

**INTERNATIONAL COURT OF JUSTICE**

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**DISPUTE CONCERNING  
NAVIGATIONAL AND RELATED RIGHTS  
(COSTA RICA v NICARAGUA)**

**COUNTER - MEMORIAL  
OF THE REPUBLIC OF NICARAGUA**

**VOLUME II**

**29 May 2007**



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## ANNEX 1

### **MONTEALEGRE-VELASCO TREATY. GRANADA, 16 AUGUST 1823.**

Assembled the gentlemen who compose it and the Envoy of Costa Rica, with the objective of concluding a treaty between the two Governments, the Commissioner proposed the following articles, as set forth in his instructions, whose competent credential is returned to him upon presentation thereof:

1. Both governments mutually recognize each other in all their branches. Approved.
2. Both governments will mutually assist each other in the event of a foreign invasion or internal disorder with up to five hundred men, considering the current forces of both Provinces, which should not be narrowly understood as if more can be provided, it shall be done. Approved.
3. If the road from Sarapiquí or San Carlos is opened to expedite communication between the Province of Costa Rica and this one, both will concur, in proportion to their powers and populations, in the expenses incurred in the garrison that will protect the commerce and security of both Provinces. Approved.
4. Costa Rica will supply to the Province of Granada tobacco for its state monopoly wholesale stores, as long as they remain a state-controlled monopoly, at twenty cents per pound in its own stores, and the Government of Granada will pay one third of the annual order at the time of shipment and the other two thirds four months after receipt thereof, all of which is to be understood upon cessation of the difficulties with the Government of Leon. Approved.
5. With respect to the debt acquired by the government of Granada with that of Costa Rica on account of two tobacco shipments. As regards the first one, valued at two thousand three hundred pesos and ten cents, it has paid one thousand five hundred, received by C. Mora, and five hundred fifty on account of the freight costs, owing only three hundred and twenty pesos and ten cents, which will be paid on this date and will be received by the Envoy and Commissioner, and as regards the second one, valued at three thousand sixty-five pesos and thirty-five cents, an order of payment will be issued against the Administrator of Masaya, D. Gregorio Bolaños, and his

guarantors, for the forty hundredweights that he received in January of this year, for which he has not rendered accounts to date, and the rest will be paid within two months. Approved.

6. The mail cost will be proportionally gauged, two thirds corresponding to the two contracting governments, with the understanding that mails will not be intercepted or otherwise its full cost will be paid. Approved.

7. As regards reciprocal commerce between both Provinces, it will be stipulated... (the rights are set forth in accordance to instructions).

8. Given that the party of Nicoya, due to its topographic location and proximity, could receive greater benefits from the government of Costa Rica, the government of Granada will inform as to its determination. Approved.

9. The ratification of the foregoing treaties is reserved by the Government of Costa Rica, as set forth in the credential of its Envoy, and a period of one and a half months is pre-established for the monthly mail to come and return, which seems opportune in this respect. Approved.

And as regards the question on whether or not this Government, which now depends on the Sovereign Constituent Assembly, has the authority to enter into treaties like the foregoing and whether or not such treaties can be ratified, it was affirmatively resolved, but always with the character of temporariness and subject to the approval of the Sovereign Assembly, which will be informed in this respect. Consequently, after rereading the foregoing context in its entirety to the contracting parties, this Governance Board and the Legatee of Costa Rica, D. Mariano Montealegre, acting in the name of his Government, solemnly commit to the foregoing agreements dependent on the aforesaid ratification, for the time being making the demonstrations that are possible and this Government undertakes to solemnly ratify this treaty in such terms that denote its rejoice, and they sign at this Sessions Hall in Granada, on the seventeenth day of the month of August in the year one thousand eight hundred and twenty-three, the first year of our freedom.

José Antonio Velasco – Mariano Montealegre – Juan Argüello – Bernabé Montiel – Venancio Fernández – Nicolás de la Rocha – Juan José Guzmán, Secretary.

## ANNEX 2

### MONTEALEGRE-SOLIS TREATY. LEON, 9 SEPTEMBER 1823.

1. That he recognizes, in the name of the Province of Costa Rica, the Government of Leon as free and independent, and the latter in the same manner recognizes that of Cartago, and by virtue thereof they proceed to the other pacts that each contracting party shall religiously observe until the Constitution of the State to be established by the National Constituent Assembly of the United Provinces determines the fate of Leon and Costa Rica.
2. That the main object of these treaties being an alliance and reciprocity, there shall be sincere and perpetual peace between the two contracting Provinces and they shall fraternally assist each other as stated below. If any of the two Provinces is attacked by a foreign enemy, the Province of Leon, as long as the division with Granada continues, shall assist the Province of Costa Rica with five hundred men and with one thousand if the entire Province was concentrated; and the Province of Cartago shall assist the former with a force of five hundred men, who shall be paid according to the regulations of Spain, and if the aforementioned regulations changed in any of the Provinces, the highest salaries shall be paid.
3. Likewise, under the same terms, they shall reciprocally assist each other in the internal struggles that arise in either of the two Provinces, either to do away with the authorities that are lawfully constituted or for any other reason aimed to disturb order and peace.
4. The Government of Costa Rica shall remain neutral in any disputes between Leon and Granada and thus shall not assist one or the other, and Leon shall do the same if any disputes arise between Granada and Cartago.
5. Costa Rica undertakes to recognize in all judicial matters the Courts of Justice of this capital city in respect of second and third instances, without applying the laws of sovereign immunity.
6. As a consequence of the preceding articles, Costa Rica, on its part, is bound to concur in the income of the magistrates and their office expenses and salaries with an amount proportional to the wealth of the peoples that are subject to the recognition and protection of the aforesaid courts.

7. As regards the changes to the rights of commerce proposed by the Envoy of Costa Rica, as they entail serious difficulties that could be speedily surmounted by the Assembly, each Province shall follow, in the mean time, as it may deem convenient, the general or particular regulations, reserving the right to deal with this matter later according to the circumstances that arise in the future.

8. As regards the fortress of the San Juan River that he requests on behalf of the Government of Costa Rica, the resolution and agreement on this matter is deferred until the Constitution of the United Provinces has been established, and if it is delayed for any reason, the aforementioned fortress will be provided according to the engineering plans and both Provinces will contribute, as shall be agreed at that time, the best data and knowledge.

9. Costa Rica undertakes to provide good quality tobacco as may be requested by this Government, at twenty-five pesos per hundredweight in its stores, free of duties, and this Government undertakes to make the respective payments in three installments, to wit: the first one in cash at the time that the order is placed in the month of November, the second one in March, and the last one in August, all payable in this city of Leon.

