cañas.

El Gobierno de Nicaragua desea igualmente reiterar que corresponde al Gobierno de Costa Rica la obligación de presentar la información técnica relativa a la construcción de la carretera y que hasta la fecha Costa Rica no solamente no ha cumplido con dicha obligación, sino que además ha anunciado que los trabajos de la Carretera 1856 están por reiniciarse, según confirmó el Ministro de Obras Públicas Pedro Castro, los cuales estarían previstos a finalizarse en gran medida el mes de Mayo del año 2014.

La reanudación de las obras ha sido anunciada a pesar del evidente impacto negativo que la construcción de la Carretera 1856 ha causado, causa y continua causando al Río San Juan de Nicaragua, el cual se encuentra detallado en la información técnica anexada a la Contra Memoria presentada por la República de Nicaragua en el caso referido a "*Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*" y en la Memoria presentada por la República de Nicaragua en el caso concerniente a "*Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa)*". Como es del conocimiento de Costa Rica, dicha información técnica ha sido elaborada por expertos internacionales de reconocimiento mundial, organizaciones ambientalistas y organismos no-gubernamentales de origen nicaragüense como costarricenses al igual que instituciones de gobierno costarricenses y nicaragüenses.





*El Ministro de Relaciones Exteriores*

Página No. 2  
5 de marzo de 2013

En vista de lo anterior y particularmente del anuncio informando la continuación de las obras, la propuesta de su ilustre gobierno de realizar un estudio científico para determinar la situación del río San Juan de Nicaragua resulta contradictoria y anacrónica, especialmente si se tiene en cuenta que los resultados de un posible estudio estarían listos una vez que la obra fuese finalizada. Por otro lado, y considerando que la navegación con fines científicos no está cubierta por el derecho de libre navegación de Costa Rica claramente definido por la Corte, aún cuando Nicaragua autorizara la realización de dicho estudio, el mismo tendría que ser ejecutado bajo la supervisión y los parámetros logísticos que Nicaragua determinara convenientes.

Bajo esa lógica, Nicaragua considera que un estudio realizado conjuntamente tanto en Nicaragua como en Costa Rica podría ser un mecanismo efectivo, de beneficio mutuo, y que serviría para implementar la ordenanza de la Corte del 08 de Marzo 2011; toda vez que, previo al mismo, Costa Rica detenga inmediatamente las obras y presente la correspondiente información técnica.

En tal sentido y en aras de la protección del Río San Juan de Nicaragua, en concordancia con lo establecido por el derecho internacional, convenios y tratados bilaterales, regionales y multilaterales, así como en cumplimiento de lo establecido por la ordenanza de la Corte Internacional de Justicia el día 08 de Marzo del 2011, al igual que lo indicado en la Sentencia de la Corte Centroamericana de Justicia Centroamericana el día 21 Junio 2012, el Gobierno de Nicaragua reitera enérgicamente a la República de Costa Rica la solicitud de suspensión inmediata de la construcción de la Carretera 1856 y de presentación del debido Estudio de Impacto Ambiental y Plan de Mitigación, entre otros, a la República de Nicaragua para su análisis y reacción.

Reciba, Señor Ministro, las muestras de mi distinguida consideración.

Samuel Santos López



Excelentísimo Señor  
Enrique Castillo Barrantes  
Ministro de Relaciones Exteriores  
República de Costa Rica

## **ANNEX 49**

*Letter from the Co-Agent of Costa Rica to the Registrar of the International  
Court of Justice*

Reference ECRPB-013-2013

7 March 2013





7 March 2013

ECRPB-013-2013

Excellency,

I have the honour to refer to Nicaragua's Memorial in the case *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)* filed on 19 December 2012. Annex I to the Memorial is a report prepared by G. Mathias Kondolf, Danny Hagans, Bill Weaver and Eileen Weppner (***the Report***).

The Report contains references to satellite imagery, maps, notes, records and photographs which do not appear to have been submitted with the Memorial. For example, reference is made to:

1. analysis of “high-resolution satellite imagery”;<sup>1</sup>
2. analysis of “aerial imagery”;<sup>2</sup>
3. imagery described as “Pleiades Satellite pan-sharpened multi-spectral imagery with 50cm resolution for September-October 2012; and RapidEye Satellite multi-spectral imagery with 5m resolution acquired December 2009”;<sup>3</sup>
4. the use of “ArcMap GIS to digitize” the road;<sup>4</sup>
5. documentation on “2009 and 2012 orthophotographic; 1:50,000 topographic maps; October 2012 field reconnaissance maps, our field notes and photography ... [and] photography provided in prior reports”;<sup>5</sup>
6. “notes and photographs” taken and produced during aerial reconnaissance, and “hand mapping of road segments on topographical maps”;<sup>6</sup> and

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<sup>1</sup> Annex I, para 1.3.1.

<sup>2</sup> Annex I, para 1.3.4.

<sup>3</sup> Annex I, para 2.2.

<sup>4</sup> Annex I, para 2.2.

<sup>5</sup> Annex I, para 2.2.

7. “records” made on “topographic maps”.<sup>7</sup>

The imagery, maps, notes, records and photographs are used to form the basis of the conclusions drawn in the Report. Those conclusions are in turn relied upon in the Memorial. Procedural fairness dictates that these be produced to Costa Rica, to allow it a full and fair opportunity of answering the case which is put to it. Costa Rica requests that all photographs and satellite images be sent in their originals, in particular the Pleiades Satellite pan-sharpened multi-spectral imagery with 50 cm resolution for September-October 2012; and the RapidEye Satellite multi-spectral imagery with 5m resolution acquired in December 2009.

In addition, the Report contains estimates of “surface erosion rates for the upstream 41 km” of the Road,<sup>8</sup> and “landslide/gully erosion” relating to road cuts and fill for the same section of the Road.<sup>9</sup> Neither the input data nor the calculations for these estimates have been provided. Furthermore, the Report refers to 54 documented sites of “direct delivery of sediment from soil erosion to the river”.<sup>10</sup> No GPS coordinates are provided for these sites. For the same reasons identified above, these data, calculations and relevant GPS coordinates should be produced to Costa Rica as soon as practicable.

For the reasons explained, Costa Rica asks that the Court order Nicaragua to produce the information, data and original documents requested herein.

Furthermore, on 6 February 2013, Costa Rica sent a diplomatic note to Nicaragua requesting its agreement to allow experts to take samples of water along the San Juan River, together with flow measurements, for a period of 12 months. This note is attached, together with an English translation. Nicaragua responded to Costa Rica on 5 March 2013 (note attached, together with an English translation), refusing Costa Rica’s requests. While Nicaragua suggests an overall study both in Nicaragua and in Costa Rica Nicaragua seeks to attach to it unreasonable conditions. Costa Rica is, as a matter of course, conducting a study in Costa Rica, but it requires sampling and measurements of the San Juan River in order to respond to the claims made against it in the present case. All the information gathered from these efforts will be shared with Nicaragua and the Court.

Nicaragua also disputes Costa Rica’s rights of navigation on the River. For the avoidance of doubt, Costa Rica does not accept Nicaragua’s interpretation of its rights of navigation. Equally, Costa Rica rejects the contention that these questions are related to the provisional measures ordered by the Court on 8 March 2011 in another case. These questions concern the case brought by Nicaragua on 19 December 2011 concerning the construction of a road on Costa Rican territory.

<sup>6</sup> Annex I, para 2.3.

<sup>7</sup> Annex I, para 2.4.

<sup>8</sup> Annex I, para 4.12.

<sup>9</sup> Annex I, para 4.12.

<sup>10</sup> Annex I, paras 1.3.6 and 4.12.

Costa Rica considers that Nicaragua's unsubstantiated allegations concerning the impact of the road over the San Juan River, cannot be seriously assessed without monitoring the flow and quality of the water and hence without taking measurements and samples. As a matter of course, these measurements, in order to be credible, require joint monitoring and the Court's supervision. Thus, in a spirit of cooperation, Costa Rica proposes to renew its request to Nicaragua as follows:

- A To jointly take discharge measurements and collect water samples from the San Juan River on a monthly basis, to establish the water discharge, chemical quality and sediment concentration.
- B To this end, Costa Rica proposes the following gauging sites along the River:
  - 1) 200 metres upstream from the town of San Carlos de Nicaragua;
  - 2) at marker II;
  - 3) 200 metres upstream from the mouth of the San Carlos River;
  - 4) 300 metres downstream from the mouth of the San Carlos River;
  - 5) 200 metres upstream from the mouth of the Sarapiquí River;
  - 6) 300 metres downstream from the mouth Sarapiquí River;
  - 7) 300 metres upstream from the bifurcation of the Colorado River and the San Juan River; and
  - 8) the San Juan River 300 metres downstream from the bifurcation of this and the Colorado River.
- C These samples, taken each month over the course of a year, will establish scientific criteria for determining the physical-chemical quality of the waters of the River, and verify, also by reference to scientific criteria, whether or not there is serious harm to the River as a result of the building of the road.
- D Costa Rica further proposes that a third sample be taken, labelled and sealed, and that this sample be sent to the Court for safe-keeping. If the analysis carried out by Nicaragua and Costa Rica of its samples diverge from one another, the sample sent to the Court may be analyzed by an independent laboratory to establish its true chemical composition and sediment load.
- E In addition, Costa Rica proposes that the parties jointly take monthly gauging measurements of the San Juan River, at the same locations where water samples are collected.

Costa Rica asks the Court to convey this proposal to Nicaragua, so that, if there is agreement, these technical tasks may commence as soon as practicable.

Accept, Sir, the assurances of my highest consideration.

Yours sincerely,



Ambassador Jorge Urbina  
Co-Agent



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

#### Certification

I certify that the following document annexed to this letter is a true copy and conforms to the original document and that the translation into English made by Costa Rica is an accurate translation.

#### Diplomatic Correspondence

1. Note from the Minister of Foreign Affairs of Costa Rica to the Minister of Foreign Affairs of Nicaragua, Ref. DM-AM- 063-13, 6 February 2013
2. Note from the Minister of Foreign Affairs of Nicaragua to the Minister of Foreign Affairs of Costa Rica, Ref. MRE/DM-AJ/129/03/13, 5 March 2013

## **ANNEX 50**

*Letter from the Registrar of the International Court of Justice to the Agent of  
Costa Rica*

Reference 141641

11 March 2013



## COUR INTERNATIONALE DE JUSTICE

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141641

11 March 2013

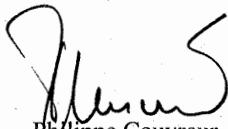
Sir,

With reference to the case concerning Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica) and further to the letter from the Agent of Nicaragua dated 19 December 2012 (ref. 02-19-12-2012) requesting the Court to decide pro proprio motu whether the circumstances of the case require the indication of provisional measures, I have the honour to inform Your Excellency of the following.

The Court is of the view that the circumstances of the case, as they now present themselves to it, are not such as to require the exercise of its power under Article 75 of the Rules of Court to indicate provisional measures pro proprio motu.

A letter in similar terms has been sent to the Agent of Nicaragua.

Accept, Sir, the assurances of my highest consideration.



Philippe Couvreur  
Registrar

H.E. Mr. Edgar Ugalde Álvarez  
 Agent of the Republic of Costa Rica  
 before the International Court of Justice  
 Embassy of the Republic of Costa Rica  
 The Hague

cc: H.E. Mr. Jorge Urbina Ortega  
 Co-Agent of the Republic of Costa Rica  
 before the International Court of Justice  
 Embassy of the Republic of Costa Rica  
 The Hague

Mr. Sergio Ugalde  
 Co-Agent of the Republic of Costa Rica  
 before the International Court of Justice  
 Embassy of the Republic of Costa Rica  
 The Hague



## **ANNEX 51**

*Note from the President of the Environmental Administrative Tribunal of Costa Rica to the Minister of Foreign Affairs and Worship of Costa Rica*

Reference 200-13-TAA

9 April 2013

English Translation and Spanish Original



*Translation into English*

San José, April 9, 2013.

**Note N° 200-13-TAA**

**Lic. Enrique Castillo Barrantes  
Minister of Foreign Affairs  
His Office**

**Matter: Confidential**

**Dear Sir,**

By means of this letter we would like to refer to Note DM-AM-171-13, received by this Court on April 4, 2013, in relation to which we would like to express the following:

1. First, we must clarify that the explanations made in this letter shall not be interpreted as the issuing of an opinion by this Court, as they refer to an administrative file in process, number 223-12-01-TAA, which is in the preliminary investigation phase. What we will provide herein is a didactic summary, in general terms, of the standards and criteria that guide the actions of this Court in matters that may have been referred to in administrative file number 223-12-01-TAA by the reports prepared by the Technical Department of this Office. As indicated, the information provided below is restricted to the aforementioned file.
2. Some of the references in English submitted by you (extracted from the memorial) correspond to note TAA-DT-136-12 of June 21, 2013 **signed by only one employee** of the Technical Department of this Court: paragraphs 5.19, 5.21. The quote in paragraph 5.13 corresponds partially to note TAA-DT-138-12 of July 2, 2013, signed by the aforementioned employee and others. Communication TAA-DT-138-12 is **subsequent** to TAA-DT-136-12, and it is also **signed by four employees** of the Technical Department of the Environmental Administrative Court. It is also important to take into consideration that the last conclusion of report TAA-DT-138-12 is the following: "In the walking inspection performed by this Court we observed damages to natural resources on Costa Rican territory. With regard to potential or alleged damages in the neighbouring country (Nicaragua), we did not observe or find actual evidence of sediment loading, or waste consisting of wood, stone or other."
3. It is worth noting that note 136-12-TAA provides alleged findings by "performing an overview of the area by means of a fly over on a small aircraft" while the field inspection, with a direct view of the alleged impact, yielded the results included in note 138-12-TAA. Thus, in the event of any discrepancy between them the second note shall prevail, as it is subsequent and because it consists of a field study and not

just a fly over.

4. In any case, the competencies of this Court are restricted to Costa Rican territory (Article 5 of the Political Constitution) and to Article 111 of the Organic Environmental Law; any other declaration by any employee that exceeds this scope shall be interpreted as a personal opinion of a citizen and not as an employee of this Department.
5. The file is in the preliminary investigation stage, which, by definition, IS NOT explaining "the truth of the facts," rather, it consists of gathering contributions from different sources, to obtain an ample outlook of the criteria of different entities. It is in the ordinary administrative proceedings that "the truth of the facts" is determined (Article 214 LGAP), which is a subsequent stage following the conclusion of the preliminary investigation.

Vote number 2007-13319 of the Constitutional Chamber establishes that:

*"In sum, the preliminary investigation allows determining whether there are sufficient grounds to begin useful administrative proceedings. It is evident that **this prior information does not require a judgment regarding the truth of the existence or lack of a violation**, given that this is precisely what the administrative proceedings are designed for, with the principle of real or material truth as guideline. It is a step that, in a strict sense, is not part of the administrative proceedings... This previous information step is justified by the need to make administrative resources more efficient and to rationalize them, to prevent wasting them and, mainly, to not incur in the hasty opening of administrative proceedings. The preliminary investigation may have different purposes; however, it is possible to clearly identify three: a) determining whether there are sufficient grounds to open the corresponding proceedings, b) identify those allegedly responsible when it is an anonymous violation -in which a determinable group of employees or officers intervened- and c) gather facts with which to form a judgment in order to originate the notification of charges or summoning. These purposes may exist jointly or separately, according to the specific circumstances, to justify the opening of a preliminary investigation. Specifically, Vote No. 8841-01 of the Constitutional Chamber of August 31, 2001, indicated that: (...) the preliminary investigation is correct and relevant, as it is necessary to gather the criteria to rule out or confirm the need for a formal procedure, or to allow its correct substantiation..." (emphasis in bold added by us).*

6. In any case, it must be clarified that the declarations and reports by technical employees of this Court (and of any other State entity) simply constitute expert reports and NOT the criteria of this Office. The rulings of all Courts *en banc* are made through written resolutions signed by the three judges, NOT by the criteria of the experts, which may or may not be supported by the judges through written resolutions, especially in the event of a final resolution. This Court has internal experts and not external, as the Judicial Branch does, for purposes of savings by the Executive Branch and for transparency. However, it must be clear that the reports by employees of the Technical Department of this Office are solely expert reports, they are not binding on the judges, who must assess them according to: the criteria of Article 16

LGAP, the elements of counterevidence submitted by the defendant (due process), the constitutional principles of reasonableness and proportionality and on the basis of sound judgment. Consequently, the criteria referred to in the memorial are only expert reports and not the opinion of the Environmental Administrative Court.

7. As mentioned above, the rulings of this Court are issued through resolutions signed by the three judges, especially for final resolutions that establish a list of proven facts and those in which a decision is made on the merits of the case in dispute. (In fact, the final judgment of a judicial resolution is limited to the operative part of said resolution, and not to any other type of considerations. In addition, the binding case law consists of *ratio decidendi* or the reason for the decision, meaning the pure and simple reasoning that supports the operative part of the judgments and not other types of judgments or statements made in the considering paragraphs of the resolutions). The expert reports ARE NOT rulings by this Office, and neither are the declarations by one or more judges; only the resolutions signed by the three judges as Court *en banc*. In fact, Article 104 LOA indicates that the Environmental Administrative Court consists of three regular judges and three deputy judges, and the following article explains in more detail the requirements of the judges. Similarly, provisions 108 and 110 of the same law give the understanding that the rulings of the Court are made, specifically, by written resolution of the three judges, especially in relation to a final decision or resolution.
8. Resolution number 671-12-TAA of July 4, 2012, in considering paragraph seven, refers to a "Plan for Mitigation, Repair and Compensation of the **alleged** environmental damage" (emphasis in bold added by us), clarifying that, since we are in the preliminary stage of the investigation, this Court seeks to mitigate the impact and does not deem proven the existence of environmental damage. The duty to mitigate impact is based on the precautionary principle or *in dubio pro natura* enshrined in Article 11 of the Law on Biodiversity.
9. Furthermore, it is worth noting the polysemy in the usage of the terms "damage" to the environment and "environmental damages," evidenced by the contrast offered for example by articles 2 and 111 LOA, on one hand, and article 3 of the General Regulation on Procedures for Environmental Impact Assessments on the other, and thirdly, article 3 of the Law on Biodiversity. The semantic spectrum is such that the same term can mean, depending on how it is used, from "irreversible damage," the most serious, to merely an "environmental impact," the simplest. The term "environmental impact" is generally not used by the technical experts in Costa Rica, including our technical officers, especially in documents that are addressed to attorneys and to the citizenry in general.

In this regard, it is important to consider that the language, although only one, includes several "registers" or modes of language usage by different sectors of the population. Communication by technical experts to the citizenry, in general, needs to be performed in a "popular" register that can be easily understood by all, from the most prominent intellectual to an illiterate youth. It is evident that to refer to that observed in any inspection the only term that would be understood by everyone was "environmental damages," without it

implying any pre-judgment. Any other word would generate confusion or lack of clarity to the listener. This generates the referred polysemy, and the term “environmental damage” is used a number of times as a synonym for a simple “environmental impact.”

10. Based on the foregoing, we can derive certain inaccuracies in the journal articles provided by you. In addition, we can express the following:

- a. El País 2012-07-15 indicates that: “the Court confirmed damages on Costa Rican territory but did not find evidence of sediment loading on San Juan River.” In addition, when summarizing the alleged resolution by this Office it employs the term “possible environmental damage” several times.
- b. El País 2012-07-26, when referring to the alleged effects on the protection area of San Juan River, is in fact referring to Note TAA-DT-136-08. As mentioned above, we shall abide by the subsequent note, TAA-DT-138-08, which makes a different ruling. As indicated, none of these reports are signed by the judges of the Court, who only issue rulings as said Court through resolutions signed by the three judges.

Please do not hesitate to contact us for any further clarifications you may require.

Signed:

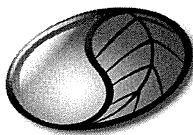
Msc. Yamilette Mata Dobles  
President

Lic. José Luis Vargas Mejía  
Vice-President

Lic. Daniel Montero Bustabad  
Secretary a.i.

Stamped:

Ministerio de Ambiente, Energía y Telecomunicaciones - Tribunal Ambiental Administrativo.  
(Ministry of the Environment - Environmental Administrative Court).



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San José, 9 de abril del año 2013.

**Oficio Nº 200-13-TAA**

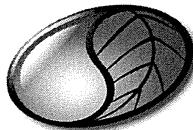
**Lic. Enrique Castillo Barrantes  
Ministro de Relaciones Exteriores y Culto  
Su Despacho**

**Asunto:** Confidencial.

**Estimado señor:**

Por medio de la presente se hace referencia al oficio número DM-AM-171-13, recibido en este Tribunal el 4 de abril de 2013, en relación al cual se le comunica lo que sigue:

1. En primer lugar se debe aclarar que las explicaciones que se efectúan en este oficio no deben interpretarse como una emisión de criterio por parte de este Tribunal, dado que se refieren a un expediente administrativo en trámite, el número 223-12-01-TAA, el cual se encuentra en etapa de investigación preliminar. Lo que se expondrá a continuación es un resumen didáctico, en términos generales, de las normas y criterios que rigen el actuar de este Tribunal, en aquellos aspectos de su oficio que pueden haber sido aludidos en el expediente administrativo número 223-12-01-TAA por los informes elaborados por el Departamento Técnico de este Despacho. Como se indicó, la información que se le proporciona a continuación se circunscribe al expediente citado.
2. Algunas de las citas en inglés remitidas por ustedes (extracto de la memoria) corresponden al oficio número TAA-DT-136-12 del 21 de junio de 2013 **suscrito por solo un funcionario** del Departamento Técnico de este Tribunal: párrafos 5.19, 5.21. La cita del párrafo 5.13 corresponde parcialmente al oficio número TAA-DT-138-12 del 2 de julio de 2013 suscrito por el funcionario aludido más otros más, de modo que el oficio TAA-DT-138-12 es posterior al TAA-DT-136-12 y además es **suscrito por cuatro funcionarios** del Departamento Técnico del Tribunal Ambiental Administrativo. Se ha de tomar asimismo en consideración que la última conclusión del informe TAA-DT-128-12 es la siguiente: "En el recorrido realizado por este Tribunal se observaron daños ambientales a los recursos naturales en territorio costarricense. Con respecto a los posibles o supuestos daños en territorio del país vecino



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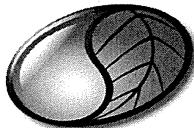


(Nicaragua) no se observaron o encontraron evidencias actuales por arrastre de sedimentos, residuos de madera, piedra u otro material”.

3. Se ha de tomar en consideración que el oficio 136-12-TAA aporta supuestos hallazgos “realizando un recorrido por la zona en “sobrevuelo en avioneta”, mientras que la inspección en el campo, con vista directa de los presuntos impactos, es la inspección cuyos aducidos resultados se encuentran en el oficio 138-12-TAA, de modo que eventualmente podría entenderse que cualquier discrepancia entre ambos oficios se resolvería a favor del segundo oficio, por ser posterior y por ser realizado por una inspección de campo, y no por un simple sobrevuelo.
4. En todo caso, las competencias de este Tribunal se circunscriben al espacio costarricense (artículo 5 de la Constitución Política) y al artículo 111 de la Ley Orgánica del Ambiente; cualquier otra manifestación de cualquier funcionario que exceda este ámbito, se ha de interpretar como una opinión personal como ciudadano y no como funcionario de este Despacho.
5. El expediente se encuentra en etapa de investigación preliminar, la cual, por definición, NO está explicando “la verdad real de los hechos”, sino que su finalidad es reunir diversos aportes, de las variadas fuentes, para tener un panorama amplio de criterios de diversas entidades. Cuando se determina “la verdad real de los hechos” es en el procedimiento ordinario administrativo (artículo 214 LGAP), la cual es una etapa posterior a cuando ya se concluye la investigación preliminar.

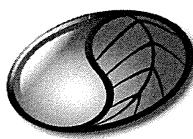
El voto de la Sala Constitucional número 2007-13319 sostiene lo siguiente:

*“En suma, la investigación preliminar permite determinar si existe mérito suficiente para incoar un procedimiento administrativo útil. Resulta obvio que en esa información previa no se requiere un juicio de verdad sobre la existencia de la falta o infracción, puesto que, precisamente para eso está diseñado el procedimiento administrativo con el principio de la verdad real o material a la cabeza. Se trata de un trámite que, strictu sensu, no forma parte del procedimiento administrativo... Este trámite de información previa tiene justificación en la necesidad de eficientar y racionalizar los recursos administrativos, para evitar su desperdicio y, sobre todo, para no incurrir en la apertura precipitada de un procedimiento administrativo. La investigación preliminar puede tener diversos fines, sin embargo, es posible identificar claramente tres: a) Determinar si existe mérito suficiente para abrir el respectivo procedimiento, b) identificar a los presuntos responsables cuando se trata de una falta anónima - en la que intervino un grupo determinable de funcionarios o servidores- y c) recabar elementos de juicio para formular el traslado de cargos o intimación. Estos fines puede concurrir conjuntamente o existir solo uno, según las circunstancias concretas, para*



*justificar la apertura de una investigación preliminar. Sobre el particular la Sala Constitucional en el Voto No. 8841-01 de las 9: 03 hrs. del 31 de agosto de 2001, señaló lo siguiente:"(...) la indagación previa es correcta y pertinente, en tanto necesaria para reunir los elementos de juicio apropiados para descartar o confirmar la necesidad del procedimiento formal, o bien para permitir su correcta sustanciación..." (las negrillas son añadidas).*

6. En todo caso, debe quedar claro que las manifestaciones y los informes de los funcionarios técnicos de este Tribunal (así como de cualquier otro ente estatal) constituyen simples informes periciales y NO el criterio de este Despacho. Los pronunciamientos de todo Tribunal colegiado se hacen a través de sus resoluciones escritas y firmadas por los tres jueces, NO por los criterios de los peritos, que pueden ser avalados o no por los jueces en sus resoluciones escritas, particularmente en una eventual resolución final. La razón por la cual este Tribunal cuenta con peritos de planta y no peritos externos como el Poder Judicial, se basa en razonamientos de ahorro de costos por parte del Poder Ejecutivo y de transparencia. Pero debe quedar claro que los informes de funcionarios del Departamento Técnico de este Despacho son únicamente informes periciales, no vinculantes para los jueces, quienes deben ponderarlos por los criterios del artículo 16 LGAP, con los elementos de contraprueta que presente el denunciado (debido proceso), con los principios constitucionales de razonabilidad y proporcionalidad y con la sana crítica. Por tanto los criterios aludidos en la memoria son sólo informes periciales y no el criterio del Tribunal Ambiental Administrativo.
7. Como se acaba de aludir, los pronunciamientos de este Tribunal se dan a través de las resoluciones suscritas por los tres jueces del mismo, especialmente en una eventual resolución final que establezca una lista de hechos probados y en los que se toma una decisión sobre el fondo del caso controvertido. (De hecho, la cosa juzgada propia de una resolución final judicial se limita al "Por Tanto" de dicha resolución, no a otro tipo de consideraciones. Incluso la jurisprudencia judicial vinculante consiste en la *ratio decidendi* o razón de decidir, es decir, al razonamiento puro y simple que sustenta el "Por Tanto" de las sentencias y no a otro tipo de juicios o manifestaciones que se hacen en los Considerandos de las resoluciones). Los informes periciales NO constituyen pronunciamientos de este Despacho ni lo son declaraciones de uno o más jueces, sino las resoluciones escritas firmadas por los tres jueces como Tribunal colegiado. En efecto, el artículo 104 LOA manifiesta que el Tribunal Ambiental Administrativo consta de tres jueces titulares y de tres jueces suplentes y el artículo siguiente explica con más detalle los requerimientos de los jueces. Asimismo los preceptos 108 y 110 del mismo Cuerpo Legal dan a entender que los pronunciamientos del Tribunal se hacen, precisamente, por resolución escrita de los tres jueces, especialmente a través del fallo o resolución final.



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8. La resolución número 671-12-TAA del 4 de julio de 2012 alude en su Considerando Séptimo a “un Plan de Mitigación, Reparación y Compensación del **supuesto** daño ambiental” (las negrillas son añadidas), dejando claro que, por encontrarnos en la etapa de investigación preliminar, este Tribunal procura que se mitiguen los impactos y no da por probado que exista daño ambiental; el deber de mitigar los impactos se fundamenta en el principio precautorio o *in dubio pro natura* consagrado a nivel legal en el artículo 11 de la Ley de Biodiversidad.
9. A mayor abundamiento, debe tomarse en consideración la polisemia con el que se emplean los términos de “daño” al ambiente y “daño ambiental”, como se aprecia en los contrastes que ofrecen, por ejemplo, los artículos 2 y 111 LOA, por un lado, 3 del Reglamento General sobre los Procedimientos de Evaluación de Impacto Ambiental y, en tercer término, 3 del Reglamento a la Ley de Biodiversidad. Es tal el espectro semántico, que el mismo término puede significar, según se emplee, desde “daño irreversible”, lo más grave, hasta un simple “impacto ambiental”, lo más sencillo. El término “impacto ambiental” generalmente no se emplea por los técnicos en Costa Rica, funcionarios técnicos incluidos, principalmente en escritos que van dirigidos a Abogados y a la ciudadanía en general.

Al respecto se ha de tomar en consideración que el idioma, aun siendo uno sólo, dispone de varios “registros”, modos de empleo del lenguaje por parte de diversos sectores de la población. La comunicación por parte de los técnicos a la ciudadanía en general, se ha de efectuar en un “registro de lenguaje”, popular, que pueda ser comprendido fácilmente tanto por la persona intelectual más insigne, como por el joven analfabeto. En este sentido, es obvio que, para referirse a lo que se observa en cualquier inspección, el único término con el cual todos iban a entender es, precisamente, el de “daño ambiental”, sin que tal término implique ningún adelanto de criterio. Cualquier otra palabra generaría confusión o falta de claridad en quienes escuchan, por lo cual se genera la polisemia aludida, empleándose incluso muchas veces, como se indicó, el término “daño ambiental” como sinónimo de simple “impacto ambiental”.

10. De lo indicado anteriormente se desprenden algunas inexactitudes de los artículos periodísticos aportados por su persona. Sin embargo, puede además manifestarse lo siguiente:

- a. El País 2012-07-15 asevera: “Tribunal confirmó daños en territorio costarricense pero no encontró evidencias de arrastre de sedimentos al río San Juan”. Asimismo al resumir la supuesta resolución de este Despacho utiliza varias veces el término “posible daño ambiental”.



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- b. El País 2012-07-26 cuando se refiere a la hipotética afectación al área de protección del Río San Juan, se refiere, en realidad, al oficio TAA-DT-136-08. Al respecto nos remitimos a lo ya comentado respecto al oficio posterior TAA-DT-138-08, el cual se pronuncia de distinta forma. Como se indicó, ninguno de esos informes es suscrito por los jueces del Tribunal, quienes únicamente se pronuncian como tal Tribunal a través de resoluciones suscritas por los tres jueces.

Quedamos a su disposición para cualquier aclaración adicional.

Atentamente,

Msc. Yamilette Mata Dobles  
Presidenta

Lic. José Luis Vargas Mejía  
Vicepresidente

Daniel Montero  
Bustabad  
Lic. Daniel Montero Bustabad  
Secretario a.i.



C.c/ Consecutivo.



## **ANNEX 52**

*Letter from the Co-Agent of Costa Rica to the Registrar of the International Court of Justice*

Reference ECRPB-26-13

24 May 2013





*Embajada de Costa Rica  
ante el Reino de los Países Bajos*

ECRPB—26-13

24 May 2013

Excellency,

I have the honour to refer to Costa Rica's letter to the Court dated 5 March 2013 insofar as it concerns satellite imagery, maps, notes, records and photographs used in Annex 1 to Nicaragua's Memorial in the case *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)* (the **Kondolf Report**), and to Nicaragua's response dated 29 April 2013 (the **Response**), transmitted to Costa Rica by the Court under cover of letter dated 1 May 2013.

I note that Nicaragua states in the Response that it will write separately concerning Costa Rica's proposal for monitoring of the San Juan River. Costa Rica renews its request for a prompt response to that proposal.

In the Response, Nicaragua agrees that it will produce aerial and field photographs, input data and calculations used in preparation of the Kondolf Report, on condition that Costa Rica produces the equivalent materials used in Professor Thorne's Report<sup>1</sup> and the UNITAR/UNOSAT reports annexed to Costa Rica's Memorial in *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* (the **Certain Activities case**). In particular, Nicaragua undertakes to produce the following information used in preparation of the Kondolf Report:

- the aerial and field photographs taken by Professor Kondolf and his team during their October 2012 research in and over the San Juan River;
- additional information regarding the input data and calculations for the Kondolf Report's estimates of surface and landslide/gully erosion rates; and
- the GPS coordinates for the 54 sites of direct sediment delivery discussed in the Kondolf Report.

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<sup>1</sup> "Assessment of the physical impact of works carried out by Nicaragua since October 2010 on the geomorphology, hydrology and sediment dynamics of the San Juan River and the environmental impacts on Costa Rican territory", by Professor Colin Thorne, October 2011, Appendix 1 to Costa Rica's Memorial in the *Certain Activities* case.

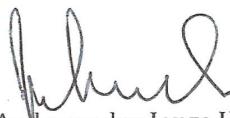
*Recd 1e 24 mai 2013  
SCH*

The UNITAR/UNOSAT reports to which Nicaragua refers are Annexes 148, 149 and 150 to Costa Rica's Memorial in the *Certain Activities* case. Those reports were not prepared by Costa Rica; nor did Costa Rica provide UNITAR or UNOSAT with any documents, photographs, data, calculations or coordinates which were used in those reports. Each of those reports record that UNITAR/UNOSAT's findings were based on commercially available satellite imagery.<sup>2</sup> In addition, the images used in those reports include information as to their source which would enable Nicaragua to obtain the same image from the commercial vendor. Moreover, images are clearly marked with GPS coordinates. For the same reasons that Nicaragua considers that Costa Rica should obtain any satellite imagery it requires which was used in the Kondolf Report from the relevant commercial vendor, Costa Rica considers that both parties are in a position to do the same with respect to the UNITAR/UNOSAT reports.

On the basis of reciprocity and in good faith, Costa Rica is willing to produce any aerial and field photographs, input data and calculations used in the preparation of Professor Thorne's Report. Costa Rica will expect Nicaragua to comply with its undertaking to do the same with respect to the Kondolf Report. Costa Rica proposes that this be done by simultaneous submission to the Court on 21 June 2013. Costa Rica requests that Nicaragua confirm its agreement to this simultaneous submission by 7 June 2013.

Costa Rica asks the Court to convey this proposal to Nicaragua.

Accept, Sir, the assurances of my highest consideration.



Ambassador Jorge Urbina  
Co-Agent



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

<sup>2</sup> UNITAR/UNOSAT, "Morphological and Environmental Change Assessment: San Juan River Area (including Isla Portillos and Calero), Costa Rica" (Geneva, 2011), 4 January 2011, **Annex 148** to CRM in *Certain Activities* case, p 140; UNITAR/UNOSAT, "Morphological and Environmental Change Assessment: San Juan River Area (including Isla Portillos and Calero), Costa Rica" (Geneva, 2011), 3 March 2011, **Annex 149** to CRM in *Certain Activities* case, p 150; UNITAR/UNOSAT, "Morphological and Environmental Change Assessment: San Juan River Area (including Isla Portillos and Calero), Costa Rica" (Geneva, 2011), 8 November 2011, **Annex 150** to CRM in *Certain Activities* case, p 160.

## **ANNEX 53**

*Letter from the Co-Agent of Costa Rica to the Registrar of the International  
Court of Justice*

Reference ECRPB-31-13

13 June 2013





*Embajada de Costa Rica  
ante el Reino de los Países Bajos*

ECRPB - 31 - 13

The Hague, 13 June 2013

Excellency,

I have the honour to refer to Costa Rica's letter to the Court dated 24 May 2013 relating to satellite imagery, maps, notes, records and photographs used in Annex 1 to Nicaragua's Memorial in the case *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)* (the **Kondolf Report**), and to Nicaragua's response dated 7 June, transmitted to Costa Rica by the Court under cover of letter dated 10 June 2013.

Costa Rica notes that Nicaragua has not yet responded to Costa Rica's proposal for monitoring of the San Juan River. Costa Rica awaits a prompt response to that proposal, which was made through note ECRPB-013-2013 of 7 March 2013, that is, more than three months ago.

In its note of 7 March, Costa Rica proposed in good faith and on the basis of reciprocity that the parties exchange certain materials, documents and input data which has been used in the preparation of the Kondolf Report in the case of Nicaragua, and in Professor Thorne's Report (the **Thorne Report**)<sup>1</sup> annexed to Costa Rica's Memorial in *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* (the **Certain Activities case**). In a response dated 29 April 2013, Nicaragua agreed in principle to this exchange, but sought to require Costa Rica to also produce the equivalent materials used in the UNITAR/UNOSAT reports annexed to Costa Rica's Memorial in the *Certain Activities case*. As Costa Rica explained in its reply dated 24 May 2013, the UNITAR/UNOSAT reports were not produced by Costa Rica, and Nicaragua is free to approach UNITAR/UNOSAT to request information concerning the materials, information and images which have been used in the production of those reports, and/or to purchase the relevant satellite images from the commercial vendors which are identified with the images produced therein. Nevertheless, Costa Rica agreed in principle to the terms of Nicaragua's proposal to exchange materials relating to the Kondolf Report and the Thorne Report, and proposed a procedure for that exchange.

In its most recent letter dated 7 June 2013, Nicaragua has again sought to impose unreasonable conditions on the agreement for exchange, no doubt with a view to obstructing the prompt

<sup>1</sup> "Assessment of the physical impact of works carried out by Nicaragua since October 2010 on the geomorphology, hydrology and sediment dynamics of the San Juan River and the environmental impacts on Costa Rican territory", by Professor Colin Thorne, October 2011, Appendix 1 to Costa Rica's Memorial in the *Certain Activities case*.

13.06.2013

exchange of materials which are relevant for the production of Costa Rica's written pleadings in the case concerning *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*. In particular, Nicaragua has sought to require Costa Rica to produce the following additional materials and documents:

1. all the maps and satellite images utilized by Professor Thorne in his "reconstruction of the geomorphological histories of the Bay of San Juan del Norte, Harbor Head Lagoon, Rio San Juan, and Delta (including surrounding wetlands)";
2. all the contemporary photographic, textual, and quantitative evidence provided by Costa Rica and Ramsar to Professor Thorne;
3. UNITAR/UNOSAT (2011b), Update 3: Morphological and Environmental Change Assessment: San Juan River Area, Costa Rica; and
4. a document identifying all maps and satellite images used in the UNITAR/UNOSAT report, indicating where and how they can be obtained, together with a list of the all the material, documentation and information that served as a basis for the UNITAR/UNOSAT report, indicating which are readily available and which are not, and those which are not readily available should be provided by Costa Rica to Nicaragua.

Nicaragua also requests that Costa Rica provides it with various reports, plans and studies regarding the environmental impact of the construction of the road which is the subject of the case in *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*. These matters will be addressed in Costa Rica's Counter Memorial in that proceeding, which Costa Rica will file in accordance with the time limit provided by the Court in its Order of 23 January 2012 .

In good faith, Costa Rica is willing to produce materials responding to items 1 and 3 in the above list, in addition to the materials which it already agreed to produce, which are listed in its letter of 24 May 2013.

Costa Rica considers Nicaragua's request that Costa Rica produce all the contemporary photographic, textual, and quantitative evidence provided by Costa Rica and Ramsar to Professor Thorne (item 2 in the above list) to be entirely unreasonable. As Nicaragua noted in its letter dated 29 April 2013, there is no reason to conduct a "discovery" procedure with respect to all notes which may have been used in the drafting process of either the Kondolf or Thorne Reports. It is one matter to request evidence, input data, calculations and materials which have been used or are referred to in a report submitted in a proceeding; it is an entirely different matter to request all information provided by a party and an independent organization in the course of preparing that report.

Costa Rica also considers Nicaragua's requests with respect to the UNITAR/UNOSAT reports to be entirely unreasonable. As Costa Rica has already indicated, these reports were produced by an independent organization and the findings contained therein were based on commercially

available satellite imagery, as the reports explicitly record.<sup>2</sup> That satellite imagery was not provided to UNITAR/UNOSAT by Costa Rica, despite Nicaragua's implication to the contrary. Nicaragua is at liberty at any time to take the reasonable and efficient step of contacting UNITAR/UNOSAT to request any relevant materials, including satellite imagery, and it has failed to do so.

In summary, in good faith and on condition that Nicaragua produces the information relating to the Kondolf report as listed on page 1 of Nicaragua's letter of 7 June, Costa Rica is willing to produce:

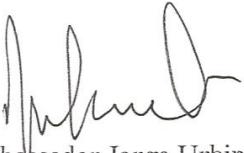
1. any aerial and field photographs, input data and calculations used in the preparation of the Thorne Report;
2. all the maps and satellite images utilized by Professor Thorne in his "reconstruction of the geomorphological histories of the Bay of San Juan del Norte, Harbor Head Lagoon, Rio San Juan, and Delta (including surrounding wetlands)"; and
3. UNITAR/UNOSAT (2011b), Update 3: Morphological and Environmental Change Assessment: San Juan River Area, Costa Rica.

In the interests of expedition, Costa Rica asks that Nicaragua confirm no later than 18 June its agreement to the contemplated simultaneous exchange of information on 21 June 2013.

Costa Rica asks the Court to convey this proposal to Nicaragua.

Accept, Sir, the assurances of my highest consideration.

Yours sincerely,



Ambassador Jorge Urbina

Co-Agent



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

<sup>2</sup> UNITAR/UNOSAT, "Morphological and Environmental Change Assessment: San Juan River Area (including Isla Portillos and Calero), Costa Rica" (Geneva, 2011), 4 January 2011, **Annex 148** to CRM in *Certain Activities* case, p 140; UNITAR/UNOSAT, "Morphological and Environmental Change Assessment: San Juan River Area (including Isla Portillos and Calero), Costa Rica" (Geneva, 2011), 3 March 2011, **Annex 149** to CRM in *Certain Activities* case, p 150; UNITAR/UNOSAT, "Morphological and Environmental Change Assessment: San Juan River Area (including Isla Portillos and Calero), Costa Rica" (Geneva, 2011), 8 November 2011, **Annex 150** to CRM in *Certain Activities* case, p 160.



## **ANNEX 54**

*Letter from the Agent of Nicaragua to the Registrar of the International Court  
of Justice*

Reference HOL-EMB-108

14 June 2013



## COUR INTERNATIONALE DE JUSTICE

PALAIS DE LA PAIX 2517 KJ LA HAYE PAYS-BAS  
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## INTERNATIONAL COURT OF JUSTICE

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 WEBSITE: www.icj-cij.org

142103

14 June 2013

Sir,

With reference to the cases concerning Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), I have the honour to transmit to Your Excellency herewith a letter dated 14 June 2013 and received in the Registry today, whereby H.E. Mr. Carlos J. Argüello Gómez, Agent of Nicaragua, informed the Court of his Government's response to the proposal for joint monitoring of the San Juan River advanced by Costa Rica in its letter dated 7 March 2013.

Accept, Sir, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read "Sergey Punzhin".

Sergey Punzhin  
 First Secretary of the Court

H.E. Mr. Edgar Ugalde Álvarez  
 Agent of the Republic of Costa Rica  
 before the International Court of Justice  
 Embassy of the Republic of Costa Rica  
 The Hague

cc: H.E. Mr. Jorge Urbina Ortega  
 Co-Agent of the Republic of Costa Rica  
 before the International Court of Justice  
 Embassy of the Republic of Costa Rica  
 The Hague

Mr. Sergio Ugalde  
 Co-Agent of the Republic of Costa Rica  
 before the International Court of Justice  
 Embassy of the Republic of Costa Rica  
 The Hague



**EMBASSY OF NICARAGUA  
THE HAGUE**

14 June 2013

REF: HOL-EMB-108

Excellency,

1. I have the honor to refer to your letter dated 27 May 2013, REF:141959, transmitting Costa Rica's letter to the Court of 24 May 2013, ref. ECRPB-26-13, in which Costa Rica requested a prompt response to the proposal for joint monitoring of the San Juan River that it advanced in a letter to the Court and dated 7 March 2013, ref. ECRPB-013-2013.

2. The background to this question is as follows:

3. In a Diplomatic Note sent by Costa Rica to Nicaragua dated 6 February 2013, it communicated its intention of sending personnel to navigate the San Juan River in order to take samples of the water<sup>1</sup>.

4. In response to this request, in its diplomatic note of 5 March 2013<sup>2</sup> Nicaragua, after pointing out that Costa Rica had no rights of navigation along the San Juan River for scientific investigation, "suggest[ed] an overall study both in Nicaragua and in Costa Rica," indicating that "a study performed jointly in Nicaragua and Costa Rica could be an effective mechanism, mutually beneficial, and that it would serve to implement the Order of the Court of 8 March 2011".<sup>3</sup> Nicaragua's proposal is even more appropriate now, after the Court joined the proceedings in the case concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and in the case concerning the *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*<sup>4</sup>.

5. Without a direct response to Nicaragua's note of 5 March 2013, Costa Rica opted to address to the Court a letter dated 7 March 2013, mentioned above, dated in which it made its

<sup>1</sup> See letter from Costa Rica to the International Court of Justice, 07 March 2013, Reference ECRPB-013-2013, Annex 1, Note from the Minister of Foreign Affairs of Costa Rica to the Minister of Foreign Affairs of Nicaragua, Ref. DM-AM-063-13, 06 February 2013.

<sup>2</sup> See Nicaraguan diplomatic note MRE/DM-AJ/129/03/13, dated 5 March 2013, p. 2 (letter from Costa Rica to the International Court of Justice, 07 March 2013, Reference ECRPB-013-2013, Annex 2)

<sup>3</sup> Ibid., p. 2.

<sup>4</sup> <http://www.icj-cij.org/docket/files/150/17332.pdf>



**EMBASSY OF NICARAGUA  
THE HAGUE**

own proposal for joint monitoring, limited only to the River itself, and gave a list of suggested technical activities to be carried out in the monitoring process.

6. Nicaragua could have replied immediately to Costa Rica's letter by pointing out that it failed to address the main elements of Nicaragua's proposal, set forth in Nicaragua's note of 5 March. But Nicaragua considered it preferable to have the team of experts that Nicaragua has been consulting on these matters examine Costa Rica's proposal and then provide their expert analysis of it. This has now been done, and the conclusions of Nicaragua's experts are indicated below.

7. Costa Rica's joint monitoring program does not address the critical questions raised in Nicaragua's note of 5 March.

8. Firstly, it does not address the basic point that any joint monitoring should include the area along the San Juan River and along the road that is being constructed in very close proximity to the River along the right bank. Furthermore, now that the two cases have been joined, any joint monitoring should include all of the "*area where the common border between them runs along the right bank of the San Juan River*", including the area in dispute at the mouth of the River.

9. Secondly, as Nicaragua's note of 5 March explained, Nicaragua considers a joint study to be feasible only if Costa Rica: (1) provides Nicaragua with the technical plans and studies regarding the construction of Route 1856 and its potential or actual impacts on the River; and (2) halts any further road construction activities pending the completion of the joint study.<sup>5</sup> In requesting the technical plans and studies regarding construction of the road and its impacts, Nicaragua is doing no more than holding Costa Rica to its obligations under international law.