10. Since it has not been possible to satisfy the rest of the one thousand hundredweight bales of tobacco previously contracted due to the hostilities with Granada and contrabands, it shall be delivered in the month of December of this year according to the terms set forth in this contract.

11. Considering the lack of currency until we are constituted, the money coined by Cartago will run in this Province and the money coined in this Province will also be accepted in Costa Rica, provided that the silver coined by each of the Governments is of good quality and weight, and stamped in dies, which will be understood henceforth since this Government has cast close to three thousand pesos.

12. As regards the incorporation of Nicoya to Costa Rica proposed by its Envoy, we will wait until the territory is divided by the Assembly.

13. Nothing can be done for the time being with respect to the payment of the mail on the Cartago route due to the many difficulties resulting from the situation in Granada.

14. So as not to delay the mail from the Provinces, the mail from Cartago will leave that city on the eighteenth of each month at twelve noon, and it

will leave Costa Rica on that same date, and this order will commence next November.

15. As regards the payment of ninths and consolidation, the resolution and settlement of this matter is deferred until the necessary file is prepared by a commission appointed for such important matter, which will be concluded as early as possible.

16. With respect to the great scarcity in Granada due to the disputes with this Government, Mr. Montealegre asked that this Province guarantee the debt of three thousand and something pesos that Granada has outstanding to date with Costa Rica and this Government has agreed to take responsibility for the aforementioned amount, provided that the government of Cartago does not supply tobacco to Granada until it has paid the aforesaid debt and this Government is able to persuade Granada to recognize and submit to its former capital, and the terms of this responsibility were left in suspense by Mr. Montealegre, subject to the approval of his Government, as well as all the foregoing articles, and both Provinces will be subject to the faithful observation and performance of this treaty upon ratification thereof.

Leon, 9 September, 1823.

Pedro Solís, Vocal Presidente – José Carmen Salazar – Domingo Galarza – Mariano Montealegre – Ramón Sarria – Narciso Mayorga, Vocal Secretario.



### **ANNEX 3**

#### **CHAMORRO - MAYORGA - WHITE CONVENTION. GRANADA, 14 AUGUST 1851.**

Decree dated 20 August 1851 ratifying the Convention entered into by the Commissioners of the Supreme Government, Colonel Fruto Chamorro and Mateo Mayorga, on the 14th day of this month with J. L. White, representative of the American company.

The President of the Senate of the Republic of Nicaragua makes known to its citizens that the Legislative Assembly has decreed the following:

The Senate and House of Representatives of the State of Nicaragua, having held an extraordinary session,

#### **Decree:**

Art. 1. The Treaty entered into by the Commissioners of the Supreme State Government Colonel Fruto Chamorro and Licentiate Mateo Mayorga on the 14th day of this month with J. L. White, representative of the American Maritime Canal Company, is hereby ratified. The Treaty reads as follows: "The Supreme Government of the Republic of Nicaragua, fully authorized by virtue of Legislative Decree of August 13th, for the sole purpose of facilitating the construction of a maritime canal, and pursuant to the wishes expressed by the canal company, has agreed, through its commissioners Messrs. Colonel Fruto Chamorro and Mateo Mayorga and Mr. J. L. White, representative of the aforementioned company, to separate and divide the section concerning the navigation of steamships on Nicaraguan waters from the contract of 22 September 1849 regarding the construction of the canal through the isthmus of Nicaragua. To this end, the following agreement has been entered into:

Art. 1. The Republic of Nicaragua authorizes the American Maritime Canal Company to divide and separate all the powers, privileges, rights and obligations described in Articles 6, 14, 20, 21, 22, 23, 30, 32, 33, 34 and others regarding navigation on Nicaraguan waters, which are not essential to the construction and use of the maritime canal, from the powers, privileges and rights granted under the treaty signed by said Government on 22 September 1849 and amended on 11 April 1850.

Art. 2. Said Company is also authorized to form another separate and distinct Company, comprised by the same members participating in the original company. This new Company will enjoy the powers and be subject to the obligations inserted in the aforementioned articles, provided that they are not contrary to the rights granted or the obligations imposed upon the Canal Company.

Art. 3. The newly created Company will proceed to execute and comply with those objectives under its competence in that part concerning the aforementioned articles, and will be entitled and enjoy the protection of the Government of Nicaragua on the same terms as those stipulated in the original contract of 22 September 1849 and its amendment on 11 April 1850, regarding the construction of the maritime canal. All those acts or objects that may infringe the rights of the canal company shall also be considered to infringe the rights of the newly created company as regards its establishment.

Art. 4. The new company will be called "Accessory Transit Company". It will comprise an incorporated and political entity with perpetual succession for the duration of its legal existence, and will have full powers to exercise its rights and privileges and to fulfill the obligations set forth in this convention, in such manner as may be deemed more convenient, and as long as its actions are not contrary to the privileges and obligations set out in the original contract of 22 September 1849 and its amendment on 11 April 1850.

Art. 5. Said company, constituted as an incorporated and political entity, may appoint and remove its employees and agents according to its best interests. It will have the right to vote and adopt provisions and regulations as it deems fit for optimal management of its interests, to ensure the enjoyment of its privileges and to fully comply with its obligations. The company may fix the amount and value of the shares to be issued, and may increase the number of shares, if necessary. It may also indicate how they may be transferred and carry out whatever is more convenient for the strict compliance of the company objective as indicated in the aforementioned articles.

Art. 6. The company constituted as an incorporated entity will appoint a board of directors, elect the president and fix the number of its members, a majority of which will determine and approve all the necessary resolutions leading to the achievement of the objective set forth in the

foregoing articles and others that refer to and do not run counter to the right to build and use the canal.

The company may adopt a common seal and change it if necessary. It may sue and be sued in the State courts as though it were a moral person.

Art. 7. All properties, objects, shares, rights, credits and effects of the new Company will be free of all charges or duties for the duration of the concession, in the same terms as stipulated in the original contract of 22 September 1849 and its amendment on 11 April 1850, regarding the building of the maritime canal and other objects.

Art. 8. This convention and all the rights and privileges guaranteed and conferred to the Company will cease on the same date that the original contract expires, either due to the expiration of the term agreed therein or for any other cause or reason that invalidates or annuls said contract.

Art 9. It is hereby stipulated and agreed by the contracting parties that no provision in the present convention may be or will be interpreted as minimally altering the obligations imposed upon each of the contracting parties in the original contract of 22 September 1849 and its amendment on 11 April 1850.