10. Not only has Costa Rica failed to provide notice or information to Nicaragua, or to carry out a proper transboundary Environmental Impact Assessment prior or even subsequent to the

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<sup>5</sup> Nicaraguan diplomatic note MRE/DM-AJ/129/03/13, dated 5 March 2013, p. 2 (letter from Costa Rica to the International Court of Justice, 07 March 2013, Reference ECRPB-013-2013, Annex 2)



**EMBASSY OF NICARAGUA  
THE HAGUE**

commencement of these activities, but also, as regards the renewal of the works, still no information has been provided to Nicaragua regarding the nature of these construction activities, where or when they will be taking place, or what Costa Rica intends to do to prevent further damage to the San Juan River as the result of such works. This lack of communication highlights once again Costa Rica's failure to abide by its international obligations to provide proper and timely notice and information to Nicaragua regarding a project with the capacity to cause significant transboundary impacts, which have already occurred.

11. Costa Rica's persistent refusal to comply with these obligations has not only deprived Nicaragua of information to which it is entitled and made it more difficult for Nicaragua to assess the impacts of the road project on the River; it has also made more difficult the development of a monitoring program (either conducted jointly or unilaterally) to accurately assess the impacts on the River of the road construction activities that have been carried out to date. Costa Rica's refusal to share relevant information with Nicaragua, in spite of its legal obligations to do so, has also made it difficult for Nicaragua to accept the representations in the Costa Rica's 7 March 2013 letter that its proposed joint monitoring program has been made "in a spirit of cooperation" and that "[a]ll the information gathered from these efforts will be shared with Nicaragua and the Court."<sup>6</sup>

12. Furthermore, the technical experts consulted by Nicaragua have identified a series of difficulties regarding Costa Rica' proposed joint monitoring plan, which is described in its letter dated 7 March 2013. The first difficulty is the vagueness of Costa Rica's proposal. But even with the scant information Costa Rica has provided, the following difficulties can be identified:

- Not only is the objective of the joint study unclear, but it seems as if the program is actually designed to show *no* effect on the River from the construction of the road, because it focuses on too large a scale, while the Road is actually affecting the River in more specific and localized ways, particularly in the vicinity of the sediment deposit locations, and in pulses (*i.e.* after storm/rain events).

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<sup>6</sup> Letter from Costa Rica to the International Court of Justice , 7 March 2013, Reference ECRPB-013-2013, pp. 2-3.



**EMBASSY OF NICARAGUA  
THE HAGUE**

- Monthly monitoring, as proposed by Costa Rica, will likely be ineffective to measure the true impact of the road on the River. For example, in order to adequately measure that impact, sampling would need to take place, especially after rainfall and runoff events, when these increase the delivery of sediments and contaminants from the road. There is no indication that Costa Rica's proposal would take into account this component.
- Moreover, Costa Rica does not indicate its intention to include sampling of plumes in the River along Costa Rican bank, which are visible after rain events. This would facilitate the identification of the exact contaminants that are coming into the River.
- Although the proposal indicates that the monitoring program would be aimed at establishing, *inter alia*, the chemical quality of the water, there is no indication which constituents would be tested, or the methods that would be used to collect or test samples.
- Furthermore, Costa Rica proposes that a "third sample be taken, labeled and sealed and that this sample be sent to the Court for safe-keeping". The sediment load of the River cannot be properly ascertained through the use of grab-type samples, among other reasons because sediment concentrations are not uniform and vary within the water column and across the river channel. Moreover, the many constituents break down and change over time resulting in the grab-type sample being useless for the purpose of accurately knowing what is being transmitted into the River. The same applies for the chemical composition of the water.
- Costa Rica provides no reason for proposing particular eight (8) sampling sites, or why it is necessary or adequate to test 200 meters upstream from tributaries, but 300 meters downstream from them. In contrast, sampling must take place in various locations along the stretches of the River where the construction of the road has done the most damage.
- A complete monitoring of the effects on the River cannot be accomplished without taking into account the road construction activities.

13. In short, Costa Rica's proposed program does not measure the impacts of the road project on the River, uses inappropriate methodologies, and lacks sufficient detail. Further, it would be both impractical and ineffective to ask the Court to maintain samples "for safe-



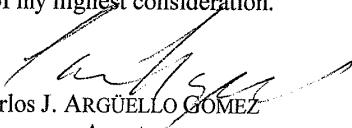
**EMBASSY OF NICARAGUA  
THE HAGUE**

keeping" and possible "subsequent testing" for chemical composition, because many constituents are known to break down and change over time, rendering any "subsequent testing" meaningless.

14. The joint monitoring program would have to be properly designed to accurately measure impacts of the road project in a manner that produces scientifically valid results. The program outlined in Costa Rica's letter of 7 March 2013 falls far short of this standard.

15. Nicaragua is prepared to discuss with Costa Rica at any time the elements of a proper joint monitoring program, with the objective of agreeing on its components, modalities and administration. As evidenced by Nicaragua's note of 5 March 2013, it is Nicaragua that first proposed, and which remains interested in, the joint monitoring of the River to accurately assess the impacts of Costa Rica's road construction project. However, before actual implementation of such a project would be feasible, and as mentioned in the note, Nicaragua insists that Costa Rica honour its international legal obligations in regard to transboundary environmental impact assessment, notice and furnishing of all pertinent technical information to Nicaragua, and adoption of reasonable measures to prevent or mitigate risks to the River, including a halt any further road construction pending the results of the joint monitoring study.

Accept, Sir, the assurances of my highest consideration.



Carlos J. ARGÜELLO GÓMEZ

Agent  
Republic of Nicaragua

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

## **ANNEX 55**

*Letter from the Co-Agent of Costa Rica to the Registrar of the International  
Court of Justice*

Reference ECRPB-036-13

24 June 2013





24 June 2013  
ECRPB-036-13

Excellency,

I refer to your communication dated 14 June 2013, reference 142103, transmitting Nicaragua's letter of the same date, reference HOL-EMB-108, to Costa Rica. Nicaragua's letter was in response to a letter from Costa Rica dated 24 May 2013, about the joint monitoring of the San Juan River.

Costa Rica observes Nicaragua's lack of willingness to accept a reasonable approach to joint monitoring of the San Juan to establish with certainty whether the Road in Costa Rican sovereign territory is having any impact on the San Juan River.

Costa Rica wishes to clarify that Nicaragua's note of 5 March 2013 was answered directly by Costa Rica, through note DM-AM-161-13, of 20 March 2013, attached.

Nicaragua misrepresents Costa Rica's request and seeks to condition the proposed joint monitoring on the establishment of a large-scale study, as detailed in Nicaragua's letter.

Nicaragua had the opportunity to present its case in its Memorial. During the full 12 months it requested from the Court to prepare its Memorial, it failed to make any proposal to Costa Rica to establish a large-scale study of the kind it now seeks.

Costa Rica is preparing its Counter Memorial, and it is obvious that Nicaragua, having failed to present a large-scale study, or even any river-flow measurements such as the ones Costa Rica now proposes, is now attempting to prevent Costa Rica from conducting any technical or scientific data collection in order to establish with certainty the impact, if any, of the Road on the San Juan River.

Costa Rica further notes that Nicaragua acknowledges that it had not permitted navigation on the San Juan River by Costa Rican scientific and environmental experts in order to assess transboundary impacts along the River and its southern bank. Costa Rica, at the appropriate time, will demonstrate to the Court that this conduct of Nicaragua constitutes a violation of Costa Rica's navigational rights, and a breach of this Court's judgment of 13 July 2009.

Nicaragua's obstructive conduct extends to rejecting the proposal that the Court receive a third sample of the waters of the River. Furthermore, Nicaragua's proposal that sampling of the River take place only after heavy rainfall and only where plumes of sediment seems to be coming from the southern bank, reinforces that Nicaragua's allegations that irreparable prejudice has been caused to the San Juan River are entirely unsubstantiated.

Notwithstanding Nicaragua's refusal, Costa Rica proposes that sampling of the waters of the San Juan River be taken twice a month, for a period of one year. This should permit sufficient data to be collected to assess the situation of the River. Costa Rica, in a spirit of cooperation and transparency, accepts to jointly take samples of tributary streams flowing onto the San

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Juan, originating from both the southern and northern banks of the River, in order to assess the amount of sediment and the water quality originating from both banks. Costa Rica proposes that these samples be collected at the same time when other samples are being gathered.

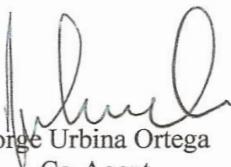
Regarding Costa Rica's proposed eight sampling sites along the San Juan: these would allow Nicaragua, Costa Rica and the Court to determine whether the Road is contributing sediment to the River and whether it is affecting the quality of the waters. The proposed sampling sites are therefore located upstream from the area where the Road is located, and along the Road until the San Juan River reaches the Colorado River. Costa Rica maintains that it has made a reasonable proposal as to these eight sampling sites, but it is willing to accept other relevant sampling sites should Nicaragua propose any.

Costa Rica insists that a third sample be sent to the Court. To avoid samples diverging in their composition, Costa Rica proposes to take one large sample at each location and to divide that large sample into three (one for Costa Rica, one for Nicaragua and one for the Court). The sample to be sent to the Court will be handled by a person agreed by the parties or, if no agreement is reached, by a person designated to that effect by the President of the Court, who will accompany the joint commission each time a collection is to take place.

Costa Rica considers that Nicaragua cannot condition this proposal to the issues which are disputed in this proceeding, particularly the production of a transboundary environmental impact assessment. That is now a question before the Court, and Costa Rica will respond to it within the time frame accorded to it by the Court in its order of 23 January 2012.

Costa Rica respectfully requests that the Court transmit this proposal to Nicaragua, and requests a definitive answer from Nicaragua to its proposal no later than 2 July 2013.

Accept, Sir, the assurances of my highest consideration.



Jorge Urbina Ortega  
Co-Agent  
Republic of Costa Rica



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

**Certification**

*I Certify that the following document annexed to this letter dated 24 June 2013, is a true copy and conform to the original document and that the translation into English made by Costa Rica is an accurate translation.*



A handwritten signature in black ink, appearing to read "Alvaro" or a similar name.

Signature

**Annex**

**Diplomatic Correspondence**

**CR1.** Original and English translation of Note from the Minister of Foreign Affairs of Costa Rica to the Minister of Foreign Affairs of Nicaragua, Ref. DM-AM-161-13, 20 March 2013.

**TRANSLATION**

**The Minister of Foreign Affairs and Worship**

20 March 2013  
Ref. DM-AM-161-13

Dear Minister,

I refer to the notes sent by you, and which my country received on 5 March 2013, with reference numbers MRE/DM-AJ/127-03-13, MRE/DM-AJ/128-03-13, and MRE/DM-AJ/129-03-13.

With respect to the first note, Costa Rica regrets that Nicaragua has failed to comply with the Order of the International Court of Justice of 8 March 2011, but rather conceals its involvement, direction and control over the presence of Nicaraguan citizens in the area indicated by the Court, despite the abundant evidence of these facts, including the manifestations by authorities of your Government which accept its participation vis-à-vis the presence of these citizens in the said area.

Moreover, it is so clear and obvious that your Government has participated in these violations of the Court's Order that press reports have recently confirmed what we already know, namely that the presence of Nicaraguans in the said area is organised and financed by the Government of Nicaragua. In this regard, both El 19 Digital and Prensa Latina reported on 17 March 2013 the following: "Through the organisation of Guardabarranco, and backed by the Sandinista Government, more than six thousand 300 youths from all over Nicaragua, in groups of 25 per week, have progressed through a learning process in both theory and practice by travelling to this significant waterway bordering Costa Rica." And, furthermore, both press outlets also noted that: "This includes two days in the classroom, increasing [their] knowledge, and eight days in Harbour Head Island (*sic*), located in the expanded waterway south of Nicaragua."

With regard to your second note, Costa Rica has taken particular care to comply with the Order of the International Court of Justice, which permits Costa Rican personnel for the protection of the environment to be sent to the area indicated by the Court. This was done in consultation with the Secretariat of the Ramsar Convention, and with prior notice to your country and the International Court of Justice. Similarly, Costa Rica has acted with the greatest willingness to achieve the most cooperation possible with Nicaragua, but your country refuses to cooperate with Costa Rica. This is evident from the aforementioned violations of the provisional measures indicated by the Court.

In relation to your third note, which concerns the proceedings that your country initiated before the International Court of Justice about the construction of a road on Costa Rica territory, my Government regrets the lack of willingness and readiness of Nicaragua to allow sampling of the San Juan River in order to establish with sound

scientific criteria the true state of the waters of the River. Despite this attitude, Costa Rica has made a new request to your country, through the intermediary of the International Court of Justice, in order that the said monitoring can be jointly undertaken. It is hoped that on this occasion your Government will be willing to cooperate if it really is the case that Nicaragua wishes to protect the environment of the San Juan River.

Moreover, Costa Rica strongly rejects the position of Nicaragua not to recognise the scope of the Judgment of the International Court of Justice of 13 July 2009, concerning the right of Costa Rica to navigate the San Juan River. The navigation of Costa Rican technicians, referred to in my note DM-AM-063-13 of 6 February 2013, is in essence navigation for commercial purposes, as a private boat is paid in exchange for the service of transporting the length of the river along which Costa Rica has a right of navigation. Costa Rica reserves its right to exercise its right of navigation in accordance with the terms provided by the International Court of Justice.

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

Enrique Castillo Barrantes

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

*El Ministro de Relaciones Exteriores y Culto*

20 de marzo de 2013  
DM-AM-161-13

Estimado señor Ministro:

Me refiero a las comunicaciones enviadas por usted, y recibidas por mi país el pasado 5 de marzo de 2013, comunicaciones números MRE/DM-AJ/127-03-13, MRE/DM-AJ/128-03-13, y MRE/DM-AJ/129-03-13.

En cuanto a la primera comunicación, Costa Rica lamenta que Nicaragua no dé cumplimiento a la orden de la Corte Internacional de Justicia de 8 de marzo de 2011, y que más bien busque disimular su participación, dirección y control sobre la presencia de ciudadanos de Nicaragua en la zona señalada por la Corte, a pesar de la abundante prueba sobre esos hechos, incluyendo las propias manifestaciones de autoridades de su Gobierno, que aceptan su participación para que esos ciudadanos tengan presencia ahí.

Más aún, es tan clara y evidente la participación de su Gobierno en estas violaciones a la orden de la Corte, que medios periodísticos recientemente confirmaban lo que todos ya sabemos: que la presencia de nicaragüenses en esa zona es organizada y financiada por el Gobierno de Nicaragua. En ese sentido, tanto el medio El 19 Digital como el medio Prensa Latina, señalaban el pasado 17 de marzo de 2013 lo siguiente: “*Por gestión de Guardabarranco, con el respaldo del gobierno sandinista, más de seis mil 300 jóvenes de toda Nicaragua, a razón de 25 cada semana, transitaron por un proceso de aprendizaje en torno a esa significativa vía fluvial limítrofe con Costa Rica, tanto desde la teoría como desde la práctica*”. Y, seguidamente, ambos medios también señalaron que: “*Este contempla dos días en el aula, acrecentando conocimientos, y ocho jornadas en la isla de Harbour Heard (sic), situada en esa avenida hidráulica expandida al sur de Nicaragua.*”

Sobre su segunda nota, Costa Rica ha cumplido con especial atención la orden de la Corte Internacional de Justicia, que permite el envío de personal costarricense para la protección del ambiente a la zona señalada por la Corte. Ello se ha hecho de común acuerdo con la Secretaría de la Convención Ramsar, y dando previo aviso a su país y a la Corte Internacional de Justicia. Asimismo, Costa Rica ha tenido la mejor voluntad de lograr la mayor cooperación posible con Nicaragua, pero ha sido su país el que rechaza cooperar con Costa Rica. Evidencia de esa posición son las violaciones antes mencionadas a las medidas provisionales dictadas por la Corte.



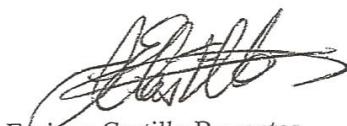
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-página 2-

En relación con su tercera comunicación, que concierne el caso que su país llevó a la Corte Internacional de Justicia por la realización de un camino en territorio de Costa Rica, mi Gobierno lamenta la falta de voluntad y disposición de Nicaragua de permitir la toma de muestras de las aguas del río San Juan, con el objeto de establecer, con criterios científicos sólidos, la verdadera situación de las aguas del río. A pesar de esa actitud, Costa Rica ha transmitido un nuevo pedido a su país, por intermedio de la Corte Internacional de Justicia, para que esos monitoreos se puedan realizar conjuntamente. Esperamos que en esta oportunidad su Gobierno esté dispuesto a cooperar si lo que realmente Nicaragua desea es la protección ambiental del Río San Juan.

Por otra parte, Costa Rica rechaza con total firmeza, la posición de Nicaragua de desconocer los alcances del fallo de la Corte Internacional de Justicia de 13 de julio de 2009, sobre los derechos de navegación de Costa Rica en el río San Juan. La navegación de técnicos costarricenses referida en mi nota DM-AM-063-13 de 6 de febrero de 2013 es, en esencia, una navegación comercial, pues se paga a un botero privado por el servicio de transporte a lo largo del sector del río donde Costa Rica tiene derecho a navegarlo. Costa Rica hace ver que se reserva el derecho de hacer uso de su derecho de navegación, en los términos señalados por la Corte Internacional de Justicia.

Aprovecho la ocasión para reiterar las seguridades de mi consideración.



Enrique Castillo Barrantes

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

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Recibido  
 m/03/13



## **ANNEX 56**

*Letter from the Minister of Foreign Affairs and Worship of Costa Rica to the  
Director General National Laboratory of Materials and Structures of the  
University of Costa Rica*

Reference DM-AM-389

15 July 2013

English Translation and Spanish Original



**Translation*****The Minister of Foreign Affairs and Worship***

15 July 2013  
DM-AM-389-13

Mister  
Eng. Alejandro Navas Castro  
Director  
National Laboratory of Materials and Structural models  
University of Costa Rica

Dear sir:

I have the pleasure to address you in reference to the case "Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)", filed by Nicaragua against Costa Rica on 22 December 2011.

In the Memorial filed before the International Court of Justice last 19 December 2012, Nicaragua uses a report about the border road prepared by the National Laboratory of Materials and Structural Models (LANAMME), in which it relies on, among other documents, to claim that Costa Rica has caused harm to the San Juan River.

With the purpose that LANAMME can give its opinion about the use that Nicaragua has given to the referred document, if it considers it necessary, I am attaching the English translation filed by Nicaragua of the referred report, as well as relevant extracts of Nicaragua's Memorial where it quotes the LANAMME report.

I avail myself of the opportunity to reiterate the assurances of my esteem and consideration.

Enrique Castillo Barrantes

Minister

Cc. Ing. Guillermo Loría Salazar, Director PITRA

*El Ministro de Relaciones Exteriores y Culto*

15 de julio de 2013  
DM-AM-389-13

Señor  
**Ing. Alejandro Navas Castro**  
Director  
Laboratorio Nacional de Materiales y Modelos Estructurales  
Universidad de Costa Rica

Estimado señor:

Me es grato saludarlo en ocasión de referirme al caso “Construcción de un Camino en Costa Rica a lo largo del Río San Juan (Nicaragua v Costa Rica)”, presentado por Nicaragua contra Costa Rica el 22 de diciembre de 2011.

En la Memoria presentada ante la Corte Internacional de Justicia el pasado 19 de diciembre de 2012, Nicaragua hace uso de un informe sobre el camino fronterizo preparado por el Laboratorio Nacional de Materiales y Modelos Estructurales (LANAMME), en el cual se apoya, entre otros documentos, con el objeto de argumentar que Costa Rica ha causado daño al río San Juan.

Con el propósito de que el LANAMME pueda opinar sobre el uso que Nicaragua ha dado al referido documento, si así lo estimare necesario, adjunto para su conocimiento la traducción al inglés presentada por Nicaragua del referido informe, así como extractos relevantes de la Memoria de Nicaragua donde se cita el informe del LANAMME.

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



Enrique Castillo Barrantes  
Ministro

C.c.: Ing. Guillermo Loría Salazar, Director PITRA

## **ANNEX 57**

*Note of the Permanent Mission of Nicaragua to the Permanent and Observer Mission to the United Nations, 5 August 2013, attaching Official Statement to the Press by the Government of Nicaragua, 1 August 2013*

Reference MINIC-MIS-114-13

5 August 2013



Aug. 5. 2013 8:24PM

No. 7672 P. 1/9



MISSION PERMANENTE DE NICARAGUA  
ANTE LAS NACIONES UNIDAS  
820 SECOND AVENUE - 8<sup>TH</sup> FLOOR  
NEW YORK, NY 10017  
(212) 496-7997

MINIC-MIS-114-13

The Permanent Mission of Nicaragua to the United Nations presents its compliments to the Permanent and Observer Missions to the United Nations and has the honor to attach the Press Release issued on 1 August 2013 by the Government of Reconciliation and National Unity regarding the Ordinance issued on July 16, 2013, by the International Court of Justice (ICJ) denying Costa Rica's three applications submitted on May 23, 2013, through which they requested amendments to the Ordinance on provisional measures, issued on March 8, 2011, within the framework of *Case of Certain activities carried out by Nicaragua in the Border Area. (Costa Rica v. Nicaragua)*.

The Permanent Mission of Nicaragua to the United Nations avails itself of this opportunity to renew to the Permanent and Observer Missions to the United Nations the assurances of its highest consideration.

New York, 5 August 2013

All Permanent and Observer Missions  
to the United Nations  
New York



Aug. 5. 2013 8:24PM

No. 7672 P. 2/9



Gobierno de Reconciliación  
y Unidad Nacional

*El Pueblo, Presidente!*

2.0.13:  
BENDECIDOS,  
PROSPERADOS Y  
EN VICTORIAS!

Non Official Translation

**Press Release**

The Government of Reconciliation and National Unity informs the people of Nicaragua and the International Community, that the International Court of Justice (ICJ), principal judicial organ of the United Nations, via Ordinance issued on July 16, 2013, denied Costa Rica's three applications submitted on May 23, 2013, through which they requested amendments to the Ordinance on provisional measures, issued on March 8, 2011, within the framework of Case of Certain activities carried out by Nicaragua in the Border Area. (*Costa Rica v. Nicaragua*).

Costa Rica argued before the ICJ, that the activities of the Guardabarranco Environmental Movement, among others, were causing irreparable damage to wetlands, arguments with



**CRISTIANA, SOCIALISTA, SOLIDARIA!**  
**Comandante Daniel**

Aug. 5. 2013 8:25PM

No. 7672 P. 3/9

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which they sought to justify the "urgency" and "need" to amend the interim measures, motions that were dismissed almost unanimously by the main Judiciary Body of the United Nations, indicating that, contrary to the claims of Costa Rica, there is no risk of irreparable harm, to the environment, or the rights invoked by Costa Rica that justifies the modification of the provisional measures, as required by Costa Rica.

Nicaragua on its part, reacting to the request of Costa Rica, requested that the measures issued by the Court in March 2011 which referred solely to the prevalent situation at that time, and not on the subsequent ecological disaster caused by the opening of a road by Costa Rica, be extended to both cases currently accumulated before the Court. Nicaragua revalidated that the behavior of the Republic of Costa Rica, in building a 160-kilometer road along the Rio San Juan in

Aug. 5. 2013 8:25PM

No. 7672 P. 4/9

3

Nicaragua without proper environmental impact studies, and other technical documents, represents an aggravation of the dispute and a breach of International law.

Therefore, Nicaragua presented as a second request to the ICJ, the need for it to order that both Parties in the now accumulated cases refrain from any action which might aggravate or extend the dispute that both countries have before the ICJ. The ICJ considered Nicaragua's request necessary, and through the Ordinance of July 16, 2013, reiterated the need to abstain "from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve," thus making this Ordinance applicable to all the facts and rights in the accumulated trial.

The Government of Reconciliation and National Unity is satisfied by the provisions of the ICJ in its ordinance, and considers it

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appropriate to make public its satisfaction, because the Ordinance has been issued taking into account the arguments presented by Nicaragua which were grounded according to International Law.

The Government of Reconciliation and National Unity states that it will continue to faithfully comply with the provisional measures ordered by the International Court of Justice, while it calls on the Sister Republic of Costa Rica to abide by the provisions of the ICJ, and cease its policy of non-compliance.

**Managua, Nicaragua  
1 August 2013  
Government of Reconciliation  
and National Unity**

Aug. 5. 2013 8:25PM

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Gobierno de Reconciliación  
y Unidad Nacional

*El Pueblo, Presidente!*

**2.5.13:**  
BENDECIDOS,  
PROSPERADOS Y  
EN VICTORIAS!

## NOTA DE PRENSA

El Gobierno de Reconciliación y Unidad Nacional informa al Pueblo de Nicaragua y a la Comunidad Internacional, que la Corte Internacional de Justicia (CIJ), Principal Órgano Judicial de Naciones Unidas, mediante Ordenanza emitida el 16 de Julio de 2013, negó a Costa Rica las tres solicitudes presentadas el 23 de Mayo de 2013, mediante la cual solicitaron la modificación de la Ordenanza sobre medidas provisionales, emitida el 8 de Marzo de 2011, dentro del marco del caso de *Ciertas actividades realizadas por Nicaragua en la zona fronteriza. (Costa Rica v. Nicaragua)*.

Costa Rica alegó ante la CIJ, que las actividades del Movimiento Ambientalista Guardabarranco, entre otros, estaban causando daño irreparable a los humedales, con lo cual pretendía



**PODER CIUDADANO CRISTIANA, SOCIALISTA, SOLIDARIA!**  
Comandante Daniel

Aug. 5. 2013 8:25PM

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justificar la "urgencia" y "necesidad" de modificar las medidas provisionales, argumentos que fueron desestimados de manera casi unánime por el Principal Órgano Judicial de Naciones Unidas, indicando que, contrario a lo alegado por Costa Rica, no existe ningún riesgo de daño irreparable, ni al Ambiente, ni a los Derechos que Costa Rica invocó, que justifiquen la modificación de las medidas provisionales, tal y como lo requiriera Costa Rica.

Por su parte, Nicaragua, reaccionando a la solicitud presentada por Costa Rica, solicitó que las medidas que la Corte había dictado en Marzo de 2011 y que estaban referidas únicamente a la situación en esos momentos vigente, y no al desastre ecológico ocasionado posteriormente por la carretera abierta por Costa Rica, se hicieran extensivas a ambos casos que actualmente se hayan acumulado ante la Corte. Nicaragua revalidó que la conducta de la República de Costa Rica, al construir una carretera

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de 160 kilómetros a lo largo del Río San Juan de Nicaragua sin los debidos Estudios de Impacto Ambiental, y otros Documentos Técnicos, representa una agravación a la disputa y un incumpliendo al Derecho Internacional.

Por eso, Nicaragua presentó como segunda solicitud ante la CIJ, la necesidad de que ésta ordenara que las Partes de los juicios ahora acumulados se abstuvieran de cualquier acción que pueda agravar o prolongar las disputas que ambos países tienen ante la CIJ. La CIJ consideró necesaria la solicitud de Nicaragua, y mediante su Ordenanza del día 16 de Julio de 2013, reiteró la necesidad de abstención "de toda acción que pueda agravar o prolongar la controversia ante la Corte o hacerla más difícil de resolver", haciendo de esta manera aplicable esta Ordenanza a todos los hechos y derechos en el juicio acumulado.

Aug. 5. 2013 8:25PM

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El Gobierno de Reconciliación y Unidad Nacional se siente satisfecho por lo dispuesto por la CIJ en su Ordenanza, y considera apropiado hacer del conocimiento público su satisfacción, debido a que la Ordenanza ha sido dictada tomando en cuenta los argumentos presentados por Nicaragua que estaban fundamentados en el Derecho Internacional.

El Gobierno de Reconciliación y Unidad Nacional expresa que seguirá dando fiel cumplimiento a las medidas provisionales ordenadas por la Corte Internacional de Justicia, a la vez que hace un llamado a la Hermana República de Costa Rica a acatar lo dispuesto por la CIJ, y cesar su política de inobservancia.

**Managua, Nicaragua  
Agosto 1º de 2013  
Gobierno de Reconciliación  
y Unidad Nacional**



## **ANNEX 58**

*Note from the Permanent Mission of Costa Rica to the United Nations to the Permanent and Observer Missions to the United Nations, attaching Position of Costa Rica in relation to a Press Release dated 1 August 2013 circulated by the Permanent Mission of Nicaragua to all permanent and Observer Missions to the United Nations on 5 August 2013*

Reference MCRONU-458-13

7 August 2013





## Permanent Mission of Costa Rica to the United Nations

211 E. 43<sup>rd</sup> Street, Room 903, New York, NY 10017. Tel: (212) 986-6373 Fax: (212) 9866842

*MCRONU-458-2013*

The Permanent Mission of Costa Rica to the United Nations presents its compliments to all Permanent and Observer Missions to the United Nations, and wishes to refer to the note verbale MINIC-MIS-114-13 and its attached press release, circulated by the Permanent Mission of Nicaragua to the United Nations on 5 August 2013, in relation to the requests made by Costa Rica and Nicaragua for the modification of the provisional measures indicated by the International Court of Justice in its Order of 8 March 2011 in the case concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, and in particular to the Order issued by the Court on 16 July 2013.

In this press release the Government of Nicaragua has gravely misrepresented the statements made by the Court in its Order. The annexed document is intended to set the record straight.

Among other omissions and misrepresentations, in its press release Nicaragua failed to mention the Court's conclusion that the presence of organized groups of Nicaraguan nationals in the disputed area had been established, despite the provisional measures requiring both countries to abstain from entering the area. The Court also considered that the presence of organized groups of Nicaraguan nationals in the disputed area carries the risk of incidents which might aggravate the present dispute, and expressed its concern in this regard. It is because of this established fact that the Court reaffirmed its Order of 8 March 2011, reminding the Parties that the provisional measures have binding effect and create international obligations. Additionally, Nicaragua not only failed to note that its request for the indication of provisional measures in relation to road infrastructure works undertaken by Costa Rica on entirely undisputed Costa Rican sovereign territory was rejected by the Court, but also seriously misrepresented the Court's Order by implying that the above statement made by the Court was related to the Costa Rican road.

The Permanent Mission of Costa Rica to the United Nations avails itself of this opportunity to reiterate to all Permanent and Observer Missions to the United Nations the assurances of its highest consideration.

New York, 7 August, 2013

To all  
**Permanent and Observer Missions**  
 New York



**POSITION OF COSTA RICA IN RELATION TO  
A PRESS RELEASE DATED 1 AUGUST 2013  
CIRCULATED BY THE PERMANENT MISSION OF NICARAGUA  
TO ALL PERMANENT AND OBSERVER MISSION TO THE UNITED NATIONS  
ON 5 AUGUST 2013**

The Government of the Republic of Nicaragua has recently circulated a press release dated 1 August 2013, concerning an Order rendered by the International Court of Justice on 16 July 2013 regarding requests made first by Costa Rica, and then by Nicaragua, for the modification of the provisional measures indicated by the Court in its Order of 8 March 2011 in the case concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*.

The Government of Costa Rica hereby informs the international community of States that the said Nicaraguan press release gravely misrepresents the statements made by the Court in relation to the requests made by both parties, and particularly the conclusions reached by the Court. The full text of the Court's Order of 16 July 2013 is available online at the following address: <http://www.icj-cij.org/docket/files/150/17500.pdf>.

As a result of Nicaragua's systematic violation of the Court's Order of 8 March 2011, by sending and maintaining large numbers of Nicaraguan nationals in the area indicated by the Court, Costa Rica was compelled to make a request for the modification of the provisional measures previously indicated by the Court.

The Court considered that the Order of 8 March 2011 did not need to be modified, as it was sufficiently clear in its scope and purpose, and that the situation, as it was now presented to the Court, did not merit its modification.

In order to conceal the Court's concern in relation to the presence of Nicaraguan nationals in the area indicated by the Court, Nicaragua deliberately omitted to refer in its press release to the Court's observations in this regard. The Court stated:

"25. In light of the evidence communicated to it, the Court therefore regards it as having been established that, since the rendering of its Order of 8 March 2011, organized groups of persons, whose presence was not contemplated when it made its decision to indicate provisional measures, are regularly staying in the disputed territory. It considers that this fact does indeed constitute, in the present case, a change in the situation within the meaning of Article 76 of the Rules of Court, upon which Costa Rica may be entitled to rely in support of its request for the modification of the said Order.

...

36. Consequently, the Court considers that, despite the change that has occurred in the situation, the conditions have not been fulfilled for it to modify the measures that it indicated in its Order of 8 March 2011.

37. Nevertheless, the presence of organized groups of Nicaraguan nationals in the disputed area carries the risk of incidents which might aggravate the

present dispute. That situation is exacerbated by the limited size of the area and the numbers of Nicaraguan nationals who are regularly present there. The Court wishes to express its concerns in this regard.

38. The Court thus considers it necessary to reaffirm the measures that it indicated in its Order of 8 March 2011, in particular the requirement that the Parties "shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve" (*Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011 (I)*, p. 27, para. 86, point 3, of the operative clause). It notes that the actions thus referred to may consist of either acts or omissions. It reminds the Parties once again that these measures have binding effect (*LaGrand (Germany v. United States of America), Judgment, I.C.J. Reports 2001*, p. 506, para. 109) and therefore create international legal obligations which each Party is required to comply with (see, for example, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 258, para. 263, and (*Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011 (I)*, pp. 26-27, para. 84)."

It is therefore clear that the Court did find that the presence of large number of Nicaraguan nationals in the area "carries the risk of incidents which might aggravate the present dispute", a situation that "is exacerbated by the limited size of the area and the numbers of Nicaraguan nationals who are regularly present there". It is because of this that the "Court wishes to express its concerns in this regard". Equally, it is because of the presence of Nicaraguan nationals in the area that the Court "thus consider[ed] it necessary to reaffirm the measures that it indicated in its Order of 8 March 2011, in particular the requirement that the Parties 'shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve'".

Furthermore, Nicaragua also failed to mention in its press release that the Court, for a second time, rejected its request for the indication of provisional measures in relation to road infrastructure works undertaken by Costa Rica on entirely undisputed Costa Rican sovereign territory, which is the subject of another case before the Court. Nicaragua made a request for provisional measures in December 2012, and this request was rejected by the Court in March 2013. It made the same request again in June 2013. In addressing Nicaragua's request for the second time, the Court stated:

"27. The Court consequently finds that Nicaragua's request for the Order of 8 March 2011 to be modified or adapted does not have any bearing on the situation addressed in that Order. It cannot, as such, be based on any "change in the situation" that gave rise to the indication of provisional measures in the *Costa Rica v. Nicaragua* case.

28. With regard to Nicaragua's second argument, the Court considers that the joinder of proceedings in the *Costa Rica v. Nicaragua* and *Nicaragua v. Costa Rica* cases has also not brought about such a change. That joinder is a procedural step which does not have the effect of rendering applicable *ipso*

*facto*, to the facts underlying the *Nicaragua v. Costa Rica* case, the measures prescribed with respect to a specific and separate situation in the *Costa Rica v. Nicaragua* case. Moreover, even if the situation invoked in the *Nicaragua v. Costa Rica* case were to justify the indication of provisional measures, the appropriate method of securing that is not the modification of the Order made in the *Costa Rica v. Nicaragua* case.

29. The Court therefore considers that Nicaragua may not rely upon a change in the situation within the meaning of Article 76 of the Rules of Court in order to found its request for the modification of the Order of 8 March 2011.”

In its press release dated 1 August 2013, Nicaragua misrepresented the Court’s Order of 16 July 2013, in particular by stating that the Court’s reaffirmation of “the requirement that the Parties ‘shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve’” applied to the road infrastructure works carried out by Costa Rica. However, as is clear from the paragraphs quoted from the Court’s Order above, the Court’s reaffirmation of its Order of 8 March 2011 was made in the context of the Court’s acknowledgment of the presence of Nicaraguan nationals in the area indicated by the Court and does not apply to the road infrastructure works in Costa Rica. Indeed, Nicaragua’s request for a modification of the provisional measures based on Nicaragua’s claim in relation to road infrastructure works in Costa Rica was dismissed by the Court because it “does not have any bearing on the situation addressed in that Order”.

Finally, Nicaragua’s misrepresentation of the Court’s Order in its press release of 1 August 2013 concludes by stating that Nicaragua “will continue to faithfully comply with the provisional measures ordered by the International Court of Justice, while it calls on the Sister Republic of Costa Rica to abide by the provisions of the ICJ, and cease its policy of non-compliance”. This statement is patently disingenuous, as the above-quoted paragraphs from the Court’s Order of 16 July 2013 make clear.

Costa Rica regrets that Nicaragua, in an attempt to manipulate the perception of the international community of States about matters that are currently before the International Court of Justice, has resorted to misrepresenting the Court’s most recent Order. Costa Rica requests that Nicaragua respect the clear terms of the Court’s Order and cease misrepresenting the Court’s statements.

7 August 2013

## **ANNEX 59**

*Letter from the Co-Agent of Costa Rica to the Registrar of the International Court of Justice*

Reference ECRPB-052-13

7 August 2013





*Embajada de Costa Rica  
ante el Reino de los Países Bajos*

7 August 2013  
ECRPB-052-13

Excellency,

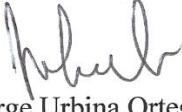
I refer to Costa Rica's communication dated 7 March 2013, with reference ECRPB-013-2013, in which Costa Rica proposed to Nicaragua a joint monitoring and sampling program for the San Juan River. I also refer to Costa Rica's communication dated 24 June 2013, and reference ECRPB-036-13 concerning the same subject.

In its letter of 24 June Costa Rica requested that Nicaragua provide a response by 2 July 2013, indicating whether it accepted Costa Rica's proposal for joint monitoring and sampling of the San Juan River.

More than a month has now passed, and Nicaragua has failed to respond to Costa Rica's proposal. Costa Rica regrets Nicaragua's lack of willingness to cooperate to establish a mechanism for joint monitoring and sampling of the San Juan that would have assisted in determining whether the construction of a road on Costa Rican sovereign territory is having any impact on the San Juan River.

Costa Rica informs the Court that due to Nicaragua's lack of cooperation, it will no longer pursue a program for joint monitoring and sampling of the River. Costa Rica will proceed with the preparation of its Counter-Memorial on the basis of available data.

Accept, Sir, the assurances of my highest consideration.

  
Jorge Urbina Ortega  
Co-Agent  
Republic of Costa Rica



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





## **ANNEX 60**

*Letter from the Registrar of the International Court of Justice to the Agent of  
Costa Rica*

Reference 142331

8 August 2013



08-08-2013 16:47

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T-922 P.001/001 F-972

## COUR INTERNATIONALE DE JUSTICE

## INTERNATIONAL COURT OF JUSTICE

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 TELEFAX: +31 (0)70 364 99 28  
 E-MAIL: mail@icj-cij.org  
 WEBSITE: www.icj-cij.org

142331

8 August 2013

Sir,

With reference to the cases concerning Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), I have the honour to acknowledge receipt of a letter from the Co-Agent of Costa Rica, dated 7 August 2013 and received in the Registry on the same day, regarding Costa Rica's proposal for joint monitoring and sampling of the San Juan River contained in the Co-Agent's letters dated 7 March 2013 (ECRPB-013-2013) and 24 June 2013 (ECRPB-036-13).

Concerning the letter of 24 June 2013, I regret to have to inform you that, for unknown reasons, probably related to the exceptionally heavy workload of the Court at that time, this letter was not properly processed and was not transmitted to the other Party. Please, accept my most sincere apologies for the inconveniences caused.

Copies of the Co-Agent's letters, dated 24 June 2013 and 7 August 2013 respectively have now been sent to the other Party.

Accept, Sir, the assurances of my highest consideration.

Philippe Couvreur  
Registrar

H.E. Mr. Edgar Ugalde Álvarez  
 Agent of the Republic of Costa Rica  
 before the International Court of Justice  
 Embassy of the Republic of Costa Rica  
 The Hague

cc: H.E. Mr. Jorge Urbina Ortega  
 Co-Agent of the Republic of Costa Rica  
 before the International Court of Justice  
 Embassy of the Republic of Costa Rica  
 The Hague

Mr. Sergio Ugalde  
 Co-Agent of the Republic of Costa Rica  
 before the International Court of Justice  
 Embassy of the Republic of Costa Rica  
 The Hague



## **ANNEX 61**

*Letter from the Director General of the National Laboratory of Materials and Structures of the University of Costa Rica to the Minister of Foreign Affairs and Worship of Costa Rica*

Reference LM-IC-D-0914-2013

14 August 2013

English Translation and Spanish Original



*Translation into English from the original document in Spanish*

**August 14, 2013 LM-IC-D-0914-2013**

**Mr. Enrique Castillo Barrantes**  
**Minister of Foreign Affairs**

Honourable Minister:

In response to your Note DM-AM-389-13 dated July 15, we would like to express that:

- a) The document received by this Department refers to a translation into English of our report INF-PITRA-014-12 and the use of our institutional logos, which were not authorized by Universidad de Costa Rica or by Laboratorio Nacional.
- b) Our review of the documents submitted as evidence by the government of Nicaragua, regarding the report issued by LanammeUCR (INF-PITRA-014-12), consisted of an individual analysis of two different documents, namely:
  - A translation into English of the contents of the original report issued by LanammeUCR in Spanish (**official language of Costa Rica**, pursuant to Article 76 of the Political Constitution). The referred translation into English is edited in a format similar to that of the original in Spanish issued in May 2012; and
  - A summary of conclusions indicating as reference the contents of the report by LanammeUCR.

In relation to the above, we would like to indicate the following:

I. - On the translation into English of the original report in Spanish issued by LanammeUCR

Regarding the first document, we compared it to the original text of the report issued by LanammeUCR to determine whether there were differences between the original and the English translation submitted as evidence by the government of Nicaragua. In general, the document translated into English adjusts to that written in the text of the original report issued in Spanish; however, in some parts of the translated document literal translations are used which **fail to accurately reflect** important technical concepts included in the original report by LanammeUCR.

1. In fact, based on a thorough comparison we found at least two fundamental differences between the text of the document translated into English and the original document in Spanish by LanammeUCR. In addition, the translated document uses (**without any authorization**) a similar format (**with all of the institutional logos**) to that used by LanammeUCR. The discrepancies found are as follows: Table #1 of the translated document is inaccurate in the numbering of the sectors studied during the visit to Route 1856.
2. Figure #17 of the translated document does not correspond to figure #17 of the original document by LanammeUCR, which results in an incorrect reference in the translated text.

The translation into English of LanammeUCR's report is inaccurate and it contains significant errors that separate it from what our Laboratory initially included in its original report.

II. - Regarding the Conclusions derived by the Government of Nicaragua from the document translated into English and submitted as evidence before the International Court of Justice, we would like to make the following observations:

REFERENCE	ANALYSIS OF THE CONCLUSION
NM, para 2.26, fn62	The conclusion corresponds to that written in report INF-PITRA-014-12.
NM, para 3.5, fns 106 and 107	The report by LanammeUCR does not use the word "negligent" anywhere to describe the manner in which the Government of the Republic of Costa Rica has carried out the Project.  There is an error in quoting " <i>causes increased cost, environmental problems, rapid deterioration of the Project</i> ", insofar as the original report by LanammeUCR does not mention this sentence and does not reference environmental issues in any portion.
NM, paras 3.17-3.18 fns 136-141	This conclusion corresponds to that written in report INF-PITRA-014-12.
NM, paras 3.20, fns 143-146	INF-PITRA-014-12 never mentions the existence of a direct deposit of sediment into San Juan River, as stated by this conclusion.
NM, para 3.24 and fns 157-158	This conclusion corresponds to that written in report INF-PITRA-014-12.
NM, para 3.26 and fns 164-165	This conclusion corresponds to that written in report INF-PITRA-014-12.

Translation into English from the original document in Spanish

NM, paras 3.35- 3.36, fns 185-191	The information included is correct; however, by using the quote " <i>in most sectors</i> " <b>it is extended to the full Route</b> , when this reference is exclusive to <b>one of the nine sectors of the project</b> .
NM, para 3.40, fns 202-205	This conclusion corresponds to that written in report INF-PITRA-014-12.
NM, para 3.42, fn 209	This conclusion is completely disproportionate. The basin of San Juan River is very large (it practically covers the entire north area of CR and a good portion of Nicaragua) in comparison to the area intervened for the construction of Route 1856, which barely surpasses 5% of said basin. Based on this reality and on the hypothesis that <b>a deposit of sediment is determined</b> as originating from Route 1856 , which contributes to all of the <b>sediment in San Juan River</b> , it is evident that if we compare said total to the contribution by Route 1856 the latter would be negligible.
NM para 3.46, fns 217-220	This conclusion corresponds to that written in report INF-PITRA-014-12.
NM, paras 3.49- 3.50, fns 231-232, 234.	The bodies of water mentioned in the report by LanammeUCR <b>do not include</b> San Juan River. They refer to creeks and streams located in Costa Rican territory. There are no direct damages to San Juan River, given that Route 1856, in the areas where it is closest to the river, is at least 50 meters from the right bank.
NM, para 3.53, fns 240-241	The bodies of water mentioned are all in Costa Rican territory.
NM, paras 3.55- 3.56 fns 248, 251- 253	This conclusion corresponds to that written in report INF-PITRA-014-12.
NM, para 4.15, fn 365	Issues related to the navigability of San Juan River are <b>NOT</b> contemplated anywhere in the original document of the report by LanammeUCR. The possibility of a risk to navigation on San Juan River due to the works on Route 1856 <b>cannot be inferred</b> either from any part of the original document.
NM, para 6.7, fn 567	This is a general conclusion with the same characteristics as the previous point. It is disproportionate, and very far from that indicated in the text of the original document issued in Spanish by LanammeUCR.
<b>References in the Kondolf Report</b>	
KR, para 1.3.4	This conclusion corresponds to that written in report INF-PITRA-014-12.
KR, para 4.4	The second statement made in this Conclusion is not something that can be inferred from the text of the report by LanammeUCR.
KR, para 4.12	This conclusion cannot be made based on the report by LanammeUCR. In fact, the report by LanammeUCR <b>DOES NOT include a single amount regarding quantities of sediment deposited into the bodies of water</b> .
KR, para 6 (p 51)	It is not valid to extend that indicated in this Conclusion to the entire San Juan River.

III. - In sum:

- a) There is no authorization from LanammeUCR to translate into English the text of the original report referenced, which was issued by LanammeUCR in Spanish, official language of Costa Rica. The document translated into English, which you sent to us for our review, cannot be recognized as an official document of Laboratorio Nacional, even if it appears edited with the institutional logos, which were not authorized for use either.
- b) The conclusions included in the document translated into English follow a macro approach, while the original report issued by LanammeUCR is more specific, following a sectors approach. This causes most of the conclusions in the version translated into English to indicate a higher impact than those included in the original report issued in Spanish by LanammeUCR (INF-PITRA-014-12); and
- c) Lastly, it is worth noting that the goal of the report by LanammeUCR that we have been referring to is to show the conditions of Route 1856 from a technical and functional perspective, directly related to road topics and to the construction of low volume roads. The environmental aspect was not addressed as it is very clear that this matter is completely separate from the competencies and capacities awarded by law to this Laboratorio Nacional.