Done and signed in duplicate at the city of Granada, Nicaragua, on the fourteenth day of August of eighteen hundred fifty-one. J. L. White, Counsel to the A.T. and Ship Canal Co. – Fruto Chamorro – Mateo Mayorga.

Art. 2. For the present convention to become a State law it must be ratified by the aforementioned Company within two months from this date.

Done at the Sessions Hall of the Senate on 19 August 1851. Pedro Aguirre S.P. – J. de Jesús Robleto S.V., secretary – Cornelio Gutierrez, S.S. to the Executive Branch – Hall of the Chamber of Representatives.

Granada, 19 August 1851. Francisco Barbarena, R.P. – José María Estrada, R.S. – Manuel Urbina R.S. – Therefore, execute.

Granada 20 August 1851. – José de Jesús Alfaro. To the Minister of Foreign Relations and Home Affairs, Mr. Fermín Ferrer.

### Article 3

It is hereby equally agreed that immediately after securing consent of the chosen arbitrator, both Republics shall confer him full powers to resolve as he considers best, according to equity and justice principles, all pending issues between the aforementioned Governments, after examining reports and documents produced by each interested party, respectively, in support of their rights, through their diplomatic agents or otherwise, with the understanding that failure by one of the parties to claim its right in the non-renewable term of one year shall not be grounds for the arbitrator to suspend his decision privileging what has been informed solely by the other party.

### Article 4

While the desired arrangement is taking place, the following is established: Both contracting parties commit themselves to strictly maintain the *status quo*.

Consequently, both Governments shall abstain from making any land concession, navigation privileges, or privileges of any other nature, under any concept, to Governments, individuals, or companies on the right or southern bank of the San Juan River nor on the shores of Lake Nicaragua, from the head of said river across from San Carlos fort to the South and East until a point on said Lake across the mouth of La Flor River on the Pacific; nor on any other portion of disputed land not currently occupied by either of the parties. This shall not preclude contracting parties, however, from continuing to exercise their jurisdiction the way they have been doing it so far on disputed territory sites currently occupied by one of the two parties, respectively.

Costa Rican citizens shall have the power to freely come in and out through the port of San Juan with their ships and goods and navigate, except by steamboat, on the river bearing the same name and on its tributaries flowing from the South, and on Lake Nicaragua in all directions, without being subject to any Nicaraguan taxes or levies, except when they drop anchor in coves, ports, or places currently in possession by Nicaragua or when they introduce products or goods for consumption in Nicaragua, in which case they shall be subject to the provisions of laws of the latter.

### Article 5

Since the Government of Nicaragua has entered contracts with a company for the opening of the interoceanic canal and transit through the isthmus, by virtue of which it has granted said companies the exclusive privilege of steamboat navigation on the San Juan River and Lake Nicaragua, and it has transferred ownership of some land portions on both banks of the San Juan

River, provisions that come into conflict with the rights Costa Rica views as its own, it is nonetheless hereby established that Costa Rica shall not oppose Nicaragua's fulfillment of its obligations, should the projected canal works be carried out.

In turn, Nicaragua shall not hinder execution of contracts Costa Rica may have already entered concerning navigation on the Sarapiquí River.

#### Article 6

The contracting parties commit themselves to help each other through their good offices and by any other agreed upon or seemingly conducive means to achieve a favorable resolution of pending or eventual issues of any of the parties with foreign nations or foreign subjects or citizens, either over the disputed territory or over territories on which no dispute existed between said Republics, but on which some issue between any of the aforementioned Republics and other Governments or persons has arisen or might arise.

#### Article 7

It is hereby expressly agreed that nothing in this Convention shall be interpreted as a waiver, dismissal, or assignment of the rights each of the contracting parties claims from the other, as long as no definitive arrangement of these issues has been reached, through either an *ad hoc* Treaty or through an arbitrament.