Respectfully,

Alejandro Navas Carro, Eng.  
M. Sc. Director of LanammeUCR

Luis Guillermo Loría Salazar, Eng., Ph.D.  
General Coordinator PITRA-LanammeUCR



**14 de agosto del 2013  
LM-IC-D-0914-2013**

**Señor**  
**Dr. Enrique Castillo Barrantes**  
**Ministro de Relaciones Exteriores y Culto**  
**Presente**

Estimado Señor Ministro:

En respuesta a su Oficio DM-AM-389-13 de fecha 15 de julio nos permitimos manifestar lo siguiente:

- a) El documento recibido por esta Dirección se refiere a una traducción al inglés de nuestro informe INF-PITRA-014-12 y al uso de nuestros logotipos institucionales que no han sido autorizados ni por la Universidad de Costa Rica ni por este Laboratorio Nacional.
- b) El trabajo de revisión hecho por nosotros de los documentos aportados como prueba por el gobierno de Nicaragua sobre el informe rendido por el LanammeUCR (INF-PITRA-014-12) consistió en efectuar un análisis individual de dos documentos diferentes, a saber:
  - Una traducción al inglés del contenido del informe original que rindió el LanammeUCR en español (**idioma oficial de Costa Rica** según se consagra en el artículo 76 de la Constitución Política). La referida traducción al inglés aparece editada en formato similar al del original en idioma español, emitido en mayo de 2012; y
  - Un compendio de Conclusiones donde se señala como referencia el contenido del informe del LanammeUCR.

Sobre el particular nos permitimos señalar:

I.- De la traducción al idioma inglés del informe original en español rendido por el LanammeUCR

Respecto del primer documento se procedió a cotejar éste con el texto del Informe original rendido por el LanammeUCR, con la finalidad de determinar la existencia o no de diferencias entre aquel informe original y su traducción al idioma inglés presentado como prueba por el gobierno de Nicaragua. En términos generales, el documento traducido al inglés, se ajusta a lo escrito en el texto del informe original rendido en idioma español; sin embargo, en algunas partes del documento



traducido, se acude a traducciones literales **que no reflejan con exactitud** conceptos técnicos importantes consignados en el informe original del LanammeUCR.

1. En efecto, realizada aquella comparación exhaustiva se encontraron, por lo menos, dos diferencias fundamentales entre el texto del documento traducido al inglés y el original en español del LanammeUCR. En el documento traducido, además, se utiliza (**sin ninguna autorización**) un formato similar (**con todos los logotipos institucionales**) al formato que utiliza el LanammeUCR. Estas discrepancias encontradas, son: La tabla #1 del documento traducido es imprecisa en la numeración de los tramos que se estudiaron durante la visita a la Ruta 1856.
2. La figura #17 del documento traducido no corresponde con la figura #17 del informe original del LanammeUCR, lo cual provoca una referencia incorrecta en ese texto traducido.

En definitiva, la traducción al inglés del informe del LanammeUCR y a la cual nos estamos refiriendo, peca de imprecisa y en ella se contienen errores importantes que lo distancian de lo que nuestro Laboratorio consignó realmente en su informe original.

II.- Acerca de las Conclusiones que el Gobierno de Nicaragua deriva del documento que tradujo al inglés y presentó como prueba a la Corte Internacional de Justicia, acotamos lo siguiente

REFERENCIA	ANALISIS DE LA CONCLUSIÓN
<b>NM, para 2.26, fn62</b>	La conclusión corresponde a lo escrito en el informe INF-PITRA-014-12.
<b>NM, para 3.5, fns 106 and 107</b>	<p>En el informe del LanammeUCR en ningún momento se utiliza la palabra “negligente” como adjetivo calificativo de la forma en que el Gobierno de la República de Costa Rica ha llevado a cabo el proyecto.</p> <p>Existe un error al citar que: <i>“causes increased cost, environmental problems, rapid deterioration of the Project”</i>; por cuanto en el informe original del LanammeUCR no se menciona esta oración, ni se alude por ningún lado a temas ambientales.</p>
<b>NM, paras 3.17-3.18 fns 136-141</b>	La conclusión corresponde a lo escrito en el informe INF-PITRA-014-12.
<b>NM, paras 3.20, fns 143-146</b>	En el INF-PITRA-014-12 nunca se menciona que exista aporte de sedimentos directamente al Rio San Juan tal como se afirma en esta conclusión.
<b>NM, para 3.24 and fns 157-158</b>	La conclusión corresponde a lo escrito en el informe INF-PITRA-014-12.
<b>NM, para 3.26 and fns 164-165</b>	La conclusión corresponde a lo escrito en el informe INF-PITRA-014-12.



<b>NM, paras 3.35-3.36, fns 185-191</b>	La información contenida es correcta, sin embargo al utilizar la cita “ <i>in most sectors</i> ” se hace extensiva a la totalidad de la Ruta, cuando esta referencia es exclusiva de uno de los nueve tramos del proyecto.
<b>NM, para 3.40, fns 202-205</b>	La conclusión corresponde a lo escrito en el informe INF-PITRA-014-12.
<b>NM, para 3.42, fn 209</b>	Esta Conclusión se encuentra fuera de toda proporción. En efecto, la cuenca del Rio San Juan es extensa (prácticamente cubre toda la zona norte de CR y buena parte de Nicaragua) en comparación con el área intervenida para la construcción de la Ruta 1856 que apenas rebasa el 5% de aquella cuenca. Partiendo de esta realidad y en la hipótesis de determinarse aporte de sedimentos originados de la Ruta 1856 a la totalidad de los sedimentos en el Río San Juan, es evidente que, al cotejarse dicha totalidad con el aporte de la Ruta 1856, éste resultaría ínfimo.
<b>NM para 3.46, fns 217-220</b>	La conclusión corresponde a lo escrito en el informe INF-PITRA-014-12.
<b>NM, paras 3.49-3.50, fns 231-232, 234.</b>	Los cuerpos de agua que se mencionan en el informe del LanammeUCR no incluyen al Río San Juan. Se trata de quebradas y riachuelos ubicados en territorio costarricense. No existen daños directos al Rio San Juan, por cuanto la Ruta 1856 aún en sus zonas más cercanas a dicho río, se aleja al menos 50 metros de la margen derecha.
<b>NM, para 3.53, fns 240-241</b>	Los cuerpos de agua mencionados son todos en territorio de Costa Rica.
<b>NM, paras 3.55-3.56 fns 248, 251-253</b>	La conclusión corresponde a lo escrito en el informe INF-PITRA-014-12.
<b>NM, para 4.15, fn 365</b>	Temas relacionados con la navegabilidad del Rio San Juan NO se contemplan en ninguna parte del documento original del Informe del LanammeUCR. Tampoco es dable inferirse de ninguna parte del contenido del informe original, la posibilidad de un riesgo para la navegación en el Río San Juan a causa de los trabajos en la Ruta 1856.
<b>NM, para 6.7, fn 567</b>	Es una conclusión general con las mismas características del punto inmediato anterior; resulta desproporcionada y además, muy alejada de lo consignado en el texto del documento original emitido en español por el LanammeUCR.
<b>Referencias en el Reporte Kondolf</b>	
<b>KR, para 1.3.4</b>	La conclusión corresponde a lo escrito en el informe INF-PITRA-014-12.
<b>KR, para 4.4</b>	La segunda afirmación aparecida en esta Conclusión, no es algo que pueda inferirse del texto del informe del LanammeUCR.
<b>KR, para 4.12</b>	Esta es una conclusión que no es posible hacerla con base en el informe del LanammeUCR. En efecto, en este informe del LanammeUCR NO se incluye una sola cifra relacionada con tasas o cantidades de sedimentos aportadas a los cuerpos de agua.
<b>KR, para 6 (p 51)</b>	No resulta válido extender lo afirmado en esta Conclusión a la totalidad del Río San Juan.



LABORATORIO NACIONAL  
DE MATERIALES Y MODELOS ESTRUCTURALES

III.- En resumen:

- a) No existe autorización del LanammeUCR para traducir al inglés el texto del informe original citado, el cual fue rendido por el LanammeUCR en el idioma español, oficial de Costa Rica. El documento traducido al inglés, que nos hizo llegar para su examen, no podemos reconocerlo como un documento oficial de este Laboratorio Nacional, aunque el mismo aparezca editado en papel con los logotipos institucionales, los cuales, por lo demás, tampoco fueron autorizados para su uso.
- b) Las conclusiones insertas en el documento traducido al idioma inglés, obedece a un enfoque de nivel macro; en tanto que el informe original en español rendido por el LanammeUCR, lo es a nivel de sectores: más específico. Esto genera que la magnitud de las conclusiones en la versión del documento traducido al inglés arroje mayores niveles de impacto, que las conclusiones consignadas en el informe original del LanammeUCR (INF-PITRA-014-12) redactado en idioma español; y
- c) Por último, es importante tener en cuenta que el objetivo del informe del LanammeUCR, al cual venimos refiriéndonos, ha sido mostrar las condiciones de la Ruta 1856 desde perspectivas técnicas y funcionales directamente relacionadas con temas viales y de construcción de caminos de bajo volumen; la parte ambiental no fue siquiera abordada por tenerse muy claro que esta materia, es absolutamente ajena a las competencias y capacidades conferidas por ley a este Laboratorio Nacional.

Del señor Ministro de Relaciones Exteriores y Culto se despiden respetuosamente,

  
**Ing. Alejandro Navas Carro, M.Sc.**  
Director LanammeUCR



## **ANNEX 62**

*Letter from the Co-Agent of Costa Rica to the Registrar of the International  
Court of Justice*

Reference ECRPB-055-13

26 August 2013





*Embajada de Costa Rica  
en el Reino de los Países Bajos*

26 August 2013  
ECRPB-055-13

Excellency,

On 5 August 2013, the Republic of Nicaragua circulated among all Member and Permanent Observer States to the United Nations note verbale MINIC-MIS-114-13, which included a press release issued by the Nicaraguan Government on 1 August 2013.

The aforementioned press release misrepresents the Order issued by the International Court of Justice on 16 July 2013 on the requests made by Costa Rica and Nicaragua for the modification of the provisional measures indicated by the Court in its Order of 8 March 2011 in the case concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*.

In light of this situation, the Republic of Costa Rica was compelled to set the record straight, through note verbale MCRONU-458-2013 dated 7 August 2013 and its accompanying document.

Due to the gravity of Nicaragua's misrepresentations of the Court's Order, Costa Rica considers that the Court should be made aware of the situation. To this end, I have the honour to annex to this communication the notes and documents circulated by Nicaragua and Costa Rica at the United Nations.

Costa Rica wishes to express its regret that Nicaragua has resorted to misrepresenting the International Court of Justice's Order, dealing with matters that are currently before the Court.

Please acknowledge due receipt of this communication.

Accept, Sir, the assurances of my highest consideration.

Jorge Urbina Ortega  
Co-Agent  
Republic of Costa Rica

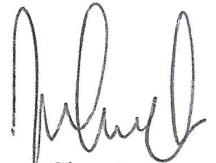


His Excellency  
Mr. Philippe Couvreur  
Registrar  
International Court of Justice  
Peace Palace 2517 KJ  
The Hague

*Juliana Couvreur  
26/8/2013*

**Certification**

*I Certify that the following documents annexed to this letter dated 12 August 2013, are true copies and conform to the original documents.*

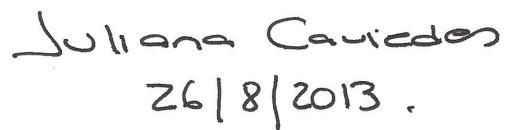


Signature

**Annexes**

**CR1.** Note verbale MINIC-MIS-114-13 of 5 August 2013 and accompanying press release of 1 August 2013.

**CR2.** Note verbale MCRONU-458-2013 of 7 August 2013 and its accompanying document.



Juliana Cauicden  
26/8/2013 .

## **ANNEX 63**

*Letter from the President of the Association of Engineers and Architects of Costa Rica to the Minister of Foreign Affairs and Worship of Costa Rica*

Reference 034-2012-2013-PRES

28 August 2013

English Translation and Spanish Original



August 28, 2013

034-2012-2013-PRES

Mr. Enrique Castillo Barrantes  
Minister of Foreign Affairs  
Ministry of Foreign Affairs of the Republic of Costa Rica

Honourable Minister:

The undersigned, José Guillermo Marín Rosales, President of the General Board of Directors of Colegio Federado de Ingenieros y Arquitectos de Costa Rica (CFIA, Costa Rican Association of Engineers and Architects), in response to your Note DM-AM-358-13 of June 27 of this year, would like to express the following:

We have reviewed the documents that you sent us, the translation into English, by Nicaragua, of our report DRD-INSP-299-2012 regarding Route 1856 of June 8, 2012, and relevant extracts of the Memorial filed by Nicaragua before the International Court in The Hague, which make reference to our report. Consequently, we present herein a brief analysis of the main findings regarding both the translation of our report and its use.

As derived from the analysis performed, the translation by Nicaragua alters in some cases the original meaning of our report. In addition, we determined that the extracts of the report referenced in the Memorial by Nicaragua attribute conclusions that were not issued by CFIA in its report.

Consequently, we would like to make the following clarifications:

#### **Reasons for the report**

In relation to that indicated by the press regarding the construction of Route 1856 and based on the purposes indicated by our Organic Law, CFIA considered necessary to perform an inspection of the aforementioned route and its accesses in order to contribute, from a technical standpoint, toward its evaluation and improvement. Consequently, CFIA sent a group of inspectors, engineering and architecture professionals, to visit said road. In this inspection they took note of the construction problems of the works and made recommendations that consisted of corrective measures for maintenance, conservation and improvement.

#### **Scope of the report issued**

The inspection by CFIA was performed when the works were in the construction process. The observations made in the report are specific and detailed, and so are the recommendations. As a result of the inspection, the CFIA report recommended the application of corrective measures in some sectors of the works, while for other sectors maintenance measures were recommended. The CFIA did not indicate at any time that the entire road had construction problems.

The report by CFIA did not issue conclusions of an environmental nature, and did not carry out measurements of sediments or hydrological studies in the San Juan River basin or in any other, given that what was carried out was a technical inspection.

Said report did not include assessments of a legal nature either. The observations and recommendations expressed in our report had the goal of contributing toward improvement from a technical perspective, in a work that CFIA, in its condition as assistant to the State in the areas of engineering and architecture, considers of great meaning and importance to the country.

**Regarding the use of CFIA's report**

CFIA only issued the aforementioned report so that its recommendations would be taken into account for the improvement of Route 1856, exclusively for domestic purpose, for national use. The inspection performed and the report issued by CFIA did not intend at any time to determine impacts on San Juan River or on Nicaraguan territory, not only because it was not for this purpose but also because this is beyond the jurisdiction of CFIA.

The use given by the Republic of Nicaragua to our report is contrary to the CFIA's goal when preparing it. CFIA does not accept the interpretation or legal assessment that Nicaragua has tried to make of our report, given that, as previously expressed, CFIA has solely complied with the purposes established in our Organic Law and in assisting the Costa Rican government with technical aspects of a work in construction.

In conclusion, any interpretation or assessment of our report made by Nicaragua cannot be attributed to this Association. Consequently, we reject the usage of the referred study as evidence of damage caused to San Juan River or to Nicaraguan territory in general.

Finally, honourable Minister, the Board of Directors of the Colegio Federeado de Ingenieros y de Arquitectos declares that it recognizes the importance of the construction of Route 1856 for the Republic of Costa Rica, and that our intention has always been to collaborate with the State in the construction aspects of this infrastructure work, with the understanding that its improvement is of benefit to the communities in the area and to our country.

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

Signed – José Guillermo Marín Rosales  
President, General Board of Directors  
Colegio Federado de Ingenieros y de Arquitectos de Costa Rica

(Stamped CFIA, Presidency)



## 110 ANIVERSARIO

28 de agosto, 2013  
034-2012-2013-PRES

**Doctor**  
**Enrique Castillo Barrantes**  
**Canciller**  
**Cancillería de la República de Costa Rica**

Estimado señor Canciller:

El suscripto, José Guillermo Marín Rosales, Presidente de la Junta Directiva General del Colegio Federado de Ingenieros y de Arquitectos de Costa Rica (CFIA), con el fin de dar respuesta a su oficio DM-AM-358-13 del 27 de junio del corriente, procede a hacer las siguientes manifestaciones:

Hemos revisado los documentos que nos hicieron llegar: traducción al inglés, hecha por Nicaragua, de nuestro informe DRD-INSP-299-2012 sobre la Ruta 1856, del 8 junio de 2012 y extractos relevantes de la Memoria que presentó Nicaragua ante la Corte Internacional de la Haya, donde se hace referencia a nuestro informe. En consecuencia nos permitimos remitir un breve análisis de los principales hallazgos que se encontraron, tanto en la traducción de nuestro informe como en el uso que se le dio al mismo.

Como se desprende del análisis realizado, la traducción hecha por Nicaragua altera en algunos casos el sentido original de nuestro informe. Asimismo, se logró determinar que los extractos de nuestro informe citados en la Memoria nicaragüense atribuyen conclusiones no emitidas por el CFIA en su informe.

En consecuencia, nos permitimos hacer las siguientes aclaraciones:

### Razones que motivaron el informe

En atención a los señalamientos que se hicieron en la prensa sobre la construcción de la Ruta 1856 y en virtud de los fines que señala nuestra Ley Orgánica, el CFIA consideró necesario realizar una inspección de la referida ruta y sus accesos con el objeto de contribuir, desde el punto de vista técnico, a su evaluación y mejoramiento. Por ello, el CFIA envió a un grupo de inspectores, profesionales en ingeniería y en arquitectura, para que visitaran la referida ruta. En esa inspección se tomó nota de los problemas constructivos que presentaba la obra y se procedió a realizar una serie de recomendaciones consistentes en las medidas correctivas de mantenimiento, conservación y mejoramiento que debían tomarse para tales efectos.

### Alcances del informe rendido

La inspección del CFIA se realizó cuando la obra se encontraba en proceso constructivo. Los señalamientos realizados en el informe son puntuales, y las recomendaciones también lo son. Producto de la inspección, el informe del CFIA recomendó la aplicación de medidas correctivas en algunos tramos de la obra, en otros sectores se recomendaron medidas de mantenimiento. En ningún momento, el CFIA indicó que toda la ruta presentara problemas constructivos.

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Despacho Ministro RREE

29AGO2013PM1:21

Dr. Enrique Castillo Barrantes  
28/08/2013  
030-2012-2013-PRES

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El informe del CFIA no emitió conclusiones de carácter ambiental, ni se realizaron mediciones de sedimentos o estudios hidrológicos, sobre la cuenca del río San Juan ni de ningún otro, ya que lo realizado fue una inspección técnica.

Dicho informe tampoco incluyó valoraciones de carácter legal. Las observaciones y recomendaciones expresadas en nuestro informe, tenían como fin contribuir al mejoramiento desde el punto de vista técnico, de una obra que el CFIA, en su condición de coadyuvante del Estado en las áreas de la ingeniería y la arquitectura, estima es de gran significado e importancia para el país.

#### **Sobre el uso que se le dio al informe del CFIA**

El CFIA emitió el referido informe únicamente con el objeto de que se tomaran en cuenta sus recomendaciones para el mejoramiento de la Ruta 1856, y tiene exclusivamente un propósito de uso doméstico a nivel nacional. La inspección realizada y el informe que se generó por parte del CFIA, en ningún momento tuvo la finalidad de determinar afectaciones al río San Juan o al territorio nicaragüense, no solo porque no tenía ese propósito, sino porque ello está fuera del área de competencia del CFIA.

El uso que la República de Nicaragua le ha dado a nuestro informe, es contrario a la motivación que el CFIA tuvo para hacerlo. El CFIA no acepta la interpretación o calificación jurídica que Nicaragua haya querido hacer de nuestro informe, pues como se ha expresado anteriormente, el CFIA únicamente ha cumplido con los fines establecidos en nuestra Ley Orgánica y en coadyuvancia al Estado costarricense en aspectos técnicos de una obra en construcción.

Como corolario, cualquier interpretación o calificación que Nicaragua haya hecho de nuestro informe, no puede ser atribuible a este Colegio profesional, y en consecuencia, se rechaza que el referido estudio sea prueba de un daño causado al río San Juan o al territorio nicaragüense en general.

Finalmente, señor Canciller, la Junta Directiva General del Colegio Federado de Ingenieros y de Arquitectos, manifiesta que reconoce la importancia para la República de Costa Rica de la construcción de la Ruta 1856 y que nuestra intención siempre ha sido colaborar con el Estado en los aspectos constructivos de esa obra de infraestructura, en el entendido que su mejoramiento es un beneficio para las comunidades de la zona y para nuestro país.

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

Ing. José Guillermo Marín Rosales  
Presidente, Junta Directiva General  
Colegio Federado de Ingenieros y de Arquitectos de Costa Rica



**INFORME ANÁLISIS DE LA TRADUCCIÓN AL INGLÉS DEL DOCUMENTO  
“INFORME PRELIMINAR TROCHA 1856” IDENTIFICADO COMO  
ANNEX 4 CFIA REPORT Y SU USO EN EL MEMORIAL PRESENTADO POR  
NICARAGUA**

Preparado por Patricia Andrés, M.A.

Traductora e Intérprete Oficial

17 de julio, 2013

A solicitud del Colegio Federado de Ingenieros y Arquitectos de Costa Rica (CFIA) se hizo un análisis comparativo detallado del documento originalmente escrito en español titulado “Informe Preliminar Trocha 1856”, (en adelante, “el Informe”) y su traducción al inglés identificada como “Annex 4 CFIA Report” (en adelante, “el Anexo”). Asimismo, con base en el documento “Reliance on CFIA Report in Nicaragua’s Memorial”, se analizó la utilización de dicha traducción en el Memorial preparado por Nicaragua (en adelante, “el Memorial”).

El propósito de dicha comparación y análisis era determinar si la traducción era fiel al original y si las referencias al Informe incluidas en el Memorial derivadas de la traducción también eran correctas.

Este documento se divide en tres secciones. La primera comenta los errores de traducción a nivel de oración en el Anexo que alteran el significado o la intención del Informe. La segunda sección presenta errores a nivel de terminología específicamente, los cuales también cambian no solo el significado sino, en algunos casos, también la intención del Informe. Y la tercera sección presenta el análisis del uso de las referencias al Anexo que se incluyen en el Memorial.

En general, este documento no incluye comentarios sobre los errores de gramática encontrados pues son pocos en número y no interfieren seriamente con el significado de las oraciones o su intención. Sin embargo, cuando son parte de alguno de los ejemplos comentados por alguna otra razón, se identifican con la forma adverbial [sic] para señalar que hay un error pero que se copia textualmente de su original.

## SECCIÓN 1: ERRORES A NIVEL DE ORACIÓN

A continuación se presentan las oraciones donde definitivamente el significado o la intención de la oración en el Informe fueron alterados en mayor o menor grado debido a una traducción inexacta.

### **1. INFORME(PÁG. 6) / ANEXO (PÁG. 8): PUNTO F, VIÑETA 5**

- “Se observan agregados de río que no son aptos para caminos, dichos
  - (a) agregados tienen un sobre tamaño considerable, y el mismo paso de los
  - (b) vehículos los expulsa hacia los lados".
  - (c)
- “There are areas with boulders not apt for roads; in these areas the river is
  - (a)
  - (b) considerably oversized and passage of vehicles creates splashes to the
  - (c) sides.”

**Comentarios:** En esta oración, la traducción presenta tres errores, dos de terminología y uno conceptual que cambian completamente el significado de la misma:

- a) El primer error de terminología es la frase “agregados de río” (river gravel/aggregates). Generalmente, los agregados son piedras pequeñas, que aunque sean de “sobre tamaño”, no llegan a ser “boulders” que es un término que se refiere específicamente a piedras grandes. Se asume que la traducción utilizó dicha palabra para compensar por la idea de ‘sobre tamaño’.
- b) El error conceptual es muy serio, pues en el Informe los agregados son los que se describen como grandes, mientras que en el Anexo, es el río el que es grande. Desafortunadamente, este error además conduce al error que se describe en el punto (c) a continuación.

c) Finalmente, en el Informe, los vehículos expulsan los agregados hacia los lados al pasar sobre ello. Por el contrario, en el Anexo, la palabra “splash” que significa “salpicar con agua” se deriva del error comentado en el punto (b) anterior. Es decir, la traducción da a entender que los vehículos pasan por el río, cuando en el Informe está claro que los vehículos transitan por el camino. De hecho, la palabra “río” en el Informe solamente se usa para describir el origen de los agregados. En ningún momento, hace referencia a que se transite por el río mismo.

## **2. INFORME(PÁG. 6) / ANEXO (PÁG. 8): PUNTO F, VIÑETA 8**

- “Se observa tubería PVC utilizada como alcantarilla en un trayecto de la trocha, en Fátima, la cual presenta obstrucción, se observa sin protección en la entrada y sin protección en la descarga”.
- *PVC pipe for drainage can be seen in a stretch of the road in Fátima. The pipe is an obstruction whose entrance and drainage point are unprotected.”*

**Comentario:** En esta oración, la traducción presenta un serio error de significado. Como se notará en el Informe se indica que la tubería está obstruida; no obstante, en la traducción en el Anexo claramente se dice que la tubería actúa como obstrucción. Hay otros errores menores en la traducción derivados de la mala redacción, pero no se comentan acá pues no interfieren con la interpretación de la oración.

## **3. INFORME(PÁG. 8) / ANEXO (PÁG. 10): PUNTO B, VIÑETA 5**

- “Se observa maquinaria acumulando materiales para re-inicio de las obras”.
- “Machinery and stored supplied [sic] are present in view of the re-initiation of the project.”

**Comentarios:** En esta oración, la traducción presenta dos errores de significado. En el Informe se indica claramente que la maquinaria está en proceso de acumular materiales para continuar las obras. Por el contrario, en la traducción del Anexo, los 'suministros' ya están 'almacenados' debido al 'reinicio del proyecto'. Esto último también es un error en la traducción, pues cambia la intención del original donde se implica que las obras estarían por reiniciar en algún momento futuro, mientras que en la traducción se da a entender que las obras ya reiniciaron.

#### 4. INFORME(PÁG. 9) / ANEXO (PÁG. 11): PUNTO G, VIÑETA 2

- “*Hay un tramo de aproximadamente 10 km que básicamente son trillos entre fincas, no se observa trabajos realizados por maquinarias.*”
- “*There is an approximately 10 kilometer stretch that basically consists of paths between different plots of land. The impact of machinery to this area is not evident.*”

**Comentarios:** Aparte de que la palabra 'fincas' se tradujo como 'plots of land' (parcelas) que no necesariamente es lo mismo, en este caso el error en el Anexo afecta seriamente la intención del original. Particularmente, la traducción en el Anexo agrega la palabra 'impact', la cual no aparece en el original. Adicionalmente, la traducción de la oración utilizada en el Anexo dice: “El impacto de la maquinaria en esta área no es evidente”. Esto es un problema porque da a entender que sí existe impacto pero que éste no es evidente, cuando en ningún momento el Informe hace referencia a ello. El informe simplemente afirma que no hay evidencia de que se hayan realizado trabajos con maquinaria en el área.

#### 5. INFORME(PÁG. 9) / ANEXO (PÁG. 11): PUNTO G, VIÑETA 8

- “*Se observó alcantarilla de PVC con obstrucción.*”
- “*A PVC pipe drain [sic] under construction was observed.*”

**Comentarios:** Además del error en la colocación del término 'drain pipe' que está al revés en el Anexo, el significado de la oración está totalmente cambiado. En el Informe, la alcantarilla está obstruida, mientras que en la traducción apenas se está construyendo.

#### 6. INFORME(PÁG. 11) / ANEXO (PÁG. 13): Pie de foto 16

- "Se observa que se eliminó bosque y aparente afectación a humedales en la zona".
- "Deforestation and impact on the zone's wetlands are evident."

**Comentarios:** En este caso, el error en la interpretación e intención de la oración se presenta cuando la traducción une los dos sujetos de la oración en uno solo. Es decir, en el Informe, por un lado se afirma que el bosque se taló y, por otro, sugiere que esto podría afectar los humedales. Sin embargo, la traducción alega que no solo hubo deforestación, sino que también se impactaron los humedales. Es decir, al afirmar en vez de sugerir, el Anexo cambia la intención e interpretación de la oración.

#### 7. INFORME(PÁG. 27) / ANEXO (PÁG. 29): SECCIÓN 6.2, VIÑETA 1

- *Construcción, de manera inmediata, de drenajes en todos los tramos de la trocha donde se haya colocado la capa de lastre, y dejando para después del invierno la construcción de drenajes en los tramos que se encuentran en tierra*
- *Immediate construction of drainage canals in all stretches of the road where gravel is already in place; and their construction in the winter in areas where this is still a dirt road [sic].*

**Comentarios:** Adicionalmente a los serios problemas de redacción y gramática de la traducción, en este ejemplo hay un serio error en la traducción de la segunda parte de la oración. Claramente, el Informe recomienda que se construyan los drenajes en las áreas donde el camino no tiene lastre para después del invierno. Por el contrario, la traducción dice que la construcción de los drenajes debe realizarse durante el invierno.

## SECCIÓN 2: ERRORES A NIVEL DE TERMINOLOGÍA

### 8. INFORME(PÁG. 3) / ANEXO (PÁG. 5): SECCIÓN 3

- “Se verifica el estado actual respecto a la condición de los drenajes, así como posibles daños ambientales, retiro de ríos y quebradas, corte y estabilización de taludes”.
- “Present status and condition regarding drainage and possible environmental damage, recesses of rivers and streams, the excavation and stabilization of slopes were inspected.”

**Comentario:** En esta oración y en muchas otras del Anexo, la palabra ‘retiro’ se tradujo como ‘recess’. El significado de la palabra ‘retiro’ en el contexto del Informe es ‘distancia que se debe dejar libre o sin obstrucciones;’ este significado se expresa con la palabra inglesa ‘clearance’. No obstante, aunque la palabra ‘recess’ puede significar ‘retiro’ en español, se usa en un contexto totalmente diferente pues se refiere a un lugar apartado y distante. En ingeniería y geología, la palabra ‘recess’ más bien significa ‘fosa o concavidad en la superficie’, lo cual claramente no es el significado que tiene en el Informe.

### 9. INFORME(PÁG. 6) / ANEXO (PÁG. 8): SECCIÓN F, VIÑETA 9

- “En algunas secciones se observan taludes de aproximadamente 4 metros de alto con pendientes muy elevadas”.
- “As observed, in some sections there are slopes approximately four meters high with very elevated margins.”

**Comentario:** La frase ‘pendientes muy elevadas’ aparece varias veces en el Informe y, en todos los casos, en el Anexo se tradujo incorrectamente como ‘very elevated margins’. La traducción correcta es ‘very steep slopes’. El problema adicional del haber usado la palabra ‘margins’ en la traducción es que hace alusión a ‘las márgenes del río’,

lo cual puede llevar a pensar que hay algún tipo de influencia sobre el mismo, cuando no es así.

#### 10. INFORME(PÁG. 8) / ANEXO (PÁG. 10): SECCIÓN B, VIÑETA 4

- “*En este tramo no se observan taludes de corte escarpado*”.
- “*There are no slopes conformed by bluffs*.”

**Comentario:** Los términos comentados aquí también aparecen varias veces en los documentos comparados. La escogencia de la palabra ‘bluff’ para traducir ‘corte escarpado’ es inadecuada porque aunque este término sí da la idea de ‘empinado, inclinado o escabroso’ como el original, altera el concepto mismo de la palabra empleada en el original. Específicamente, ‘bluff’ significa ‘orilla del río escarpada formada principalmente por erosión’, significado que obviamente no se deriva del original donde se habla no de las orillas del río, sino más bien de taludes a lo largo del camino y tampoco se hace referencia alguna a erosión.

#### 11. INFORME(PÁG. 9) / ANEXO (PÁG. 11): SECCIÓN G, VIÑETA 1

- *La mayor parte de esta ruta son caminos de tierra con conformación de rasante,*  
(a)  
*algunos sectores son casi intransitables.*  
(b)
- *Most of this route consists of dirt roads with some leveling beginning, some areas  
(a)  
cannot be transited.*  
(b)

**Comentarios:** Adicional a los problemas de redacción, esta oración presenta los dos problemas de traducción siguientes.

- a) El primero es la traducción de la frase “conformación de rasante” que en el Informe significa que los caminos tienen alguna gradiente o inclinación. Sin

embargo en el Anexo, la traducción significa que se ha empezado a nivelar el camino, lo cual es totalmente diferente.

- b) En el segundo caso, el Anexo afirma que algunas áreas son definitivamente intransitables al eliminar la palabra 'casi' del original. Es decir, el Informe sugiere que dichas áreas sí se pueden transitar pero con algunas dificultades y no que no se pueda transitar por ellas del todo. En otras palabras, el error de la traducción lleva a hacer una conclusión diferente a la sugerida por el original.

## 12. INFORME(PÁG. 9) / ANEXO (PÁG. 11): SECCIÓN G, VIÑETA 11

- "...ya que se pudo observar un material arcilloso no apto para carreteras".
- "...since impermeable material, not apt for roads, was observed."

**Comentario:** La traducción precisa de 'material arcilloso' es "clayey material" o 'clayish material' y aunque el material arcilloso es poco permeable, no es totalmente impermeable como da a entender la traducción utilizada al cambiar el término 'arcilloso' por 'impermeable' y no usar del todo el término 'clayish' o 'clayey'. O sea, la traducción alteró la intención del original.

## 13. INFORME(PÁG. 13) / ANEXO (PÁG. 13): Foto 19

- "... Este aparente tajo se ubica entre el río San Juan y la trocha, a pocos metros del río....."
- "...Here, what is apparently a trench is located between the Rio San Juan and the road, several meters from the river..."

**Comentario:** Este pie de foto presenta un par de cambios en la traducción como el ya comentado 'agregados gruesos' / 'boulders'. Además de ello, hay un cambio en el significado pues el Informe llama al área de donde se han extraído materiales 'aparente tajo', mientras que el Anexo la llama 'zanja'.

**14. INFORME(PÁG. 16) / ANEXO (PÁG. 18): Sección H, Viñeta 4**

- “Se observan taludes de grandes dimensiones y con pendientes muy elevadas sin protección de ningún tipo”.
- “*There are huge slopes with high peaks and no protection whatsoever.*”

**Comentario:** En este ejemplo hay un error en la terminología empleada en la traducción que tiene connotaciones que en ningún momento tiene el original. Específicamente, al traducirse la frase ‘pendiente muy elevadas’ [very steep slopes] como ‘high peaks’, o sea ‘picos altos’, el Anexo da a entender que hay picos o montes altos al lado del camino que están desprotegidos, cuando en realidad el Informe está haciendo referencia a la inclinación de los taludes. Este mismo error se repite en otras secciones del documento, como por ejemplo en las fotos 27 y 28.

**15. INFORME(PÁG. 17) / ANEXO (PÁG. 18): Sección H, Viñeta 5**

- “Existen pasos de agua pluvial formados por troncos de madera”.
- “*There is river water flowing along paths formed by logs of wood.*”

**Comentario:** El uso de la frase “river water” [agua de río] como traducción de ‘agua pluvial’ [rainwater] es incorrecto y, desafortunadamente se repite varias veces. Este error induce al lector a pensar que se está hablando del agua del Río San Juan, cuando en realidad se está hablando del agua de lluvia que fluye hacia algunas quebradas cercanas a camino.

**16. INFORME(PÁG. 22) / ANEXO (PÁG. 24): Sección K, Viñeta 3**

- “Se localizan cortes de terreno de 3 y 6 m de altura aproximada”.
- “Clearing of areas approximately three to six meters high [sic]”

**Comentario:** Aparte del hecho que la traducción carece de verbo convirtiendo el grupo de palabras en una idea incompleta de acuerdo a las reglas gramaticales del idioma inglés, hay un cambio serio de significado. Es decir, al traducirse la frase ‘cortes de terreno’ [cuts/slopes] como ‘desmonte de áreas’ el significado y, principalmente, la intención cambian completamente. El Informe simplemente está describiendo la altura de los cortes o taludes que se hicieron en el terreno, pero el Anexo va mucho más allá al afirmar que se ha talado el área, información que no se puede deducir de la oración original

## **SECCIÓN 3: ANÁLISIS DEL USO DE REFERENCIAS A LA TRADUCCIÓN (ANEXO) EN EL MEMORIAL**

Este análisis contiene únicamente las referencias al Informe que presentan algún problema directa o indirectamente derivado de la traducción (Anexo) o algún otro asunto lingüístico. En todos los casos se incluye una traducción inversa para facilitar el análisis y explicación del problema detectado.

### **17. PÁGINA 2, REFERENCIA NM, PARA 3.9, NOTA AL PIE DE PÁGINA 118 / REFERENCIA AL INFORME PÁGINAS 11 Y OTRAS**

**Original:** “Costa Rica’s Federated Association of Engineers and Architects has reported that “deforestation and impact on the zone’s wetlands are evident” (p.11) in various places throughout the length of the Road and in close proximity to the River, requiring “[a]n evaluation for possible environmental damage.”

**Traducción inversa:** “El Colegio Federado de Ingenieros y Arquitectos de Costa Rica reportó que ‘la deforestación y el impacto en los humedales de la zona es evidente’ (p. 11) en varios lugares a todo lo largo de la Trocha y en proximidad cercana al Río, lo que requiere ‘una evaluación del daño ambiental posible’.”

**Comentario:** Aparentemente esta cita del Informe hace referencia al pie de foto (Foto 16) en la página 11. El problema que se ha detectado es que está utilizando el error en la traducción (comentado en el ejemplo 6 en la página 5 de este documento) para atribuir al CFIA una afirmación que no es del todo cierta. Como se comentó en el ejemplo 6, el Informe menciona que se observa eliminación de bosque y aparente impacto en los humedales, pero no lo afirma categórica e indiscutiblemente como sí lo hace la traducción y, en consecuencia, el Memorial. Además, en la página 11 tampoco se menciona la necesidad de realizar un estudio de impacto ambiental, aunque el Informe sí lo recomienda en otras secciones.

**18. PÁGINA 2, REFERENCIA NM, PARA 3.15 / SIN REFERENCIA EXPLÍCITA**

**Original:** "In addition to removing large areas of forest and other vegetation, Costa Rica's road construction efforts have reshaped the landscape along the southern bank of the San Juan River, resulting in vast areas of exposed red earth, where the land has been cut away ("cuts"), and where excavated materials have been deposited in what are now mounds of excavated sediments ("fills"). Making matters worse, these "earthmoving works," as Costa Rica's post-hoc "Environmental Management Plan" calls them, were carried out in a disordered and unprofessional manner. This is the conclusion reached by Costa Rica's own national Federation of Engineers and Architects (CFIA) and the University of Costa Rica's National Laboratory."

**Traducción inversa:** "Además de remover grandes áreas de bosque y otra vegetación, los esfuerzos de construcción del camino de Costa Rica han remodelado [o cambiado la forma] del paisaje a lo largo de la margen sur del Río San Juan, lo que ha ocasionado vastas áreas de tierra roja expuesta, donde la tierra se ha recortado ('cortes') y donde los materiales excavados se han depositado en lo que ahora son montículos de sedimentos excavados ('rellenos'). Para empeorar las cosas, estos 'trabajos de movimientos de tierras', como los llama el "Plan de Gestión Ambiental" *post-hoc* de Costa Rica, fueron realizados de manera desordenada y no profesional. Esta es la conclusión a la que llegó el propio Colegio Federado de Ingenieros y Arquitectos (CFIA) nacional de Costa Rica y el Laboratorio Nacional de la Universidad de Costa Rica".

**Comentario:** Al utilizar comillas en algunas palabras y decir que el CFIA llegó a 'esta conclusión', el Memorial parece estar citando el Informe. Sin embargo, no se hace referencia directa alguna sección específica. Aún así el texto parece dar a entender que el estudio realizado por el CFIA menciona todos los problemas que alude el párrafo. En realidad, el Informe nunca utiliza las frases 'tierra roja expuesta' ni tampoco dice en ninguna parte que hayan 'montículos de sedimentos excavados'. De hecho, la palabra 'sedimentos' no se utiliza del todo en el Informe. Y en la sección (Conclusión 5.8) donde aparecen las tres palabras que el texto incluye entre comillas (cortes, rellenos y trabajos

de movimientos de tierra), el Informe habla de la estabilidad de las pendientes, compactación del terreno y dificultad para transitar por algunas zonas. De hecho, la traducción en el Anexo de esta sección no presenta ningún error que pudiera haber llevado a concluir lo que el párrafo propone.

#### **19. PÁGINA 2-3, REFERENCIA NM, PARA 3.18 / REFERENCIA AL INFORME PÁGINA 19**

**Original:** "Costa Rica's lack of basic plans or preliminary studies also led to the excessive clearing and alteration of land in some areas, including areas parallel to the San Juan River that contain "markedly rugged terrain". This caused earthmoving works to be more extensive and more complicated than necessary, particularly given the existing slopes and types of soil present. The CFIA agreed that work in these sectors "is incomplete," there are places where the Road "is almost impossible to transit," and "[i]mpact on the forest is noticeable". (p. 19)"

**Traducción inversa:** "La falta de planes básicos o estudios preliminares de Costa Rica también llevó al desmonte excesivo y alteración de la tierra en algunas áreas, incluyendo áreas paralelas al Río San Juan que contienen 'terreno marcadamente escabroso'. Esto causó que los trabajos de movimientos de tierra fueran más extensos y más complicados de lo necesario, particularmente dadas las pendientes existentes y el tipo de suelo presente. El CFIA estuvo de acuerdo con que el trabajo en estos sectores 'está incompleto', que hay lugares en el camino donde 'la Trocha es casi imposible de transitar' y 'el impacto al bosque es notorio' (p. 19)"

**Comentario:** En la página 19 del Informe hay varias fotos y en ningún pie de foto se fotografía el Río San Juan ni se hace referencia o mencionan 'terrenos marcadamente escabrosos'. El problema es que al estar entre comillas da a entender que es parte de la cita que aparece más adelante en el mismo párrafo, lo cual no es cierto pues en la página 19 no aparece tal información. Además, tampoco se usa en los pies de foto la frase 'movimientos de tierra'. Como se explicó en el ejemplo anterior (17),

el Informe solo habla de movimientos de tierra en la Conclusión 5.8, pero en ningún momento dice que el trabajo haya sido ‘más extenso o complicado de lo necesario’. La traducción de la cita en sí no contiene errores, pero se está usando en un contexto equivocado. Es decir, el párrafo en el Memorial da a entender que el Informe está describiendo áreas cercanas (paralelas) al Río San Juan, cuando en realidad, como ya se indicó, las fotografías no son del Río San Juan.

#### **20. PÁGINA 3, REFERENCIA NM, PARA 3.27, NOTAS AL PIE DE PÁGINA 166-168 / REFERENCIA AL INFORME PÁGINAS 6, 9, 14, 15, 22 & 24**

**Original:** “Costa Rica’s Federation of Engineers and Architects voiced concern about the same problem, emphasizing the presence of slopes that are four to six meters high “with very elevated margins,” (Pages 6, 9, 14, 15, 22 &24) and calling particular attention to a stretch of the Road where “huge slopes with high peaks and no protection whatsoever” (p. 16, see also pp. 17-18) were created “a short distance from the bank of the Rio San Juan” –only “approximately 15 meters.” (p. 16, see also pp. 17-18)”

**Traducción inversa:** “El Colegio Federado de Ingenieros y Arquitectos de Costa Rica expresó su preocupación sobre el mismo problema, al enfatizar la presencia de pendientes que tienen de cuatro a seis metros de alto ‘con márgenes muy elevadas’, (páginas 6, 9, 14, 15, 22 & 24) y llamar atención particular al tramo de la Trocha donde ‘enormes pendientes con picos altos y sin ningún tipo de protección’ (p. 16, ver también pp. 17-18) se crearon ‘a corta distancia de la margen del Río San Juan’ – solamente ‘aproximadamente 15 metros’ (p. 16, ver también pp. 17-18)”.

**Comentario:** Antes de hacer el análisis de este párrafo, es importante resaltar que con base en el extracto del documento no es posible identificar la referencia anafórica de la frase ‘sobre el mismo problema’. Es decir, no se puede determinar a qué problema se estaba refiriendo el Memorial en el párrafo u oración anterior y para el cual está usando las citas del Informe como evidencia. Habiendo hecho esta salvedad, es posible mencionar que, como se indicó en el ejemplo 9 en la página 6 de este

documento, existe una mala traducción en la frase 'con márgenes muy elevadas' pues la frase en el Informe se refiere a 'pendientes muy elevadas'. El uso del vocablo 'márgenes' en la traducción y, en consecuencia, en el Memorial, lleva a una connotación no adecuada al hacer al lector asociar la palabra con la imagen visual de las márgenes del río. Y aunque esta connotación no esté correcta, en las referencias que hacen a las páginas 9, 16, 17 y 18, ahí aparecen dos viñetas separadas pero seguidas una de la otra en las que se comenta la poca distancia (el retiro) del camino con respecto al Río San Juan (viñeta 3) y la presencia de taludes elevados y desprotegidos. Es decir, aunque la viñeta en la que se mencionan los taludes no habla específicamente del Río San Juan, la proximidad de las oraciones podrían llevar a concluir que esos taludes o cortes observados están cerca del San Juan, lo cual se ve reforzado por el uso de la palabra márgenes en el Memorial. Por otra parte, en las páginas 14, 15, 22 y 24 sí se mencionan las pendientes elevadas o cortes de talud pero no se menciona al Río San Juan del todo.

**21. PÁGINA 3, REFERENCIA NM, PARA 3.45, NOTAS AL PIE DE PÁGINA 214-216 / REFERENCIA AL INFORME PÁGINA 27, PARA 6.2)**

**Original:** "In its June 2012 report, the Costa Rican Federation of Engineers and Architects found, after conducting two separate site visits to the Road [. . .] The organization therefore recommended the "[i]mmediate construction of drainage canals in all stretches of the road where gravel is already in place; and their construction in the water in areas where this is still a dirt road." (p. 27, para 6.2)."

**Traducción inversa:** "En su informe de junio del 2012, el Colegio Federado de Ingenieros y Arquitectos determinó, después de concluir dos visitas de campo separadas a la Trocha, [. . .] La organización, por lo tanto, recomendó la 'construcción inmediata de canales de drenaje en todos los tramos de la trocha donde ya hay lastre en el lugar; y su construcción en el agua en áreas donde esto es todavía un camino de tierra'. (p. 27, para 6.2)".

**Comentario:** Aquí hay un doble error. En primer lugar, es que se supone que el Memorial está copiando esta cita de la traducción, pero la copiaron mal porque en el Anexo la frase subrayada dice: “*and their construction in the winter in areas where this is still a dirt road*” mientras que en el Memorial dice: “*and their construction in the water in areas where this is still a dirt road*”. Como se notará se cambio la palabra ‘invierno’ por la palabra ‘agua’. El segundo error es que de todos modos la traducción de esta primera intervención a corto plazo recomendada por el CFIA está totalmente equivocada como ya se explicó anteriormente (ver Sección 1, Ejemplo 7, página 5 de este documento) pues se ha cambiado el momento en que deben realizarse los trabajos de canalización.

Otro problema a tomar en cuenta es que no se sabe si este texto corresponde al párrafo 3.45 del Memorial o a las notas al pie de página mencionadas.

## 22. PÁGINA 4, REFERENCIA NM, PARA 3.56 / REFERENCIA AL INFORME PÁGINA 27, PÁRRAFO 6.2

**Original:** “The University of Costa Rica’s National Laboratory and the Costa Rican Federation of Engineers and Architects warned in May and June 2012 that properly designed drainage pipes adequate to handle the flow of each watercourse must be installed as quickly as possible in order to prevent damage to the Road embankment and resulting sediment transfer during the rainy season (p. 27, para 6.2)”

**Traducción inversa:** “El Laboratorio Nacional de la Universidad de Costa Rica y el Colegio Federado de Ingenieros y Arquitectos de Costa Rica advirtieron en mayo y junio del 2012 que deberían instalarse tuberías de drenaje diseñadas adecuadamente para manejar el flujo de cada uno de los cursos de agua lo más pronto posible con el fin de evitar daños a los taludes de la Trocha y el acarreo resultante de sedimentos durante la estación lluviosa (p. 27, para 6.2)”.