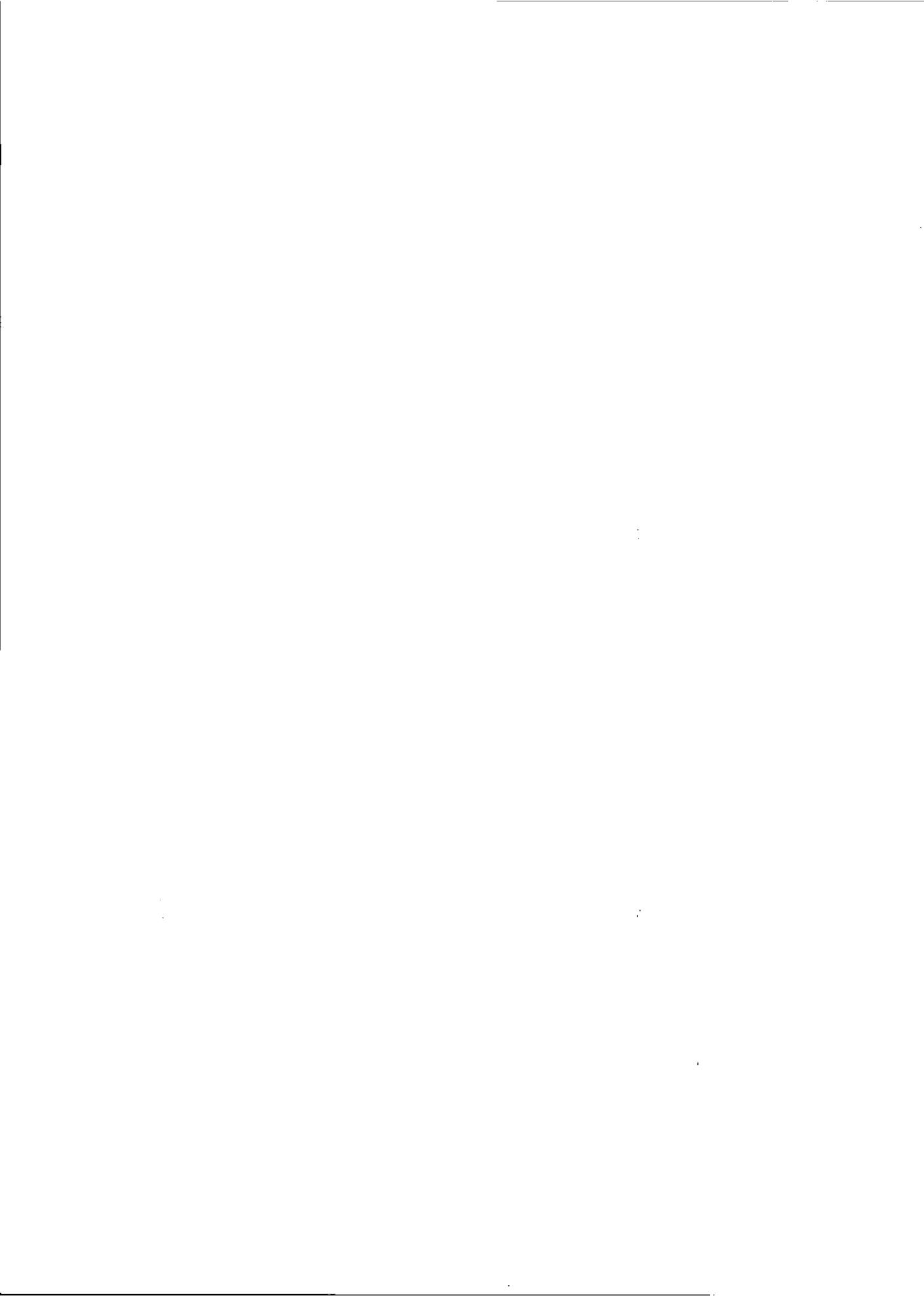
#### Article 8

This Convention shall be submitted by the undersigned to their respective Governments, and in case it is adopted by them and ratified by Legislatures of each contracting Republic, ratifications shall be exchanged within six months from this date or even before, if possible, in Washington, San José, or Managua.

In witness whereof, the undersigned Plenipotentiaries have signed this Convention in duplicate and have stamped it with their respective seals, in the city of Washington, on the twenty-eighth day of the month of January of the year of the Lord one thousand eight hundred and fifty four.

J. de Marcoleta

F.Molina



## ANNEX 5

### CASS-IRISARRI TREATY. WASHINGTON, 16 NOVEMBER 1857.

The Republic of Nicaragua and the United States of America, being desirous of maintaining mutual relations of friendship for the purpose of promoting commercial intercourse between their respective citizens and implementing a common arrangement to open a communication route between the Atlantic and Pacific Oceans through the San Juan de Nicaragua River, and either Lake Nicaragua or Managua, or any other route through the territory of the aforesaid Republic of Nicaragua, have agreed to conclude a treaty of friendship, commerce and navigation, and for such purpose have appointed the following Plenipotentiaries:

The Republic of Nicaragua, Antonio José de Irisarri, Envoy Extraordinary and Minister Plenipotentiary to the United States of America,

And the President of the United States of America, Lewis Cass, Secretary of State of the United States, who, after having exchanged their full powers, found to be in good form, have agreed upon the following articles:

#### Article I

There shall be perpetual amity between the United States and their citizens on the one part, and the Government of the Republic of Nicaragua and its citizens on the other part.

#### Article II

There shall be reciprocal freedom of commerce between all the territories of the United States and those of the Republic of Nicaragua.

The subjects and citizens of both countries, respectively, shall have liberty to come freely and securely with their ships and cargoes to all the places, ports and rivers in the aforesaid territories, to which other foreigners are or may be permitted to come, enter, remain and reside in any part thereof, respectively, as well as to hire and occupy houses and warehouses for commerce; in general, merchants and traders of each nation, respectively, shall enjoy the most complete protection and guarantee in their trade, subject always to the laws and statutes of both countries, respectively.

In like manner, the respective ships of war and trade of both countries shall have liberty, freely and securely, to come to all the ports, rivers and places to which other foreign vessels of war and merchant ships are or may be

permitted to come, enter, anchor and remain there and refit, subject always to the laws and statutes of both countries respectively.

The right to enter the places, ports and rivers mentioned in this article is not understood as a privilege of coastal trade, which is only permitted to national vessels of the country where it is carried out.

### Article III

It being the intention of the two High Contracting Parties to mutually bind themselves by the preceding articles to treat each other on the footing of the most favored nation, it is hereby stipulated by both that any favor, privilege or immunity which either Contracting Party has granted or may grant to the subjects or citizens of any other State shall be granted gratuitously to the subjects or citizens of the other Contracting Party if the concession in favor of that other nation shall have been gratuitous; or in return for a compensation as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement, if the concession shall have been conditional.

### Article IV

No higher nor other duties shall be imposed on the importation into the territories of the United States, of any articles, being of the growth, produce or manufacture of Nicaragua, nor shall any other or higher duties or charges be imposed on the importation into the territories of the Republic of Nicaragua, of any articles, being of the growth, produce or manufacture of Nicaragua, than such as are or may be payable on like articles being of the growth, produce or manufacture of any other foreign country; nor new imposts or duties may be imposed in the territories of either of the High Contracting Parties on the exportation of any articles to the territories of the other.

### Article V

No higher nor other duties on account of tonnage, lighting, harbor fees, pilotage or salvage in case of damage or shipwreck, or on account of any other local charges, shall be imposed in any port of Nicaragua on U.S. vessels, other than those payable in the same ports by Nicaraguan ships; nor in any of the ports of the United States on Nicaraguan ships, than those payable in the same ports by U.S. vessels.

### Article VI

The same duties shall be paid on the importation into the territories of the Republic of Nicaragua, of any articles, being the growth, produce or manufacture of the United States, whether such importations shall be made in Nicaraguan or U.S. ships; and the same duties shall be paid on the

importation into the territories of the United States, of any articles, being the growth, produce or manufacture of the Republic of Nicaragua, whether such importations shall be made in U.S. or Nicaraguan vessels.

The same duties shall be paid, and the same discounts and concessions shall be granted on the exportation to the Republic of Nicaragua of any articles, being the growth, produce or manufacture of the United States, whether such exportations shall be made in Nicaraguan or U.S. vessels; and the same duties shall be paid, and the same discounts and concessions shall be granted on the exportation of any articles, being the growth, produce or manufacture of the Republic of Nicaragua, to the territories of the United States, whether such exportations shall be made in U.S. or Nicaraguan vessels.

#### Article VII

All merchants, ship captains and other citizens of the United States shall enjoy full liberty in the territories of the Republic of Nicaragua to manage their own affairs, in accordance with the law, or to commission them to whomsoever they choose as broker, agent or interpreter; nor shall they be obliged to employ any other persons in those capacities than those employed by Nicaraguan citizens, nor to pay them any other salary or remuneration than such as is paid in like cases by Nicaraguan citizens; and absolute liberty shall be granted in all cases to the buyer or seller to contract and fix the price of any goods, wares or merchandise imported to or exported from the Republic of Nicaragua, as they shall deem appropriate, observing the laws and customs of the country.

The same privileges shall be enjoyed in the territory of the United States by Nicaraguan citizens under the same conditions.

The citizens of the High Contracting Parties shall reciprocally receive and enjoy full and perfect protection for their people and property, and shall have free and open access to the courts of justice in the said countries, respectively, for the prosecution and defense of their just rights; and they shall be at liberty to employ, in all cases, the attorneys, proxies or agents of whatever description, whom they may think proper; and they shall enjoy in this respect the same rights and privileges as native citizens.

#### Article VIII

In whatever relates to the police of the ports, loading and unloading of ships, security of the merchandise, goods and effects, the succession to personal estates by will or otherwise, and the disposal of personal property of every sort and denomination, by sale, donation, exchange, testament, or in any

other manner whatsoever, as well as the administration of justice; the citizens of the two High Contracting Parties shall reciprocally enjoy the same privileges, liberties and rights enjoyed by native citizens, subject, of course, to the local and national laws of both countries, respectively.

The foregoing provisions shall be applicable to real estate situated within the States of the American Union, or within the Republic of Nicaragua, in which foreigners shall be entitled to hold or inherit real estate.

But in case real estate situated within the territory of one of the contracting parties should fall to a citizen of the other party, who, on account of his being an alien, is not permitted to own said property in the State in which it is situated, said heir or other successor shall be accorded such conditions as the laws of the State will permit to sell such property and shall be at liberty, at all times, to withdraw and export the proceeds thereof without difficulty and without paying to the Government any charges other than those which would be paid by an inhabitant of the country in which the real estate is situated.

If a citizen of either of the two High Contracting Parties shall die without will or testament in the territory of the other party, the Minister or Consul or other Diplomatic Agent of the nation to which the deceased belonged (or the representatives of said Minister or Consul or other Diplomatic Agent, in his absence) shall have the right to nominate curators to take charge of the property of the deceased, so far as the laws of the country will permit, for the benefit of the lawful heirs and creditors of the deceased; giving proper notice of such nomination to the authorities of the country.

#### Article IX

The citizens of the United States residing in Nicaragua, and the citizens of Nicaragua residing in the United States, may intermarry with the natives of the country; hold and enjoy, by purchase, marriage, or descent, any estate, real or personal, without thereby changing their national character, subject to the laws which now exist or may be enacted in this respect.

The citizens of the United States residing in Nicaragua, and the citizens of Nicaragua residing in the United States, shall be exempted from all compulsory military service whatsoever, either by sea or by land, and from all contributions of war, military exactions, forced loans in time of war; but they shall be obliged, in the same manner as the citizens of each nation, to pay lawful taxes, municipal and other modes of imposts or ordinary charges, loans and contributions in time of peace (as the citizens of the country are liable), in just proportion to the private property they own.

Nor shall the property of any citizen, of any kind whatsoever, shall be taken for any public object without full and just compensation to be paid in advance and the citizens of each of the two High Contracting Parties shall have the unlimited right to go to any part of the territories of the other, and in all cases shall enjoy the same guarantees as the natives of the country where they reside, with the condition that they duly observe the laws and ordinances.

#### Article X

The two High Contracting Parties may appoint consuls to reside in any territory of the other party for the protection of trade.

But before a consul shall act as such, he shall, in the usual form, be approved and admitted by the Government to which he is sent; and either of the Contracting Parties may except from the resident of consuls such particular places as they judge fit.

The Diplomatic Agents and Consuls of Nicaragua shall enjoy in the territories of the United States whatever privileges, exceptions and immunities are or may be granted to agents of the same rank belonging to the most favored nation; and in like manner, the diplomatic agents and consuls of the United States in Nicaragua shall enjoy, according to the strictest reciprocity, whatever privileges, exemptions and immunities are or may be granted in the Republic of Nicaragua to the Diplomatic Agents and Consuls of the most favored nation.

#### Article XI

For the better security of commerce between the citizens of the United States and the citizens of Nicaragua, it is agreed that if at any time the friendly relations between the two High Contracting Parties were informally interrupted, the citizens of either Contracting Party who may be within the territory of the other, shall, if residing upon the coasts, be allowed 6 months, and if in the interior, a whole year, to wind up their accounts and dispose of their property; and a safe-conduct shall be given them to embark at the port which they themselves shall select. Even in the event of a rupture, all the citizens of the High Contracting Parties who are established in any territory of the other, in the exercise of any trade or other employment, shall have the privilege of remaining and of continuing such trade or employment therein, without any manner of interruption, in the full enjoyment of their liberty and property, as long as they conduct themselves peacefully and do not commit any offense against the laws; and their goods and effects, of whatever description they may be, whether in their own custody or entrusted to

individuals or to the State, shall not be liable to seizure or sequestration, nor to any charges or imposts other than those which may be made upon like effects or property belonging to the native citizens of the country in which such citizens reside. In the same case, debts between private individuals, private property and shares of companies shall never be confiscated or detained.

#### Article XII

The citizens of the United States and the citizens of the Republic of Nicaragua, respectively, residing in the territory of the other party, shall enjoy, in their houses, persons and properties, the protection of the Government, and shall continue in possession of the guarantees which they now enjoy. They shall not be disturbed, molested or harassed in any manner on account of their religious beliefs, nor in the proper exercise of their religion, according to the system of tolerance established in the territory of the High Contracting Parties; provided they respect the religion of the nation in which they reside, as well as the Constitution, laws and customs of the country.

Liberty shall also be granted to bury the citizens of both High Contracting Parties who may die in the aforesaid territories, in burial places of their own, which in the same manner may be freely established and maintained; nor shall the funerals or sepulchers of the dead be disturbed upon any account.

#### Article XIII

Whenever a citizen of either of the contracting parties shall be forced to seek refuge or asylum in the rivers, bays, ports or dominions of the other with their vessels, whether merchant or war, public or private, through stress of weather, pursuit of pirates or enemies, or want of provisions or water, they shall be received and treated with humanity, and given all favor and protection for repairing their vessels, procuring provisions, and placing themselves in all respects in a condition to continue their voyage without obstacle of any kind.

#### Article XIV

The Republic of Nicaragua grants to the United States and its citizens and properties the right to transit from the Atlantic Ocean to the Pacific Ocean through the territory of said Republic through any route or communication, natural or artificial, either by land or by water, existing now or in the future, or to be built later under the authority of Nicaragua, which shall be used and enjoyed in the same manner and in the same terms by both Republics and their respective citizens, but the Republic of Nicaragua reserves the right of sovereignty over said route or communication.