**Comentario:** En este párrafo se hace referencia a una de las intervenciones de corto plazo recomendadas por el Informe, específicamente a la viñeta 3. Aunque la traducción fiel al original claramente señala que dichos trabajos deben realizarse para evitar 'deslizamientos' ('landslides') en las áreas donde existen taludes con pendientes elevadas, el Memorial habla de acarreo de sedimentos que llegarían a los cursos de agua, lo cual no se menciona ni en el Informe ni en el Anexo. Si bien el Memorial no usa comillas para indicar que es una cita textual, sí incluye una referencia específica a esa sección del Informe.

### 23. PÁGINA 6, REFERENCIA NM, PARA 3.78 / SIN REFERENCIA EXPLÍCITA

**Original:** "In particular, based on the foregoing factors, as well as his own field observations and those published in the reports prepared by the University of Costa Rica's National Laboratory and Costa Rica's Federation of Engineers and Architects, Dr. Kondolf estimated that 40% of the displaced soils being generated upstream from the confluence of the San Carlos River reaches the San Juan River annually.<sup>304</sup> That is, some 7,120 to 8,520m<sup>3</sup>of sediments produced by surface erosion are making their way to the River, and roughly ten times that amount –some 87,000 to 109,000 m<sup>3</sup>per year – are being transported into the River as a result of the mass wasting and gully erosion taking place along the Road.<sup>305</sup> Combined, these sums total between 94,120 and 117,520 m<sup>3</sup> of sediment that have been and will continue to be deposited into the San Juan River per year as a result of Costa Rica's Road."

**Traducción inversa:** "En particular, con base en los factores anteriores, así como en sus propias observaciones de campo y aquellas publicadas en los informes preparados por el Laboratorio Nacional de la Universidad de Costa Rica y el Colegio Federado de Ingenieros y Arquitectos, el Dr. Kondolf estimó que el 40% de los suelos desplazados que se están generando corriente arriba desde la confluencia del Río San Carlos llegan al Río San Juan anualmente.<sup>304</sup> [...] Combinados, estas sumas totalizan entre 94,120 y 117,520 m<sup>3</sup> de sedimento que han sido y continuarán siendo depositados en el Río San Juan por año como resultado de la Trocha de Costa Rica".

**Comentario:** En este párrafo el Memorial dice que el Dr. Kondolf usó la información en el Informe sobre el Río San Carlos, entre otros, para obtener sus cálculos sobre la cantidad de sedimentos depositados o por depositar en el Río San Juan. Sin embargo, el Informe no habla sobre 'sedimentos' en ninguna parte y en las secciones donde se menciona el Río San Carlos, es simplemente para indicar que no había puente sobre él, por lo cual no se pudo seguir recorriendo el camino (por ejemplo, en el punto 1.3 en la página 2 del Informe y en la Conclusión 5.2, página 25. En realidad acá no hay error de traducción, sino de interpretación.

#### **24. PÁGINA 6, REFERENCIA NM, PARA 4.15, NOTA AL PIE DE PÁGINA 364 / REFERENCIA AL INFORME PÁGINA 11 Y OTRAS**

**Original:** "The works for the construction of road 1856 constitute a serious threat on the navigation on the river – and not only in the short term: - Dumping of trees and soil along the route of the road into the river flow, makes more difficult, and increases the risk of, navigation in its waters; (p. 11; see also pp. 17, 18, 19 ("impact on the forest is noticeable"), 21, 22 and 26)"

**Traducción inversa:** "Los trabajos para la construcción de la Ruta 1856 constituyen una seria amenaza a la navegación en el río – y no solo en el corto plazo: - el botar árboles y tierra a lo largo de la ruta de la vía hacia el caudal del río hace más difícil, y aumenta el riesgo de, navegar en sus aguas; (p. 11, ver también pp. 17, 18, 19 ('impacto en el bosque es notorio'), 21, 22 y 26)."

**Comentario:** Se revisaron las páginas a las que hace referencia el Memorial y se determinó que aunque en ellas el Informe (y el Anexo, por ende) hace referencia a que hubo tala, en ninguna de ellas ni en ninguna otra parte del Informe se dice que los árboles cortados o tierra se hayan botado al Río San Juan o a algún otro río. Y en cuanto a navegar por el Río San Juan, solo se menciona a que según los Tratados,

Costa Rica tiene derecho de navegarlo en ciertas áreas (Conclusión 5.7) y su traducción, aunque con una redacción algo compleja, también dice lo mismo.

## 25. PÁGINA 7, REFERENCIA NM, PARA 5.2, / REFERENCIA AL INFORME PÁGINA 2

**Original:** "The present Chapter will show that it is in fact Costa Rica that has acted in utter disregard of its environmental obligations in constructing what it has chosen to call the "Juan Rafael Mora Porras 1856 Highway," hereafter referred to as the Road for simplicity, resulting in destruction of the environment on a massive scale and leaving an ugly scar some 120 kilometers long (p.2) along the right bank of the San Juan de Nicaragua River."

**Traducción inversa:** "Este Capítulo mostrará que de hecho es Costa Rica la que ha actuado con total desprecio a sus obligaciones ambientales en la construcción de lo que ha escogido llamar la 'Ruta Juan Rafael Mora Porras 1856', en adelante denominado el Camino para simplicidad, ocasionando la destrucción del ambiente a una escala masiva y dejando una fea cicatriz en unos 120 kilómetros (p. 2) a lo largo de la margen derecha del Río San Juan de Nicaragua".

**Comentario:** La referencia que hace el Memorial a la página 2 del Informe mediante la traducción es incorrecta porque en dicha página no dice en ninguna parte ni en el Informe ni en el Anexo que la Trocha haya 'dejado una fea cicatriz en unos 120 kilómetros' a lo largo del Río. De hecho, en esa página no aparece el número 120. Lo que dice el Informe (y, por ende, el Anexo) es que la extensión del camino es de unos 160 kilómetros y que hay aproximadamente 400 kilómetros más en caminos de acceso a la Trocha. Tampoco se menciona en dicha página (aunque está fuera de la cita en el Memorial) ni el Río San Juan ni su margen derecha. Es decir, aunque el error no proviene de la traducción, definitivamente la información está equivocada.

**26. PÁGINA 8, REFERENCIA NM, PARA 5.87 / REFERENCIA AL INFORME INCOMPLETA**

**Original:** "The Road contradicts the concepts of "sustained", or sustainable, development, in view of its construction in what Costa Rica's own engineering organization has found to be shoddy, and without prior planning or environmental impact assessments. (CFIA Report op. cit. supra)"

**Traducción inversa:** "La Trocha contradice los conceptos de desarrollo 'sostenido', o 'sostenible', en vista de que la propia organización de ingenieros de Costa Rica ha encontrado su construcción de mala calidad y sin ninguna planificación o evaluaciones de impacto ambiental. (CFIA Report op. cit. supra)."

**Comentario:** Este ejemplo se incluye debido al uso del término 'shoddy' [mala calidad] en el Memorial el cual se atribuye al Informe, por medio de su traducción. Dicho término tal cual no aparece en el Informe ni tampoco en el Anexo. Podría decirse que en el Memorial lo utiliza para resumir algunas ideas que podrían inferirse del Informe. Desafortunadamente, el documento *Reliance on CFIA Report in Nicaragua's Memorial* no incluye la cita anterior (op. cit. supra.) a la que se hace referencia en este párrafo para poder hacer un análisis más detallado del uso de este vocablo.

**27. PÁGINA 8, REFERENCIA NM, PARA 5.100 / REFERENCIA AL INFORME INCOMPLETA**

**Original:** "Costa Rica's dumping of debris and other waste from its Road project into the San Juan de Nicaragua River and its Costa Rican tributaries constitutes pollution of the San Juan. While this waste may not be hazardous in itself, it can carry with it oil and other hydrocarbons that may be hazardous. As the report of CFIA, the Costa Rican Engineers Association, (CFIA Report op. cit. supra) shows, Costa Rica did not make the slightest effort to adopt or implement a preventive or a precautionary

approach in respect of pollution even of watercourses in its own territory, let alone of the San Juan de Nicaragua River. This resulted in "the release into the environment [i.e., the San Juan de Nicaragua River] of substances that could cause harm to humans or the environment."

**Traducción inversa:** "El que Costa Rica bote los escombros y otros desechos de su proyecto de camino en el Río San Juan de Nicaragua y sus tributarios costarricenses constituye contaminación del San Juan. Aunque este desecho puede no ser peligroso en sí mismo, puede llevar consigo petróleo y otros hidrocarburos que podrían ser peligrosos. Como muestra en informe del CFIA, el Colegio Federado de Ingenieros costarricenses, (CFIA Report op. cit. supra), Costa Rica no hizo el más mínimo esfuerzo para adoptar o implementar un enfoque preventivo o precautorio con respecto a la contaminación incluso de los cauces de ríos en su propio territorio, y menos del Río San Juan de Nicaragua. Esto ocasionó 'la liberación al ambiente [o sea, al Río San Juan de Nicaragua] de sustancias que podrían causar daño a humanos o el ambiente'".

**Comentario:** Al igual que en el caso anterior, aquí desafortunadamente no se incluye la cita anterior a la que se hace referencia, para determinar de dónde se supone que el Memorial está citando el Informe. En todo caso, cuando el Informe (página 6 y página 25, Conclusión 5.5) habla de 'contaminación' lo hace para indicar la posibilidad de que se hayan contaminado los agregados o base del camino. La traducción (Anexo) también lo dice así. En ningún momento dice que se han contaminado los ríos costarricenses ni mucho menos el San Juan. Tampoco habla el Informe (ni el Anexo) de que se haya liberado sustancias peligrosas al ambiente ni de daños causados o que podrían causarse a seres humanos y tan solo menciona la posibilidad de que pudiera haber daños al medio ambiente por tala pero no por sustancias peligrosas.

**28. PÁGINA 9, REFERENCIA NM PARA 6.7, NOTA AL PIE DE PÁGINA 567 / REFERENCIA AL INFORME INCOMPLETA**

**Original:** "It might have been the case that the harms in question and the urgency to remedy them were not fully established to the satisfaction of the Court in the Application. However, now, these possible deficiencies are cured and both the harms caused to the River and the urgency to take measures to stop or, at least, alleviate them are now fully documented by Costa Rican Institutions ((CFIA Report op. cit. supra) and in particular in the Kondolf Report."

**Traducción inversa:** "Podría haber sido el caso que los daños en cuestión y la urgencia de corregirlos no hubiesen habido sido establecidos completamente a satisfacción de la Corte en la Solicitud. Sin embargo, ahora, estas posibles deficiencias se han subsanado y tanto los daños causados al Río como la urgencia de tomar medidas para detenerlas o, por lo menos, mitigarlos han sido totalmente documentados por las Instituciones costarricenses (CFIA Report op.cit. supra) y en particular el Informe Kondolf.

**Comentario:** Una vez más la cita está incompleta (op.cit. supra), por lo que no se puede determinar con exactitud a qué sección del Informe (por medio del Anexo) está haciendo referencia el Memorial. Lo que sí se puede afirmar es que el Informe no habla en ninguna parte de daños ocasionados al Río San Juan. Como se indicó en el ejemplo 23, el Informe menciona que hay algunos materiales cerca del río y a veces hace referencia a la necesidad de revisar que se haya conservado la distancia (retiro) con respecto al río, pero no dice en ninguna parte que se ocasionó algún daño al San Juan.

**29. PÁGINA 9, REFERENCIA NM, PARA 6.21, NOTA AL PIE DE PÁGINA 591 / REFERENCIA AL INFORME PARA. 1.3**

**Original:** "Moreover, it is worth noting that Road 1856 is only an element of a vast road building project of more than 500 kilometres that is likely to significantly harm Nicaragua. (para 1.3)."

**Traducción inversa:** "Además, vale la pena hacer notar que la Ruta 1856 es solamente un elemento de una vasto proyecto de construcción de caminos de más de 500 kilómetros que tiene probabilidad de dañar significativamente a Nicaragua (para. 1.3)..."

**Comentario:** En este caso se citan las secciones del Informe que describen el recorrido que hicieron los autores del Informe y otras que hablan que se encontraron algunas mejoras en algunos caminos que conducen hacia la Ruta 1856. Esto se está interpretando en el Memorial como 'un vasto proyecto de construcción de caminos'. Lo interesante desde el punto de vista lingüístico, es el uso del vocablo 'proyecto' debido a las acepciones de dicha palabra en el Diccionario de la Real Academia Española (DRAE) en su edición 22. Ahí se presentan cinco definiciones de la palabra 'proyecto'. La cuarta y quinta definiciones, que pueden aplicarse a este contexto, dicen: "4. Conjunto de escritos, cálculos y dibujos que se hacen para dar idea de cómo ha de ser y lo que ha de costar una obra de arquitectura o de ingeniería. 5. Primer esquema o plan de cualquier trabajo que se hace a veces como prueba antes de darle la forma definitiva". Es decir, el Memorial presupone la existencia de toda esta información previa a la que hace referencia el DRAE en la construcción de la Ruta 1856, lo cual contradice lo que el Memorial ha repetido varias veces, por ejemplo, en el párrafo 2.26 (página 1 del documento *Reliance on CFIA Report in Nicaragua's Memorial*), en el sentido de que, según el CFIA, la Trocha se construyó "sin un solo plan para indicar la ruta que se iba a abrir, o las características que debía tener" (traducción inversa).

**30. PÁGINA 10, REFERENCIA KR, PARA 1.3.4, P. 5 / SIN REFERENCIA EXPLÍCITA**

**Original:** "Our aerial and riverboat reconnaissance, analysis of aerial imagery, and the reports and images presented by CFIA (2012) and LANAMME (2012) make plain that the construction of Route 1856 has involved excessive and disorganized earthmoving works."

**Traducción inversa:** "Nuestro reconocimiento aéreo y en bote fluvial, el análisis de las imágenes aéreas y los informes e imágenes presentados por el CFIA (2012) y LANAME (2012) dejan claro que la construcción de la Ruta 1856 ha implicado trabajos de movimientos de tierras excesivos y desorganizados".

**Comentarios:** Como ya se explicó en el ejemplo 18 en las páginas 12-13 de este documento, el Informe no dice en ninguna parte que los movimientos de tierra hayan sido excesivos o desorganizados pues en el único párrafo donde se habla de movimientos de tierra es la Conclusión 5.8 en la página 26, donde la idea principal es comentar la estabilidad de los taludes y las pendientes.

**31. PÁGINA 11, REFERENCIA KR, PARA 4.4, P. 24 / SIN REFERENCIA EXPLÍCITA**

**Original:** "As obvious from our aerial and riverboat reconnaissance, from analysis of aerial imagery, and from the reports and images presented by CFIA (2012) and LANAMME (2012), the construction of Route 1856 has not been carried out in an organized or professional manner. The construction has involved excessive and disorganized earthmoving works, a function of the lack of planning. By failing to implement the measures necessary to protect the resulting cuts and fills from wind, rain, runoff, and even gravity, the disorganized construction of this road in a fragile

environment created a situation in which sediment transfer to the Rio San Juan and the tributaries that feed it was inevitable."

**Traducción inversa:** "Como es obvio de nuestro reconocimiento aéreo y en bote fluvial, el análisis de las imágenes aéreas y los informes e imágenes presentados por el CFIA (2012) y LANAME (2012) dejan claro que la construcción de la Ruta 1856 no ha sido realizada de manera organizada o profesional. La construcción ha implicado trabajos de movimientos de tierras excesivos y desorganizados, una función de la falta de planeamiento. Al no implementar las medidas necesarias para proteger los cortes y rellenos resultantes del viento, la lluvia, la escorrentía e incluso la gravedad, la construcción desorganizada de este camino en un ambiente frágil creó una situación en la cual fue inevitable el acarreo de sedimentos al Río San Juan y los tributarios que lo alimentan".

**Comentario:** Este párrafo incluye nuevamente referencia a los movimientos de tierra y sedimentos que, como ya se ha expuesto en otras secciones de este documento, no son referencias exactas a lo que el Informe dice. Además, acá se vuelve a mencionar los cortes y rellenos (referencia ya comentada en el ejemplo 18, páginas 12-13 de este documento) enfatizando el Memorial que estos no se han protegido, cuando el Informe lo que dice es que se desconoce su estabilidad. También se menciona nuevamente el 'acarreo de sedimentos' aunque acá, a diferencia de otras referencias, el Memorial da por un hecho de que tal evento ha ocurrido al enfatizar que 'fue inevitable'. No obstante, este texto parece ser una conclusión indirecta general basada en la información en el Informe y que por ello no se hace referencia a alguna sección específica del Informe. Aunque sea así, es importante recalcar una vez más que el Informe no habla de acarreo de sedimentos y que la referencia a los movimientos de tierras es inexacta.

## **COMENTARIO FINAL**

Una vez terminada la comparación entre el original y la traducción y analizado el uso de las referencias al Informe en el Memorial, con base en los ejemplos citados en este documento se puede notar que efectivamente hay traducciones incorrectas que no reflejan fielmente el original y que llevan a conclusiones imprecisas en el Memorial.

También hay algunos casos donde el Memorial hace referencias inexactas al Informe que no están basadas directamente en problemas de traducción. En algunos casos también se detectaron inferencias basadas en la información en el Informe que no se desprenden de un error en la traducción.

Finalmente, es preciso mencionar que no todos los errores en la traducción comentados en este documento se han incluido en las referencias que hace el Memorial al Informe del CFIA.

## **ANNEX 64**

*Letter from the Agent of Nicaragua to the Registrar of the International Court  
of Justice*

Reference HOL-EMB-167

30 August 2013



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142357

3 September 2013

Sir,

With reference to the cases concerning Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), as well as to the Registrar's letter No. 142331 of 8 August 2013, I have the honour to transmit to Your Excellency herewith a copy of a letter from the Agent of Nicaragua dated 30 August 2013 and received in the Registry today, whereby he responded to the letters dated 24 June 2013 and 7 August 2013 from the Co-Agent of Costa Rica.

Accept, Sir, the assurances of my highest consideration.

Jean-Pelé Fornété  
Deputy-Registrar

H.E. Mr. Edgar Ugalde Álvarez  
Agent of the Republic of Costa Rica  
before the International Court of Justice  
Embassy of the Republic of Costa Rica  
The Hague

cc: H.E. Mr. Jorge Urbina Ortega  
Co-Agent of the Republic of Costa Rica  
before the International Court of Justice  
Embassy of the Republic of Costa Rica  
The Hague

Mr. Sergio Ugalde  
Co-Agent of the Republic of Costa Rica  
before the International Court of Justice  
Embassy of the Republic of Costa Rica  
The Hague



**EMBASSY OF NICARAGUA  
THE HAGUE**

**COPY**

30 August 2013

REF: HOL-EMB-167

Excellency,

I have the honor to refer to your letter dated 8 August 2013, ref. 142330, transmitting Costa Rica's letters to the Court of 24 June 2013 and 7 August 2013, and to respond on behalf of Nicaragua to Costa Rica's two letters.

Costa Rica's Letter of 24 June 2013

Costa Rica's 24 June 2013 letter responded to Nicaragua's letter of 14 June 2013. As Nicaragua recalled in its letter, it was Nicaragua that first suggested, on 5 March 2013, that a joint monitoring program "could be an effective mechanism, mutually beneficial, and that it would serve to implement the Order of the Court of 8 March 2011."<sup>1</sup> Nicaragua's letter affirmed that it was "prepared to discuss with Costa Rica at any time the elements of a proper joint monitoring program, with the objective of agreeing on its components, modalities and administration." It is self-evident, after Nicaragua's letter, that Costa Rica's allegation in response thereto that Nicaragua "is now attempting to prevent Costa Rica from conducting any technical or scientific data collection" is entirely without basis. Nicaragua continues to hold the view it expressed in its letter of 14 June: that a joint monitoring program must be properly designed to accurately measure the impacts of the road project in a manner that produces scientifically valid results. Unfortunately, the program proposed in Costa Rica's letter of 7 March 2013, and largely repeated (with minor variations) in its letter of 24 June, does not meet this standard. Costa Rica persists in proposing inappropriate methodologies that are not designed to measure the impacts of the road project on the San Juan River; to the contrary, in Nicaragua's view Costa Rica's proposal appears intended to measure everything *but* the impacts of the road project on the River, in an effort to obfuscate those impacts.

Despite Nicaragua's observation in its 14 June letter that Costa Rica's earlier proposal had failed to indicate basic information such as "which constituents would be tested, or the

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<sup>1</sup> Nicaraguan diplomatic note MRE/DM-AJ/129/03/13, dated 5 March 2013, p. 2 (Annex 2 to Costa Rica's letter to the Court dated 7 March 2013, ref. ECRPB-013-2013).

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THE HAGUE**

methods that would be used to collect or test samples," Costa Rica's proposal of 24 June has the same deficiencies. It contains no such details, making it impossible for Nicaragua to know what procedures Costa Rica is actually proposing. Moreover, as Nicaragua explained in its 14 June letter, the technical experts consulted by Nicaragua have advised that it is not scientifically defensible for a third sample to be "taken, labeled and sealed" and "sent to the Court for safe-keeping," both because the sediment load of the River cannot properly be ascertained through the use of the grab-type samples which Costa Rica appears to be proposing,<sup>2</sup> and because many constituents break down and change over time and will not be measurable if tested after a period of "safe-keeping" by the Court. It is not "obstructive conduct," as Costa Rica alleges, for Nicaragua to object to a proposal that is scientifically unsound and would, if followed, lead to inaccurate results regarding the sediment content and chemical composition of the water. Costa Rica's continued "insist[ence] that a third sample be sent to the Court" simply illustrates its calculated misinterpretation of basic sampling and storage techniques.

Costa Rica distorts Nicaragua's position by alleging that Nicaragua has proposed "that sampling of the River take place *only* after heavy rainfall and *only* where plumes of sediment seems [sic] to be coming from the southern bank" (emphasis added). As Nicaragua explained in its 14 June letter, sampling after rainfall events and in runoff plumes is necessary to measure the true impact of the road on the River and must therefore be included *as part of a larger joint sampling protocol*. Costa Rica's proposal that "sampling of the waters of the San Juan River be taken twice a month" does not ensure sampling immediately after rainstorms or that plumes of sediment runoff from the Road will be considered. It is the view of Nicaragua's technical experts that this would not "permit sufficient data to be collected to assess the situation of the River." Costa Rica's resistance to sampling the plumes of runoff that appear in the River after rain events, which, as Nicaragua explained in its 14 June letter, is necessary to "facilitate the identification of the exact contaminants that are coming into the River" from Costa Rican

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<sup>2</sup> Because sediment concentrations are never uniform and vary within a water column and across a river channel, it is necessary to utilize a standardized depth-integrated sediment sampling methodology, which involves testing across the whole channel and accounts for different sediment levels at different depths. Costa Rica's proposal that "one large sample" be taken at each of its eight proposed sampling sites and then split into three – "one for Costa Rica, one for Nicaragua, and one for the Court" – is not consistent with the physical reality of sediment loads or scientific understanding regarding their proper sampling.

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territory, suggests that it is precisely this identification that Costa Rica's proposal is designed to avoid.

Nicaragua continues to favor joint monitoring of the River to determine the impacts of the road construction project. But, as it has stated previously, it considers a joint study to be feasible only if Costa Rica halts any further road construction activities pending the completion of the study. Costa Rica's letter of 24 June is silent on this point. Moreover, despite repeated requests from Nicaragua, Costa Rica has still provided no information regarding the nature of anticipated construction activities, where or when they will be taking place, or what Costa Rica intends to do to prevent further damage to the San Juan River as the result of such works.

Finally, in its letter of 24 June 2013, Costa Rica accuses Nicaragua of "a violation of Costa Rica's navigational rights, and a breach of this Court's judgment of 13 July 2009." This is an incongruous allegation, apparently premised on the proposition that any activity is commercial so long as "a private boat is paid" to transport individuals regardless of what activities they may engage in.<sup>3</sup> As the Court reaffirmed in the *Dispute Regarding Navigational and Related Rights*, the San Juan River is the sovereign territory of Nicaragua. Costa Rica's ability to navigate on the River is restricted to "navigation for the purposes of commerce," including the "transport of passengers." Costa Rica's proposed navigation is for the purposes of a scientific investigation on behalf of its Government, not navigation for the purposes of commerce. Just as Costa Rica cannot navigate the river for purposes of conducting police activities by paying a private boat to carry Costa Rican police officers, its Government cannot navigate the river for purposes of conducting governmentally-directly scientific investigations by paying a private boat to carry its scientists.

<sup>3</sup> See Costa Rican diplomatic note DM-AM-161-13, dated 20 March 2013, p. 3, attached to Costa Rica's Letter to the Court of 24 June 2013.

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Costa Rica's Letter of 7 August 2013

Costa Rica's letter of 7 August 2013 incorrectly accuses Nicaragua of deliberately ignoring and failing to respond to Costa Rica's letter of 24 June. Nicaragua's response to the first letter, which was received by Nicaragua on 8 August, is set forth above.

Costa Rica's second letter uses Nicaragua's alleged "fail[ure] to respond" as a convenient excuse for its abrupt decision to "no longer pursue a program for joint monitoring and sampling of the River." If this is, in fact, Costa Rica's final word on the subject, it would be most unfortunate. Nicaragua remains willing to agree with Costa Rica upon a proper protocol for jointly measuring the impacts of the road construction project on the River in the way indicated in its 14 June letter. To that end, Nicaragua proposes that the Parties agree to schedule a meeting of their technical experts, and to allow their respective experts to work together to produce a testing protocol that is scientifically sound and appropriately designed to obtain the desired information.

Please accept, Sir, the assurances of my highest consideration.

  
 Carlos J. ARGUELLO GÓMEZ  
 Agent  
 Republic of Nicaragua

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



## **ANNEX 65**

*Letter from the Co-Agent of Costa Rica to the Registrar of the International  
Court of Justice*

Reference ECRPB-63-2013

27 September 2013





*Embajada de Costa Rica  
ante el Reino de los Países Bajos*

The Hague, 27 September 2013

ECRPB-63-2013

Excellency,

I have the honour to refer to your note dated 3 September 2013, reference 142357, transmitting Nicaragua's note of 30 August 2013, reference HOL-EMB-167, regarding the proposal made by Costa Rica to Nicaragua for the joint monitoring of the San Juan River.

After having failed to receive an affirmative answer from Nicaragua to its first proposal of joint monitoring of the San Juan river (note DM-AM-063-13 of 6 February 2013), Costa Rica proposed again through the Court, in the framework of the case concerning the *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, to carry out a monitoring program. In its note of 30 August 2013, Nicaragua, again, under cover of a new counter-proposal containing unacceptable conditions, in particular the cessation of the road and mitigation works, purports to avoid an analysis of the identification of the sources of the sediment runoff into the San Juan, which undoubtedly would demonstrate that the road infrastructure works carried out by Costa Rica produce no harm to the régime of the San Juan River or the quality of its waters.

As the deadline for the filing of its Counter-Memorial approaches, Costa Rica is not practically in a position to insist on its proposal of joint monitoring of the waters of the San Juan River. Costa Rica will produce in due time its own evidence for the purposes of the case.

27.09.2013  
*Received Susanna Dauer*  
*SDB*

Costa Rica will, through the appropriate channels outside the confines of this case, invite Nicaragua to agree to monitor the entire length of the San Juan River, and insist that all potential sources of sedimentation to the San Juan River be identified, including those emanating from Nicaraguan territory.

Accept, Sir, the assurances of my highest consideration.



Jorge Urbina Ortega  
Co-Agent  
Republic of Costa Rica



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

## **ANNEX 66**

*Letter from the Registrar of the International Court of Justice to the Agent of  
Costa Rica*

Reference 142549

27 September 2013



27-09-2013 19:10

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T-025 P.001/001 F-075

## COUR INTERNATIONALE DE JUSTICE

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## INTERNATIONAL COURT OF JUSTICE

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142549

27 September 2013

Sir,

With reference to the cases concerning Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), I have the honour to acknowledge receipt of a letter from H.E. Mr. Jorge Urbina Ortega, Co-Agent of Costa Rica, dated 27 September 2013 and received in the Registry today. By his letter, the Co-Agent responded to the letter dated 30 August 2013 from the Agent of Nicaragua, with regard to the question of joint monitoring of the San Juan River.

A copy of the Co-Agent's letter has been sent to the other Party.

Accept, Sir, the assurances of my highest consideration.

Philippe Couvreur  
Registrar

H.E. Mr. Edgar Ugalde Álvarez  
 Agent of the Republic of Costa Rica  
 before the International Court of Justice  
 Embassy of the Republic of Costa Rica  
 The Hague

cc: H.E. Mr. Jorge Urbina Ortega  
 Co-Agent of the Republic of Costa Rica  
 before the International Court of Justice  
 Embassy of the Republic of Costa Rica  
 The Hague

Mr. Sergio Ugalde  
 Co-Agent of the Republic of Costa Rica  
 before the International Court of Justice  
 Embassy of the Republic of Costa Rica  
 The Hague



## **ANNEX 67**

*Letter from the Agent of Nicaragua to the Registrar of the International Court  
of Justice*

Reference HOL-EMB-196

11 October 2013





**EMBASSY OF NICARAGUA  
THE HAGUE**

11 October 2013  
Ref: HOL-EMB-196

Excellency,

I have the honour to refer to the proceedings listed in the Court's docket as *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica) Proceedings joined with Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*. In particular this Note refers to the Order of the Court dated 30 September 2013 Ref: 142552, for the opening of public hearings on the request made by Costa Rica for new provisional measures.

Nicaragua would like to point out that although it has filed a case against Costa Rica for the construction of a Road (Road 1856)<sup>1</sup>, the damage done to the River by the construction of this road also constitutes an independent aggravation of the dispute under consideration in the case concerning the *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*. The damages caused by the road are an inextricable part of the case concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, as explained in Nicaragua's pleadings, Costa Rica's road works have caused a surge in the San Juan River's sediment load requiring Nicaragua to take active efforts, including dredging, to maintain the quality and quantity of the river's waters.

As the Court recalled in its Order of 17 April 2013:

"Both cases are based on facts relating to works being carried out in, along, or in close proximity to the San Juan River, namely the dredging of the river by Nicaragua and the construction of a road along its right bank by Costa Rica. Both sets of proceedings are about the effect of the aforementioned works on the local environment and on the free

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<sup>1</sup> See the Application of the Republic of Nicaragua instituting Proceedings against the Republic of Costa Rica, 21 December 2011.



**EMBASSY OF NICARAGUA  
THE HAGUE**

navigation on, and access to, the San Juan River. In this regard, both Parties refer to the risk of sedimentation of the San Juan River.

In the present case and in the *Nicaragua v. Costa Rica* case, the Parties make reference, in addition, to the harmful environmental effect of the works in and along the San Juan River on the fragile fluvial ecosystem (including protected nature preserves in and along the river).<sup>2</sup>

Nicaragua pointed out in its Counter Memorial of 6 August 2012 in the dispute concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* that the construction by Costa Rica of a 160 km road running along the margin of the San Juan River constituted the most egregious violation of the Order of the Court of 8 March 2011, which indicated unanimously that:

"(3) Each Party shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve" [.]<sup>3</sup>

As the Court is aware, Costa Rica has repeatedly refused to give Nicaragua appropriate information on the road works. Indeed, it has denied that it has any obligation to prepare an Environmental Impact Assessment or to provide such a document to Nicaragua. As Nicaragua reported, it sent an international team of environmental scientists and road construction experts to inspect the River in October 2012. They confirmed that Costa Rica had not taken measures to stop or even mitigate the serious harms caused to the San Juan de Nicaragua River<sup>4</sup>. Furthermore, in anticipation of the second heavy rainy season since the construction of the road began, Nicaragua sent the same team on a second mission in May 2013. The second mission

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<sup>2</sup> I.C.J., Order, 17 April 2013, *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Joinder of Proceedings*, paras. 20-21.

<sup>3</sup> Order of 8 March 2011 concerning the Request for the Indication of Provisional Measures, para.86 (3).

<sup>4</sup> G. Mathias Kondolf, Danny Hagans, Bill Weaver and Eileen Weppner, "Environmental Impacts of Juan Rafael Mora Porras Route 1856, Costa Rica, on the Rio San Juan, Nicaragua," December 2012 ("Kondolf Report"),(NM, Vol. II, Annex 1).



**EMBASSY OF NICARAGUA  
THE HAGUE**

underscored the urgent need for the mitigation measures previously presented by Nicaragua to the Court.

As the rainy season enters into its heaviest stage washing even greater quantities of sediment and run-off into the river's waters, Costa Rica has still not provided the necessary information to Nicaragua, nor has it taken the necessary actions along the 160 km road to avoid or mitigate the irreparable damage that is being inflicted on the river and its surrounding environment, including on navigation and the health and wellbeing of the population living along its margins.

I have the honour of drawing the attention of the Court to the fact that in the context of Costa Rica's request for a modification of the 8 March 2011 provisional measures Order of the Court<sup>5</sup>, Nicaragua itself made a request for a modification of the provisional measures. The Court decided not to examine Nicaragua's request because "even if the situation invoked in the *Nicaragua v. Costa Rica* case were to justify the indication of provisional measures, the appropriate method of securing that is not the modification of the Order made in the *Costa Rica v. Nicaragua* case."<sup>6</sup> In accordance with this decision, Nicaragua requests not the modification of the existing measures, but the adoption of new provisional measures linked with the *Nicaragua v. Costa Rica* case.

Since Costa Rica is once more attempting to modify the provisional measures, initially adopted in *Costa Rica v. Nicaragua*, Nicaragua believes that the oral hearings that will take place from 14 to 17 October 2013 will provide an appropriate forum for the consideration of Nicaragua's request for the indication of the measures necessary in order to avoid a continued and irreparable damage to Nicaragua's rights.

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<sup>5</sup> Request for the Modification of the Order of 8 March 2011 in the case concerning Certain Activities carried out by Nicaragua in the Border Area (*Costa Rica v. Nicaragua*), 21 May 2013.

<sup>6</sup> I.C.J., Order, 16 July 2013, *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) / Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Provisional Measures, para. 28.



**EMBASSY OF NICARAGUA  
THE HAGUE**

The measures indicated below are known and will not take Costa Rica by surprise. Nicaragua has been pointing out the need for information sharing and remedial measures from the moment the road works began, and it has requested them in one way or another in both cases that have been joined and are presently before the Court.

Nicaragua, therefore, respectfully requests the Court, as a matter of urgency to prevent further damage to the River and to avoid aggravation of the dispute, to order the following provisional measures:

- (1) that Costa Rica immediately and unconditionally provides Nicaragua with the Environmental Impact Assessment Study and all technical reports and assessments on the measures necessary to mitigate significant environmental harm to the River,
- (2) that Costa Rica immediately takes the following emergency measures:
  - (a) Reduce the rate and frequency of road fill failure slumps and landslides where the road crosses the steeper hill slopes, especially in locations where failed or eroded soil materials have been or could potentially be delivered to the Río San Juan.
  - (b) Eliminate or significantly reduce the risk of future erosion and sediment delivery at all stream crossings along Route 1856.
  - (c) Immediately reduce road surface erosion and sediment delivery by improving dispersion of concentrated road runoff and increasing the number and frequency of road drainage structures.
  - (d) Control surface erosion and resultant sediment delivery from bare soil areas that were exposed during clearing, grubbing and construction activities in the last several years.



**EMBASSY OF NICARAGUA  
THE HAGUE**

- (3) Order Costa Rica not to renew any construction activities of the road while the Court is seized of the present case.

Nicaragua reserves its right to amend and modify the measures sought in light of any situation that might arise.

Please accept, Excellency, the assurances of my highest consideration.

Carlos J. ARGÜELLO GÓMEZ  
Agent  
Republic of Nicaragua

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



## **ANNEX 68**

*Letter from the General Director of the Costa Rican National Meteorological Institute to H.E. Edgar Ugalde Álvarez*

7 November 2013

English Translation and Spanish Original





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07 November 2013  
 N°409-2013-IMN

Ambassador  
 Edgar Ugalde Álvarez  
 Agent of Costa Rica before  
 the International Court of Justice  
 Ministry of Foreign Affairs

Dear Mr. Ugalde:

With regard to your inquiry concerning hurricanes Joan (1988), Mitch (1998) and Stan (2005), I am attaching the information gathered, making special reference to the impact on the North and North Caribbean area of the country.

#### **HURRICANE JOAN, 10-23 October 1988:**

Hurricane Joan made contact with the coast of Nicaragua, at Bluefields.

For Costa Rica the rain accumulation from 20 to 23 October in the North and North Caribbean region ranged from 20 to 250 mm (litres per square meter), the highest numbers on the Caribbean area, and the lower numbers toward the area of Sarapiquí, with intermediate values toward the area of Los Chiles.

#### **HURRICANE MITCH, 22 OCTOBER TO 09 NOVEMBER 1998**

This hurricane entered Central American territory through the central sector of the coast of Honduras.

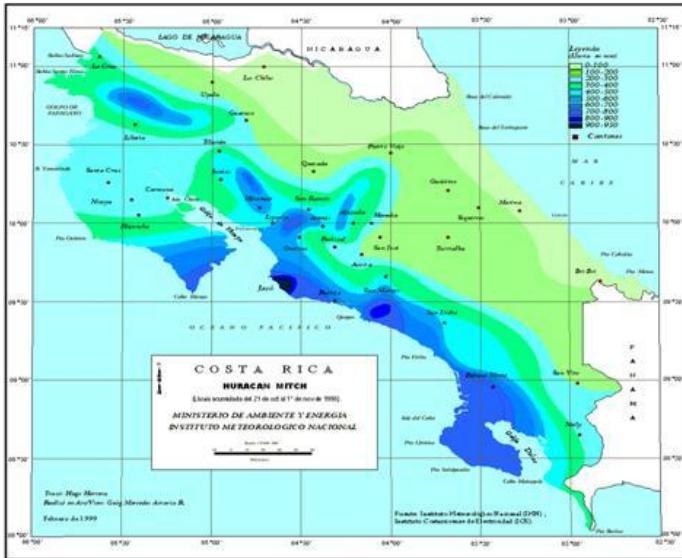
Similarly, due to its position on the Caribbean, the main effects on Costa Rica were on the Pacific Watershed.

The map included below establishes that rain accumulation from 21 October to 01 November, which clearly shows that the rains recorded during those days in the Caribbean Watershed and the North Area were below 100 mm (litres per square meter).





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### HURRICANE STAN, 01 TO 05 OCTOBER 2005:

The recorded rain accumulation from 02 to 05 October for the North and the North Caribbean Area ranged from 150 mm in the Sarapiquí area to 15 mm on the coast.

It is worth noting that the north area of the country, due to its nature, is very rainy. The average annual rain accumulation can reach 6 000 mm.

Regards,

A handwritten signature in black ink.

**Juan Carlos Fallas Sojo**  
**General Director IMN**



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07 de noviembre de 2013  
 Nº409-2013-IMN

Señor Embajador  
 Edgar Ugalde Álvarez  
 Agente de Costa Rica ante  
 la Corte Internacional de Justicia  
 Ministerio de Relaciones Exteriores y Culto

Estimado señor Ugalde:

Con respecto sobre su consulta sobre los huracanes Joan (1988), Mitch (1998) y Stan (2005), le adjunto la información recabada, haciendo una referencia más específica sobre sus impactos a la Zona de Norte y Caribe Norte del país.

#### **HURACÁN JOAN, 10-23 de octubre 1988:**

El huracán Joan hizo contacto con la costa de Nicaragua, en Bluefields.

Para Costa Rica, el acumulado de lluvia del 20 al 23 de octubre en la Zona Norte y Caribe Norte del país, osciló entre 20 a 250 mm (litros por cada metro cuadrado), ubicándose los valores más altos en la zona del Caribe, y los valores más bajos hacia la Zona de Sarapiquí, con valores intermedios hacia la zona de Los Chiles.

#### **HURACÁN MITCH, 22 DE OCTUBRE AL 09 DE NOVIEMBRE 1998**

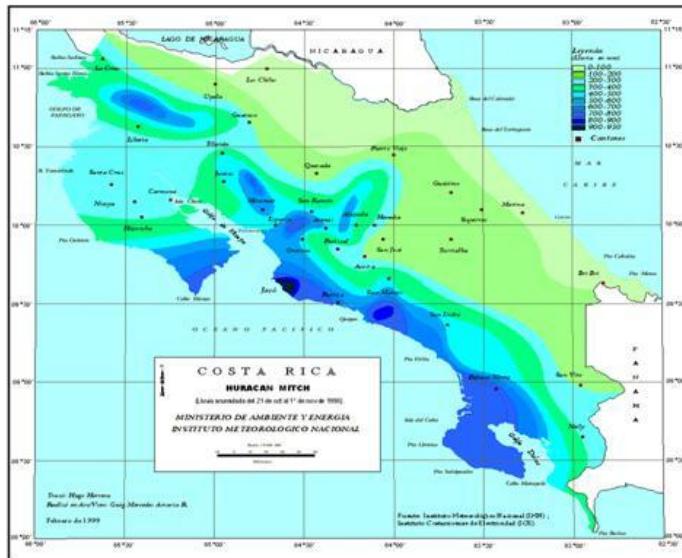
Este huracán ingresó a territorio de Centroamérica, sobre el sector central de la costa de Honduras.

De igual forma por su posición sobre el mar Caribe, la afectación importante sobre Costa Rica fue sobre la Vertiente del Pacífico.

En el mapa que se adjunta se establece el acumulado de lluvias del 21 de octubre al 01 de noviembre, donde se muestra con claridad que las lluvias registradas durante esos días en la Vertiente del Caribe y la Zona norte estuvieron por debajo de los 100 mm (litros por metro cuadrado).



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### **HURACÁN STAN, 01 AL 05 DE OCTUBRE 2005:**

El registro acumulado de lluvia del 02 al 05 de octubre, para la Zona Norte y el Caribe Norte osciló entre 150 mm en la zona de Sarapiquí y de 15 mm hacia el sector costero.

Es importante señalar que la zona norte del país, por su propia naturaleza, es muy lluviosa, en donde el acumulado promedio anual puede alcanzar los 6 000 mm.

Sin otro particular y quedando a sus gratas órdenes, lo saluda cordialmente,

**Juan Carlos Fallas Sojo**  
**Director General del IMN**

**CONSTRUIMOS UN PAÍS SEGURO** | Gobierno de Costa Rica

## **ANNEX 69**

La Nación (Costa Rica)

*'Nicaraguan immigration denies entry to journalists through San Juan River'*

available at

<http://wfnod01.nacion.com/2010-10-22/ElPais/UltimaHora/ElPais2564695.aspx?Page=3>,

22 October 2010

English Translation and Spanish Original



# LA NACIÓN

[http://www.nacion.com/archivo/Migracion-prohibe-periodistas-San-Juan\\_0\\_1154484546.html](http://www.nacion.com/archivo/Migracion-prohibe-periodistas-San-Juan_0_1154484546.html)

## Nicaraguan immigration denies entry to journalists through San Juan River

CARLOS ARGUEDAS C. | CARLOS ARGUEDAS C. AND CARLOS HERNÁNDEZ – UPDATED ON 22 OCTOBER 2010 AT: 12:00 A.M.

San José (Redacción). Nicaraguan Immigration Officers prohibited today the entrance of two boats through San Juan River, on which Costa Rican journalists travelled, heading to the Isla Calero area in Pococí, Limón.

This measure was communicated by Pedro Alemán, Nicaraguan Immigration Officer, who indicated that “for security reasons” free transit is not allowed. He argued that the conflict area is Nicaraguan territory therefore Costa Ricans lose all rights there.

He explained that the journalists could request a permit from the Costa Rican Ministry of Foreign Affairs, and with said authorization they would allow navigation to the interested party.

The measure affected the boat in which Carlos Hernández travelled, sent by La Nación newspaper, and another in which Alfonso Gatgens from Diario La Extra travelled.

Passage was prohibited from the mouth of Sarapiquí River.

### ETIQUETAS

- [CONFLICTO CON NICARAGUA](#)

# LA NACIÓN

[http://www.nacion.com/archivo/Migracion-prohibe-periodistas-San-Juan\\_0\\_1154484546.html](http://www.nacion.com/archivo/Migracion-prohibe-periodistas-San-Juan_0_1154484546.html)

## Migración nica prohíbe paso a periodistas por río San Juan

CARLOS ARGUEDAS C. | CARLOS ARGUEDAS C.Y CARLOS HERNÁNDEZ - ACTUALIZADO EL 22 DE OCTUBRE DE 2010  
A: 12:00 A.M.

San José (Redacción). Funcionarios de Migración de Nicaragua prohibieron el paso hoy a dos lanchas por el río San Juan, donde viajaban periodistas costarricenses y que se dirigían hacia la región de isla Calero, en Pococí, Limón.

La medida la comunicó Pedro Alemán, trabajador de Migración nicaragüense, quien dijo que por “razones de seguridad” no se permitía el libre tránsito. Argumentó que la zona del conflicto es territorio de Nicaragua y que ahí pierden cualquier derecho los costarricenses.

Explicó que los periodistas podrían pedir un permiso a la Cancillería costarricense y con esa autorización ellos permitirían la navegación del interesado.

La medida afectó a una lancha donde viajaba Carlos Hernández, enviado del periódico La Nación , y a otra donde se encontraba Alfonso Gatgens del diario La Extra .

El paso se prohibió partir de la desembocadura del río Sarapiquí.

### ETIQUETAS

• [CONFLICTO CON NICARAGUA](#)

## **ANNEX 70**

La Nación (Costa Rica)

*'Nicaragua Reinforces Troops at the Border'*

available at

[http://www.nacion.com/sucesos/Nicaragua-refuerza-tropas-frontera\\_0\\_1154884554.html](http://www.nacion.com/sucesos/Nicaragua-refuerza-tropas-frontera_0_1154884554.html)

24 October 2010

English Translation and Spanish Original





[http://www.nacion.com/sucesos/Nicaragua-refuerza-tropas-frontera\\_0\\_1154884554.html](http://www.nacion.com/sucesos/Nicaragua-refuerza-tropas-frontera_0_1154884554.html)

# Nicaragua reinforces troops at the border

UPDATED ON 24 OCTOBER 2010, AT 12:00 A.M.

Managua. AFP Nicaragua sent troops yesterday to the border with Costa Rica in an action that Colonel Juan Ramón Morales, chief of Public Relations of the Army, reported is motivated by drug trafficking.

The mobilization “is related to drug trafficking (...) not to a situation that occurred on the other side with the deployment by Costa Rica, which has full legal rights to do so,” Morales indicated.

The special units soldiers of the Army were mobilized on Saturday morning to the border area, where they carry out works to clear the waters of San Juan River, to which San José expressed its opposition due to alleged environmental damages in their territory.

“We do not see that any situation of that nature (armed) will arise (at the border). These are separate things, (the presence of the army) is an activity against drug trafficking,” Morales stated with regard to growing tension in the area between both countries.

Before confirming the deployment of troops to the south, members of the Police, the Army and the Attorney General’s Office gave statements regarding an escape plan by six Honduran drug traffickers that were captured on September 30 at the southern border.

Morales indicated that the case is related to the dismantling of an organized crime base that was operating at the same place where the dredging works are being carried out.

“With the information regarding the drug traffickers’ escape plan, in addition to other information provided, we are sending a unit to the area to detail the reports and follow up on a drug trafficking group that is operating there,” he added.

The alleged chief of the gang, identified as “Aragón”, is thought to be in Costa Rica. “They are the ones who are selling the idea that we are on Costa Rican territory, trying to evade an illegal situation,” Morales noted.