## Article XV

The United States agrees to protect all the aforesaid communication routes and to guarantee the neutrality of the same, as well as to use its influence with other nations to induce them to guarantee said neutrality and protection.

And the Republic of Nicaragua, on its part, agrees to establish two free ports at each extremity of the aforesaid communication routes on the Atlantic and Pacific Oceans. No tonnage or other duties decreed or required by the Government of Nicaragua shall be imposed in these ports to U.S. vessels or any objects or merchandise owned by U.S. citizens or subjects, or to vessels or objects of any other country with the bona fide purpose of passing through the aforementioned communication routes and not to be consumed in the Republic of Nicaragua.

The United States shall also have the freedom to carry troops and war munitions on its vessels, or by any other way, to any of the aforementioned free ports, and shall have the right to transport them through any of the aforesaid communication routes. And for the transportation or transit of persons or objects by the citizens or subjects of the United States or of other countries through the aforementioned routes of communication, no duties or tolls shall be imposed which are higher than those paid now or in the future by Nicaraguan nationals for their persons and properties. And the Republic of Nicaragua recognizes the right of the Postmaster General of the United States to enter into contracts with U.S. individuals or post transportation companies in the aforementioned communication routes or any other routes within the Isthmus, free of charges and duties by the Government of Nicaragua, and if appropriate, in closed pouches, the contents of which shall not be distributed in said Republic, but the right of said individuals and companies to carry out this transportation shall not be understood to include transportation of passengers and freight.

## Article XVI

The Republic of Nicaragua agrees that, should it become necessary at any time to employ military forces for the security and protection of persons and property passing over any of the routes aforesaid, it will employ the requisite force for that purpose, but upon failure to do this from any cause whatever, the Government of the United States may, upon prior notice to the Government of Nicaragua or to its Minister in the United States, employ such force for this and for no other purpose, and when the necessity ceases, such force shall be immediately withdrawn.

### Article XVII

It is understood, however, that the protection of the communication routes and the guarantee of their neutrality and security agreed by the United States shall be conditional and withdrawn if the United States considers that the persons or companies administering the routes adopt or establish traffic rules which are contrary to the spirit and intentions of this treaty, either by making unfair distinctions to benefit the trade of any nation or nations, or by decreeing excessive levies or exorbitant imposts on mail, passengers, vessels, materials, stock, merchandise and other goods.

However, the aforementioned protection and guarantee shall not be withdrawn by the United States until notice is given to the Republic of Nicaragua not less than six months in advance.

### Article XVIII

It is further understood and agreed that, in any concessions granted or contracts entered into by the Government of Nicaragua in respect of the aforementioned inter-oceanic routes, or any part thereof, the rights and privileges hereby granted to the Government of the United States and its citizens shall be fully protected and excluded from the new concessions and contracts. And if said concessions and contracts already exist and are legally valid, it is also understood that the guarantee and protection of the United States, stipulated in Article 15 of this Treaty, shall be suspended and be null until the titleholders of said concessions or contracts recognize the concessions made in this treaty to the Government and citizens of the United States in respect of such inter-oceanic routes, or any part thereof, and agree to observe these concessions and to be governed by them as if they were incorporated in their entirety in their original concessions and contracts. Upon such recognition and agreement, said guarantee and protection shall enter into full force, provided that nothing in the foregoing stipulations is interpreted as affirming or denying the validity of said contracts.

### Article XIX

Ten years after the completion of a railway or other communication route between the Atlantic and Pacific Oceans in the territory of Nicaragua, no company which has built the same, or has possession thereof, may divide among its shareholders, directly or indirectly, through the issue of new shares, dividends or otherwise, more than fifteen percent of the tolls collected each year, or in proportion, but when the tolls generate greater profits, this rate shall be reduced to fifteen percent per annum.

## Article XX

It is understood that nothing in this treaty shall adversely affect the desires of the Government of the Republic of Costa Rica and its people to free navigation in the San Juan River of its persons and goods to the Atlantic Ocean and vice versa.

## Article XXI

This treaty shall be ratified and the instruments of ratification shall be exchanged at the city of Washington within nine months or as early as possible.

In testimony thereof, the respective plenipotentiaries sign and seal this treaty.

Done at the city of Washington on this sixteenth day of November of the year of the Lord, one thousand eight hundred fifty-seven. Lewis Cass. A. J. de Yrisarri.



## ANNEX 6

### ZELAYA -VOLIO CONVENTION. SAN JOSÉ, 13 JULY 1868.

The Government of the Republic of Costa Rica and the Government of the Republic of Nicaragua, being equally interested and desirous of uniting efforts to improve one of the ports in the Atlantic Ocean, either at the San Juan del Norte river or at the mouth of the Colorado river, even if one is injurious to the other, based on the assumption that either of them by itself is insufficient to satisfy the needs of commerce, and aspiring to establish the preliminary framework for such important arrangement, have conferred their full powers as follows:

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

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

Who, after having communicated to each other their respective full powers, which were found to be in good and proper form, have agreed upon the following:

#### PRELIMINARY CONVENTION

##### Article I

A scientific survey will be carried out in the Colorado and San Juan rivers by a commission formed by the named persons, one of which will be appointed by the Government of Costa Rica and another by the Government of Nicaragua, with the objective of determining which of the two ports would be easier to improve by combining into a single watercourse all or part of the waters of the two rivers dividing the upper San Juan.

##### Article II

The commission will draw up the necessary plans and budgets and will extend its report to any other points it may deem convenient so as to accomplish its important mission. The Governments of Costa Rica and Nicaragua, in the presence of these reports, will give new instructions to their respective Ministers to conclude a final agreement in this respect, if deemed appropriate.

### Article III

This Convention shall be ratified by the President of the Republic of Costa Rica and by the President of the Republic of Nicaragua, and any of them may submit it to its respective legislative branch for approval, and it will enter into force immediately after the exchange of ratifications.

In witness whereof, both Plenipotentiaries sign in duplicate and affix their respective seals.

Done and dated at San José, on the thirteenth of July of one thousand eight hundred sixty-eight.

J. Volio  
José María Zelaya

National Palace, San José, on the fourteenth of July of one thousand eight hundred sixty-eight.

Finding the foregoing Convention in accordance with the instructions given, it is approved, and it is submitted to the legislative Branch for ratification thereof.

Initialed by the President  
of the Republic  
J. Volio.