## **ETIQUETAS**

• [LÍO EN FRONTERA](#)

# LA NACIÓN

[http://www.nacion.com/sucesos/Nicaragua-refuerza-tropas-frontera\\_0\\_1154884554.html](http://www.nacion.com/sucesos/Nicaragua-refuerza-tropas-frontera_0_1154884554.html)

## Nicaragua refuerza tropas en la frontera

ACTUALIZADO EL 24 DE OCTUBRE DE 2010 A: 12:00 A.M.

Managua. AFP Nicaragua envió ayer tropas a la frontera con Costa Rica en una acción que, según explicó, está motivada por el narcotráfico, informó el coronel Juan Ramón Morales, jefe de Relaciones Públicas del Ejército.

La movilización “está relacionada al narcotráfico (...) no a una situación que se presentó al otro lado con el desplazamiento que hizo Costa Rica, que está en su pleno derecho”, dijo Morales.

Los soldados de unidades especiales del Ejército se habrían trasladado en la mañana del sábado hacia la zona fronteriza donde se desarrollan las labores de limpieza del caudal del río San Juan, al que San José se opuso por supuestos daños ambientales en su territorio.

“Nosotros no vemos que ahí (frontera) se vaya a presentar alguna situación de esa naturaleza (armada). Son cosas diferentes, (la presencia del Ejército) es una actividad contra el narcotráfico”, dijo Morales ante una creciente tensión en la zona entre ambos países.

Antes de confirmar la movilización de tropas al sur, funcionarios de la Policía, el Ejército y la Fiscalía hicieron declaraciones sobre un plan de fuga de seis presuntos narcotraficantes de origen hondureño capturados el 30 de septiembre en la frontera sur.

El caso estaría relacionado con el desmantelamiento de una base del crimen organizado que operaba en el mismo lugar donde se están llevando a cabo las tareas de dragado, dijo Morales.

“Con la información del plan de fuga de los narcotraficantes, más una serie de informaciones que se están dando, enviamos un componente a la zona para repuntualizar los informes y dar seguimiento al elemento narcotraficante que está operando ahí”, agregó.

El presunto jefe de la banda, identificado como “Aragón”, estaría en Costa Rica. “Son ellos los que están vendiendo la idea de que estamos en territorio costarricense, tratando de evadir una situación ilícita”, subrayó Morales.

## **ETIQUETAS**

- [LÍO EN FRONTERA](#)

## **ANNEX 71**

El 19 (Nicaragua)

*'Nicaragua will request before the ICJ Navigation through Río Colorado'*

available at

[http://www.el19digital.com/index.php?option=com\\_content&view=article&id=18149:nicaragua-pedira-ante-cij-navegacion-por-rio-colorado&catid=23:nacionales&Itemid=12](http://www.el19digital.com/index.php?option=com_content&view=article&id=18149:nicaragua-pedira-ante-cij-navegacion-por-rio-colorado&catid=23:nacionales&Itemid=12)

13 November 2010

English Translation and Spanish Original





[http://www.el19digital.com/index.php?option=com\\_content&view=article&id=18149:nicaragua-pedira-ante-cij-navegacion-por-rio-colorado&catid=23:nacionales&Itemid=12](http://www.el19digital.com/index.php?option=com_content&view=article&id=18149:nicaragua-pedira-ante-cij-navegacion-por-rio-colorado&catid=23:nacionales&Itemid=12)

## NATIONAL NEWS

***Under the same terms and conditions that Costa Rica enjoys over San Juan de Nicaragua River***

**Nicaragua will request before the ICJ navigation through Río Colorado**

November 13, 2010 | Valeria Imhof



President Daniel Ortega announced that Nicaragua will request before the International Court of Justice (ICJ) navigation through Río Colorado under the same terms and conditions that Costa Rica has to navigate San Juan de Nicaragua River, whilst the cleaning and dredging of this affluent are being concluded to recover its water level.

Daniel argued that 90% of the flow of water of Río Colorado comes from waters within our country, from Lake Cocibolca through San Juan River.

"We are giving Costa Rica 90% of the water of Río Colorado, and Nicaragua does not recover the water flow or exit of this river, while we continue to carry out its cleaning

and creating an exit through Harbour Head Island; Costa Rica should accept that we receive the same treatment to navigate Colorado River,” he expressed.

He added that Costa Rica can navigate 140 kilometres of the San Juan River and then navigate through Río Colorado, whose volume is permanently maintained by Nicaragua’s lakes and rivers.

“We are looking for a balance, for fairness, just as they benefit from San Juan River; we could have the same conditions as they do to navigate through San Juan River, with the same prerogatives, terms and privileges that Costa Rica has to navigate our river,” he stated.

The President showed maps of the conflict area in 1960 and 2010 and the negative effects caused by Costa Rica on the mouth of San Juan River, forest areas and natural reserves for cattle-raising and agricultural projects.

“The flow of San Juan River was sufficient to have a huge bay, but since waters divert into Río Colorado the water volume of San Juan River was affected,” he expressed.

He explained that this causes that during the summer the river cannot be navigated, and in some places it even turns into small puddles and sand deposits.

“Those who have seen the river know that they can even walk on the river bed, because the water is simply feeding Río Colorado,” he insisted.

He indicated that during the summer San Juan River loses water volume, therefore it is unable to reach the historical mouth mentioned in the treaties, decisions and international resolutions.

“Dredging works intend to recover the water level so that we can permanently have a route that can be navigated, and this is what we are defending: what the treaties, decisions and resolution of the International Court of Justice say,” he claimed.

The President also showed a map of the alleged Isla Calero, while he rejected the campaign started by the Costa Rican government that Nicaragua has invaded its territory.

“A campaign has been started claiming that Nicaragua has military occupation in Isla Calero, a territory between San Juan River and Río Colorado which they have thus named,” he said.

He added that in said territory, corresponding to 180 square kilometres, there isn’t a single Nicaraguan soldier, and no soldiers or police have entered the area.



[http://www.el19digital.com/index.php?option=com\\_content&view=article&id=18149:nicaragua-pedira-ante-cij-navegacion-por-rio-colorado&catid=23:nacionales&Itemid=12](http://www.el19digital.com/index.php?option=com_content&view=article&id=18149:nicaragua-pedira-ante-cij-navegacion-por-rio-colorado&catid=23:nacionales&Itemid=12)

## NACIONALES

***En los mismos términos y condiciones que goza Costa Rica sobre el Río San Juan de Nicaragua***

**Nicaragua pedirá ante CIJ navegación por Río Colorado**

13 de Noviembre de 2010 | Valeria Imhof



El presidente Daniel Ortega anunció que Nicaragua pedirá ante la Corte Internacional de Justicia (CIJ) la navegación por el costarricense Río Colorado, en los mismos términos y condiciones en que este país puede navegar por nuestro Río San Juan de Nicaragua, al mismo tiempo que se concluyen las labores de limpieza y dragado de este afluente para recuperar su caudal.

Daniel argumentó que el 90 por ciento del caudal del Río Colorado proviene de las aguas de nuestro país, desde el Lago Cocibolca, a través del Río San Juan.

“Nosotros le estamos entregando a Costa Rica el 90 por ciento del agua del Río Colorado

y como Nicaragua todavía no recupera el caudal del río y su salida mientras nosotros seguimos desarrollando la limpieza del río y el establecimiento de una salida a través de la Isla Harbour Head que Costa Rica acepte que Nicaragua reciba el mismo tratamiento para transitar por el Río Colorado”, expresó.

Agregó que Costa Rica puede recorrer el Río San Juan 140 kilómetros y luego transitar por el Río Colorado, cuyo caudal tiene agua permanentemente gracias a los lagos y ríos de Nicaragua.

“Lo que estamos buscando es un punto de equilibrio, de justicia así como ellos se benefician del Río San Juan también nosotros podamos optar con las mismas condiciones que ellos para navegar por el Río San Juan con las mismas prerrogativas, con las mismas facilidades y con los mismos privilegios que tiene Costa Rica para navegar sobre nuestro río”, manifestó.

El presidente mostró mapas de la zona en conflicto de los años 1960 y 2010 y las afectaciones provocadas por Costa Rica en la desembocadura del Río San Juan, en las zonas boscosas y las reservas naturales para desarrollar programas ganaderos y proyectos agrícolas.

“El caudal del Río San Juan era suficiente como para que se pudiera contar con una inmensa bahía pero en la medida que las aguas se fueron desviando hacia el Río Colorado se fue afectando el caudal del Río San Juan”, expresó.

Explicó que esto ocasiona que el río no sea navegable en tiempos de verano inclusive en lugares se convierte en pequeños charcos y bancos de arena.

“Los que han visitado el río saben que se puede caminar incluso por el lecho del río porque sencillamente el agua está alimentando al Río Colorado”, insistió.

Señaló que el Río San Juan en época de verano pierde caudal por lo que no logra llegar a su desembocadura histórica mencionada en los tratados, laudos y resoluciones internacionales.

“Las labores de dragado tienen como objetivo recuperar el caudal para que de manera permanente tengamos una ruta navegable y eso es lo que estamos defendiendo: lo que mandan los tratados, los laudos y la resolución de la Corte Internacional de Justicia”, aseveró.

El presidente además mostró un mapa de la supuesta Isla Calero al mismo tiempo que rechazó la campaña emprendida por el gobierno costarricense de que Nicaragua ha invadido su territorio.

“Aquí se ha levantado una campaña de que Nicaragua ha ocupado militarmente Isla Calero un territorio que se encuentra entre el Río San Juan y el Río Colorado y que ellos le han llamado con ese nombre”, dijo.

Agregó que ese territorio, correspondiente a 180 kilómetros cuadrados, no hay un sólo soldado nicaragüense ni ha entrado un soldado ni policía a esa zona.

## **ANNEX 72**

La Prensa (Nicaragua)

*'Nicas want Peace and Dialogue with Costa Rica'*

available at

<http://www.laprensa.com.ni/2010/12/14/nacionales/46366>

14 December 2010

English Translation and Spanish Original



National news

## Nicaraguans want peace and dialogue with Costa Rica

**Less Nicaraguans want to leave**

- 66% of those surveyed believe the troops should go



### Preventing Conflict

"The Governments of Nicaragua and Costa Rica, in the current situation, should prioritize cooperation relations over conflict."

Agree -Disagree - Don't know

Opposition – FSLN – Independent - All Interviewees

Source M&R Consultores, November 27 to December 6, 2010

[See enlarged image](#)

**By Geiner Enrique Bonilla and Josué Bravo**

### Managua and San José

Nicaraguans want a peaceful settlement for the conflict between Nicaragua and Costa Rica, which arose from the dredging in San Juan River. At least this is what the most recent survey on public opinion carried out by M&R Consultores indicates.

Of those surveyed, 95.9 percent indicated that they agree that the governments of both countries must prioritize cooperation relationships over conflict.

A large majority of Nicaraguans also considers that it is time for dialogue; however, this requires removing the military bodies from the conflict area, and they believe that this withdrawal of troops would not mean risking national sovereignty.

On the other hand, no one doubts that the conflict between both nations helped to feed the popularity of Sandinista president Daniel Ortega, given that more than half of those surveyed qualified as positive Ortega's steps to manage the problem between Nicaragua and Costa Rica.

All of this data is compiled in the 27<sup>th</sup> edition of the Public Opinion Monitoring System, which was applied to a total of 1,600 persons nationwide, between November 27 and December 6.

The interviews were performed in person, to individuals over 16 years of age in urban and rural areas of the country. The data included in the survey includes a reliability level of 95.5 per cent.

This time the results are shown based on the political sympathies of each interviewee.

Thus, although globally, over half of the interviewees consider that military troops should be withdrawn to begin dialogue, 42.1% of the population which defined itself as Sandinista does not agree with this possibility.

However, demilitarizing the border area would not mean at any time putting at risk or losing national sovereignty. At least this is what 60% of the population with sympathy toward an opposition party believes, and 54.2% of which proclaim to be independent.

## **CONTRADICTIONS**

Regarding this point, Sandinistas differ greatly from the rest of the trends, and even contradict themselves in their positions. Although a large portion (56.7%) of those who sympathize with the government agrees with the withdrawal of troops to begin dialogue, 56.9 percent believe that withdrawing the troops would mean risking national sovereignty.

However, globally, the scale tilts more toward those who think that national sovereignty is not exposed (48.9), exceeding by a little over two points those who think the opposite (46.3 per cent).

These binational problems largely benefitted the popularity of the Sandinista president, given that even the independent and opposition sectors rated highly Ortega's actions to manage conflict.

Except for the opposition -the majority of which qualified Ortega's management as regular- more than half of Sandinistas and independent individuals consider the President's work to be positive.

## **COSTA RICAN INVASION?**

On the other hand, the Costa Rican Minister of Security (of Nicaraguan father), José María Tijerino, continued escalating his militaristic dialogue by paraphrasing about an eventual military invasion against Nicaragua, which in the midst of laughter, he ascertained will not occur yet.

In declarations to Telenoticias Canal 7, the public employee explained that the arrival of naval artillery ships with US marines to its maritime territory is part of an agreement to fight against drug trafficking.

"Nicaraguans can rest assured that we will not invade yet," he said.

The issue of an eventual request for military help by Costa Rica to resolve the conflict with Nicaragua is still latent, although the Costa Rican government speaks of peaceful solutions in conformity with international law.

## LA MAYORÍA APUESTA POR EL DIÁLOGO

"Los gobiernos de Nicaragua y Costa Rica en la situación actual deben retirar a sus cuerpos militares de la zona de CONFLICTO para darle lugar al diálogo."

■ ACUERDO ■ DESACUERDO ■ NO SABE

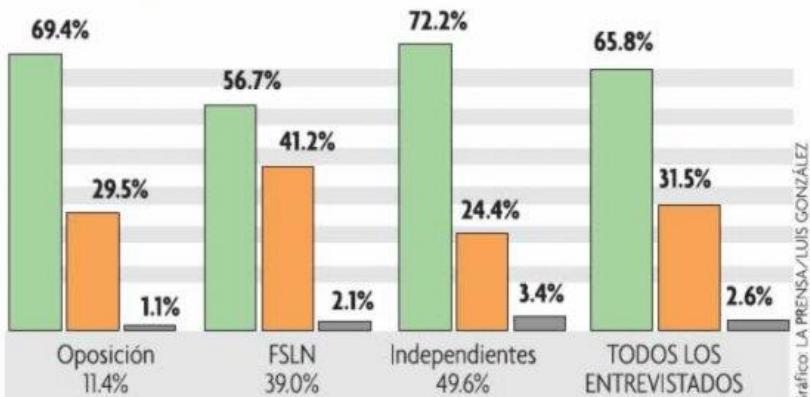


Gráfico: LA PRENSA/LUIS GONZÁLEZ

Fuente: M&R Consultores, 27 de noviembre al 6 de diciembre 2010.

[See enlarged image](#)

### The majority bet on dialogue

"The Governments of Nicaragua and Costa Rica, in the current situation, should withdraw the military troops from the Conflict Area to give way to dialogue."

Opposition – FSLN – Independent - All Interviewees  
Source M&R Consultores, November 27 to December 6, 2010

## Nicas quieren paz y diálogo con Costa Rica

Valorar: 

Resultados:

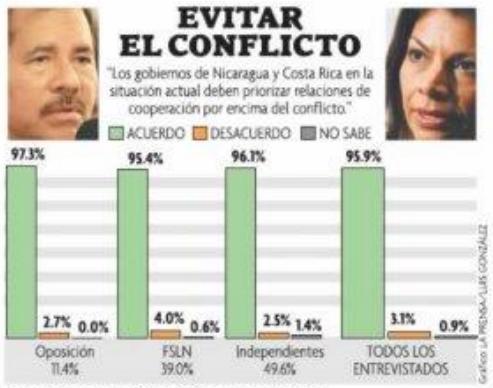


6 votos

Comentarios: 23

[Menos nicas se quieren ir](#)

El 66 por ciento de los encuestados cree que las tropas deben retirarse

[Ver imagen ampliada](#)**Por Geiner Enrique Bonilla y Josué Bravo**

### Managua y San José

Los nicaragüenses quieren una solución pacífica para el conflicto entre Nicaragua y Costa Rica, desatado a raíz del dragado en el río San Juan. Al menos así lo indica la más reciente encuesta de monitoreo de opinión pública que realizó M&R Consultores.

El 95.9 por ciento de los encuestados aseguró estar de acuerdo con que los gobiernos de ambas naciones deben priorizar las relaciones de cooperación por encima del conflicto.

Otra gran mayoría de nicaragüenses considera que es hora de darle lugar al diálogo, pero para ello se deben retirar los cuerpos militares de la zona de conflicto y creen que este retiro de tropas no significaría arriesgar la soberanía nacional.

Por otra parte, nadie pone en duda que el conflicto entre las naciones ayudó a alimentar la popularidad del mandatario sandinista Daniel Ortega, pues más de la mitad de los encuestados calificó como positivas las gestiones de Ortega para manejar el problema entre Nicaragua y Costa Rica.

Todos estos datos están recopilados en la edición 27 del Sistema de Monitoreo de Opinión pública, que se aplicó a un total de 1,600 personas a nivel nacional, entre el 27 de noviembre y el pasado 6 de diciembre.

Las entrevistas se hicieron cara a cara, a personas mayores de 16 años de las zonas urbanas y rurales del país. Los datos contenidos en la encuesta tienen un nivel de confianza de 95.5 por ciento.

En esta oportunidad se muestran los resultados basados en la simpatía política de cada entrevistado.

Así pues, aunque a nivel global, más de la mitad de los encuestados considera que se deben retirar las tropas militares para iniciar el diálogo, un 42.1 por ciento de la población que se definió como sandinista no está de acuerdo con esta posibilidad.

Pero desmilitarizar la zona fronteriza no significaría en ningún momento poner en riesgo o perder la soberanía nacional. Al menos así piensa un 60 por ciento de la población que tiene simpatía por algún partido de oposición y el 54.2 por ciento de los que se proclaman independientes.

## **SE CONTRADICEN**

En cuanto a este punto, los sandinistas difieren mucho del resto de tendencias, e incluso se contradicen en sus posiciones. Pues aunque gran parte (56.7 por ciento) de los simpatizantes al partido de gobierno están de acuerdo con el retiro de tropas para iniciar el diálogo, 56.9 por ciento creen que retirar las tropas sería arriesgar la soberanía nacional.

Sin embargo, a nivel global, la balanza se inclina más hacia los que piensan que no se expone la soberanía nacional (48.9), superando por poco más de dos puntos a los que piensan lo contrario (46.3 por ciento).

Estos problemas binacionales beneficiaron grandemente la popularidad del mandatario sandinista, pues incluso los sectores independientes y de oposición calificaron muy bien las acciones de Ortega al momento de manejar el conflicto.

Exceptuando a los opositores —cuya mayoría calificó de regular la gestión de Ortega— más de la mitad de los sandinistas e independientes consideran positivo el trabajo del Presidente.

## **¿INVASIÓN TICA?**

Por su parte, el ministro de Seguridad de Costa Rica (de padre nicaragüense), José María Tijerino, siguió escalando su discurso belicista al parafrasear sobre una eventual invasión militar contra Nicaragua, la cual en medio de risas, aseguró que no se realizaría todavía.

En declaraciones a Telenoticias de Canal 7, el funcionario explicó que el arribo de barcos artillados con militares estadounidenses a su territorio marítimo es parte de un convenio para luchar contra el narcotráfico.

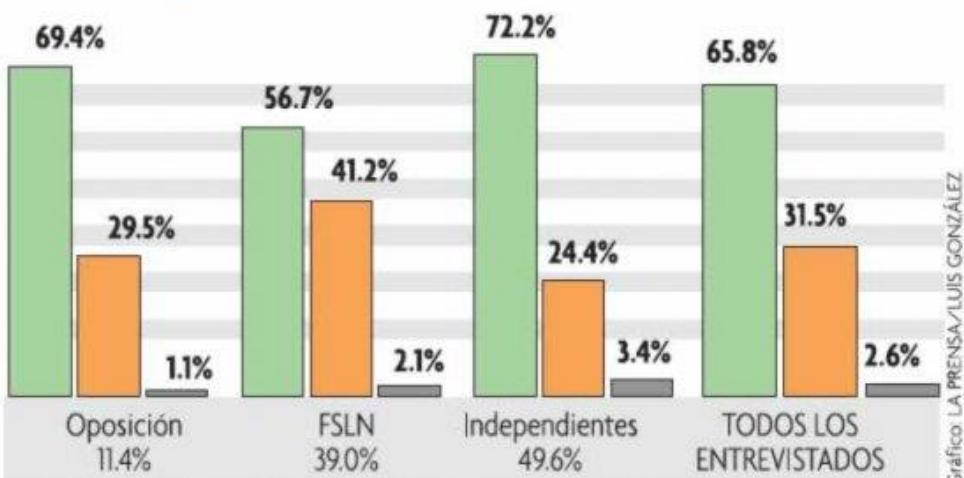
"Pueden estar tranquilos los nicaragüenses, no pensamos invadirlos todavía", dijo.

El tema sobre una eventual solicitud de ayuda militar de parte de Costa Rica para resolver el conflicto con Nicaragua aún sigue latente, aunque el gobierno tico habla de soluciones "pacíficas" apegadas al derecho internacional.

## LA MAYORÍA APUESTA POR EL DIÁLOGO

"Los gobiernos de Nicaragua y Costa Rica en la situación actual deben retirar a sus cuerpos militares de la zona de CONFLICTO para darle lugar al diálogo."

ACUERDO DESACUERDO NO SABE



Graffico: LA PRENSA/LUIS GONZÁLEZ

Fuente: M&R Consultores, 27 de noviembre al 6 de diciembre 2010.

[Ver imagen ampliada](#)

## **ANNEX 73**

Central American Court of Justice (Managua), transcript of interview with  
Central American Court of Justice judges Ricardo Acevedo and Dario Lobo

*'The challenge is having Panama and Costa Rica join'*

available at

<http://portal.ccj.org.ni/ccj2/Publicar/tabid/88/EntryId/3/-El-reto-es-que-Panama-y-Costa-Rica-se-integren.aspx>

English Translation and Spanish Original





<http://portal.ccj.org.ni/ccj2/Publicar/tabid/88/EntryId/3/-El-reto-es-que-Panama-y-Costa-Rica-se-integren.aspx>

 VOCERO DE LA CORTE

## “The challenge is having Panama and Costa Rica join”



### Interview

Judges of the Central American Court of Justice, Drs. Ricardo Acevedo Peralta, outgoing president, and Francisco Darío Lobo, incoming president of the Central American Court of Justice.

**Yolanda Magaña**  
**Diario El Mundo**

The seat of the presidency at the Central American Court of Justice was filled once again last Thursday by Honduran Francisco Darío Lobo Lara, who received it from Salvadorian Ricardo Acevedo Peralta. Both agree that the integration of Panama and Costa Rica is the next step after the late incorporation of Guatemala.

### How is El Salvador leaving the Court?

Ricardo Acevedo Peralta (RAP): This year we managed to have Guatemala enter, after 14 years of absence. We also achieved one of the most important events, the first meeting of international courts. They met in Managua.

### Why is Guatemala joining now, after 14 years?

RAP: The integration has progressed slowly for many reasons: apathy, the lack of incentives. Guatemala signed, yet there were technical issues, and then the integration process has been so sluggish that the European Union didn't come in until now, and the Europeans are asking the institutions that guarantee the rule of law to become stronger, to integrate, since our process has unfortunately always moved forward through external influences, the presidents realized that they needed to hurry...

**Did the European Union have influence over Guatemala's final integration?**

RAP: It did have influence over Guatemala.

**Why was there resistance?**

RAP: There hasn't been any resistance, but rather apathy, institutional laziness.

**Is there mistrust regarding the regional Court?**

RAP: That is not the case. Partly because the processes are not known, they haven't been sufficiently diffused, and partly because this process has moved forward very slowly and there hasn't been much interest, until now, when the European Union is going to guarantee Europe's investments in the region, since Europe is coming here to a single Court, to a single nation.

**What are the challenges you are faced with as you receive the presidency of the Court?**

Francisco Darío Lobo Lara (FDLL): The Court I am receiving has more of an international outlook. This Court is new. It was founded on October 13, 1994. It is the court of Central American integration.

**What is the main challenge after Guatemala's integration?**

FDLL: To continue on the same path... Panama is about to join. The only state that gets complicated is Costa Rica. We are confident that they will take measures. We would like to strengthen the ethical aspect of our roles, to continue issuing respectable rulings, to not bend the Law and to strengthen integration.

**Is it indispensable for Costa Rica to join for the next Central American Court and its next period?**

FDLL: It is necessary. The word indispensable is more elevated.

**Is it urgent?**

FDLL: To some measure, it is. We cannot stop. No one can stop Central America's integration. Everything is on our side.

**But in order for the European Union to take the region seriously, is it indispensable for Costa Rica to join?**

FDLL: This is the European Union's aspiration, to not be divided, to not be weakened, because together we have better prospects for development. If Central America comes together it becomes a power. The six Central American states are under the Court's jurisdiction, even if they don't have judges, by the sovereign will of the six States. Now there will be no excuse.

RAP: One of Costa Rica's objections is interference in each State's domestic conflicts. Currently, it is sufficient for one of the parties to resort to the Court. In light of Costa Rica's suggestion, this power could become optional; the Court could participate only when the State accepts it. This would be more difficult, but it's a proposal.

### **Would this be a backward movement?**

The Court cannot receive more power because it already has all of the power in the world. This remains to be seen. I am certain that El Salvador, Nicaragua... would not agree. The court doesn't need strength, it needs legitimacy. We have strength with or without Costa Rica, and with or without Panama. A Court ruling in a disagreement between a European agreement and a Central American agreement has strength, but not sufficient legitimacy if Panama and Costa Rica do not join.

### **Have the rulings issued been few (100 since 1994)?**

RAP: No, not with the levels and the dynamics of the integration process, and considering how recent it is. We are moving forward.

### **Are the rulings followed?**

RAP: So far, the Court's rulings have been followed, one way or another. The rulings are applied by the same national judges. All of them are mandatory, no excuses. No one can reform us to make us better.

FDLL: the rulings are issued by the Court; their execution depends on the Central American presidents.

### **Is the work flow ideal?**

Ideally it should increase. (The problem is that) the jurisdiction is extensive, but no one is aware of this extent.

NOTICIAS

EVENTOS

PUBLICACIONES  
DE MAGISTRADOS

**ÚLTIMOS  
EXPEDIENTES**

**VOCERO  
DE LA CORTE**

## VOCERO DE LA CORTE

BUSCAR

"El reto es que Panamá y Costa Rica se integren"



### Entrevista

Magistrados de la Corte Centroamericana de Justicia, Doctores Ricardo Acevedo Peralta, Presidente saliente y Francisco Darío Lobo, Presidente Entrante de la Corte Centroamericana de Justicia

GALERÍAS



**Yolanda Magaña**  
**Diario El Mundo**

La presidencia de la Corte Centroamericana de Justicia fue retomada el jueves pasado por el hondureño Francisco Darío Lobo Lara, recibida del salvadoreño Ricardo Acevedo Peralta. Ambos coinciden en que la integración de Panamá y Costa Rica es el siguiente paso después de una tardía incorporación de Guatemala.

#### ¿Cómo entrega la Corte El Salvador?

Ricardo Acevedo Peralta (RAP): Este año logramos que Guatemala, después de 14 años de estar ausente, ingrese. Y logramos hacer uno de los eventos más importantes, el primer encuentro de las cortes internacionales. Se dieron cita en Managua.

#### ¿Por qué Guatemala ingresa, después de 14 años, hasta ahora?

RAP: La integración ha marchado muy despacio por miles de razones: por desidia, porque no ha habido incentivos. Guatemala firmó pero hubo problemas técnicos y, como el proceso de integración ha caminado tan despacio, fue hasta ahora que viene la Unión Europea y que los europeos están pidiendo que las instituciones que garantizan el Estado de Derecho se fortalezcan, se integren, porque nuestro proceso desafortunadamente siempre ha caminado a raíz de influencias externas, los presidentes se dieron cuenta que había que acelerar...

#### ¿La Unión Europea influyó en la integración final de Guatemala?

RAP: Influyó en Guatemala.

#### ¿Y por qué hubo resistencia?

RAP: No ha habido resistencia, sino desidia, haraganería institucional.

#### ¿No se confía en la Corte regional?

RAP: No es eso. En parte porque los procesos no se conocen, no se les ha dado la suficiente divulgación y en parte porque este proceso ha caminado muy despacio y no ha habido mayor interés. Hasta ahora que la Unión Europea que van a garantizar las inversiones de Europa en la región, porque Europa viene aquí a una sola Corte, a una sola nación.

#### ¿Cuáles son los retos con que usted recibe la presidencia de la Corte?

Francisco Darío Lobo Lara (FDLL): La recibo como una Corte más proyectada a nivel internacional. Esta Corte es nueva. Fue fundada el 13 de octubre de 1994. Es el tribunal de la integración centroamericana.

#### ¿Cuál es el principal reto después de la integración de Guatemala?

FDLL: Es continuar la misma línea... Panamá está a punto de entrar. El único estado que se pone un poco difícil es Costa Rica. Confiamos en que van a tomar medidas. Queremos fortalecer la ética en nuestras funciones, seguir dictando fallos respetables, no torcer el Derecho y fortalecer la integración.

#### ¿Es indispensable que se integre Costa Rica para Corte Centroamericana y en su próxima gestión?

FDLL: Es necesaria. La palabra indispensable es mucho más elevada.

#### ¿Es urgente?

FDLL: Sí, lo es, en alguna medida. No podemos detenerlos. La integración centroamericana nadie la detiene. Ya tenemos todo a nuestro favor.

**Pero, para que la Unión Europea tome en serio a la región, ¿es indispensable que se integre Costa Rica?**

FDLL: Es una aspiración de la Unión Europea, no dividirnos, no debilitarnos, porque unidos tenemos mayores perspectivas de desarrollo. Centroamérica unida sería una potencia. Los seis Estados centroamericanos están bajo la jurisdicción de la Corte aunque no tengan magistrados, por voluntad soberana de los seis Estados. Ahora ya no habrá ninguna excusa.

RAP: Uno de los argumentos que Costa Rica ha estado objetando es la injerencia en conflictos internos en cada Estado. Ahora, es suficiente que una de las partes acuda a la Corte. Ante la sugerencia de Costa Rica, esta potestad pasaría a ser opcional, sólo podría participar la Corte, cuando el Estado lo acepte. Sería más difícil. Pero esa es una propuesta.

**¿Sería un retroceso?**

A la Corte no le pueden dar más poder porque tiene todo el poder del mundo. Está por verse. Estoy seguro que El Salvador, Nicaragua... no estarían de acuerdo. A la Corte no le falta fuerza, sino legitimidad. Tenemos fuerza con Costa Rica o sin Costa Rica, con Panamá o sin Panamá. Una resolución de la Corte en un diferendo entre un convenio europeo y centroamericano tiene fuerza, pero no suficiente legitimidad si no entran Panamá y Costa Rica.

**¿Son pocas las resoluciones emitidas (100 desde 1994)?**

RAP: No, para los niveles y el dinamismo que tiene el mismo proceso de integración y lo reciente que es, no es poco. Vamos caminando.

**¿Se cumplen los fallos?**

RAP: Hasta ahora se han cumplido los fallos de la Corte. De una manera o de otra. Las resoluciones son aplicadas por los mismos jueces nacionales. Todas son obligatorias sin excusa. A nosotros nadie nos puede reformar para hacernos mejor.

FDLL: Los fallos los dicta la Corte, la ejecución de los mismos les compete a los presidentes centroamericanos.

**¿Es el flujo de trabajo idóneo?**

Lo idóneo es que se incremente. (El problema es que) las competencias son amplias, pero nadie las conoce.



## **ANNEX 74**

El Nuevo Diario (Nicaragua)

*'Stop the Road'*

available at

<http://www.elnuevodiario.com.ni/nacionales/234697-paren-carretera>

30 November 2011

English Translation and Spanish Original



# EL NUEVO DIARIO.com.ni

<http://www.elnuevodiario.com.ni/nacionales/234697-paren-carretera>

November 30, 2011

NICARAGUAN GOVERNMENT DEFENDS SAN JUAN RIVER BEFORE COSTA RICA:

Managua, Nicaragua | END

## “Stop the Road”

In a note of protest sent to San José yesterday, it demanded that the works be stopped until their environmental impact is assessed. Chinchilla challenges and sees the extensive road as “heritage.”

Matilde Córdoba and Sixto Valladares | **National news**



### Road along San Juan River

The image shows how the Costa Rican road project along the banks of the San Juan River is wreaking havoc in the riverbank's ecosystem. Courtesy of END

The government sent a note of protest yesterday for the damage being caused to the environment by the construction of a 130 km long road at the border, along San Juan River, and it demanded that the works be stopped until their environmental impact is assessed. The Minister of Foreign Affairs, Manuel Coronel Kautz, called to mind in the letter sent to his Costa Rican counterpart, Enrique Castillo Barrantes, that this highway runs parallel and at a very short distance from the river, and that it drains into

the river. It also highlighted “the destruction of the flora and fauna in a very extensive wetlands area.”

“The Government of Nicaragua reminds the Government of Costa Rica that all projects of this nature, due to their inherent characteristics, must have an Environmental Impact Assessment performed.”

“This study, due to the geographic location, should have been timely notified to the Government of Nicaragua,” he adds in the note of protest, which referred to the decision of the International Court of Justice issued on March 8, 2011 and to Article 5 of the Ramsar Convention.

Similarly, the Minister of the Environment and Natural Resources, Juana Argeñal, sent a letter on Monday to the Secretary General of the Ramsar Convention, Anada Tiéga, informing him of the environmental destruction being caused by the works performed by Costa Rica on the bordering area with the river, and asked for a commission to be sent to visit the area.

“Considering the gravity of the situation and imminent environmental risk of an irreparable nature, and in view of the lack of cooperation in the conservation of biodiversity and management of water resources, our country requests the Convention to immediately send an advisory mission to visit the area and to confirm in situ the evident violations of this sister nation to the Ramsar Convention,” reads the letter sent to the Ramsar Convention.

### **San José replies**

However, the Ministry of Foreign Affairs denied that the highway is generating environmental damages. The Minister of Foreign Affairs, Enrique Castillo, added in a note sent yesterday that the construction of the highway has not affected Nicaraguan territory, but that he is willing to hear Nicaragua’s claims.

Costa Rica indicated in the note that the construction of the road has not affected Nicaraguan territory, and that the country has been “forced” to build it due to the actions of Nicaragua at the shared border.

The government of Costa Rica accepted the mediation of the governments of Guatemala and Mexico in this new chapter on border disputes, but it asked Nicaragua “to be responsible in its actions regarding the projects that it is carrying out or that it intends to carry out in the border area.”

Meanwhile, Costa Rican president Laura Chinchilla indicated yesterday at a press conference that the complaints of Daniel Ortega’s government are a smoke curtain.

“For the first time in 190 years of independence Costa Ricans will be able to travel along the north border area through a way other than exclusively through the San Juan River. It is a heritage that we will leave Costa Rica and which I am extremely proud of,” stated Chinchilla.

### **Environmental youth: prompt resolution**

The executive director of Asociación de Jóvenes Ambientalistas (Environmental Youth Association), Raomir Manzanares, considered that this problem can be resolved at the Council of Ministers of the Environment and Natural Resources comprised of the seven countries that are members of the Central American Commission for the Environment and Development (CCAD), a body attached to Central American Integration System (SICA).

Meanwhile, the president of the Central American Court of Justice (CCJ), Francisco Lobo, indicated yesterday that the conflict arising from the decision of the southern neighbouring country to build a road along the riverbank could be resolved at that regional instance.

Several ecologists in the country have alerted of the serious damage being caused to San Juan River by the construction of the highway, given that according to the environmentalists' claims the works have massively cut down trees, removed earth, disturbed streams and virgin soil, and have established the drainage and sewers system toward the water flow of the San Juan River.

*With the collaboration of Edith Pineda and Leyla Jarquín*

# EL NUEVO DIARIO.com.ni

<http://www.elnuevodiario.com.ni/nacionales/234697-paren-carretera>

## EL NUEVO DIARIO.com.ni

### “Paren carretera”

En una nota de protesta enviada ayer a San José, demandó la detención de la obra hasta que se evalúe su impacto ambiental. Chinchilla reta y ve la extensa vía como “una herencia”

END --

El gobierno envió ayer una nota de protesta a Costa Rica por el daño que está causando al medio ambiente la construcción de una carretera de 130 km de longitud en la frontera con el río San Juan, y demandó detener la obra hasta que se valore su impacto ambiental. El canciller por la ley, Manuel Coronel Kautz, recordó en la misiva enviada a su par costarricense, Enrique Castillo Barrantes, que dicha carretera corre paralelamente y a poca distancia del río y que desagua en él. También hizo hincapié en “la destrucción de la flora y de la fauna en una muy extensa zona de humedales”.

“El Gobierno de Nicaragua recuerda al Gobierno de Costa Rica que todo proyecto de esta naturaleza, por las características propias que implica, debe de contar con un Estudio de Impacto Ambiental”.

“Este estudio, el cual, por la ubicación geográfica del mismo, debió ser comunicado en su oportunidad al Gobierno de Nicaragua”, agrega la nota de protesta, que cita la ordenanza de la Corte Internacional de Justicia, emitida el 8 de marzo de 2011, y el artículo 5 de la Convención de Ramsar.

Asimismo, la ministra del Ambiente y de los Recursos Naturales, Juana Argeñal, envió el lunes una carta a la secretaria general de la Convención Ramsar, Anada Tiéga, informándole sobre la destrucción del medio ambiente que están causando las obras ejecutadas por Costa Rica en la frontera con el río, y solicitándole que envíe una comisión para que visite la zona.

“Ante la gravedad de la situación y riesgo ambiental inminente de carácter irreparable, ante la falta de cooperación en la conservación de la biodiversidad y manejo de los recursos hidrológicos, nuestro país solicita que de manera inmediata la Convención envíe una misión de asesoramiento que visite la zona y compruebe in situ las violaciones flagrantes de ese hermano país a la Convención Ramsar”, dice la carta enviada a la Convención Ramsar.

#### San José contesta

Sin embargo, la Cancillería costarricense negó que la carretera esté generando daños ambientales. El canciller Enrique Castillo añade en una nota enviada ayer que la construcción de la vía no ha afectado al territorio nicaragüense, pero que está dispuesto a escuchar los argumentos de Nicaragua.

Costa Rica señaló en la nota que la construcción de la vía no ha generado afectaciones al territorio nicaragüense, y que la misma se realiza dado que este país se ha visto “forzado” a construirla como consecuencia de las acciones nicaragüenses en la frontera común.

El gobierno tico aceptó la mediación de gobiernos de Guatemala y México en este nuevo capítulo de conflictos fronterizos, pero, además, pidió a Nicaragua “también sea responsable en su actuar en relación con los proyectos que está desarrollando o piensa desarrollar a futuro en la zona fronteriza”.

En tanto, la presidenta costarricense Laura Chinchilla aseguró ayer en conferencia de prensa que las quejas del gobierno de Daniel Ortega son una cortina de humo.

“Por primera vez en 190 años de vida independiente los costarricenses vamos a poder recorrer la frontera norte por una vía que no sea exclusivamente el río San Juan. Es una herencia que vamos a dejarle a Costa Rica y de la que me siento profundamente orgullosa”, dijo Chinchilla.

#### **Jóvenes ambientalistas: pronta resolución**

El director ejecutivo de Asociación de Jóvenes Ambientalistas, Raomir Manzanares, consideró que este problema puede ser resuelto en el Consejo de Ministros del Ambiente y Recursos Naturales que integran los siete países miembros de la Comisión Centroamericana de Ambiente y Desarrollo, CCAD, órgano adscrito al Sistema de la Integración Centroamericana, SICA.

Mientras, el presidente de la Corte Centroamericana de Justicia, CCJ, Francisco Lobo, dijo ayer que el conflicto suscitado por la decisión del vecino del sur de construir una carretera a orillas del río, puede ser resuelto en esa instancia regional.

Diversos ecólogos del país han alertado sobre el grave daño que está causando al río San Juan la construcción de la carretera, pues según denuncias de ambientalistas las obras han arrasado con árboles, removido tierra, roto riachuelos y suelo virgen, además que han dispuesto el sistema de drenaje y alcantarillado de su vía hacia el caudal del San Juan.

*Con la colaboración de Edith Pineda y Leyla Jarquín*

El Nuevo Diario 1998-2013 / email:web@elnuevodiario.com.ni



## **ANNEX 75**

La Gente, Radio la Primerísima (Nicaragua)

*'Central American Court admits lawsuit against Costa Rica'*

available at

<http://www.rlp.com.ni/noticias/111936/corte-ca-admite-demanda-contra-costarica>

19 December 2011

English Translation and Spanish Original





<http://www.rlp.com.ni/noticias/111936/corte-ca-admite-demanda-contra-costa-rica>

## CA Court admits complaint against Costa Rica

Managua. Agency. | December 19, 2011



The six judges at the Central American Court of Justice (Corte Centroamericana de Justicia, CCJ) unanimously admitted the complaint filed by Nicaraguan environmental organizations against Costa Rica for damages being caused by the 160 kilometre road under construction along the right bank of San Juan de Nicaragua River.

The announcement was made by the President of CCJ, Honduran Francisco Darío Lobo, who expressed that the State of Costa Rica must submit the response to the complaint filed by Fundación Nicaragüense para el Desarrollo Sostenible, coordinated by scientist Jaime Incer Barquero, and also by Foro Nacional de Reciclaje, coordinated by environmentalist Kamilo Lara.

Lobo expressed that a delegation of judges of the CCJ may perform a visit to the area where Costa Rica is building the road to confirm the environmental damages caused by the project and thus determine the precautionary measures to be imposed on the neighbouring country.

In the event that Costa Rica disregards the decision of the CCJ, Lobo stated that it could be declared "rebellious" given that the Central American state signed the agreements and treaties of this regional legal body.

Although Costa Rica does not have judges at CCJ it cannot disregard the judgments and decisions issued by this entity.

"The six Central American states are under the jurisdiction of this Court in all community law and international law spheres, recognized by the states themselves. What has occurred is that some states, such as Costa Rica, do not have judges here, but this does not exempt them from the obligation of being under the jurisdiction of this court and abiding by the judgments and decisions made," Darío Lobo indicated.

A few days ago a Costa Rican court admitted an appeal for protection filed by Costa Rican environmentalists who also oppose the highway project promoted by President Laura Chinchilla.

Darío Lobo explained that by admitting the complaint against Costa Rica for environmental damages means that a lawsuit is opened and a term of ten days is given for Chinchilla to provide the response to the complaint.

# La Gente

Radio La Primerísima 91.7 - 105.3 fm. 680 a.m.

## Corte CA admite demanda contra Costa Rica

Managua. Agencias. | 19 diciembre de 2011

Los seis magistrados de la Corte Centroamericana de Justicia (CCJ) admitieron por unanimidad la demanda introducida por los organismos ambientales nicaragüenses en contra de Costa Rica, a causa de los daños que está ocasionado con la carretera de 160 kilómetros que construye en la margen derecha del Río San Juan de Nicaragua.

El anuncio fue realizado por el presidente de la CCJ, el hondureño Francisco Darío Lobo, quien manifestó que el estado costarricense debe contestar a la demanda interpuesta por la Fundación Nicaragüense para el Desarrollo Sostenible, que coordina el científico Jaime Incer Barquero, y también por el Foro Nacional de Reciclaje, que coordina el ambientalista Kamilo Lara.

Lobo manifestó que una delegación de magistrados de la CCJ podría realizar una visita en la zona en que Costa Rica construye su carretera para constatar los daños ambientales que estaría ocasionando el proyecto y de esa manera definir las medidas cautelares que se impondrían al vecino país.

En caso de que Costa Rica desconozca la decisión de la CCJ, Lobo dijo que podría ser declarada "rebelde" pues recordó que ese estado centroamericano firmó los convenios y tratados de conformación de este órgano regional jurídico.

Aunque Costa Rica no tenga magistrados en la CCJ no puede desconocer las sentencias y mandatos que ahí se emitan.

"Los seis estados centroamericanos están bajo la jurisdicción de esta Corte en todo el ámbito del derecho comunitario y del derecho internacional, aceptado por estos estados mismos. Que ha ocurrido, algunos estados no tienen magistrados como Costa Rica, pero eso no lo exime de la obligación estar bajo la jurisdicción de esta corte y de acatar las resoluciones y sentencias que dictemos", señaló Darío Lobo.

Hace algunos días un tribunal jurídico de Costa Rica admitió un recurso de amparo introducido por ambientalistas costarricenses, que también se oponen al proyecto carretero impulsado por la mandataria Laura Chinchilla.

Darío Lobo explicó que al admitirse la demanda contra Costa Rica por daños ambientales, significa que también se abre un juicio y se da un término de diez días para que Chinchilla conteste la demanda.

## **ANNEX 76**

El Nuevo Diario (Nicaragua)

*'CACJ opens trial to evidence'*

available at

<http://www.elnuevodiario.com.ni/politica/239562>

24 January 2012

English Translation and Spanish Original



# EL NUEVO DIARIO.com.ni

<http://www.elnuevodiario.com.ni/politica/239562>

January 24, 2012

**CHINCHILLA DID NOT RESPOND TO CALL FOR DIALOGUE UNTIL YESTERDAY**

Managua, Nicaragua

## CCJ opens evidentiary period

Sectors of the country continue to call for rapprochement of the presidents while Honduran President Porfirio Lobo supports the actions of the Court

Miguel Carranza Mena and Sixto Valladares | **Politics**



MELVIN VARGAS / END Judge Francisco Darío Lobo, President of CCJ.

While the Central American Court of Justice, CCJ, opens the evidentiary period as of today, by request of Nicaraguan environmental organizations, Costa Rican President Laura Chinchilla spoke in San José about the conflict regarding the wetlands of Harbour Head but did not refer to the dialogue proposed by Daniel Ortega to her government. In the meantime, in Managua, experts on international issues including Oscar Castillo and Róger Guevara Mena considered that the negotiation between both countries "should not wait any longer."

The president of the CCJ, Judge Francisco Darío Lobo, stated in Managua that yesterday morning the Full Court decided to open the evidentiary period for twenty days in the complaint against the Government of Costa

Rica, which has refused to recognize the jurisdiction of this Central American Court.

**Until yesterday Chinchilla did not speak of dialogue**

Meanwhile, in Costa Rica President Laura Chinchilla went back in time when she stated: "it is difficult to explain the military aggression and invasion of a portion of our land."

She also indicated that the incursion by Nicaragua "has not led Costa Rica off track" in the search for pacific solutions, such as before the International Court of Justice in The Hague, but as of yesterday afternoon she did not refer to the informal meeting with Nicaraguan President Daniel Ortega in Guatemala, regarding the wish to resolve the road conflict through dialogue.

**Court explains to SICA President**

Upon returning to Managua, Darío Lobo urged the Costa Rican Minister of Foreign Affairs to provide evidence of his alleged partiality toward Nicaragua and asked the Nicaraguan environmental organizations to submit sufficient evidence for the Court to not issue a judgment declaring unfounded Nicaragua's complaint.

Judge Darío Lobo also stated that in a meeting with Honduran President Porfirio Lobo Sosa, who acts as president pro tempore of the System for Central American Integration (Sistema de Integración Centroamericana, SICA), the Honduran president indicated his support of the Central American Court of Justice.

Judge Lobo indicated that the Honduran President was duly informed of the CCJ's work and the application by the court of justice of the treaties signed by the six countries that are members of SICA, including Costa Rica.

**Useful and necessary dialogue**

The expert on international matters, Róger Guevara Mena, considered that the idea of dialogue between both countries is useful and necessary, if both parties wish to diminish excessive noise aimed at hiding greater internal problems in Nicaragua and Costa Rica.

Guevara Mena indicated that it is important for both heads of state, Ortega and Chinchilla, to take into account the opinion of the catholic bishops of Costa Rica and Nicaragua, who have indicated their support of dialogue between both countries to end the discrepancies on border issues.

Dr. Oscar Castillo indicated that both countries must convene dialogue between the two nations, given that proceedings at The Hague are long and costly.

"I think that what the bishops say is right, they should heed to this good advice, but it would be necessary to see what Costa Rica thinks in this regard," Castillo commented.



24 de enero de 2012 | 00:00:00

CHINCHILLA HASTA AYER NO RESPONDÍA A LLAMADO DE DIÁLOGO

Managua, Nicaragua

## CCJ abre juicio a pruebas

Sectores del país siguen clamando por acercamiento de presidentes mientras mandatario hondureño Porfirio Lobo respalda acciones de la Corte

Miguel Carranza Mena y Sixto Valladares | Política



MELVIN VARGAS / END Magistrado Francisco Darío Lobo, Presidente de la CCJ.

Mientras la Corte Centroamericana de Justicia, CCJ, abre un juicio a pruebas, a partir de hoy, a solicitud de las organizaciones ambientales nicaragüenses, la mandataria de Costa Rica, Laura Chinchilla remojó el conflicto por los humedales de “Harbour Head” en San José y no se refirió al diálogo que el presidente Daniel Ortega propuso a su gobierno. En tanto en Managua expertos en temas internacionales como Oscar Castillo y Róger Guevara Mena, consideraron que la negociación entre ambos países “no debería esperar más tiempo”.

El presidente de la CCJ, magistrado Francisco Darío Lobo, dijo en Managua que la Corte Plena decidió la mañana de ayer abrir un juicio a pruebas por veinte días contra el gobierno de Costa Rica, quien se ha negado a reconocer la competencia de este tribunal centroamericano.

### **Chinchilla hasta ayer no hablaba de diálogo**

En tanto, en Costa Rica la mandataria Laura Chinchilla se remontó en el tiempo cuando afirmó: “Resulta difícil explicar la agresión militar y la invasión de una porción de nuestro territorio”.

También señaló que la incursión de parte de Nicaragua “no ha logrado descarrilar a Costa Rica” de la búsqueda de soluciones pacíficas, como en la Corte Internacional de Justicia, en La Haya”, pero hasta ayer por la tarde no se refirió al encuentro informal con el presidente de Nicaragua, Daniel Ortega, en Guatemala, en el sentido que quiere resolver el conflicto de la carretera, por la vía del diálogo.

### **Corte explica a presidente del SICA**

Tras regresar a Managua, Darío Lobo instó al canciller costarricense a comprobar su supuesta parcialidad a favor de Nicaragua y llamó a las organizaciones ambientales nicaragüenses a presentar pruebas suficientes para que la Corte no dicte sentencia declarando sin lugar la demanda de Nicaragua. El magistrado Darío Lobo dijo también que sostuvo un encuentro con el presidente de Honduras Porfirio Lobo Sosa, quien funge como presidente pro tempore del Sistema de Integración Centroamericana, SICA. El mandatario hondureño le manifestó su apoyo al tribunal de justicia centroamericano.

El magistrado Lobo señaló que el mandatario de Honduras quedó bien informado de la labor de la CCJ y de la aplicación que el tribunal de justicia hace de los tratados que han sido suscritos por los seis países miembros del SICA, entre ellos Costa Rica.

### **Diálogo útil y necesario**

El experto en asuntos internacionales, Róger Guevara Mena, consideró que la idea del diálogo entre ambos países es útil y necesaria, si es que ambas partes no quieren mantener un ruido excesivo que vaya dirigido a ocultar problemas internos mayores en Nicaragua y Costa Rica.

Guevara Mena dijo que es importante que ambos mandatarios, Ortega y Chinchilla tomen en cuenta la opinión de los obispos católicos de Costa Rica y Nicaragua, quienes se han mostrado a favor de un diálogo entre ambos estados para que se ponga fin a las discrepancias por asuntos limítrofes.

El doctor Oscar Castillo dijo que ambas naciones deben convocar a un diálogo binacional, puesto que los juicios en la Haya son tardados y costosos.

“Yo creo que el llamado que hacen los obispos es correcto, deberían tomar esa buena recomendación, pero habría que ver qué piensa el gobierno de Costa Rica en ese sentido”, finalizó Castillo.



## **ANNEX 77**

El 19 Digital (Nicaragua)

*'Nicaragua advances in collecting evidence for case against Costa Rica at the Hague'*

available at

<http://www.canal15.com.ni/noticia/34739>

or

<http://www.lavozdelsandinismo.com/nicaragua/2012-02-10/nicaragua-trabaja-en-recopilacion-de-pruebas-sobre-danos-de-costa-rica-al-rio-san-juan/>

10 February 2012

English Translation and Spanish Original



## TRANSLATION



<http://www.lavozdelsandinismo.com/nicaragua/2012-02-10/nicaragua-trabaja-en-recopilacion-de-pruebas-sobre-danos-de-costa-rica-al-rio-san-juan/>

## NATIONAL HEADLINES

## Nicaragua advances in collecting evidence for case against Costa Rica in The Hague

10 February 2012 | Raúl Lenin Rivas



Dr. Carlos Argüello Gómez, agent of Nicaragua before the International Court of Justice (ICJ) in The Hague, stated that our country continues to advance the process of the claim filed in the international court against Costa Rica for the construction of a 160 kilometre road on the bank of the Nicaraguan San Juan River.

Argüello explained that in January the Court fixed the timetable for the filing of the memorial that will provide an explanation of the case, which will be submitted on 22 December [2012] and for which the Government of Nicaragua is already working on gathering enough evidence to help strengthen the argument put forward in the claim.

"We are working, we are preparing and collecting all the necessary evidence so it is absolutely clear that harm is being caused by Costa Rica with its road, as well as [evidence of] all the environmental harm of which the road is the most recent example. Costa Rica has for years been causing harm to the river in particular the San Juan River, and we are collecting all the evidence so that not the slightest doubt remains about what is happening" he said.

The lawyer said that among the evidence that Nicaragua is collecting are the studies and analyses of the waters of the River, which will support the argument that there has been an increase of sedimentation that is affecting the flow of the River as a result of the construction of the road, and that harm has been caused by Costa Rica's agriculture industry through the use of chemical products that have been causing damage and poisoning the environment for many years.

According to Argüello, although the request currently before the Central American Court of Justice (CACJ), which was brought by Nicaraguan environmental organisations and the Government, is unrelated [to case before the ICJ], the evidence that is presented before this regional court could be very useful in the judicial proceedings before the Court in The Hague.

"All the elements that we found in studies carried out in Nicaragua, presented before the Central American Court, including those presented in Costa Rican Courts because Costa Rican environmentalists are worried [about the road], all the elements that we found demonstrate that what is happening we can use in the International Court of Justice", added Dr. Argüello Gómez.

He said that one of the elements of the claim against Costa Rica could include a financial penalty for the southern neighbour, since the road is causing enormous economic damage, "naturally Costa Rica is responsible for this damage and Nicaragua is making a claim in this regard, this is part of our claim".



[http://www.el19digital.com/index.php?option=com\\_content&view=article&id=35619:nicaragua-avanza-en-recopilacion-de-pruebas-para-juicio-en-la-haya-contra-costa-rica&catid=23:nacionales&Itemid=12](http://www.el19digital.com/index.php?option=com_content&view=article&id=35619:nicaragua-avanza-en-recopilacion-de-pruebas-para-juicio-en-la-haya-contra-costa-rica&catid=23:nacionales&Itemid=12)

## NACIONALES

# Nicaragua avanza en recopilación de pruebas para juicio en La Haya contra Costa Rica

10 de Febrero de 2012 | Raúl Lenin Rivas



El Dr. Carlos Argüello Gómez, representante de Nicaragua ante la Corte Internacional de Justicia (CIJ) en La Haya, manifestó que el país pinolero continúa avanzando en el proceso de la demanda interpuesta en el tribunal internacional contra Costa Rica por la construcción de una carretera de 160 kilómetros en la ribera del nicaragüense Río San Juan.

Argüello explicó que la Corte fijó en enero recién pasado el plazo para la presentación de la memoria ampliada con las explicaciones del caso, el que será presentado el 22 de diciembre y

en el cual el Gobierno de Nicaragua ya está trabajando en la recopilación de las pruebas suficientes que contribuyan a fortalecer el argumento de la demanda.

“Estamos trabajando, estamos preparando y recogiendo todas las pruebas necesarias para que quede clarísimo el enorme daño que está causando Costa Rica con su carretera y todo el daño ambiental, porque la carretera es lo último que está haciendo. Costa Rica tiene años de estar dañando el río y en particular el Río San Juan, así que estamos recogiendo todas esas pruebas para que no quede la más mínima duda de que es lo que está sucediendo”, expresó.

El jurista señaló que dentro de las pruebas que Nicaragua está recopilando se están tomando en cuenta estudios y análisis de agua del Río, lo que sustentará el argumento del aumento de sedimentación que se está produciendo sobre el caudal producto de la construcción de la carretera, así como los daños ocasionados por la industria agrícola costarricense debido al uso de productos químicos que han venido perjudicando y envenenando el medioambiente desde hace muchos años atrás.

Según Argüello, aunque la demanda que se está ventilando ante la Corte Centroamericana de Justicia (CCJ), fue interpuesta por organismos ambientales nicaragüenses y el Gobierno no está vinculado, las pruebas que se presenten en esta instancia de justicia regional podrían ser de mucha utilidad en el proceso judicial ante la Corte de La Haya.

“Todos los elementos que nosotros encontramos tanto en estudios hechos en Nicaragua, presentados ante la Corte Centroamericana, incluso presentados en Cortes de Costa Rica, porque también los ambientalistas de Costa Rica están preocupados, todos los elementos que nosotros encontramos que demuestren lo que está sucediendo lo podremos usar en la Corte Internacional de Justicia”, agregó el Dr. Argüello Gómez.

Indicó que uno de los elementos de la demanda contra Costa Rica podría incluir una sanción económica para el vecino del Sur, dado que la carretera está ocasionando un daño económico enorme, “naturalmente que Costa Rica es responsable por ese daño y Nicaragua lo está reclamando, eso es parte de nuestra demanda”.

## **ANNEX 78**

La Prensa (Nicaragua)

*'CACJ Judgment will go to case at The Hague'*

available at

<http://www.laprensa.com.ni/2012/07/03/ambito/107181-fallo-ccj-a-al>

3 July 2012

English Translation and Spanish Original



## TRANSLATION

**LA PRENSA.com.ni**

Managua, 3 July 2012

<http://www.laprensa.com.ni/2012/07/03/ambito/107181-fallo-ccj-a-al>

Areas

**CACJ Judgment will go to the case in The Hague**

- Judges may request assistance from the presidents [*sic*] concerning the Costa Rica rebellion



Carlos Guerra, president of the CACJ, announcing the judgment.  
LA PRENSA/G. FLORES.

**Wilder Pérez R.**

It's official. The judgment of the Central American Court of Justice (CACJ) blaming Costa Rica "for the ecological and related damages [caused] to the San Juan de Nicaragua river" will be a fundamental part of the case that Nicaragua filed for the same reason in the International Court of Justice (ICJ) in The Hague, The Netherlands.

Kamilo Lara, one of the representative of civil society who won the case against Costa Rica, confirmed that the CACJ judgment and evidence from the Nicaraguan representatives [submitted to the CACJ] will be submitted in The Hague, but first [she would wait for] the reactions of the representatives of the Government of Costa Rica.

The six judges of the CACJ ruled unanimously on ten points, after almost six months of proceedings, during which the environmental damage caused by the road that Costa Rica constructed alongside the San Juan de Nicaragua River was discussed and deliberated.

"Declaring that the State of Costa Rica should not have constructed a high risk and environmentally dangerous work in the framework of communitarian obligations, because it exposes the shared basin and the common ecosystem that it shares with Nicaragua and the region to serious and unpredictable harm" announced its president, Carlos Guerra.

Laura Chinchilla, President of Costa Rica, reacted, qualifying the CACJ decision "spurious", that is, having no direct relation to the facts. This is despite the fact that environmental consequences are often indirect.

Chinchilla, who at the Rio +20 summit held [the Costa Rican Government] out to be environmentally friendly, recognised the environmental harm before travelling to Brazil, but placed emphasis on the effects on animals, the river and forests near the border, displaying her poor knowledge of the ecology.

### **[CACJ] HAS JURISDICTION**

Costa Rica never paid any attention to the [CACJ] proceedings, arguing that the CACJ has no jurisdiction. In its judgment, the CACJ recalled that Costa Rica, by signing the Central American Integration System and by approving previous CACJ judgments, is a member of the CACJ and is obliged not only to recognise but also to obey [CACJ] judgments made against it.

Chinchilla's government was found guilty of violating 22 international laws.

Chinchilla accused the CACJ of being biased because it is located in Nicaragua, but was silent as to why it had submitted false information about accusations against Nicaragua two years ago to the Ramsar Convention, the regional headquarters of which are in Costa Rica.

The CACJ did not make an order for compensation because there was no quantification of the damage. The National Recycling Forum and the Nicaraguan Foundation for Sustainable Development [known by the Spanish acronym Fonare] will conduct an assessment to start the incrimination.

# LA PRENSA.com.ni

Managua, 3 de julio, 2012

<http://www.laprensa.com.ni/2012/07/03/ambito/107181-fallo-ccj-a-al>

Ámbitos

## Fallo de la CCJ irá al juicio de La Haya

- Magistrados podrían solicitar ayuda a presidentes por rebelión tica



Carlos Guerra, presidente de la CCJ, al anunciar el fallo.  
LA PRENSA/G. FLORES.

### **Wilder Pérez R.**

Ya es oficial. El fallo de la Corte Centroamericana de Justicia (CCJ) culpando a Costa Rica "por los daños ecológicos y conexos al río San Juan de Nicaragua" será parte fundamental del juicio que Nicaragua entabló por el mismo motivo en la Corte Internacional de Justicia (CIJ) de La Haya, Holanda.

Kamilo Lara, uno de los representantes de la sociedad civil que ganó el juicio contra Costa Rica, confirmó que harán llegar la resolución de la CCJ y las pruebas a los representantes nicaragüenses en La Haya, no sin antes esperar las reacciones de los representantes del Gobierno costarricense.

Los seis magistrados de la CCJ fallaron con unanimidad sobre diez puntos, tras casi seis meses de proceso, en el que se discutió y deliberó sobre los daños ambientales causados por una carretera que Costa Rica construyó junto al río San Juan de Nicaragua.

"Declárese que el Estado de Costa Rica construyó una obra de alto riesgo y peligrosidad ambiental que debió evitar en el marco de las obligaciones comunitarias, porque expone la cuenca compartida y el ecosistema común que tiene con Nicaragua y la región a daños graves e impredecibles", anunció su presidente, Carlos Guerra.

Laura Chinchilla, presidenta de Costa Rica, reaccionó, calificando la actuación de la CCJ como "espirua", es decir, que no tiene relación directa de los hechos. Esto a pesar de que en medioambiente las consecuencias suelen ser indirectas.

Chinchilla, quien en la cumbre Río +20 se mostró como ejemplo de administración amigable con el medioambiente, había reconocido el daño ambiental antes de viajar a Brasil, pero haciendo énfasis en que las afectaciones a los animales, río y bosques, terminaban en la frontera, dando muestras de sus pobres conocimientos sobre ecología.

## **CON JURISDICCIÓN**

Costa Rica nunca hizo caso al proceso, aduciendo que la CCJ no tiene jurisdicción. En el fallo, la CCJ recuerda que Costa Rica, por el hecho de ser firmante del Sistema de Integración Centroamericana y por haber aprobado fallos anteriores a la CCJ, es miembro de la misma y está obligada no solo a acusar sino también a obedecer cuando los fallos le son adversos.

El gobierno de Chinchilla fue encontrado culpable por violar 22 legislaciones internacionales.

Chinchilla acusó a la CCJ de parcial porque su sede se encuentra en Nicaragua, pero mantuvo silencio sobre por qué entregó información falsa sobre acusaciones contra Nicaragua hace dos años a la Convención Ramsar, cuya sede regional está en Costa Rica.

La CCJ no mandó a resarcir por los daños debido a que no existe una cuantificación. El Foro Nacional de Reciclaje y la Fundación Nicaragüense para el Desarrollo Sostenible (Fonare) realizarán la evaluación para iniciar la parte condenatoria.

*Ver en la versión impresa las páginas: 5 A ,1 A*

## **ANNEX 79**

La Prensa (Nicaragua)

*'Damages to the river will be quantified'*

available at

[http://www.laprensa.com.ni/2013/11/03/poderes/168532-cuantificaran-danos-al-  
rio](http://www.laprensa.com.ni/2013/11/03/poderes/168532-cuantificaran-danos-al-rio)

3 November 2013

English Translation and Spanish Original



# LA PRENSA.com.ni

Managua, 3 November 2013

<http://www.laprensa.com.ni/2013/11/03/poderes/168532-cuantificaran-danos-al-rio>

## Damages to the river will be quantified

- Judgment of the regional court may be a reference before the Court in The Hague

By: Tania Sirias



The Central American Court of Justice will quantify the damages to San Juan River due to the construction of the Costa Rican highway, after receiving in October a claim from Foro Nacional de Reciclaje.

LA PRENSA/ARCHIVE

Nicaragua and Costa Rica will face each other again in new proceedings before the Central American Court of Justice (Corte Centroamericana de Justicia, CCJ). However, this time "the damages [caused to the Nicaraguan San Juan River] will be measured," Alejandro Gómez Vides, a judge from this regional entity, explained.

The judge indicated that CCJ does not see directly the border problems between the countries, but it does see the collateral damage. However, it indicated that said Court is based on the philosophical

principles of the Protocol of Tegucigalpa, which in Article 4 indicates that the Central American countries shall look for peaceful ways to resolve their problems.

He called to mind that the first decision issued by this regional Court verified the environmental damage caused by Costa Rica to San Juan River, upon constructing a highway parallel to this important water resource.

"We issued a judgment and sentenced Costa Rica, even though this country did not appear as a party. They indicated that they had reports where they proved that there were no damages, thus we asked them to present them to the Court, but they did not," Gómez Vides indicated.

He added that although president Laura Chinchilla does not recognize the Central American Court, the fact is that former Costa Rican President Rafael Calderón Fournier signed and recognized this body, as well as members of the Supreme Court of Justice, Costa Rican public officers and academics.

"The signing of the Protocol of Tegucigalpa gives us jurisdiction over Costa Rica," judge Gómez Vides highlighted. He indicated that if the president and congress ratify it, the State accepts not only the positive aspects but also the obligations of this international treaty.

"In addition, this protocol does not permit reservations, meaning that it accepts all articles, including article 12 which created the Central American Court of Justice," the judge indicated.

### **PRECEDENT BEFORE ICJ**

Another element that the jurist highlighted is that there are precedents in which the International Court of Justice (ICJ) in The Hague bases its judgment on rulings of the Central American Court of Justice.

He recalled the case of Honduras and El Salvador before The Hague to determine their borders after the peace treaty, which included Honduras' maritime limits in the Pacific.

"The decision of the International Court was based on a judgment of the Central American Court to rule in favor of Honduras," therefor, judge Gómez indicated, this could be a precedent in the case of the conflict between Costa Rica and Nicaragua.

Gómez Vides was recently awarded the "Orden Francisco Morazán en el Grado de Gran Cruz, Placa de Plata," for his services relevant to case for Central American unity.

*See the printed version in pages: 5 A*

# LA PRENSA.com.ni

Managua, 03 de noviembre, 2013  
<http://www.laprensa.com.ni/2013/11/03/poderes/168532-cuantificaran-danos-al-rio>

Poderes

## Cuantificarán daños al río

- Sentencia del tribunal regional puede ser referente ante la Corte de la Haya

Por: Tania Sirias



La Corte Centroamericana de Justicia cuantificará los daños al río San Juan por la construcción de la carretera costarricense, después de recibir en octubre una denuncia del Foro Nacional de Reciclaje. LA

PRENSA/ARCHIVO

Nicaragua y Costa Rica volverán a enfrentarse en un nuevo juicio ante la Corte Centroamericana de Justicia (CCJ), nada más que esta vez "se cuantificarán los daños" provocados al nicaragüense río San Juan, explicó el magistrado de esta instancia regional, Alejandro Gómez Vides.

El magistrado indicó que la CCJ no ve directamente los problemas limítrofes entre países, pero sí los daños colaterales. Sin embargo dijo que esta Corte se basa en los principios filosóficos del Protocolo de Tegucigalpa, en su artículo 4, el cual dice que los países centroamericanos deben buscar las vías pacíficas para resolver sus problemas.

Recordó que el primer fallo emitido por esta Corte regional comprobó el daño ambiental provocado por Costa Rica al río San Juan, al construir una carretera paralela a este importante recurso hídrico.

"Nosotros dimos una sentencia y condenamos a Costa Rica, aunque este país no se mostró parte. Ellos informaron que tenían informes donde comprobaban que no habían daños, por lo que pedimos que los presentaran a la Corte, pero no lo hicieron", manifestó Gómez Vides.

Agregó que aunque la presidenta Laura Chinchilla no reconozca a la Corte Centroamericana, el hecho es que el expresidente costarricense, Rafael Calderón Fournier, firmó y reconoció a este organismo, así como miembros de la Corte Suprema de Justicia, funcionarios y académicos costarricenses.

"La misma firma del Protocolo de Tegucigalpa nos da jurisdicción sobre Costa Rica", subrayó el magistrado Gómez Vides. Sostuvo que si el presidente y el Congreso lo ratifica, el Estado acepta no solo las cosas a favor sino también las obligaciones de este tratado internacional.

"Además este protocolo no admite reserva, es decir que acepta todos los artículos y eso incluye el artículo 12 donde se conformó la Corte Centroamericana de Justicia", afirmó el magistrado.

### **PRECEDENTE ANTE LA CIJ**

Otro elemento que destacó el jurista es que ya hay precedentes en que la Corte Internacional de Justicia (CIJ) en La Haya, basa su sentencia en sentencias de la Corte Centroamericana de Justicia.

Recordó el caso de Honduras y El Salvador en La Haya para delimitar sus fronteras luego del tratado de paz, donde se tenía que ver la salida del mar territorial de Honduras en el Pacífico.

"El fallo de la Corte Internacional se basó en una sentencia de la Corte Centroamericana para darle la razón a Honduras", por lo tanto, dijo el magistrado Gómez que puede ser un precedente en el conflicto entre Costa Rica y Nicaragua.

Gómez Vides fue recientemente condecorado con la Orden Francisco Morazán en el Grado de Gran Cruz, Placa de Plata, por sus relevantes servicios a la causa de la unidad centroamericana.

*Ver en la versión impresa las páginas: 5 A*

## **ANNEX 80**

El 19 (Nicaragua)

*'33rd Anniversary of the Naval Force'*

available at

<http://www.el19digital.com/index.php/discurso/ver/12213/33-aniversario-de-la-fuerza-naval->

14 August 2013

English Translation and Spanish Original





<http://www.el19digital.com/index.php/discurso/ver/12213/33-aniversario-de-la-fuerza-naval->

## SPEECHES

### 33rd Anniversary of the Naval Force

Wednesday, 14 August 2013 | Council of Communication and Citizenship



...

The Court also ruled, clearly, that San Juan River is heritage of the Nicaraguan people. There was a dispute regarding San Juan River, and Costa Rica thought, some authorities in Costa Rica thought, that the same could happen in that area as what happened in Guanacaste... Nicaraguan territory. And we are speaking of thousands of square kilometres; we are not talking of 3 square kilometres, 2.8 square kilometres in the Nicaraguan territory of Harbour Head in the wetland... no, we are not talking about a tiny territory, we are speaking of thousands of square kilometres. We could consider, given the circumstances, and this is an issue that has not been discussed before the Court, we could consider taking the case to the International Court of Justice. That would allow Nicaragua to recover an immense territory, if the judgment were favourable for Nicaragua.

And there are historical grounds; there are also elements of confrontation and of fighting Yankee expansionism... Note that we lost territories specifically when our country was facing Yankee expansionism. And Costa Rica thought that since they were committing troops in the battle against Yankee expansionism, which was also against them, and the front line of battle was taking place in Nicaragua, afterward they considered that they had to demand payment from Nicaragua, and charge the River and more territory; they even wanted to take Lake Nicaragua! In other words, the ambitions of Costa Rican politicians who have held power have gone that far; and History is right there, the Documents are there.

...



<http://www.el19digital.com/index.php/discurso/ver/12213/33-aniversario-de-la-fuerza-naval->

## DISCURSOS

### 33 Aniversario de la Fuerza Naval

Miercoles, 14 de Agosto 2013 | Consejo de Comunicación y Ciudadanía



CCC / Jairo Cajina

Acto del 33 Aniversario de la Fuerza Naval del Ejército de Nicaragua. 13 de Agosto del 2013:

#### **Maestro de Ceremonia**

Presiden este Acto de Aniversario de la Fuerza Naval, el Presidente de la República y Jefe Supremo del Ejército de Nicaragua, Comandante Daniel Ortega Saavedra; la Coordinadora del Consejo de Comunicación y Ciudadanía, Compañera Rosario Murillo Zambrana; el Comandante en Jefe del Ejército de Nicaragua, General de Ejército Julio César Avilés Castillo; el Jefe del Estado Mayor General del Ejército de Nicaragua, Mayor General Oscar Balladares Cardoza; el Inspector General del Ejército de Nicaragua, General de Brigada Adolfo José Zepeda Martínez; la Secretaria General del Ministerio de Defensa, Doctora Martha Elena Ruiz Sevilla; el Jefe de la Fuerza Naval del Ejército de Nicaragua, Contralmirante Marvin Elías Corrales Rodríguez; el Prelado de Honor de Su Santidad, Monseñor Eddy Montenegro Avendaño.

También presiden este Acto, el Vicepresidente de la República, General de Ejército en Retiro Moisés Omar Halleslevens Acevedo; Jefes y Delegados de Fuerzas Navales, Armadas y Marinas de Guerra de, Federación de Rusia, República Bolivariana de Venezuela, Bolivia, Guatemala, Honduras, El Salvador, Estados Unidos Mexicanos, Panamá y Costa Rica;

Miembros de los Poderes del Estado y Gabinete de Gobierno; Directores de Entes Autónomos e Instituciones Civiles Privadas, y Gerentes de Empresas.

Generales de Brigada y Oficiales Superiores; Miembros del Consejo Militar del Ejército de Nicaragua; ex-Jefes de la Fuerza Naval en la honrosa Condición de Retiro; Miembros de la Asociación de Agregados de Defensa; Militares Navales y Aéreos; Jefes de Misiones Militares acreditados en Nicaragua, e Invitados Especiales.

Participan en este Acto, Oficiales de la Fuerza Naval en la honrosa Condición de Retiro; Jefes, Oficiales, Suboficiales, Clases, Marineros y Personal Auxiliar de la Fuerza Naval; Bloques de Tropas Representativos de la Fuerza Naval y Unidades Militares de la Capital; Bloques Representativos de la Marina de Guerra de la Federación de Rusia; Hombres y Mujeres de Prensa, e Invitados Especiales.

El Prelado de Honor de Su Santidad, Monseñor Eddy Montenegro Avendaño, dirigirá una Invocación al Altísimo.

#### **Invocación al Altísimo Monseñor Eddy Montenegro Avendaño**

Muy buenas tardes, Hermanas y Hermanos; Señor Presidente, Comandante Daniel Ortega Saavedra; Compañera Rosario Murillo, Coordinadora del Consejo de Comunicación y Ciudadanía; General Julio César Avilés; Hermanas y Hermanos que presiden; Hermanas y Hermanos de nuestra Marina y del Ejército de Nicaragua; Hermanos de la Federación Rusa, esa Gran Nación Hermana también de Nicaragua.

Esta tarde, bajo el Cielo Azul que nos regala el Señor en esta tarde, invocamos la Bendición del Altísimo, especialmente sobre este Cuerpo de la Marina nicaragüense, en tiempos y en un año tan especial en que nuestros Hermanos de la Marina patrullan esas aguas de la Soberanía nicaragüense, restituída el año pasado por el Decreto de la Corte, y el resto de todos nuestros Lagos, Ríos y Mares.

Por eso siempre cada año, en esta oportunidad invocamos la Bendición descendente sobre ustedes, Marineros, sobre sus Familias, y principalmente sobre nuestra Patria Nicaragua, para que continuemos siempre construyendo la Paz desde la Reconciliación; y habiendo Paz y Reconciliación, hay Desarrollo y hay Progreso.

Bendice, pues, a nuestra Patria nicaragüense, de una manera muy especial en este día en que nuestros ojos están viendo la acción, el actuar y el ser de nuestro Ejército a través de la Marina. Que Dios los bendiga a cada uno de ustedes.

#### **Maestro de Ceremonia**

El Jefe de Personal y Cuadros del Ejército de Nicaragua, General de Brigada Ricardo Sánchez Méndez, dará lectura a la Orden No. 0063-2013 del Comandante en Jefe, para otorgar la Condecoración Medalla Honor al Mérito Naval en Primera y Segunda Clase.

#### **Lectura de la Orden No. 0063-2013 del Comandante en Jefe**

"Orden del Comandante en Jefe del Ejército de Nicaragua, Número 0063-2013, para otorgar la Medalla Honor al Mérito Naval en Primera y Segunda Clase, en el Acto Conmemorativo del XXXIII Aniversario de Constitución de la Fuerza Naval del Ejército de Nicaragua. Conforme a facultad instituida en el Artículo 9, Inciso 8 de la Ley No. 181, Código de Organización, Jurisdicción y Previsión Social Militar, en el Artículo 100 de la Normativa Interna Militar, y de conformidad a lo establecido en el Artículo 292 de la Normativa para la prestación del Servicio Militar Activo. Ordено:

1º. Otorgar póstumamente la Medalla Honor al Mérito Naval en Primera Clase al Teniente de Fragata Fernando Bermúdez López, en reconocimiento a su destacada participación como Comandante de Guardacostas de la Fuerza Naval, y al Marinero Francisco Mena Baltodano, en reconocimiento a su destacada participación como Artillero Naval de lanchas rápidas de la Fuerza Naval.

2º. Otorgar la Medalla Honor al Mérito Naval en Primera Clase, al Teniente de Navío Francisco Javier Díaz Mendoza, y al Teniente de Navío Juan Carlos Lira Meza, en reconocimiento al cumplimiento de la primera travesía de la Misión Paz y Soberanía "General Augusto C. Sandino", demostrando un alto deber patriótico en nuestras aguas restituidas por la Corte Internacional de Justicia de La Haya.

3º. Otorgar la Medalla Honor al Mérito Naval en Primera Clase, en reconocimiento a los Lazos de Amistad y Cooperación existentes con la Fuerza Naval del Ejército de Nicaragua, al Almirante Gilberto Pinto Blanco, Comandante General de la Armada de la República Bolivariana de Venezuela; al Vicealmirante Víctor Baldivieso Hache, Comandante General de la Armada de la República de Bolivia; al Vicealmirante Carlos Antonio Lainfiesta Soto, Comandante de la Marina de Guerra de la Defensa Nacional de la República de Guatemala; al Contralmirante Rigoberto Espinoza Posadas, Comandante General de la Fuerza Naval de la República de Honduras; al Capitán de Navío Miguel Ángel Castillo Guardado, Jefe del Estado Mayor General de la Fuerza Naval de la República de El Salvador.

4º. Otorgar la Medalla Honor al Mérito Naval en Segunda Clase, en reconocimiento a los Lazos de Amistad y Cooperación existentes con la Fuerza Naval del Ejército de Nicaragua, al Contralmirante Rogelio Marbán Díaz, Agregado Naval a la Embajada de México en Panamá, y representante del Secretario de la Marina de México; al Comisionado José de Jesús Rodríguez, Jefe de la Primera Región Aeronaval del Servicio Nacional Aeronaval de la República de Panamá; y al Comandante Javier Arturo Cubero Vargas, Oficial Director de la Estación de Guardacostas Murciélagos, del Servicio de Guardacostas de la República de Costa Rica.

5º. En nombre del Ejército de Nicaragua, de la Comandancia General y en el mío propio, los felicito por haber obtenido tan distinguida Condecoración.

Dado en la Comandancia General del Ejército de Nicaragua, El Chipote, Ciudad Managua, Capital de la República, a los 13 días del mes de Agosto del año 2013. Comandante en Jefe del Ejército de Nicaragua, General de Ejército Julio César Avilés Castillo".

**Contralmirante Marvin Elías Corrales  
Jefe de la Fuerza Naval del Ejército de Nicaragua**

Comandante Daniel Ortega Saavedra, Presidente de la República y Jefe Supremo del Ejército de Nicaragua; Compañera Rosario Murillo, Coordinadora del Consejo de Comunicación y Ciudadanía; Vicepresidente de la República, General Omar Halleslevens

Acevedo; Comandante en Jefe del Ejército de Nicaragua, General de Ejército Julio César Avilés Castillo; Jefe del Estado Mayor General, Mayor General Oscar Balladares Cardoza; Inspector General, General de Brigada Adolfo Zepeda Martínez.

Doctora Martha Ruiz, Secretaria General del Ministerio de Defensa; Monseñor Eddy Montenegro; Funcionarios de los distintos Poderes del Estado; Delegaciones Navales extranjeras; Agregados Militares, Navales y Aéreos, y Jefes de Misiones Militares acreditados en nuestro País; Oficiales Generales, Superiores, Subalternos, Clases, Soldados, Marineros y Auxiliares, presentes en este Acto; Invitad@s Especiales, Medios de Comunicación Social.

Desde esta Plaza de la Revolución, lugar lleno de Historia, donde hace 34 Años el Pueblo celebró el Triunfo de la Revolución, hoy nos honramos en Celebrar el 33 Aniversario de la Fuerza Naval del Ejército de Nicaragua.

Quisiera agradecer la presencia de ustedes nuestr@s Invitad@s, que están compartiendo con nosotros esta Celebración. Su presencia reafirma el compromiso de seguir trabajando, permanente y eficientemente, tratando de mejorar día a día nuestro desempeño.

La Fuerza Naval tiene la Misión de garantizar el respeto a nuestra Soberanía en las fronteras marítimas, la seguridad portuaria, el control del tráfico y la seguridad marítima. Realizar operaciones contra el narcotráfico, la piratería marítima, el tráfico ilegal de armas y de personas, la pesca ilegal, el contrabando de los productos del mar. Brindar protección a los Recursos Naturales y al Medio Ambiente, Marino, Lacustres y Pluvial; y como una Misión Especial, realizar operaciones de búsqueda, salvamento y rescate marítimo, así como el apoyo a la población civil ante situaciones de Desastres Naturales.

Para lograr resultados efectivos en nuestras Misiones, la profesionalización de nuestro personal constituye un elemento fundamental. Es necesario contar con personal altamente calificado y con Vocación de Servicio.

Educados para la premisa del Sistema de Valores, orientados por el Comandante en Jefe, la Fuerza Naval forma Hombres y Mujeres de Bien, dispuest@s a cumplir con su Misión con Honor y Ética Militar, con un profundo sentido Patrio de Dignidad e Identidad Nacional, inspirados en el Espíritu de Lucha de nuestros antepasados.

Es por ello que constantemente realizamos esfuerzos en el adiestramiento elevando los conocimientos en los niveles de Jefes y Oficiales, Especialistas y Tropas, habiendo cumplido un total de 1,928 horas lectivas de adiestramiento, que permite afrontar situaciones extremas en el teatro de operaciones navales de responsabilidad.

Hemos cumplido los Planes de Educación Patriótica, haciendo énfasis en el fortalecimiento de Valores y Principios, así como en lo relacionado al conocimiento de la Historia de nuestra Patria y de la gesta de nuestros Héroes Nacionales.

En cuanto a la Técnica Naval hemos logrado mantener el 98% de disposición técnica en todos nuestros medios. Con el apoyo del Comandante en Jefe y la Comandancia General, hemos logrado el mejoramiento en las condiciones de vida de nuestro personal. Hoy contamos con mejores condiciones, que ha permitido incrementar la operatividad y presencia de nuestras Tripulaciones en los lugares más alejados del Litoral Caribe, así como en los Lagos y sectores ribereños del interior del País, para posicionarnos con mejores

controles de nuestros Litorales y Aguas Interiores, que nos permite incrementar los niveles de estabilidad y seguridad en todos esos sectores.

En el período de Agosto del 2012 a Julio del presente año, en cumplimiento de los diferentes Planes del Ejército de Nicaragua, hemos obtenido los siguientes resultados: Se realizaron 6,432 Misiones de todo tipo, navegando un total de 82,410.5 millas náuticas.

En la lucha contra el narcotráfico se incautaron 3,000 kilos con 473 gramos de cocaína y 22 kilos con 104 gramos de marihuana. Se ocuparon 38,013 dólares, los que fueron entregados mediante Acta a las Autoridades competentes. Se ocuparon 19 narco-lanchas y fueron capturados 17 narcotraficantes. En nuestras aguas jurisdiccionales fueron capturadas y detenidas 57 embarcaciones de diferentes nacionalidades, con 215 tripulantes en labores de pesca ilegal. Se ocuparon 141,297.33 pies tablares, 2,011 tucas, y 8,932 piezas de madera de diferentes especies.

En búsqueda, salvamento y rescate se cumplieron 71 Misiones, logrando auxiliar a 32 embarcaciones, 128 personas, y rescatar 17 cadáveres. Brindamos seguridad y protección a 527 buques mercantes que recalaron en nuestros Puertos, y manejaron una carga con un peso que asciende a 3 millones 651,447 toneladas métricas. Garantizamos la seguridad de 27 cruceros que permitieron el arribo de 27,990 turistas y tripulantes. Se realizaron 220 controles al uso correcto de los Dispositivos Exclusores de Tortugas, tanto en Puertos como en alta mar. Se realizaron 129,163 sondeos a embarcaciones de todo tipo.

La Fuerza Naval ha contribuido a la Economía Nacional, apoyando la Seguridad de las embarcaciones que realizan faenas de pesca, contribuyendo a que este sector exporte un poco más de 63 millones de libras de producto, las que representan alrededor de 203 millones de dólares. Hemos participado en la Comisión de Seguridad Portuaria, realizando 16 inspecciones a los principales Puertos de nuestro País, con el propósito de mantener los parámetros de seguridad establecidos en los Convenios Internacionales, garantizando que los cinco Puertos certificados como Puertos Seguros mantengan esa condición.

En apoyo al Proceso Democrático de nuestro País, participamos activamente en el Proceso de Elecciones Municipales del año recién pasado. Garantizando la seguridad y transportación acuática del Material Electoral y de Funcionarios del Consejo Supremo Electoral hacia los lugares más alejados del territorio del Caribe nicaragüense. Garantizando que los habitantes de esos lugares pudieran ejercer su Derecho al Voto, para lo cual cubrimos 15 rutas; se transportaron un total de 32,620 libras, y se navegó 1,520 millas náuticas.

Estos son los resultados del trabajo de nosotros los Miembros de la Fuerza Naval en el período señalado.

Un reconocimiento especial a l@s Compañer@s que desde el 25 de Noviembre del año pasado han cumplido con éxito la Misión Paz y Soberanía "General Augusto C. Sandino", en cumplimiento al objetivo principal ordenado por nuestro Comandante en Jefe, de ejercer Soberanía en el mar y espacio aéreo jurisdiccional, restituido a Nicaragua por la Corte Internacional de Justicia, donde hemos garantizado de manera sostenida la presencia permanente de nuestras Unidades de Superficie en los espacios restituidos.

En este Acto de Aniversario asumimos los Jefes, Oficiales, Clases, Comandos, Marineros y Personal Auxiliar de la Fuerza Naval, el compromiso de elevar nuestra eficacia y eficiencia, y de fortalecer la lealtad y cohesión, cuidando siempre el Honor, la Disciplina, la Firmeza y el

Prestigio de la Fuerza Naval del Ejército de Nicaragua. Sigamos sirviendo a nuestro Pueblo, siempre vigilantes y atentos, para salvaguardar los intereses de la Patria y los Valores Supremos en la Defensa de la Libertad, la Independencia y la Soberanía de nuestro Pueblo.

Queremos expresar nuestro reconocimiento a los familiares que en nombre de nuestros Hermanos caídos en cumplimiento del Deber, recibieron en este Acto la Condecoración Honor al Mérito Naval, así como a los que han sido condecorados por su actuación destacada en la Misión Paz y Soberanía "General Augusto C. Sandino", y a los que la recibieron como muestra del fortalecimiento de los Lazos de Amistad y Cooperación existentes entre las Fuerzas Navales.

Un agradecimiento especial a nuestros Invitados extranjeros. Al Comandante General de la Armada Bolivariana de Venezuela, Almirante Gilberto Pinto Blanco, y su estimada esposa. Gracias por los mensajes de saludo, y por la Medalla Almirante Sebastián Francisco de Miranda, que me fue otorgada.

Al Comandante General de la Armada Boliviana, Vicealmirante Víctor Baldivieso Hache, y su estimada esposa; al Comandante de la Marina de la Defensa Nacional de Guatemala, Vicealmirante Carlos Antonio Lainfiesta Soto; al Comandante General de la Fuerza Naval de Honduras, Contralmirante Rigoberto Espinoza Posadas, y su estimada esposa.

Al Jefe del Estado Mayor General de la Fuerza Naval de El Salvador, Capitán de Navío Miguel Ángel Castillo Guardado, y su estimada esposa; al Agregado Naval a la Embajada de México en Panamá, Contralmirante Rogelio Marbán Díaz, Representante del Secretario de Marina de México, y su estimada esposa; al Jefe de la Primera Región Aeronaval del Servicio Nacional Aeronaval de Panamá, Comisionado José de Jesús Rodríguez; y al Comandante Javier Arturo Cubero Vargas, Oficial Director de la Estación de Guardacostas Murciélagos, del Servicio Nacional de Guardacostas de Costa Rica.

De igual manera, agradecer la presencia de la Delegación de la Marina de Guerra de la Federación de Rusia, del Contralmirante Valery Vladimirovich Kulikov, Jefe del Grupo de los Buques de Guerra; y al Capitán de Navío, Serguei Ivanovich Tronev, Jefe del Crucero de Cohetes Moscú. Y agradecerles el haber enviado parte de la tripulación de Marineros rusos y su buque, que hoy nos honran con su presencia en este Acto como una muestra de los Lazos de Amistad y Cooperación existente entre nuestras Fuerzas Navales.

Queremos reiterarles el agradecimiento de los Miembros de la Fuerza Naval a los que nos entregaron Placas de Reconocimiento; y a todos por compartir con nosotros este Aniversario. Tengan la certeza que su presencia nos fortalece para cumplir cada día de la mejor manera posible nuestras Tareas y Misiones.

Nuestro saludo y agradecimiento a los familiares del Coronel del Ejército Defensor de la Soberanía Nacional, Abraham Rivera, y del Comandante Hilario Sánchez, por estar presentes acompañándonos en este Aniversario.

Queremos agradecer y expresar nuestro reconocimiento a los Oficiales de la Fuerza Naval en la honrosa Condición de Retiro, que hoy se han hecho presentes para compartir con nosotros esta noche especial. Así como a los Jefes de la Fuerza Naval que jugaron un papel importante en el desarrollo de la misma... en primer lugar, al Comandante Richard Lugo, cuya familia nos acompaña esta noche; al Capitán de Navío Manuel Rivas Guatemala; al

General Omar Halleslevens; al Contralmirante Juan Estrada y su esposa; y al Contralmirante Róger González y su esposa, gracias por su presencia.

Nuestro recuerdo lleno de respeto y admiración a los Miembros de la Fuerza Naval, que a lo largo de todos estos años han entregado su valiosa Vida en el cumplimiento del Deber por nuestra Patria. Sus lecciones son la guía de nuestro quehacer diario, y su ejemplo permanece en lo más profundo de nuestros corazones.

Agradecemos muy especialmente a nuestras Familias, por el apoyo permanente y solidario que nos permite siempre cumplir con nuestro Sagrado Deber de servir a la Patria.

¡Viva el 33 Aniversario de la Fuerza Naval del Ejército de Nicaragua! ¡Viva el 34 Aniversario del Ejército de Nicaragua! ¡Viva el Ejército de Nicaragua! Muchas gracias.

**General Julio César Avilés  
Comandante en Jefe del Ejército de Nicaragua**

Comandante Daniel Ortega, Presidente de la República y Jefe Supremo del Ejército de Nicaragua; Compañera Rosario Murillo, Coordinadora del Consejo de Comunicación y Ciudadanía; Hermanos de la Comandancia General, Mayor General Balladares, General Zepeda; General de Ejército en Retiro, Omar Halleslevens, Vicepresidente de la República; Contralmirante Marvin Corrales, Jefe de la Fuerza Naval del Ejército de Nicaragua; Doctor Julio Centeno, Fiscal General de la República; Canciller Samuel Santos.

Hermanos de la Policía Nacional, Subdirectores Generales Javier Meynard y Francisco Díaz; Licenciada Martha Ruiz, Secretaria General del Ministerio de Defensa; señor Nikolay Vladimir, Embajador de la Federación de Rusia; estimados Magistrados, Ministros, Autoridades Gubernamentales, Alcaldes, y Representantes de Organizaciones de la Pesca; Hermanos del Consejo Militar, ex-Jefes de la Fuerza Naval en la honrosa Condición de Retiro; Delegaciones Internacionales de Venezuela, Bolivia, Guatemala, Federación de Rusia, Honduras, El Salvador, México, Costa Rica y Panamá.

Agregados de Defensa, Militares, Navales y Aéreos, y Jefes de Misiones Militares acreditados en nuestro País; estimados Jefes, Oficiales, Clases, Marineros y Personal Auxiliar de la Fuerza Naval; Bloques Representativos de las Unidades Militares aquí formados; apreciados familiares de nuestros Marineros y de nuestros Hermanos caídos en el Cumplimiento del Deber; Monseñor Eddy Montenegro, le agradecemos sus Oraciones y Bendiciones; Invitados Especiales; Amig@s de los Medios de Comunicación, gracias a tod@s por acompañarnos.

Este día conmemoramos el 33 Aniversario de constitución de la Fuerza Naval del Ejército de Nicaragua. En tan especial ocasión, queremos expresarles a todos sus integrantes las felicitaciones y el merecido reconocimiento en nombre de la Comandancia General, el Consejo Militar, los Oficiales, Clases, Soldados y Personal Auxiliar del Ejército de Nicaragua.

33 Años de entrega y dedicación cumpliéndole a la Patria, protegiendo nuestros mares, y haciendo cumplir nuestras Leyes... ¡Cuánta Valentía, Dignidad y Patriotismo en ustedes Hermanos Marineros! Todos son poseedores de una voluntad sin límites en sus Misiones de Resguardo de nuestros Mares Soberanos, miles y miles de millas navegadas de día y de noche en condiciones climáticas complejas. Navegación que se ha incrementado en más de un 30% ahora que con la Ley y la razón de nuestro lado nos corresponde navegar en los mares restituídos por la Corte Internacional de Justicia a Nicaragua.

Como tod@s conocemos, el 19 de Noviembre recién pasado la Corte Internacional de Justicia reconoció los Derechos de Nicaragua muy al Este del Meridiano 82. Para ese día ya estábamos listos para ejercer nuestra Soberanía a mayores distancias de nuestras costas, aún con las limitaciones existentes.