## ANNEX 7

### RIVAS-ESQUIVEL CONVENTION. SAN JOSÉ, 21 DECEMBER 1868.

The Government of the Republic of Costa Rica and the Government of the Republic of Nicaragua, being desirous to conclude the preliminary Convention entered into at San José on the thirteenth of July of this year, on the improvement of one of the two ports in the Atlantic, known as "San Juan del Norte or Greytown" and "Boca del Colorado"; and having the engineers from both Republics carried out their respective explorations and surveys, and having submitted the reports regarding the case, which have seen the public light; and to resolve as may be convenient within the spirit of the referenced Convention, the Government of Costa Rica has conferred its Full Powers to Mr. Aniceto Esquivel, Secretary of State at the Office of Foreign Affairs, and the Government of the Republic of Nicaragua, Mr. Anselmo H. Rivas, Secretary of State of the same Government,

Who, after exchanging their respective Full Powers, found in good and due form, have agreed upon the following articles:

#### Article I

The Government of Costa Rica grants to the Government of Nicaragua the waters of the Colorado River, so that by diverting them from their present course, in whole or in part, and throwing them into the San Juan River, it may re-establish or improve the San Juan de Nicaragua port.

#### Article II

The Government of Nicaragua, on its part, commits to stipulate, in the event that any transit contract is entered into, whether with nationals or foreigners, that the freight rates established by Nicaragua for imported or exported products or merchandise shall also be extensive to Costa Rica, and any grace, privilege or cohesion obtained by Nicaragua, as far as transportation on the San Juan River is concerned, shall be extensive to Costa Rica on an equal footing.

#### Article III

Vessels from Costa Rica, which arrive at the San Juan del Norte port, shall not pay any duties which are not charged to the national vessels of Nicaragua.

#### Article IV

In the event that San Juan ceases to be a free port, and the Government of Nicaragua subjects to registration or taxation the merchandise which is imported or the products which are exported through it, the merchandise and products imported or exported by Costa Rica shall be exempt from such formalities and from the payment of any duties.

#### Article V

If the Government of Nicaragua, as a result of any internal disorder or because it finds itself at war, cannot efficiently protect the San Juan port, the Government of Costa Rica shall have the right to send the necessary force to the aforesaid port to protect the commercial interests of Costa Rica, and the Government of Nicaragua shall not concur in the cost of this provision.

#### Article VI

The Government of Nicaragua hereby ratifies the Treaties of Limits which have been entered into with the Government of Costa Rica; and both parties submit to the arbitration of the United States of America for the settlement of any question which may arise, either regarding those treaties or the execution of this Convention.

#### Article VII

This Convention shall be approved by the President of the Republic of Costa Rica and by the President of the Republic of Nicaragua, and shall also be submitted to their respective Legislative Branch for ratification, and it shall enter into force immediately after it has been ratified.

In witness whereof, both Plenipotentiaries sign in duplicate and affix their respective seals.

[Signed] A. Esquivel

[Signed] A.H. Rivas

National Palace. San José, twenty-first of December of one thousand eight hundred and sixty-eight.

Finding that the foregoing Convention concurs with the conferred instructions, it is approved, and to this end, it shall be duly submitted to the Legislative Branch for ratification.

Countersigned by the  
President of the Republic  
Esquivel.

## ANNEX 8

### MONTEALEGRE-JIMÉNEZ INTER-OCEANIC CANALIZATION TREATY. SAN JOSÉ, 18 JUNE 1869.

The Republics of Costa Rica and Nicaragua, desirous of enforcing the contract entered into in Paris on the sixth of October of the year eighteen sixty-eight, between Messrs. Tomás Ayón, representative of the Republic of Nicaragua, and Miguel Chevalier, a French subject, for the excavation of an interoceanic canal, have agreed to enter into an Agreement for the purpose of determining the rights and duties of Costa Rica in return for its adhesion to the aforesaid contract.

To this end, the two Republics have appointed their respective Plenipotentiaries, to wit:

His Excellency, the President of the Republic of Costa Rica: Agapito Jiménez, Secretary of State at the Ministry of Foreign Affairs, and

His Excellency, the President of the Republic of Nicaragua: Mariano Montealegre, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua in the Republic of Costa Rica

Who, after exchanging their full powers, found to be in good and due form, have agreed on the following provisions:

#### Article 1

The Republic of Costa Rica adheres to the contract entered into in Paris on the sixth day of October of the year eighteen sixty-eight, between Messrs. Tomás Ayón, representative of the Republic of Nicaragua, and Miguel Chevalier, a French subject, for the excavation of an interoceanic canal, in which Costa Rica guarantees the concessionaire over its territory and in all matters concerning her, the same advantages that Nicaragua grants [Costa Rica], and which are stipulated in the following articles:

#### Article 2

The duration of the concession will be ninety-nine years, commencing on the date on which the canal is opened.

#### Article 3

The concessionaire shall choose the route which, according to the studies undertaken by experts on the matter, is considered the most suitable, but it is

declared as of this moment that the canal must come up the San Juan River to Lake Nicaragua, cross the lake and end at the Pacific Ocean, [somewhere] between the extremes of Salinas and El Realejo.

(...)

#### Article 12

It is understood that this concession, much as the concession referred to in article 10, is applicable only to land belonging to the State, and that the State at all times maintains its sovereign rights. Further, the State also reserves itself those sites or land it deems necessary for the opening of roads.

The Republic of Costa Rica may open such roads even in Nicaraguan territory and navigate on the rivers in that territory, for the purpose of transporting and introducing its agricultural, industrial and commercial products to the canal. Nicaragua may not impede in any way whatsoever the opening of said roads, nor the navigation of said rivers; and in the mouths of these rivers, Costa Rica may establish customs and warehouses at the expense of the State, upon prior notice to the Government of Nicaragua; in no case, however, may Costa Rica place armed forces there, but only the employees necessary for the custody and security of the country's customs and warehouses, and vice versa. For its part, the Republic of Nicaragua may open roads in Costa Rican territory and navigate its rivers for purposes of commerce. Costa Rica may in no case impede the opening of said roads, or the navigation of said rivers. Nicaragua may establish customs and warehouses at their outlets, at State expense, having advised the Government of Costa Rica to that effect. In no case may Nicaragua station armed forces there, except the number of employees considered necessary for the custody and security of its customs and warehouses.

(...)