El cumplimiento de la Misión Paz y Soberanía "General Augusto C. Sandino", la iniciamos a la orden del Presidente de la República el 25 de Noviembre, y desde esa fecha nuestra Bandera Nacional ondea orgullosa en nuestras naves en esos amplios mares que nos pertenecen. Nuestro reconocimiento especial a todos los Jefes, Oficiales, Sargentos y Marineros que han estado cumpliendo esta Sagrada Misión.

Igualmente, queremos reconocer todos los esfuerzos permanentes por asistir a embarcaciones y tripulaciones en peligro; por atender a pobladores en situaciones de riesgo; por proteger los Recursos Naturales, y crear condiciones favorables para la actividad pesquera de pequeñas, medianas y grandes embarcaciones. Nuestro reconocimiento por su contribución en la seguridad de la navegación y sus aportes a la seguridad de nuestros Puertos, lo que facilita el arribo, zarpe, movimiento de cargas y el turismo.

No podemos dejar de mencionar los aportes de nuestra Fuerza Naval a la Seguridad del País, misma que se ve altamente beneficiada por la eficiente labor que desarrollamos en la lucha contra el narcotráfico y el crimen organizado. Nuestros Marineros forman parte en la primera línea de defensa de la Seguridad de la Nación, y con sus acciones capturan y desvían droga que pretende circular por nuestro territorio. En este esfuerzo contra el narcotráfico y el crimen organizado, mantenemos excelentes niveles de coordinación con países con los cuales tenemos límites en nuestros mares.

Asimismo destacamos, que tenemos excelentes niveles de cooperación con los Estados Unidos de América, en el marco del Convenio firmado en el año 2001 para la lucha contra el narcotráfico. Y les agradecemos el apoyo brindado con la entrega de lanchas, equipos, entrenamiento, y en la construcción y remodelación de instalaciones en el Distrito Naval Atlántico.

En Agosto del año 2012, fue abanderado por usted Presidente, el Destacamento Naval de Aguas Interiores "Comandante Hilario Sánchez". Este Destacamento tiene entre sus Misiones aportar a la seguridad en la navegación de las aguas interiores; asistir a la población en caso de Desastres Naturales, y contribuir a la lucha contra el narcotráfico.

Un año después de su despliegue y puesta en operación, hemos hecho dos Ejercicios en correspondencia con las Misiones que este Destacamento tiene planteada. Ejercicios en los que hemos interactuado sobre objetivos únicos con Instituciones del Gobierno, como la Empresa Portuaria Nacional, el Ministerio de Transporte, el Ministerio de Salud, el SINAPRED, el INTUR, y también con las Alcaldías Municipales, y poblaciones ribereñas.

El despliegue del Destacamento Naval de Aguas Interiores nos significó un gran reto. Nos desplegamos en las riberas de los lagos y ríos en condiciones de campaña muy difíciles; hoy, un año después, además de tenerlo dotado con medios de comunicación y los medios navales necesarios para el cumplimiento de sus Misiones, hemos mejorado las condiciones de vida y de trabajo con la construcción o instalación de Módulos prefabricados en 14 puntos, los cuales tenemos en Granada, Solentiname, Malacatoya, San Carlos, San Miguelito y en el Lago de Managua, entre otros sitios.

No podemos hablar de este logro sin agradecer a la Federación de Rusia por el apoyo dado a nuestra Fuerza Naval, para estos fines. Este año, en el marco de las relaciones de Amistad y Cooperación, hemos tenido la visita de buques de China-Taiwán en Abril; y ahora en Agosto tenemos la visita de la Federación de Rusia, quienes también tienen dos Bloques Representativos participando en esta Ceremonia. Nuestro agradecimiento a ambas Fuerzas Navales por estas visitas que nos han realizado.

Este día también queremos agradecer la presencia de las Delegaciones Navales amigas que nos acompañan, y felicitarlos por las Condecoraciones recibidas de manos del Presidente de la República. Nuestras felicitaciones a los Jefes de Delegaciones de Venezuela, Bolivia, Guatemala, de la Federación de Rusia, Honduras, El Salvador, México, Costa Rica y Panamá.

Aprovecho para manifestar mi agradecimiento a la Armada de la República Bolivariana de Venezuela, por la Condecoración que me fue impuesta por el Almirante Gilberto Pinto Blanco. Muchísimas gracias.

Nuestro reconocimiento a los que póstumamente recibieron condecoraciones, al Teniente de Fragata Fernando Bermúdez López, y al Marinero Francisco Mena Baltodano, ambos caídos en el Cumplimiento del Deber en Misiones en los años 84 y 85.

Nuestras felicitaciones a los Tenientes de Navío, Lira Meza y Díaz Mendoza, Capitanes de los Guardacostas, General de División José Dolores Estrada y Río Grande de Matagalpa, respectivamente, que son los que incursionaron por primera vez después del Fallo de la Corte Internacional de Justicia en las aguas del Caribe que nos fueron restituidas.

En el marco de esta Ceremonia queremos agradecer a las diferentes Instituciones que nos apoyan para el exitoso cumplimiento de las Misiones de la Fuerza Naval; y de manera especial a usted, Presidente de la República, por darnos siempre su respaldo.

Nuestras felicitaciones a todos los Miembros que integran la Fuerza Naval del Ejército de Nicaragua, y por supuesto, a través de ustedes a sus familiares.

Nuestro reconocimiento a todos los que a lo largo de estos 33 Años contribuyeron a fortalecer esta rama del Ejército de Nicaragua. Felicidades también a usted, Contralmirante Corrales. Felicidades a los Jefes, Oficiales, Sargentos y Marineros, por los logros alcanzados.

Para finalizar, queremos reafirmar a nuestro Pueblo, que con Patriotismo y Dignidad, y los modestos medios que tenemos, seguiremos cumpliendo en Paz las Misiones de Resguardo de nuestros Mares Soberanos.

¡Viva el 33 Aniversario de Constitución de la Fuerza Naval! ¡Viva el Ejército de Nicaragua! Muchas gracias.

### **Palabras de Daniel**

Ahora que el Almirante Gilberto Pinto Blanco, Comandante General de la Armada de la República Bolivariana de Venezuela, nos imponía en el pecho... en el pecho del Pueblo nicaragüense, en el pecho de Sandino, en el pecho de Carlos, de Tomás, de Santos López; en el pecho de quienes se enfrentaron al expansionismo yanqui en el siglo antepasado; en el pecho de nuestros ancestros, de nuestros Caciques, de nuestros Héroes, con Diriangén a la cabeza.

Qué honor para l@s nicaragüenses recibir esta Condecoración que representa la Fuerza Liberadora de Miranda... Yo conocí a Miranda a través de la lectura, y para conocer a Bolívar había que conocer a Miranda; y en Sandino encontramos al Hijo de Bolívar.

Y hoy, en estos Nuevos Tiempos de Nuestramérica Caribeña, de Unidad, de Integración, en la Comunidad de Estados Latinoamericanos y Caribeños, en el ALBA, en PETROCARIBE, en los diferentes Procesos de Integración Sub-Regionales que se viven en toda la Región, para nosotros es reconocer lo que ha significado en este Proceso, Bolívar a través de Chávez. Por eso bien lo dice el Almirante Pinto Blanco, que así lo llama y lo dice el Pueblo Bolivariano; y lo dicen nuestros Pueblos, y el Pueblo nicaragüense, en este mismo sitio donde el 10 de Enero del año 2012, estuvo el Presidente-Comandante Hugo Chávez Frías, acompañándonos.

¡Chávez vive...! Chávez vive en la lucha que libran los Pueblos Latinoamericanos y Caribeños, por la Unidad, por la Integración, que nos permiten acercarnos más con un objetivo común, y es, ¡Unid@s somos más Fuertes! Unid@s, al ser más Fuertes, entonces se nos respeta en la Comunidad Internacional. Unid@s, podemos desarrollar Programas y Políticas en Beneficio de las Familias Latinoamericanas y Caribeñas, ¿para qué? Para sacarlas de la pobreza.

Porque es un gran reto que tenemos en toda América Latina y El Caribe... sacar a nuestros Pueblos de la pobreza, de la miseria, del analfabetismo, en que lo ha venido enterrando periódicamente el Capitalismo Salvaje, como bien lo llamó Juan Pablo II; y traerles Bienestar a nuestros Pueblos... Salud, Educación, Trabajo. Esos son los grandes objetivos, y para alcanzar esos grandes objetivos es fundamental la Estabilidad, la Seguridad, en nuestras Naciones y en nuestras Regiones.

De ahí, la trascendencia que tiene el hecho de que estamos siendo respetuosos, estamos demostrando ser respetuosos los Gobiernos Latinoamericanos y Caribeños; estamos demostrando ser respetuosos del Principio de resolver nuestras diferencias por la vía del diálogo, por la vía de la negociación. Y en el caso extremo, ya nunca jamás recurrir a aquellas guerras fratricidas que bañaron nuestros territorios, sino recurrir a los Organismos Internacionales que están instalados para poder pronunciarse, para definir lo que le corresponde a cada quién.

Nicaragua tiene una larga historia en lo que es el acatamiento a los Organismos Internacionales, en lo que es el recurrir a los Organismos Internacionales, a la Corte Internacional de Justicia. Ahí hemos recurrido en múltiples ocasiones, en algunas ocasiones el resultado ha sido adverso para Nicaragua... territorio en litigio que era disputado con la Hermana República de Honduras.

El Fallo favoreció a Honduras, y nosotros indiscutiblemente reconocemos ese Fallo, se reconoció en su momento, y lo seguimos reconociendo. Es un Fallo que al triunfar la Revolución en el 79, no lo pusimos en duda, no lo pusimos en cuestión; ya había fallado la Corte, por lo tanto no había razón alguna para venir a desconocer ese Fallo.

En cambio, un Tratado, un Acuerdo, que fue impuesto a Nicaragua allá por los años 1928, cuando nuestro País estaba ocupado por las Tropas de la Marinería norteamericana; una larga ocupación a la cual se enfrentó y resistió Sandino. En esas dolorosas circunstancias se le impuso a Nicaragua, recurriendo como siempre a los que Sandino llamaba: "Peleles y vendepatrias", que los nombraron los yanquis como Presidentes en nuestro País, en Elecciones que en ese entonces, incluso, el Consejo Electoral eran las Tropas yanquis, las

Tropas de la Marinería yanqui... ¡Fíjense qué trabajo! las Tropas de la Marinería yanqui ejerciendo la labor de Consejo Supremo Electoral en Nicaragua.

En esa circunstancia se impuso ese Tratado, y bueno, el Pueblo no lo aceptaba, y las nuevas generaciones no lo aceptaban. Y saltamos del año 1928 al año 1979, el Triunfo de la Revolución Popular Sandinista; y uno de los primeros actos legítimos de Gobierno de ejercer Soberanía, fue el Decreto de la Junta de Gobierno, que en ese momento dijimos: Ese Tratado es nulo de toda nulidad; por lo tanto, no lo podemos reconocer.

Y fuimos donde el Juez, porque no íbamos a plantearnos, aunque hubiésemos tenido la fuerza militar no íbamos a plantearnos la vía militar para resolver ese Diferendo, sino que dijimos: Vamos a la Corte; y fuimos a la Corte Internacional de Justicia. A esa misma Corte a la que recurrimos en medio de la guerra, y que dictó un Fallo, una Sentencia Histórica, donde condenó al Gobierno encabezado por el Presidente Ronald Reagan, que en Paz descanse. Le condenó por todos los crímenes cometidos en Nicaragua; por los actos de terrorismo cometidos en Nicaragua, por el minado de los Puertos, por la destrucción de escuelas, por la destrucción de puentes; por el asesinato de Maestr@s, por el asesinato de Médicos, por la muerte de miles de jóvenes, de miles de nicaragüenses. Lo condenó a Estados Unidos, y ahí está la Sentencia.

Yo le decía en una entrevista un día de estos a RT, la Televisión Rusa, de la Federación Rusa. Me preguntaban por el Fallo, y les decía que esa Sentencia sigue viva. Llegará el día en que habrá una Administración en los Estados Unidos que reconocerá lo que dicta ese Fallo, e indemnizará a Nicaragua, tal y como lo manda el Fallo de la Corte de Justicia.

Y fuimos a la Corte también, de común acuerdo Honduras y Nicaragua, para delimitar nuestra línea en el territorio marítimo, en el Mar Caribe. Y el día de la Sentencia nos reunimos los dos Presidentes: el Presidente Manuel Zelaya y yo, para dar una señal de respeto a lo que es la Autoridad mundial en esa materia.

Y con Costa Rica hemos ido en múltiples ocasiones también a la Corte, y ahora continuamos en la Corte con Costa Rica. Siempre dispuestos a dialogar con Costa Rica, siempre dispuestos a buscar acuerdos con Costa Rica; pero mientras no se abra ese camino, mientras Costa Rica no contemple ese camino, no considere esa posibilidad, no queda más camino que continuar en la Corte; y continuamos en la Corte.

La Corte que falló también con toda claridad que el Río San Juan es Patrimonio de l@s nicaragüenses. Había un Diferendo alrededor del Río San Juan, y Costa Rica pensaba, algunas Autoridades en Costa Rica pensaban que podía pasar lo mismo que sucedió con toda esa Zona que está en El Guanacaste... territorio nicaragüense. Y ahí estamos hablando de miles de kilómetros cuadrados; no estamos hablando de 3 kilómetros cuadrados, 2.8 kilómetros cuadrados en ese territorio nicaragüense de Harbour Head en el humedal... no, no estamos hablando de un territorio minúsculo, estamos hablando de miles de kilómetros cuadrados. Nosotros podríamos considerar dada las circunstancias, y que este es un tema que no ha sido debatido en la Corte, podríamos considerar llevar el caso a la Corte Internacional de Justicia. Eso le permitiría a Nicaragua recuperar un inmenso territorio, si la Sentencia favoreciese a Nicaragua.

Y hay fundamentos históricos, hay elementos también de confrontación y enfrentamiento al expansionismo yanqui... Fíjense que hemos perdido territorios precisamente cuando nuestro País ha estado enfrentado al expansionismo yanqui entonces. Y Costa Rica pensó que, como estaban ellos comprometiendo tropas en el enfrentamiento contra el expansionismo yanqui,

que también iba contra ellos, y donde la primera línea de combate se estaba dando en Nicaragua, entonces después consideraron que había que cobrarle a Nicaragua, y cobrarle el Río y cobrarle más territorio, i hasta el Lago le querían cobrar a Nicaragua! O sea, hasta allí han llegado las ambiciones de algunos políticos en Costa Rica que han ejercido poder; y ahí está la Historia, ahí están los Documentos.

Entonces, pienso que eventualmente podemos también recurrir a la Corte, como es nuestro derecho también en el caso de la Hermana República de Colombia, es nuestro derecho a aspirar al Mar Territorial, es decir, a lo que está pendiente de definición en Instrumentos y Organismos de Naciones Unidas. Porque con Colombia teníamos ese territorio donde se dio ese Tratado en el período de la ocupación norteamericana.

Les decía que triunfó la Revolución, y entonces desconocimos el Tratado; luego fuimos a la Corte, y después de tantos años, en Noviembre del año pasado falló la Corte. Y la Corte le reconoció a Nicaragua lo que en derecho le corresponde a Nicaragua... 90,000 kilómetros cuadrados recuperados. ¿Que no se logró reincorporar a Nicaragua las Islas de San Andrés? Bueno, no nos queda más que ser respetuosos con la Sentencia. La Sentencia favoreció en ese sentido a Colombia con San Andrés, y a Nicaragua con el Mar.

Nosotros desde ese momento hemos estado ejerciendo labores normales que se ejercen en las aguas que le pertenecen a un Estado, en este caso al Estado nicaragüense. Inmediatamente después del Fallo se empezó a navegar ¿con quién? con la Fuerza Naval, ¿y acompañados de quién? de la Fuerza Aérea... Fuerzas Navales muy modestas las nuestras, que ameritan lógicamente un fortalecimiento, y estamos trabajando para que se puedan fortalecer nuestras Fuerzas Navales, con ánimo de Paz y Seguridad. Porque las Fuerzas Navales se encuentran ahora, y se combinan, y lo decía antes, para enfrentar la pobreza, para enfrentar la miseria, para enfrentar el hambre.

Tenemos que combatir el narcotráfico y el crimen organizado, porque esa es la principal amenaza a la seguridad que tienen nuestros países; esa es la mayor amenaza. Y hay un convencimiento de que es necesario unir esfuerzos, y hemos venido uniendo esfuerzos... primero, en nuestra Subregión aquí en Centroamérica, en el Caribe, coordinando también actividades con la Hermana República de Colombia.

Y hemos venido también trabajando con los Hermanos venezolanos, que hoy nos han honrado con este Reconocimiento a nuestro Pueblo. Nuestros saludos a Nicolás, a Cilia; a la Ministra de Defensa, la Ministra del Poder Popular para la Defensa, la Almirante en Jefe Carmen Meléndez Rivas, para ella también nuestros saludos.

Igualmente, hemos trabajado con los Estados Unidos de Norteamérica... Cuando se acordaron, cuando se tomaron estos Acuerdos, estos Convenios, recuerdo bien que había un planteamiento de parte de los norteamericanos de instalar una base allá en el Caribe, en la Zona de Bilwi. Nosotros estábamos en la oposición, y nos pidieron una reunión, nos reunimos con ellos, y les manifestamos, yo les decía: Si Estados Unidos quiere ayudar en el combate al narcotráfico, no es instalando bases aquí en Nicaragua, sino fortaleciendo las Instituciones que tiene Nicaragua; fortaleciendo al Ejército, fortaleciendo a la Fuerza Naval, fortaleciendo a la Fuerza Aérea. No haciéndolas a un lado instalando sus bases, imponiendo sus tropas, imponiendo sus medios. Lo que necesitamos es que Estados Unidos aporte al fortalecimiento de estas Instituciones que al final de cuentas le están cuidando las espaldas a los Estados Unidos, aquí en la Región Centroamericana.

Ese fue nuestro planteamiento, y uno de los puntos de mayor discusión es el que tenía que ver con el patrullaje conjunto, que realmente se trata de una operación combinada donde la Fuerza Naval norteamericana, que ya conocemos su poderío, patrulla en el Mar Caribe como puede patrullar también en el Pacífico más allá de las 12 millas. Que ellos patrullen en aguas internacionales, y luego, en coordinación con el Ejército y llevando Oficiales del Ejército en las naves, se desarrollan operaciones para combatir el narcotráfico; operaciones que han sido efectivas, y ha habido un buen trabajo en esa dirección.

Y ha habido algún aporte de parte de los Estados Unidos, en los últimos días aportaron dos lanchas, yo diría que es el aporte más significativo de los últimos tiempos, las dos lanchas; luego están barcos norteamericanos que traen Cuerpos Médicos que atienden a la población. Hemos autorizado ese tipo de intercambios, porque la población recibe beneficios, y también ellos están conociendo la realidad.

Los Soldados norteamericanos que vienen a nuestro País se están dando cuenta de la realidad de Nicaragua; y estoy seguro que cada vez que viene un Soldado norteamericano a Nicaragua debe de decir: ¿Cómo es posible que allá en las escuelas nos digan que Nicaragua es una amenaza para la seguridad de los Estados Unidos? No lo pueden creer ya cuando están en Nicaragua. A Oficiales norteamericanos les han dicho que Nicaragua es una amenaza para la seguridad de los Estados Unidos. Ese tipo de planteamiento yo digo que ha venido quedando realmente ya muy debilitado... Nicaragua más bien le ayuda a los Estados Unidos, y los Estados Unidos todavía no retribuyen como deberían de retribuir la ayuda que Nicaragua le brinda a los Estados Unidos. Nosotros tenemos que ser claros.

Y esta es una actitud compartida... compartida digo en la Región. En la Región hay un malestar en este sentido, porque como que le resulta más fácil a Estados Unidos colocar bases militares, en lugar de fortalecer a las Instituciones locales, a las Fuerzas Navales, a las Fuerzas Aéreas; a las Fuerzas que están en la lucha contra el narcotráfico y el crimen organizado, a las Fuerzas de la Policía. O sea, todavía ellos comprometen recursos, porque han comprometido recursos, los comprometieron en la Reunión que se llevó a cabo en Guatemala en el mes de Junio del año 2011. Allí se comprometieron la Comunidad Internacional y Estados Unidos. Pero cuando nos reunimos los Presidentes Centroamericanos, y revisamos la Agenda sobre el cumplimiento de esos compromisos, nos encontramos con que muy poco se ha hecho de parte de los que se comprometieron a aportar recursos; muy poco, muy poco.

Eso no tiene nada que ver, no hay punto de comparación entre los miles y miles de billones de dólares que se comprometen en las guerras que se están librando allá lejos, en otras Regiones, con los centavos que colocan aquí en la Región Centroamericana... son centavos realmente! Lo que sí debo destacar es que tenemos con los Estados Unidos una buena relación en cuanto al combate contra el narcotráfico y el crimen organizado, con ese problema que nos afecta a todos en la Región.

Igualmente, otras Naciones como la Federación Rusa con las cuales nosotros tenemos relaciones históricas. En esta Nueva Etapa la Federación Rusa, a partir del año 2007 ha venido estrechando relaciones con Nicaragua en todos los Campos y, ya se llevaron a cabo las primeras operaciones contra el narcotráfico en el Mar Caribe con la Naval de la Federación Rusa, intercambiando información, Inteligencia, y se golpeado ya al narcotráfico.

Porque la verdad es que, para enfrentar al narcotráfico tenemos que unir fuerzas tod@s; y nosotros lógicamente estamos buscando más recursos para la Fuerza Naval. Porque la Zona que hay que cubrir ahora frente al narcotráfico y el crimen organizado es mucho mayor con

el territorio recuperado, los 90,000 kilómetros recuperados en el Mar Caribe. Eso demanda de más y mejores medios navales para patrullar la Zona. Que tengan más autonomía para penetrar en la Zona, hacer labores de vigilancia, y combatir en primer lugar... porque la prioridad allí es combatir el narcotráfico y el crimen organizado, porque es un asunto de Seguridad, para Nicaragua y para toda la Región, iasunto de Seguridad!

Nosotros claro que estamos haciendo gestiones... hacemos gestiones, buscamos recursos, buscamos el apoyo correspondiente, para poder contar con mayores y mejores medios navales. No para hacerle daño a Pueblo Hermano alguno, sino para enfrentar el narcotráfico y el crimen organizado, combinando nuestras operaciones como se combinan con la Fuerza Naval colombiana, con las Fuerzas Navales que están en la Zona del Caribe, y con la Fuerza Naval norteamericana, y ahora con la Fuerza Naval de la Federación Rusa.

Y nos sentimos también muy contentos que en este día, 33 Aniversario de la Fuerza Naval de Nicaragua, nos acompañen dos Pelotones de la Fuerza Naval de la Federación Rusa. Aquí los tenemos, dos Pelotones, son parte de una flota que se encuentra en Corinto, y que está de visita en nuestro País en este proceso de fortalecer las relaciones con todo el Mundo. Y lógicamente, la Federación Rusa tiene esa voluntad, tiene esa disposición, y le damos la bienvenida a Nicaragua a la Fuerza Naval rusa.

Una Fuerza Naval con una Historia heroica, más que heroica, desde el Acorazado Potemkin, donde los Oficiales y los Marineros se sublevaron en una Insurrección en el año 1905, contra el zarismo. Y luego, cuando mandaron a otras naves a detenerlos, o a hundirlos, iban con la orden de hundirlos si no se detenían, las otras naves no quisieron disparar contra sus Hermanos; los dejaron pasar.

Luego, el Gran Lenin, Vladimir Illich Ilianov, Lenin, Líder de la Revolución de Octubre, haría referencia del Acorazado Potemkin; y decía: Fue el primer territorio libre en las batallas que entonces estaban librando contra el zarismo. Una Fuerza Naval con una Historia que llena de orgullo a ese Pueblo, y que nos llena de orgullo a nosotros que nos estén hoy aquí acompañando.

Quiero saludar muy en particular al Contralmirante Valery Kulikov, Jefe del Grupo de los Buques de Guerra de la Federación de Rusia... Bienvenido a Nicaragua, Almirante. Y nuestros saludos para el Pueblo ruso, nuestros saludos para el Ejército ruso, y nuestros saludos para el Presidente Putin. Gracias Compañero.

Igualmente, saludar al Capitán de Navío Sergey Tronev, Jefe del Grupo del Crucero de Cohetes Moscú, de la Federación de Rusia. Bienvenido Capitán de Navío, Sergey. Igualmente, nuestros saludos a todas las Delegaciones que han sido presentadas, que hemos tenido la oportunidad de saludarlos aquí al momento de entregarles la Orden en el Marco de este 33 Aniversario.

Nuestros saludos a la Compañera Rosario, que nos acompaña siempre en lo que es el respaldo firme de este Gobierno Cristiano, Socialista y Solidario, para el Ejército de Nicaragua y para su Fuerza Naval, para su Fuerza Aérea, para su Fuerza Terrestre, para todas las Unidades del Ejército de Nicaragua.

Nuestros saludos para el Comandante en Jefe del Ejército de Nicaragua, General de Ejército Julio César Avilés Castillo; y felicitaciones porque ha estado de cumpleaños en estos días... iun aplauso para el General que cumplió años ahora en Agosto!

La Compañera Rosario estaba recordando que ahora en Agosto cumplió años mi madre, mi madre que falleció a los 97 años. Y hoy 13 de Agosto yo recordaba que en los años 79, 80, mi madre fue a La Habana a acompañar a Fidel, y Tomás acompañaba también a Fidel, porque Fidel está cumpliendo años el día de hoy, y Tomás igualmente cumple años el día de hoy, ahí se reunían los tres. Ahí tengo las fotos todavía de Fidel con mi madre celebrando su cumpleaños. Para Fidel, como siempre nuestro saludo, nuestro reconocimiento, nuestro respeto, y sobre todo nuestro cariño, y nuestra lealtad, para con él, para con sus Ideas, para con esa Gloriosa Revolución Cubana.

¿Y qué decir de Tomás, si decir Tomás dice mucho? Y todos sabemos lo que significa Tomás, lo que ha significado y lo que continúa significando Tomás en la lucha de nuestro Pueblo. Y Tomás entrevistando a Fidel, y publicando aquel libro "Un grano de maíz". Y Chávez, recordando que cuando estuvo en prisión tenía de cabecera el libro "Un grano de maíz". Así nos lo comentaba el Comandante Hugo Chávez, y lo hemos conversado con Nicolás, con Cilia, con Diosdado, con Elías, con tod@s l@s Compañeros, cómo Chávez hizo uno de sus libros de cabecera "Un grano de maíz". Y lo citaba, en sus Discursos lo citaba.

Nuestros saludos al Jefe del Estado Mayor General del Ejército de Nicaragua, Mayor General Oscar Balladares Cardoza; al Inspector General, General de Brigada Adolfo Zepeda Martínez; a nuestro Hermano, Compañero Vicepresidente de la República, General de Ejército en Retiro Moisés Omar Halleslevens Acevedo, quien estuvo al frente de esta Institución también, como estuvo también al frente de ese Destacamento, del Comando Juan José Quezada, con Germán Pomares, y con Eduardo Contreras.

Nuestros saludos al Jefe de la Fuerza Naval del Ejército de Nicaragua, Contralmirante Marvin Elías Corrales. Hemos escuchado su Informe Compañero, y la verdad que no es más que una síntesis, porque no es fácil hacer una síntesis de todo lo que son las labores de la Fuerza Naval, en un mes, ya no digamos en un año, no es fácil.

Compañera Secretaria del Ministerio de Defensa, Martha Elena Ruiz Sevilla; Compañero Canciller de la República, Samuel Santos; Fiscal General de la República, Doctor Julio Centeno Gómez; Prelado de Honor de Su Santidad el Papa, Monseñor Eddy Montenegro Avendaño, gracias por sus palabras. Porque a él Su Santidad Juan Pablo II, lo nombró Prelado de Honor, a él y a otros siete Monseñores. Son Prelados de Honor de Su Santidad el Papa.

Nuestros saludos para todos los Hermanos del Cuerpo Diplomático; para la Delegación de la Federación Rusa... Y hablando con los Compañeros, y con esto voy concluyendo, hablando con los Compañeros de las Navales Centroamericanas, y esto lo hago extensivo a la Naval de Colombia también, hago un reconocimiento a la Naval de Colombia; porque, a pesar de que el Gobierno del Presidente Santos todavía no se pronuncia sobre el Fallo de la Corte, tuvimos la oportunidad de reunirnos en México con motivo de la Toma de Posesión del Presidente Peña Nieto.

Y ahí acordamos buscar el diálogo, ¿para qué? Hay un Fallo, bueno, cómo tenemos que trabajar para que, a partir de lo que dice el Fallo en adelante vamos a seguir coordinando nuestro trabajo. Pero desgraciadamente en Colombia hay sectores radicales, extremistas, que quieren que Colombia desconozca el Fallo, y eso reclaman, que Colombia desconozca el Fallo, y entre ellos el que más destaca es el Presidente Álvaro Uribe, que quiere ser Presidente, entonces piensa que con un mensaje de ese tipo va a ganar votos... yo no creo! Yo creo que el Pueblo colombiano quiere Paz.

Y nosotros reconocemos que en medio de un ambiente tan caldeado, porque todos los días escuchamos declaraciones que vienen de Colombia, declaraciones incendiarias, declaraciones confrontativas, han continuado sus labores la Fuerza Naval nicaragüense, ha continuado desplazándose también la Fuerza Aérea en lo que le corresponde en los nuevos territorios.

Hemos asignado Bloques para la exploración en la búsqueda de petróleo o de gas en los territorios, que ya definidos por la Corte le pertenecen a Nicaragua. A la hora de definir esto de los Bloques hemos respetado la Zona de Reserva... Zona de Reserva que ya antes el Gobierno de Colombia, no puedo decir qué Gobierno, si fue el del Presidente Uribe, ya había empezado a desarrollar labores de exploración en la Zona de Reserva, cuando ellos tenían el dominio en la Zona de Reserva ya habían empezado a hacer labores de exploración.

Nicaragua, en este sentido respeta y está listo para que con Colombia trabajemos en la protección de esa Zona de Reserva. Estamos listos a que se pueda desarrollar ese diálogo, esa negociación entre Colombia y Nicaragua, que nos permita finalmente superar esta situación, y que trabajemos más, colombian@s y nicaragüenses, por la Paz, por la Estabilidad.

Como les decía, hay que reconocer que en medio de toda esta turbulencia mediática, la Fuerza Naval de Colombia que es muy poderosa, no lo dudamos, tiene un poderío militar muy grande, ha sido cuidadosa, ha sido respetuosa, y no se ha presentado ningún tipo de enfrentamiento entre la Fuerza Naval de Colombia con la Fuerza Naval nicaragüense, gracias a Dios, y Dios quiera que se continúe trabajando de esa manera.

Y estoy convencido que, el que ha determinado esa actividad pacífica como le llama el Jefe de la Fuerza Naval de Colombia, el que ha determinado esa actividad pacífica es el Presidente Juan Manuel Santos. Estoy convencido, y esperamos que esto continúe así hasta que se llegue a las conversaciones, se llegue a las negociaciones, y se establezcan los Acuerdos definitivos para aplicar el Fallo, la Sentencia que dictó la Corte en el mes de Noviembre del año pasado. Tenemos toda esa disposición.

Estamos hablando de un territorio muy grande donde el combate al narcotráfico nos da a l@s nicaragüenses una mayor responsabilidad, y le da, por lo tanto, a la Fuerza Naval una mayor responsabilidad, al Ejército una mayor responsabilidad, a la Fuerza Aérea una mayor responsabilidad, combinando operaciones con todos aquellos países que a través de sus Fuerzas Navales o de sus Fuerzas Aéreas estén dispuestos a trabajar con Nicaragua, en el resguardo de esa Zona, para limpiar esa zona.

Nicaragua tiene que trabajar y hemos venido trabajando para limpiar la Zona. Limpiar Nicaragua del narcotráfico y el crimen organizado, y que junt@s l@s centroamerican@s, l@s mesoamerican@s, limpiemos toda la Región del narcotráfico y el crimen organizado, ¿para qué? Para desarrollar mejor, en muchas mejores condiciones los Proyectos Sociales que le llevan Bienestar a las Familias más empobrecidas; que le llevan Educación a la Juventud; que le llevan Cultura y Deportes a la Juventud; que alejan a la Juventud de la droga, y que aseguran lo que se conoce en el léxico clásico de las Democracias con intereses, la Seguridad Democrática.

La Seguridad Democrática no se resuelve en estos momentos inventando un Organismo allí en el SICA, que se llame Organismo de Seguridad Democrática. La Seguridad Democrática se resuelve liberando a nuestros países de la presencia y el control que el narcotráfico y el crimen organizado llegan a tener ya en buena parte del territorio centroamericano.

¿Qué Seguridad Democrática puede haber en un país donde los narcotraficantes, donde el crimen organizado tiene aterrorizada a la población, tiene aterrorizados a los comerciantes, a los empresarios; los tienen chantajeados, los asesinan, los secuestran? ¿De qué Seguridad Democrática están hablando? Allí no hay ninguna Seguridad Democrática. Para poder luchar por la Seguridad Democrática en esos países, primero hay que acabar con el crimen organizado, hay que acabar con el narcotráfico, hay que acabar con el poder que vienen ejerciendo y vienen instalando en esos países que ya son en algunos poderes paralelos, y van avanzando a buscar cómo ser poderes totales.

¡Esa es la amenaza! Si una gran amenaza tiene en este momento la Seguridad Democrática es el narcotráfico y el crimen organizado. Esa es la mayor amenaza, y tenemos que trabajar en esa dirección, tenemos que luchar en esa dirección, y nuestro compromiso es ese, querid@s Herman@s nicaragüenses, queridas Familias nicaragüenses, seguir trabajando en esa dirección.

O sea, no podemos descuidar, no podemos descuidarnos. Lo que ha logrado avanzar Nicaragua, la Estabilidad y Seguridad que tiene Nicaragua tenemos que cuidarla, cuidarla tod@s... el Pueblo, las Familias, l@s Trabajador@s, la Juventud, y las Instituciones, tod@s junt@s tenemos que cuidarla. Porque aquí está en juego la Vida y la Seguridad misma de las Familias, y de ahí pasa en juego la Vida y la Seguridad del Barrio, y luego se pone en riesgo la Vida y la Seguridad del Pueblo, del Municipio, del Departamento, del País.

Por eso es que nosotros tenemos como una prioridad para poder desarrollar en las mejores condiciones el Programa de Desarrollo Humano en nuestro País, que saque definitivamente de la pobreza en este Siglo XXI a todas las Familias nicaragüenses; eso pasa necesariamente porque tengamos Estabilidad y Seguridad en el País. Lo que significa no solamente contener, sino ir contrarrestando y alejando hasta que se vaya extinguiendo esa plaga del narcotráfico y el crimen organizado, combinando esfuerzos, lógicamente.

Querid@s Herman@s, querid@s Compañer@s de la Fuerza Naval, nos honramos hoy en entregarles Reconocimientos a los Hermanos Centroamericanos. Y decía que allí tenemos también otro punto de enorme responsabilidad... el Golfo de Fonseca. Se lo decía al Hermano de la Fuerza Naval de Honduras, al Contralmirante Rigoberto Espinoza Posadas, Comandante General de la Fuerza Naval de la República de Honduras; y se lo decía también al Capitán de Navío Miguel Ángel Castillo Guardado, Jefe del Estado Mayor General de la Fuerza Naval de la República de El Salvador.

Reconocerles en primer lugar, que ellos han sabido garantizarnos la Paz y la Seguridad en el Golfo de Fonseca. Porque tenemos un Diferendo allí, que aunque ya fue fallado por la Corte todavía no logra asentarse, y eso crea roces. Y los primeros que rozan en ese mar territorial del Golfo, son las Fuerzas Navales de El Salvador, de Honduras y de Nicaragua; y donde se puede provocar una chispa, como se ha producido ya en otros momentos, y ha corrido la sangre allí, y no es posible que vuelva a correr la sangre de Hermanos.

Tenemos que seguir trabajando para que el Golfo se convierta en una Zona de Desarrollo Económico, de Desarrollo Social, de Desarrollo Cultural, y que esto permita entonces que todas las Comunidades que están en el Litoral, yendo hacia el Golfo, desde El Salvador, desde Honduras, desde Nicaragua, que puedan mejorar sus condiciones de vida. Y que ese Golfo se convierta de manera definitiva en un Golfo de Paz, y que las Fuerzas Navales puedan allí trabajar como Hermanos, garantizando el Desarrollo del Golfo como Zona de Paz.

Y yo les decía a los Almirantes de El Salvador, de Honduras, que los felicitaba porque la verdad es que han hecho una gran labor en medio también de campañas mediáticas. De repente empiezan a crear tensiones mediáticas que pueden generar incidentes. Gracias a Dios tambi&eacute;



## **ANNEX 81**

G.M. Kondolf

*'Hungry water: Effects of dams and gravel mining on river channels'*

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# PROFILE

## Hungry Water: Effects of Dams and Gravel Mining on River Channels

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**ABSTRACT** / Rivers transport sediment from eroding uplands to depositional areas near sea level. If the continuity of sediment transport is interrupted by dams or removal of sediment from the channel by gravel mining, the flow may become sediment-starved (hungry water) and prone to erode the channel bed and banks, producing channel incision (downcutting), coarsening of bed material, and loss of spawning gravels for salmon and trout (as smaller gravels are transported without replacement from upstream). Gravel is artificially added to the River Rhine to prevent further inci-

sion and to many other rivers in attempts to restore spawning habitat. It is possible to pass incoming sediment through some small reservoirs, thereby maintaining the continuity of sediment transport through the system. Damming and mining have reduced sediment delivery from rivers to many coastal areas, leading to accelerated beach erosion. Sand and gravel are mined for construction aggregate from river channel and floodplains. In-channel mining commonly causes incision, which may propagate up- and downstream of the mine, undermining bridges, inducing channel instability, and lowering alluvial water tables. Floodplain gravel pits have the potential to become wildlife habitat upon reclamation, but may be captured by the active channel and thereby become instream pits. Management of sand and gravel in rivers must be done on a regional basis, restoring the continuity of sediment transport where possible and encouraging alternatives to river-derived aggregate sources.

As waters flow from high elevation to sea level, their potential energy is converted to other forms as they sculpt the landscape, developing complex channel networks and a variety of associated habitats. Rivers accomplish their geomorphic work using excess energy above that required to simply move water from one point on the landscape to another. In natural channels, the excess energy of rivers is dissipated in many ways: in turbulence at steps in the river profile, in the frictional resistance of cobbles and boulders, vegetation along the bank, in bends, in irregularities of the channel bed and banks, and in sediment transport (Figure 1). The transport of sand- and gravel-sized sediment is particularly important in determining channel form, and a reduction in the supply of these sediments may induce channel changes. The supply of sand and gravel may be the result of many factors, including changes in land use, vegetation, climate, and tectonic activity. This paper is concerned specifically with the response of river channels to a reduction in the supply of these sediments by dams and gravel mining.

Sediment is transported mostly as suspended load: clay, silt, and sand held aloft in the water column by turbulence, in contrast to bedload: sand, gravel, cobbles, and boulders transported by rolling, sliding, and bounc-

ing along the bed (Leopold and others 1964). Bedload ranges from a few percent of total load in lowland rivers to perhaps 15% in mountain rivers (Collins and Dunne 1990), to over 60% in some arid catchments (Schick and Lekach 1993). Although a relatively small part of the total sediment load, the arrangement of bedload sediments constitutes the architecture of sand- and gravel-bed channels. Moreover, gravel and cobbles have tremendous ecological importance, as habitat for benthic macroinvertebrates and as spawning habitat for salmon and trout (Kondolf and Wolman 1993).

The rate of sediment transport typically increases as a power function of flow; that is, a doubling of flow typically produces more than a doubling in sediment transport (Richards 1982), and most sediment transport occurs during floods.

### Continuity of Sediment Transport in River Systems

Viewed over a long term, runoff erodes the land surface, and the river network carries the erosional products from each basin. The rates of denudation, or lowering of the land by erosion, range widely. The Appalachian Mountains of North America are being denuded about 0.01 mm/yr (Leopold and others 1964), the central Sierra Nevada of California about 0.1

**KEY WORDS:** Dams; Aquatic habitat; Sediment transport; Erosion; Sedimentation; Gravel mining

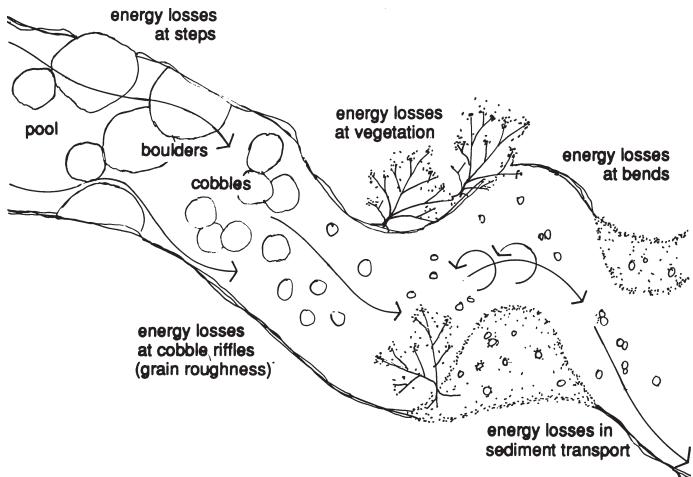


Figure 1. Diagram of energy dissipation in river channels.

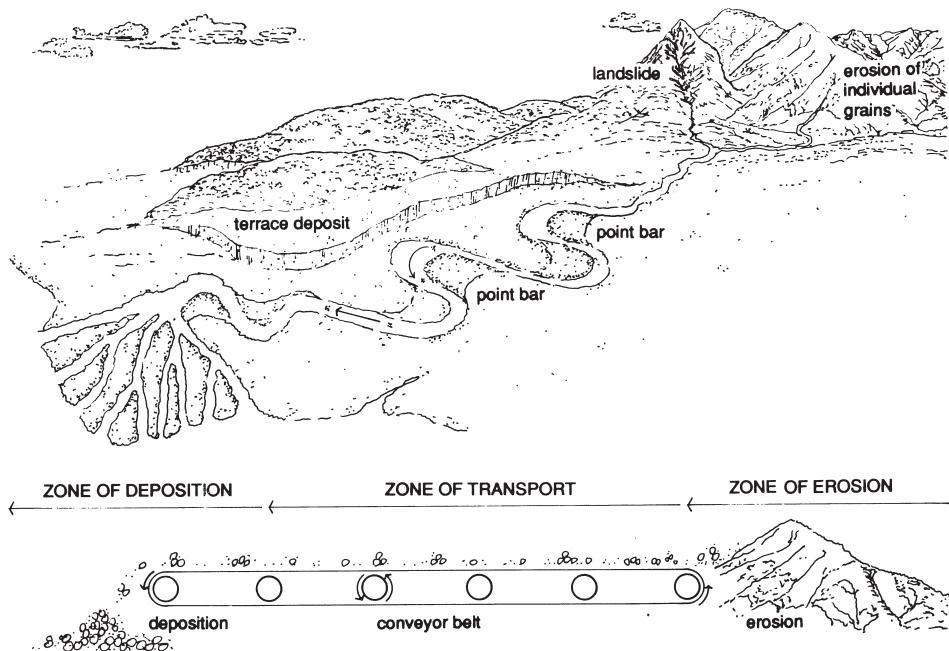


Figure 2. Zones of erosion, transport, and deposition, and the river channel as conveyor belt for sediment. (Reprinted from Kondolf 1994, with kind permission of Elsevier Science-NL.)

mm/yr (Kondolf and Matthews 1993), the Southern Alps of New Zealand about 11 mm/yr (Griffiths and McSaveney 1983), and the southern Central Range of Taiwan over 20 mm/yr (Hwang 1994). The idealized watershed can be divided into three zones: that of erosion or sediment production (steep, rapidly eroding headwaters), transport (through which sediment is moved more or less without net gain or loss), and

deposition (Schumm 1977) (Figure 2). The river channel in the transport reach can be viewed as a conveyor belt, which transports the erosional products downstream to the ultimate depositional sites below sea level. The size of sediment typically changes along the length of the river system from gravel, cobbles, and boulders in steep upper reaches to sands and silts in low-gradient downstream reaches, reflecting diminution in size by

weathering and abrasion, as well as sorting of sizes by flowing water.

Transport of sediment through the catchment and along the length of the river system is continuous. Increased erosion in the upper reaches of the catchment can affect the river environment many miles downstream (and for years or decades) as the increased sediment loads propagate downstream through the river network. On Redwood Creek in Redwood National Park, California, the world's tallest trees are threatened with bank erosion caused by channel aggradation (building up of sediment in the channel), which in turn was caused by clear-cutting of timber on steep slopes in the upper part of the catchment (Madej and Ozaki 1996, Janda 1978).

Along the river channel conveyor belt, channel forms (such as gravel bars) may appear stable, but the grains of which they are composed may be replaced annually or biannually by new sediment from upstream. Similarly, the sediments that make up the river floodplain (the valley flat adjacent to the channel) are typically mobile on a time scale of decades or centuries. The floodplain acts as a storage reservoir for sediments transported in the channel, alternately storing sediments by deposition and releasing sediment to the channel by bank erosion. For example, the Carmel River, California, is flanked by flat surfaces (terraces) that step up from the river. The lowest terrace is the channel of sand and gravel deposited by the 1911 flood, but the surface now stands about 4 m above the present, incised channel (Kondolf and Curry 1986). By 1960, the terrace had been subdivided for low-density housing, despite the recent origin of the land and the potential for future shifts in channel position.

A river channel and floodplain are dynamic features that constitute a single hydrologic and geomorphic unit characterized by frequent transfers of water and sediment between the two components. The failure to appreciate the integral connection between floodplain and channel underlies many environmental problems in river management today.

### Effects of Dams

Dams and diversions are constructed and operated for a wide variety of purposes including residential, commercial, and agricultural water supply; flood and/or debris control; and hydropower production. Regardless of their purpose, all dams trap sediment to some degree and most alter the flood peaks and seasonal distribution of flows, thereby profoundly changing the character and functioning of rivers. By changing flow regime and sediment load, dams can produce adjustments in alluvial channels, the nature of which depends upon the characteristics of the original and altered flow regimes and sediment loads.

Dams disrupt the longitudinal continuity of the river system and interrupt the action of the conveyor belt of sediment transport. Upstream of the dam, all bedload sediment and all or part of the suspended load (depending upon the reservoir capacity relative to inflow) (Brune 1953) is deposited in the quiet water of the reservoir (reducing reservoir capacity) and upstream of the reservoir in reaches influenced by backwater. Downstream, water released from the dam possesses the energy to move sediment, but has little or no sediment load. This clear water released from the dam is often referred to as hungry water, because the excess energy is typically expended on erosion of the channel bed and banks for some years following dam construction, resulting in incision (downcutting of the bed) and coarsening of the bed material until equilibrium is reached and the material cannot be moved by the flows. Reservoirs also may reduce flood peaks downstream, potentially reducing the effects of hungry water, inducing channel shrinking, or allowing fine sediments to accumulate in the bed.

### Channel Incision

Incision below dams is most pronounced in rivers with fine-grained bed materials and where impacts on flood peaks are relatively minor (Williams and Wolman 1984). The magnitude of incision depends upon the reservoir operation, channel characteristics, bed material size, and the sequence of flood events following dam closure. For example, the easily eroded sand bed channel of the Colorado River below Davis Dam, Arizona, has incised up to 6 m, despite substantial reductions in peak flows (Williams and Wolman 1984). In contrast, the Mokelumne River below Camanche Dam in California has experienced such a dramatic reduction in flood regime (and consequent reduction in sediment transport capacity) that no incision has been documented and gravels are reported to have become compacted and immobile (FERC 1993).

Reduction in bedload sediment supply can induce a change in channel pattern, as occurred on Stony Creek, a tributary to the Sacramento River 200 km north of San Francisco. Since the closure of Black Butte Dam in 1963, the formerly braided channel has adopted a single-thread meandering pattern, incised, and migrated laterally, eroding enough bedload sediment to compensate for about 20% of the bedload now trapped by Black Butte Dam on an annual average basis (Kondolf and Swanson 1993).

### Bed Coarsening and Loss of Spawning Gravels

Channel erosion below dams is frequently accompanied by a change in particle size on the bed, as gravels and finer materials are winnowed from the bed and transported downstream, leaving an armor layer, a coarse lag deposit of large gravel, cobbles, or boulders. Development of an armor layer is an adjustment by the river to changed conditions because the larger particles are less easily mobilized by the hungry water flows below the dam. The armor layer may continue to coarsen until the material is no longer capable of being moved by the reservoir releases or spills, thereby limiting the ultimate depth of incision (Williams and Wolman 1984, Dietrich and others 1989).

The increase in particle size can threaten the success of spawning by salmonids (salmon and trout), which use freshwater gravels to incubate their eggs. The female uses abrupt upward jerks of her tail to excavate a small pit in the gravel bed, in which she deposits her eggs and the male releases his milt. The female then loosens gravels from the bed upstream to cover the eggs and fill the pit. The completed nests (redds) constitute incubation environments with intragravel flow of water past the eggs and relative protection from predation. The size of gravel that can be moved to create a redd depends on the size of the fish, ranging in median diameter from about 15 mm for small trout to about 50 mm for large salmon (Kondolf and Wolman 1993).

Below dams, the bed may coarsen to such an extent that the fish can no longer move the gravel. The Upper Sacramento River, California, was once the site of extensive spawning by chinook salmon (*Oncorhynchus tshawytscha*), but massive extraction of gravel from the riverbed, combined with trapping of bedload sediment behind Shasta Dam upstream and release of hungry water, has resulted in coarsening of the bed such that spawning habitat has been virtually eliminated in the reach (Figure 3) (Parfitt and Buer 1980). The availability of spawning gravels can also be reduced by incision below dams when formerly submerged gravel beds are isolated as terrace or floodplain deposits. Encroaching vegetation can also stabilize banks and further reduce gravel recruitment for reds (Hazel and others 1976).

### Gravel Replenishment Below Dams

Gravels were being artificially added to enhance available spawning gravel supply below dams on at least 13 rivers in California as of 1992 (Kondolf and Matthews 1993). The largest of these efforts is on the Upper Sacramento River, where from 1979 to 2000 over US\$22 million will have been spent importing gravel (derived mostly from gravel mines on tributaries) into the river channel (Denton 1991) (Figure 4). While these projects



**Figure 3.** Keswick Dam and the channel of the Sacramento River downstream. (Photograph by the author, January 1989.)

can provide short-term habitat, the amount of gravel added is but a small fraction of the bedload deficit below Shasta Dam, and gravels placed in the main river have washed out during high flows, requiring continued addition of more imported gravel (California Department of Water Resources 1995). On the Merced, Tuolumne, and Stanislaus rivers in California, a total of ten sites were excavated and back-filled with smaller gravel to create spawning habitat for chinook salmon from 1990 to 1994. However, the gravel sizes imported were mobile at high flows that could be expected to occur every 1.5–4.0 years, and subsequent channel surveys have demonstrated that imported gravels have washed out (Kondolf and others 1996a,b).

On the border between France and Germany, a series of hydroelectric dams was constructed on the River Rhine (progressing downstream) after 1950, the last of which (the Barrage Iffezheim) was completed in the 1970s. To address the sediment deficit problem downstream of Iffezheim, an annual average of 170,000 tonnes of gravel (the exact amount depending on the

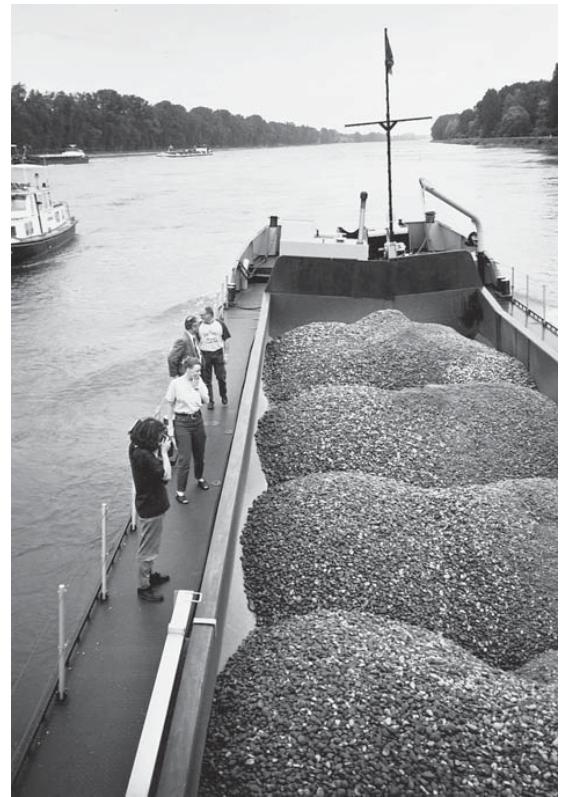


**Figure 4.** Gravel replenishment to the Sacramento River below Keswick Dam. (Photograph by the author, January 1991.)

magnitude of the year's runoff) are added to the river (Figure 5). This approach has proved successful in preventing further incision of the riverbed downstream (Kuhl 1992). It is worth noting that the quantity of gravel added each year is not equivalent to the unregulated sediment load of the Rhine; the river's capacity to transport sediment has also been reduced because the peak discharges have been reduced by reservoir regulation. The amount of sediment added satisfies the transport capacity of the existing channel, which has been highly altered for navigation and hydroelectric generation.

#### Sediment Sluicing and Pass-Through from Reservoirs

The downstream consequences of interrupting the flux of sand and gravel transport would argue for designing systems to pass sediment through reservoirs (and thereby reestablish the continuity of sediment transport). To date, most such efforts have been undertaken to solve problems with reservoir sedimentation, particularly deposits of sediment at tunnel intakes and outlet structures, rather than to solve bedload sediment supply problems downstream. These efforts have been most common in regions with high sediment yields such as Asia (e.g., Sen and Srivastava 1995, Chongshan and others 1995, Hassanzadeh 1995). Small diversion dams (such as those used to divert water in run-of-the-river hydroelectric generating projects) in steep V-shaped canyons have the greatest potential to pass sediment. Because of their small size, these reservoirs (or forebays) can easily be drawn down so that the river's gradient and velocity are maintained through the dam



**Figure 5.** Barge artificially feeding gravel into the River Rhine downstream of the Barrage Iffezheim. (Photograph by author, June 1994.)



**Figure 6.** Sand deposited in the bed of the Kern River as a result of sluicing from Democrat Dam in 1986. (Photograph by the author, December 1990.)

at high flow. Large-capacity, low-level outlets are required to pass the incoming flow and sediment load.

If low-level outlets are open at high flow and the reservoir is drawn down, a small reservoir behaves essentially as a reach of river, passing inflowing sediment through the dam outlets. In such a sediment pass-through approach, the sediment is delivered to downstream reaches in essentially the same concentration and seasonal flood flows as prevailed in the predam regime. This approach was employed at the old Aswan Dam on the River Nile and on the Bhatgurk Reservoir on the Yeluard River in India (Stevens 1936). Similarly, on the River Inn in Austria and Germany, floodwaters with high suspended loads are passed through a series of hydropower reservoirs in a channel along the reservoir bottom confined by training walls (Hack 1986, Westrich and others 1992). If topographic conditions are suitable, sediment-laden floodwater may be routed around a reservoir in a diversion tunnel or permitted to pass through the length of the reservoir as a density current vented through a bottom sluice on the dam (Morris 1993). The Nan-Hwa Reservoir in Taiwan was designed with a smaller upstream forebay from which sediment is flushed into a diversion tunnel, allowing only relatively clear water to pass into the main reservoir downstream (Morris 1993).

If sediment is permitted to accumulate in the reservoir and subsequently discharged as a pulse (sediment sluicing), the abrupt increase in sediment load may alter substrate and aquatic habitat conditions downstream of the dam. The most severe effects are likely to occur when sediment accumulated over the flood season is discharged during baseflow (by opening the outlet pipe or sluice gates and permitting the reservoir

to draw down sufficiently to resuspend sediment and move bedload), when the river's transporting capacity is inadequate to move the increased load. On the Kern River, the Southern California Edison Company (an electric utility) obtained agency permission to sluice sand from Democrat Dam in 1986, anticipating that the sand would be washed from the channel the subsequent winter. However, several years of drought ensued, and the sand remained within the channel until high flows in 1992 (Figure 6) (Dan Christenson, California Department of Fish and Game, Kernville, personal communication 1992).

On those dams larger than small diversion structures, the sediment accumulated around the outlet is usually silt and clay, which can be deleterious to aquatic habitat and water quality (Bjornn and Reiser 1991). Opening of the low-level outlet on Los Padres Dam on the Carmel River, California, released silt and clay, which resulted in a large fish kill in 1980 (Buel 1980). The dam operator has since been required to use a suction dredge to maintain the outlet (D. Dettman, Monterey Peninsula Water Management District, personal communication 1990). On the Dan River in Danville, Virginia, toxicity testing is required during sluicing of fine sediments from Schoolfield Dam (FERC 1995). Accidental sluices have also occurred during maintenance or repair work, sometimes resulting in substantial cleanup operations for the dam operators (Ramey and Beck 1990, Kondolf 1995).

Less serious effects are likely when the sediment pulse is released during high flows, which will have elevated suspended loads, but which can typically disperse the sediment for some distance downstream. The Jansanpei Reservoir in Taiwan is operated to provide

power for the Taiwan Sugar Company, which needs power for processing only from November to April. The reservoir is left empty with open low-level outlets for the first two months of the rainy season (May and June), so sediments accumulated over the months of July–April can be flushed by the first high flows of the season before storing water in the latter part of the rainy season (Hwang 1994).

At present, sediment pass-through is not commonly done in North America, probably because of the limited capacity of many low-level outlets and because of concern that debris may become stuck in the outlets, making them impossible to close later, and making diversions impossible during the rest of the wet season until flows drop sufficiently to fix the outlets. These concerns can probably be addressed with engineering solutions, such as trash racks upstream of the outlet and redundancies in gate structures on the low-level outlet. Large reservoirs cannot be drawn down sufficiently to transport sediment through their length to the outlet works, for such a drawdown would eliminate carryover storage from year to year, an important benefit from large reservoirs.

In most reservoirs in the United States, sediment is simply permitted to accumulate. Active management of sediment in reservoirs has been rare, largely because the long-term costs of reservoir storage lost to sedimentation have not been incorporated into decision-making and planning for reservoirs. Most good reservoir sites are already occupied by reservoirs, and where suitable replacement reservoir sites exist, the current cost of replacement storage (about US\$3/m<sup>3</sup> in California) is considerably higher than original storage costs. Mechanical removal is prohibitively expensive in all but small reservoirs, with costs of \$15–\$50/m<sup>3</sup> cited for the Feather River in California (Kondolf 1995).

#### Channel Narrowing and Fine Sediment Accumulation Below Dams

While many reservoirs reduce flood peaks, the degree of reduction varies considerably depending upon reservoir size and operation. The larger the reservoir capacity relative to river flow and the greater the flood pool available during a given flood, the greater the reduction in peak floods. Flood control reservoirs typically contain larger floods than reservoirs operated solely for water supply. Downstream of the reservoir, encroachment of riparian vegetation into parts of the active channel may occur in response to a reduction in annual flood scour and sediment deposition (Williams and Wolman 1984). Channel narrowing has been greatest below reservoirs that are large enough to contain the river's largest floods. In some cases, fine sediment

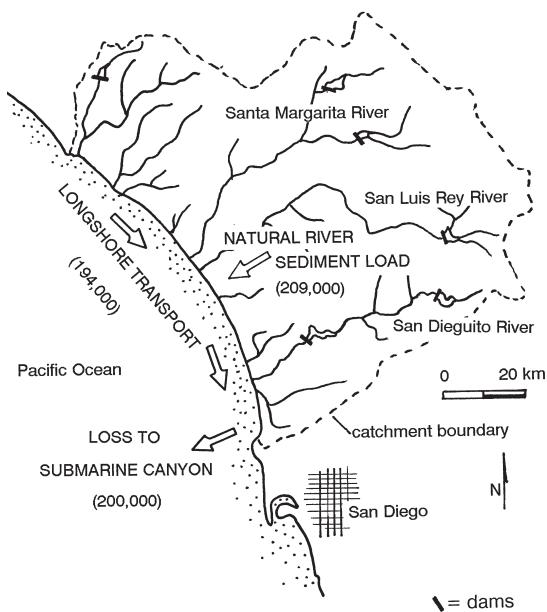
delivered to the river channel by tributaries accumulates in spawning gravels because the reservoir-reduced floods are inadequate to flush the riverbed clean.

On the Trinity River, California, construction of Trinity Dam in 1960 reduced the two-year flow from 450 m<sup>3</sup>/sec to 9 m<sup>3</sup>/sec. As a result of this dramatic change in flood regime, encroachment of vegetation and deposition of sediment has narrowed the channel to 20%–60% of its predam width (Wilcock and others 1996). Accumulation of tributary-derived decomposed granitic sand in the bed of the Trinity River has led to a decline of invertebrate and salmonid spawning habitat (Fredericksen, Kamine and Associates 1980). Experimental, controlled releases were made in 1991, 1992, 1993, 1995, and 1996 to determine the flows required to flush the sand from the gravels (Wilcock and others 1996).

Such flushing flows increasingly have been proposed for reaches downstream of reservoirs to remove fine sediments accumulated on the bed and to scour the bed frequently enough to prevent encroachment of riparian vegetation and narrowing of the active channel (Reiser and others 1989). The objectives of flushing flows have not always been clearly specified, nor have potential conflicts always been recognized. For example, a discharge that mobilizes the channel bed to flush interstitial fine sediment will often produce comparable transport rates of sand and gravel, eliminating the selective transport of sand needed to reduce the fine sediment content in the bed, and resulting in a net loss of gravel from the reach given its lack of supply from upstream (Kondolf and Wilcock 1996).

#### Coastal Erosion

Beaches serve to dissipate wave action and protect coastal cliffs. Sand may be supplied to beaches from headland erosion, river transport, and offshore sources. If sand supply is reduced through a reduction in sediment delivery from rivers and streams, the beach may become undernourished, shrink, and cliff erosion may be accelerated. This process by which beaches are reduced or maintained can be thought of in terms of a sediment balance between sources of sediment (rivers and headland erosion), the rate of longshore transport along the coast, and sediment sinks (such as loss to deeper water offshore) (Inman 1976). Along the coast of southern California, discrete coastal cells can be identified, each with distinct sediment sources (sediment delivery from river mouths) and sinks (losses to submarine canyons). For example, for the Oceanside littoral cell, the contribution from sediment sources (Santa Margarita, San Luis Rey, and San Dieguito rivers and San Mateo and San Juan creeks) was estimated,

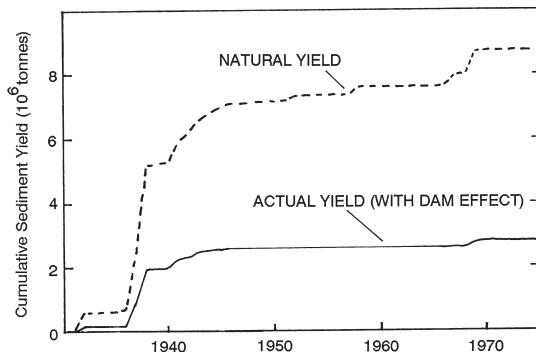


**Figure 7.** The Oceanside littoral cell, showing estimated sand and gravel supply from rivers, longshore transport, and loss to the La Jolla submarine canyon (in  $\text{m}^3/\text{yr}$ ). (Adapted from Inman 1985, used by permission.)

under natural conditions, at  $209,000 \text{ m}^3/\text{yr}$ , roughly balancing the longshore transport rate of  $194,000 \text{ m}^3/\text{yr}$  and the loss into the La Jolla submarine canyon of  $200,000 \text{ m}^3/\text{yr}$  (Figure 7) (Inman 1985).

The supply of sediment to beaches from rivers can be reduced by dams because dams trap sediment and because large dams typically reduce the magnitude of floods, which transport the majority of sediment (Jenkins and others 1988). In southern California rivers, most sediment transport occurs during infrequent floods (Brownlie and Taylor 1981), but it is these energetic events that flood control dams are constructed to prevent. On the San Luis Rey River, one of the principal sources of sediment for the Oceanside littoral cell, Henshaw Dam reduced suspended sediment yield by 6 million tonnes (Figure 8), total sand and gravel yield by 2 million tonnes (Brownlie and Taylor 1981).

Ironically, by trapping sediment and reducing peak flows, the flood control dams meant to reduce property damage along rivers contribute to property damage along the coast by eliminating sediment supply to the protective beaches. For the rivers contributing sediment to the Oceanside littoral cell as a whole, sediment from about 40% of the catchment area is now cut off by dams. Because the rate of longshore transport (a



**Figure 8.** Cumulative reduction in suspended sediment supply from the catchment of the San Luis Rey River due to construction of Henshaw Dam. (Adapted from Brownlie and Taylor 1981.)

function of wave energy striking the coast) is unchanged, the result has been a sediment deficit, loss of beach sand, and accelerated coastal erosion (Inman 1985).

The effects of sediment trapping by dams has been exacerbated in combination with other effects such as channelization and instream sand and gravel mining (discussed below). Although sluicing sediment from reservoirs has been considered in the Los Angeles Basin, passing sediment through urban flood control channels could cause a number of problems, including decreasing channel capacity (Potter 1985). "Beach nourishment" with imported sediment dredged from reservoirs and harbors has been implemented along many beaches in southern California (Inman 1976, Allayaud 1985, Everts 1985). In some cases, sand is transported to critical locations on the coast via truck or slurry pipelines. The high costs of transportation, sorting for the proper size fractions, and cleaning contaminated dredged material, as well as the difficulty in securing a stable supply of material make these options infeasible in some places (Inman 1976).

To integrate considerations of fluvial sediment supply in the maintenance of coastal beaches into the existing legal framework, a system of "sand rights," analogous to water rights, has been proposed (Stone and Kaufman 1985).

#### Gravel Mining in River Systems

Sand and gravel are used as construction aggregate for roads and highways (base material and asphalt), pipelines (bedding), septic systems (drain rock in leach fields), and concrete (aggregate mix) for highways and buildings. In many areas, aggregate is derived primarily

from alluvial deposits, either from pits in river floodplains and terraces, or by in-channel (instream) mining, removing sand and gravel directly from river beds with heavy equipment.

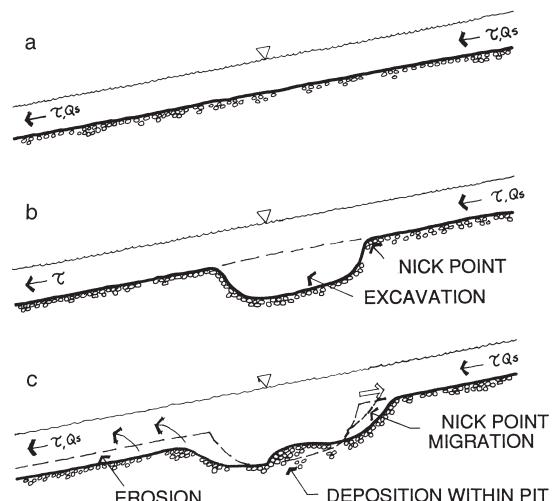
Sand and gravel that have been subject to prolonged transport in water (such as active channel deposits) are particularly desirable sources of aggregate because weak materials are eliminated by abrasion and attrition, leaving durable, rounded, well-sorted gravels (Barksdale 1991). Instream gravels thus require less processing than many other sources, and suitable channel deposits are commonly located near the markets for the product or on transportation routes, reducing transportation costs (which are the largest costs in the industry). Moreover, instream gravels are typically of sufficiently high quality to be classified as "PCC-grade" aggregate, suitable for use in production of Portland Cement concrete (Barksdale 1991).

### Effects of Instream Gravel Mining

Instream mining directly alters the channel geometry and bed elevation and may involve extensive clearing, diversion of flow, stockpiling of sediment, and excavation of deep pits (Sandecki 1989). Instream mining may be carried out by excavating trenches or pits in the gravel bed, or by gravel bar skimming (or scalping), removing all the material in a gravel bar above an imaginary line sloping upwards from the summer water's edge. In both cases, the preexisting channel morphology is disrupted and a local sediment deficit is produced, but trenching also leaves a headcut on its upstream end. In addition to the direct alterations of the river environment, instream gravel mining may induce channel incision, bed coarsening, and lateral channel instability (Kondolf 1994).

#### Channel Incision and Bed Coarsening

By removing sediment from the channel, instream gravel mining disrupts the preexisting balance between sediment supply and transporting capacity, typically inducing incision upstream and downstream of the extraction site. Excavation of pits in the active channel alters the equilibrium profile of the streambed, creating a locally steeper gradient upon entering the pit (Figure 9). This over-steepened nickpoint (with its increased stream power) commonly erodes upstream in a process known as headcutting. Mining-induced incision may propagate upstream for kilometers on the main river (Scott 1973, Stevens and others 1990) and up tributaries (Harvey and Schumm 1987). Gravel pits trap much of the incoming bedload sediment, passing hungry water downstream, which typically erodes the channel bed

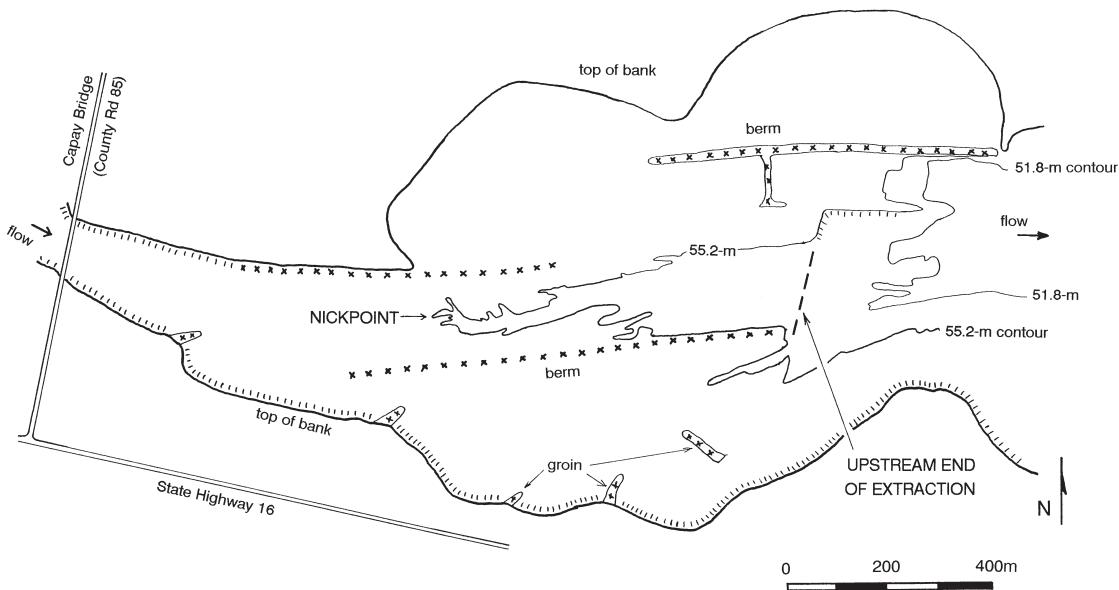


**Figure 9.** Incision produced by instream gravel mining. **a:** The initial, preextraction condition, in which the river's sediment load ( $Q_s$ ) and the shear stress ( $\tau$ ) available to transport sediment are continuous through the reach. **b:** The excavation creates a nickpoint on its upstream end and traps sediment, interrupting the transport of sediment through the reach. Downstream, the river still has the capacity to transport sediment ( $\tau$ ) but no sediment load. **c:** The nickpoint migrates upstream, and hungry water erodes the bed downstream, causing incision upstream and downstream. (Reprinted from Kondolf 1994, with kind permission of Elsevier Science-NL.)

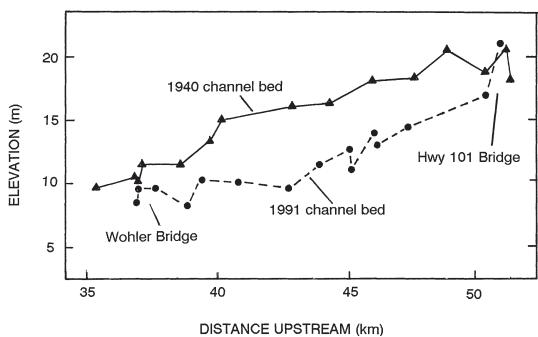
and banks to regain at least part of its sediment load (Figure 9).

A vivid example of mining-induced nickpoint migration appears on a detailed topographic map prepared from analysis of 1992 aerial photographs of Cache Creek, California. The bed had been actively mined up to the miner's property boundary about 1400 m downstream of Capay Bridge, with a 4-m high headwall on the upstream edge of the excavation. After the 1992 winter flows, a nickpoint over 3 m deep extended 700 m upstream from the upstream edge of the pit (Figure 10). After the flows of 1993, the nickpoint had migrated another 260 m upstream of the excavation (not shown), and in the 50-yr flood of 1995, the nickpoint migrated under the Capay Bridge, contributing to the near-failure of the structure (Northwest Hydraulics Consultants 1995).

On the Russian River near Healdsburg, California, instream pit mining in the 1950s and 1960s caused channel incision in excess of 3–6 m over an 11-km length of river (Figure 11). The formerly wide channel of the Russian River is now incised, straighter, prevented from migrating across the valley floor by levees, and thus unable to maintain the diversity of successional



**Figure 10.** Nickpoint upstream of 4-m-deep gravel pit in the bed of Cache Creek, California, as appearing on a topographic map of Cache Creek prepared from fall 1992 aerial photographs. Original map scale 1:2400, contour interval 0.6 m.



**Figure 11.** Longitudinal profile of the Russian River, near Healdsburg, California, showing incision from 1940 to 1991. (Redrawn from Florsheim and Goodwin 1993, used by permission.)

stages of vegetation associated with an actively migrating river (Florsheim and Goodwin 1993). With continued extraction, the bed may degrade down to bedrock or older substrates under the recent alluvium (Figure 12). Just as below dams, gravel-bed rivers may become armored, limiting further incision (Dietrich and others 1989), but eliminating salmonid spawning habitat.

In many rivers, gravel mining has been conducted downstream of dams, combining the effects of both impacts to produce an even larger sediment deficit. On the San Luis Rey River downstream of Henshaw Dam,

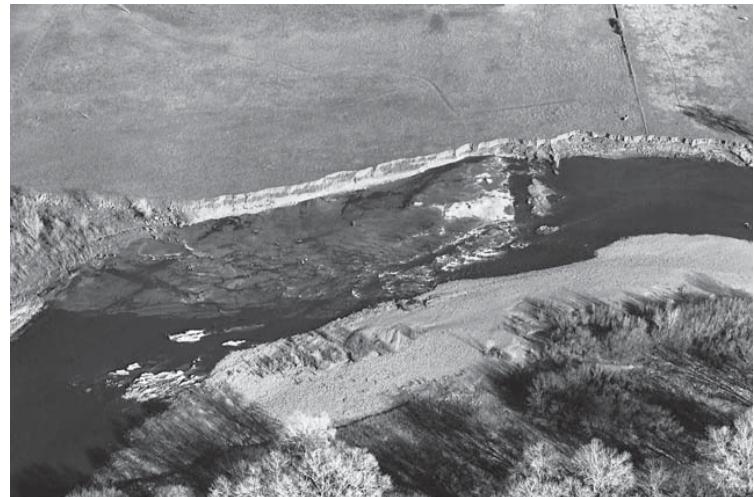
five gravel mining operations within 8 km of the Highway 395 bridge extract a permitted volume of approximately 300,000 m<sup>3</sup>/yr, about 50 times greater than the estimated postdam bedload sediment yield (Kondolf and Larson 1995), further exacerbating the coastal sediment deficit.

Incision of the riverbed typically causes the alluvial aquifer to drain to a lower level, resulting in a loss of aquifer storage, as documented along the Russian River (Sonoma County 1992). The Lake County (California) Planning Department (Lake County 1992) estimated that incision from instream mining in small river valleys could reduce alluvial aquifer storage from 1% to 16%, depending on local geology and aquifer geometry.

#### Undermining of Structures

The direct effects of incision include undermining of bridge piers and other structures, and exposure of buried pipeline crossings and water-supply facilities. Headcutting of over 7 m from an instream gravel mine downstream on the Kaoping River, Taiwan, threatens the Kaoping Bridge, whose downstream margin is now protected with gabions, massive coastal concrete jacks, and lengthened piers (Figure 13).

On the San Luis Rey River, instream gravel mining has not only reduced the supply of sediment to the coast, but mining-induced incision has exposed aqueducts, gas pipelines, and other utilities buried in the



**Figure 12.** Tributary to the Sacramento River near Redding, California, eroded to bedrock as a result of instream mining. (Photograph by author, January 1989.)



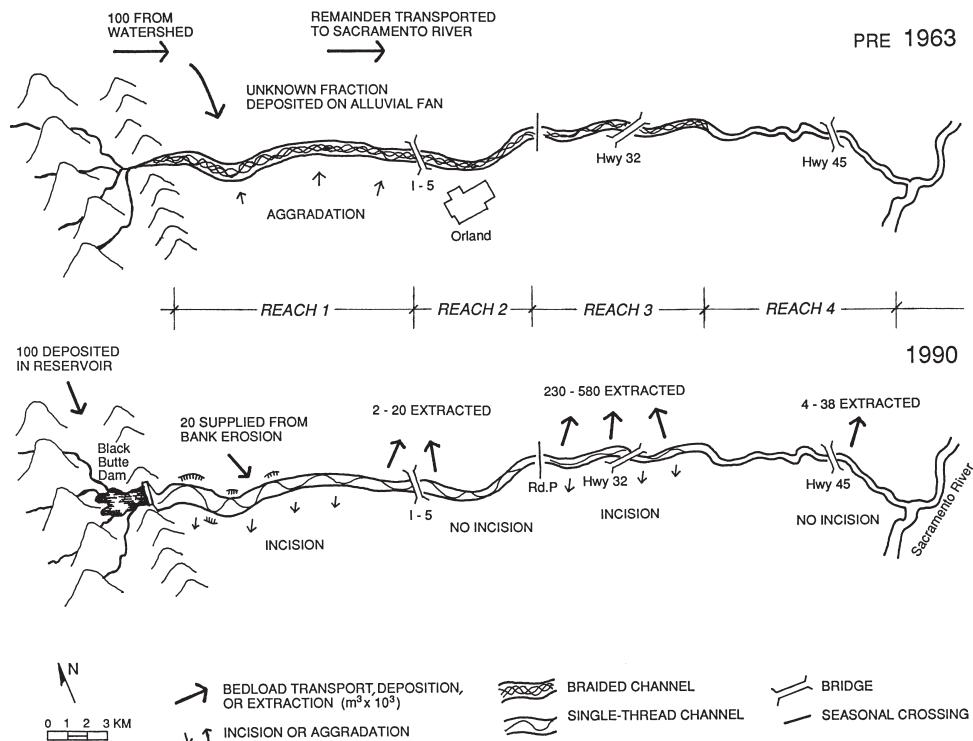
**Figure 13.** Undercutting and grade control efforts along the downstream side of the Kaoping Bridge over the Kaoping River, Taiwan, to control incision caused by massive gravel mining downstream. (Photograph by the author, October 1995.)

bed and exposed the footings of a major highway bridge (Parsons Brinkeroff Gore & Storrie, Inc. 1994). The Highway 32 bridge over Stony Creek, California, has been undermined as a result of intensive gravel mining directly upstream and downstream of the bridge (Kon-dolf and Swanson 1993). Municipal water supply intakes have been damaged or made less effective on the Mad (Lehre and others 1993) and Russian (Marcus 1992) rivers in California as the layer of overlying gravel has decreased due to incision.

#### Channel Instability

Instream mining can cause channel instability through disruption of the existing equilibrium channel

form or undercutting of banks caused by incision. Gravel mining in Blackwood Creek, California, caused incision and channel instability upstream and downstream, increasing the stream's sediment yield fourfold (Todd 1989). As a nickpoint migrates upstream, its incision and bank undercutting release additional sediment to downstream reaches, where the channel may aggrade and thereby become unstable (Sear and Archer 1995). Incision in the mainstem Russian River propagated up its tributary Dry Creek, resulting in undercutting of banks, channel widening (from 10 to 400 m in places), and destabilization, increasing delivery of sand and gravel to the mainstem Russian River (Harvey and Schumm 1987).



**Figure 14.** Sediment budget for Stony Creek, California. (Reprinted from Kondolf and Swanson 1993, used by permission of Springer-Verlag, New York.)

A more subtle but potentially significant effect is the increased mobility of the gravel bed if the pavement (the active coarse surface layer) (Parker and Klingeman 1982) is disrupted by mining. Similarly, removal of gravel bars by instream mining can eliminate the hydraulic control for the reach upstream, inducing scour of upstream riffles and thus washout of incubating salmon embryos (Pauley and others 1989).

#### Secondary Effects of Instream Mining

Among the secondary effects of instream mining are reduced loading of coarse woody debris in the channel, which is important as cover for fish (Bisson and others 1987). Extraction (even bar skimming at low extraction rates) typically results in a wider, shallower streambed, leading to increased water temperatures, modification of pool-riffle distribution, alteration of intergravel flow paths, and thus degradation of salmonid habitat.

#### Resolving the Effects of Instream Mining from Other Influences

In many rivers, several factors potentially causing incision in the channel may be operating simultaneously, such as sediment trapping by dams, reduced

channel migration by bank protection, reduced overbank flooding from levees, and instream mining. However, in many rivers the rate of aggregate extraction is an order of magnitude greater than the rate of sediment supply from the drainage basin, providing strong evidence for the role of extraction in causing channel change. On Stony Creek, the incision produced by Black Butte Reservoir could be clearly distinguished from the effects of instream mining at the Highway 32 bridge by virtue of the distinct temporal and spatial patterns of incision. The dam-induced incision was pronounced downstream of the reservoir soon after its construction in 1963. By contrast, the instream mining (at rates exceeding the predam sediment supply by 200%–600%, and exceeding the postdam sediment supply by 1000%–3000%) produced incision of up to 7 m centered in the mining reach near the Highway 32 bridge, after intensification of gravel mining in the 1970s (Kondolf and Swanson 1993) (Figure 14).

#### Management of Instream Gravel Mining

Instream mining has long been prohibited in the United Kingdom, Germany, France, the Netherlands, and Switzerland, and it is being reduced or prohibited

in many rivers where impacts are apparent in Italy, Portugal, and New Zealand. In the United States and Canada, instream mining continues in many rivers, despite increasing public opposition and recognition of environmental effects by regulatory agencies. Instream mines continue to operate illegally in many places, such as the United States (Los Angeles Times 1992) and Taiwan.

Strategies used to manage instream mining range widely, and in many jurisdictions there is no effective management. One strategy is to define a redline, a minimum elevation for the thalweg (the deepest point in a channel cross section) along the river, and to permit mining so long as the bed does not incise below this line (as determined by annual surveys of river topography). The redline approach addresses a problem common to many permits in California, which have specified that extraction is permitted “*x* feet below the channel bed” or only down to the thalweg, without stating these limits in terms of actual elevations above a permanent datum. Thus the extraction limits have migrated vertically downward as the channel incises.

Another approach is to estimate the annual bedload sediment supply from upstream (the replenishment rate) and to limit annual extraction to that value or some fraction thereof, considered the “safe yield.” The replenishment rate approach has the virtue of scaling extraction to the river load in a general way, but bedload transport can be notoriously variable from year to year. Thus, this approach is probably better if permitted extraction rates are based on new deposition that year rather than on long-term average bedload yields. More fundamentally, however, the notion that one can extract at the replenishment rate without affecting the channel ignores the continuity of sediment transport through the river system. The mined reach is the “upstream” sediment source for downstream reaches, so mining at the replenishment rate could be expected to produce hungry water conditions downstream. Habitat managers in Washington state have sought to limit extraction to 50% of the transport rate as a first-cut estimate of safe yield to minimize effects upon salmon spawning habitat (Bates 1987).

Current approaches to managing instream mining are based on empirical studies. While a theoretical approach to predicting the effects of different levels of gravel mining on rivers would be desirable, the inherent complexity of sediment transport and channel change makes firm, specific predictions impossible at present. Sediment transport models can provide an indication of potential channel incision and aggradation, but all such models are simplifications of a complex reality, and the utility of existing models is limited by unreliable formu-

lation of sediment rating curves, variations in hydraulic roughness, and inadequate understanding of the mechanics of bed coarsening and bank erosion (NRC 1983).

In 1995, the US Department of Transportation issued a notice to state transportation agencies indicating that federal funds will no longer be available to repair bridges damaged by gravel mining, a move that may motivate more vigorous enforcement of regulations governing gravel mining in rivers by states.

### Floodplain Pit Mining

Floodplain pit mining transforms riparian woodland or agricultural land into open pits, which typically intersect the water table at least seasonally (Figure 15). Floodplain pit mining has effectively transformed large areas of floodplain into open-water ponds, whose water level commonly tracks that of the main river closely, and which are commonly separated from the active channel by only a narrow strip of unmined land. Because the pits are in close hydrologic continuity with the alluvial water table, concerns are often raised that contamination of the pits may lead to contamination of the alluvial aquifer. Many existing pits are steep-sided (to maximize gravel yield per unit area) and offer relatively limited wetlands habitat, but with improved pit design (e.g., gently sloping banks, irregular shorelines), greater wildlife benefits are possible upon reclamation (Andrews and Kinsman 1990, Giles 1992).

In many cases, floodplain pits have captured the channel during floods, in effect converting formerly off-channel mines to in-channel mines. Pit capture occurs when the strip of land separating the pit from the channel is breached by lateral channel erosion or by overflowing floodwaters. In general, pit capture is most likely when flowing through the pit offers the river a shorter course than the currently active channel.

When pit capture occurs, the formerly off-channel pit is converted into an in-channel pit, and the effects of instream mining can be expected, notably propagation of incision up- and downstream of the pit. Channel capture by an off-channel pit on the alluvial fan of Tujunga Wash near Los Angeles created a nickpoint that migrated upstream, undermining highway bridges (Scott 1973). The Yakima River, Washington, was captured by two floodplain pits in 1971, and began undercutting the highway for whose construction the pits had been originally excavated (Dunne and Leopold 1978). High flows on the Clackamas River, Oregon, in 1996 resulted in capture of an off-channel pit and resulted in 2 m of incision documented about 1 km upstream



**Figure 15.** Floodplain pit along Cottonwood Creek near Redding, California. (Photograph by author, January 1989.)



**Figure 16.** Incision of Clackamas River approximately one mile upstream of captured gravel pit near Barton, Oregon. The three men on the right are standing on the bed of a side channel that formerly joined the mainstem at grade, but is now elevated about 2 m above the current river bed, after upstream migration of a nickpoint from the gravel pit. View upstream. (Photograph by author, April 1996.)

(Figure 16) and caused undermining of a building at the gravel mine site (Figure 17).

Off-channel gravel pits have been used successfully as spawning and rearing habitat for salmon and trout in Idaho (Richards and others 1992) and on the Olympic Peninsula of Washington (Partee and Samuelson 1993). In warmer climates, however, these off-channel pits are likely to heat up in the summer and provide habitat for warm-water fish that prey on juvenile salmonids. During floods, these pits may serve as a source of warm-water fish to the main channel, and juvenile salmon can become stranded in the pits. The Merced River, California, flows through at least 15 gravel pits, of which seven were excavated in the active channel, and eight were

excavated on the floodplain and subsequently captured the channel (Vick 1995). Juvenile salmon migrating towards the ocean become disoriented in the quiet water of these pits and suffer high losses to predation by largemouth and smallmouth bass (*Micropterus salmoides* and *M. dolomieu*). On the nearby Tuolumne River, a 1987 study by the California Department of Fish and Game estimated that juvenile chinook salmon migrating oceanward suffered 70% losses to predation (mostly in gravel pits) in the three days required to traverse an 80-km reach from LaGrange Dam to the San Joaquin River (EA 1992). To reduce this predation problem, funding has been allocated to repair breached levees at one gravel pit on the Merced River at a cost of



**Figure 17.** Building undercut by bank erosion as the Clackamas River flows through a captured gravel pit near Bar-ton, Oregon. (Photograph by the author, April 1996.)

US\$361,000 (Kondolf and others 1996a), and refilling of two pits on the Tuolumne River has been proposed at a cost of \$5.3 million (McBain and Trush 1996).

#### Aggregate Supply, Quality, and Uses

Aggregates can be obtained from a wide variety of sources (besides fluvial deposits), such as dry terrace mines, quarries (from which rock must be crushed, washed, and sorted), dredger tailings, reservoir deltas, and recycling concrete rubble. These alternative sources usually require more processing and often require longer transportation. Although their production costs are commonly higher, these alternative sources avoid many impacts of riverine extraction and may provide other benefits, such as partially restoring reservoir capacity lost to sedimentation and providing opportunities for ecological restoration of sterile dredger tailings.

In California, most aggregate that has been produced to date has been PCC-grade aggregate from instream deposits or recent channel deposits in flood-plains. These deposits were viewed as virtually infinite in supply, and these high-grade aggregates have been used in applications (such as road subbase) for which other, more abundant aggregates (e.g., crushed rock from upland quarries) would be acceptable. Given that demand for aggregate commonly exceeds the supply of sand and gravel from the catchment by an order of magnitude or more, public policy ought to encourage reservation of the most valuable aggregate resources for the highest end uses. PCC-grade instream gravels should be used, to the extent possible, only in applications requiring such high-quality aggregate. Upland quarry and terrace pit sources of lower-grade aggregate should

be identified, and alternative sources such as mining gold dredger tailings or reservoir accumulations, should be evaluated. Wherever possible, concrete rubble should be recycled to produce aggregate for many applications.

Reservoir sediments are a largely unexploited source of building materials in the United States. In general, reservoir deposits will be attractive sources of aggregates to the extent that they are sorted by size. The depositional pattern within a reservoir depends on reservoir size and configuration and the reservoir stage during floods. Small diversion dams may have a low trap efficiency for suspended sediments and trap primarily sand and gravel, while larger reservoirs will have mostly finer-grained sand, silt, and clay (deposited from suspension) throughout most of the reservoir, with coarse sediment typically concentrated in deltas at the upstream end of the reservoir. These coarse deposits will extend farther if the reservoir is drawn down to a low level when the sediment-laden water enters. In many reservoirs, sand and gravel occur at the upstream end, silts and clays at the downstream end, and a mixed zone of interbedded coarse and fine sediments in the middle.

Sand and gravel are mined commercially from some debris basins in the Los Angeles Basin and from Rollins Reservoir on the Bear River in California. In Taiwan, most reservoir sediments are fine-grained (owing to the caliber of the source rocks), but where coarser sediments are deposited, they are virtually all mined for construction aggregate (J. S. Hwang, Taiwan Provincial Water Conservancy Bureau, Taichung City, personal communication 1996). In Israel, the 2.2-km-long Shikma Reservoir is mined in its upper 600 m to produce sand and gravel for construction aggregate, and in its lower 1 km to produce clay for use in cement, bricks, clay seals

for sewage treatment ponds, and pottery (Laronne 1995, Taig 1996). The zone of mixed sediments in the mid-section of the reservoir is left unexcavated and vegetated so it permits only fine-grained washload to pass downstream into the lower reservoir, thereby ensuring continued deposition of sand and gravel in the upstream portion of the reservoir and silt and clay in the downstream portion. The extraction itself restores some of the reservoir capacity lost to sedimentation. Similarly, on Nahal Besor, Israel, the off-channel Lower Rehovot Reservoir was deliberately created (to provide needed reservoir storage) by gravel mining. Water is diverted into the reservoir through a spillway at high flows, as controlled by a weir across the channel (Cohen 1996).

Extraction of reservoir sediments partially mitigates losses in reservoir capacity from sedimentation. Because of the high costs and practical problems with construction of replacement reservoir storage and/or mechanical removal of sediment, restoration of reservoir capacity may be seen as one of the chief benefits from mining aggregate and industrial clays from reservoirs. If these benefits are recognized, mining reservoir deposits may become more economically attractive in the future, especially if the environmental costs of instream and floodplain mining become better recognized and reflected in the prices of those aggregates. In the United States, construction of reservoirs was often justified partially by anticipated recreational benefits, and thus reservoir margins are commonly designated as recreation areas, posing a potential conflict with an industrial use such as gravel mining. Furthermore, wetlands may form in reservoir delta deposits, posing potential conflicts with regulations protecting wetlands.

## Conclusions

Comprehensive management of gravel and sand in river systems should be based on a recognition of the natural flow of sediment through the drainage network and the nature of impacts (to ecological resources and to infrastructure) likely to occur when the continuity of sediment is disrupted. A sediment budget should be developed for present and historical conditions as a fundamental basis for evaluation of these impacts, many of which are cumulative in nature.

The cost of sediment-related impacts of existing and proposed water development projects and aggregate mines must be realistically assessed and included in economic evaluations of these projects. The (very real) costs of impacts such as bridge undermining, loss of spawning gravels, and loss of beach sand are now externalized, borne by other sectors of society rather

than the generators of the impacts. The notion of sediment rights (analogous to water rights) should be explored as a framework within which to assess reservoir operations and aggregate mining for these impacts.

Sediment pass-through should be undertaken in reservoirs (where feasible) to mimic the natural flux of sediment through the river system. Pass-through should be done only during high flows when the sediment is likely to continue dispersing downstream from the reservoir. The cost of installing larger low-level outlets (where necessary) on existing dams will generally be less than costs of mechanical removal of sediments over subsequent decades. In larger reservoirs where sediment cannot be passed through a drawn-down reservoir, alternative means of transporting the gravel and sand fractions around (or through) reservoirs using tunnels, pipes, or barges should be explored.

Flushing flows should be evaluated not only in light of potential benefits of flushing fine sediments from mobilized gravels, but also the potential loss of gravel from the reach due to downstream transport.

The regional context of aggregate resources, market demand, and the environmental impacts of various alternatives must be understood before any site-specific proposal for aggregate extraction can be sensibly reviewed. In general, effects of aggregate mining should be evaluated on a river basin scale, so that the cumulative effects of extraction on the aquatic and riparian resources can be recognized. Evaluation of aggregate supply and demand should be undertaken on the basis of production-consumption regions, encompassing the market for aggregate and all potential sources of aggregate within an economical transport distance.

The finite nature of high-quality alluvial gravel resources must be recognized, and high-quality PCC-grade aggregates should be reserved only for the uses demanding this quality material (such as concrete). Alternative sources should be used in less demanding applications (such as road subbase). The environmental costs of instream mining should be incorporated into the price of the product so that alternative sources that require more processing but have less environmental impact become more attractive.

Instream mining should not be permitted in rivers downstream of dams by virtue of the lack of supply from upstream or in rivers with important salmon spawning (unless it can be shown that the extraction will not degrade habitat).

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