#### Article 43

Costa Rica undertakes, upon receiving the respective indication from Nicaragua, and in accordance with its contents, to take the necessary steps in order to obtain from the Governments of France, England and the United States of America the guarantee of neutrality and acceptance of other attributions to which reference is made in Articles 30, 46, 47, 48 and 50 of the contract above mentioned.

#### Article 44

The Government of Nicaragua shall be obliged to present for acceptance by the concessionaire the adhesion of Costa Rica, in accordance with the terms and conditions set out in the present Convention.

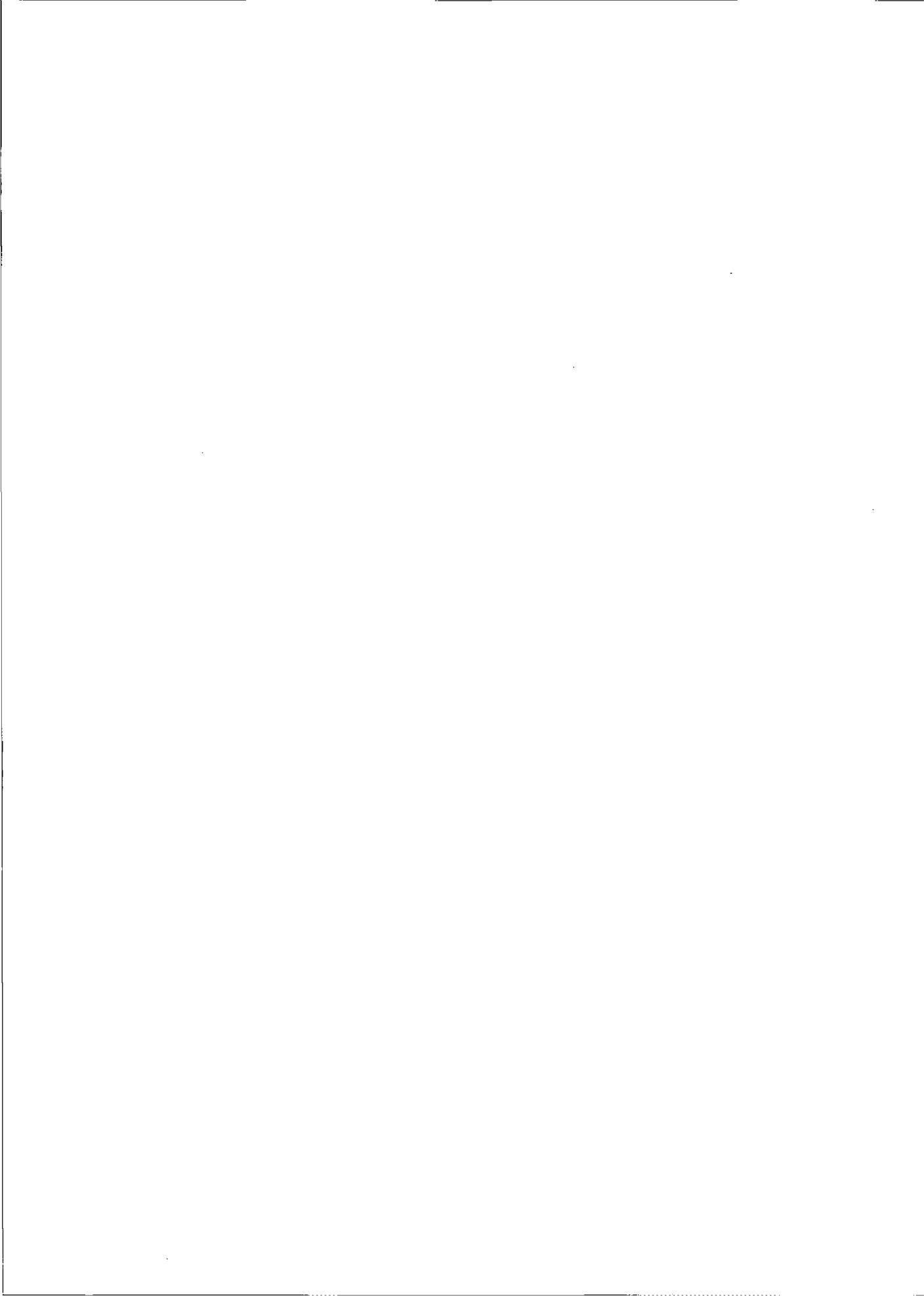
#### Article 45

The present Convention shall be duly ratified, and ratifications shall be exchanged as soon as possible, either in San José, capital of the Republic of Costa Rica, or in Managua, capital of the Republic of Nicaragua.

In witness whereof, the Plenipotentiaries have entered into the present Convention by signing a duplicate copy of the original and affixing their seal at San José, capital of the Republic of Costa Rica, on the eighteenth day of June of the year eighteen sixty-nine.

(Signed) A. Jiménez

(Signed) Marno. Montealegre



## ANNEX 9

### ÁLVAREZ-ZAMBRANA TREATY OF LIMITS. GRANADA, 5 FEBRUARY 1883.

The Republic of Nicaragua and the Republic of Costa Rica, being desirous of putting an end to the differences that have arisen between them for a long time with respect to the dividing line that should separate them, and of affirming the friendship that unites them, making their fraternal relations more efficient and fruitful, have resolved to conclude a Treaty aimed at achieving these important and common purposes.

To this end, His Excellency Mr. Joaquín Zavala, President of the Republic of Nicaragua, has appointed Dr. Francisco Alvarez as Minister Plenipotentiary, and His Excellency Mr. Próspero Fernández, President of the Republic of Costa Rica, has appointed Dr. Antonio Zambrana as Envoy Extraordinary and Minister Plenipotentiary.

The Plenipotentiaries, after communicating to each other their respective powers, found in good and due form, have agreed upon the following articles:

#### Article 1

The dividing line between the Republics of Costa Rica and Nicaragua begins on the right bank of the Colorado River, at its mouth on the Atlantic, and continues along that right bank up to the intersection of this river with the San Juan River, extending along the right bank of the San Juan River to a point three English miles below the exterior fortifications of the Old Castle. From here, a curve shall be drawn, taking El Castillo as the center, keeping a distance of three English miles along its entire length, up to a point two miles from the bank of the river at the distance of two miles upstream from the bank of the river on the other side of the castle. From here, the line shall continue in direction to 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 up to its origin in lake; and from there, up to the junction of the aforesaid Sapoá River; from a place parallel to the junction of the Sapoá River, two miles distant, it follows an astronomic straight line to the central point of the Salinas Bay, in the Southern Sea, where the dividing line ends.

## Article 2

To carry out the necessary measurements, trace the line described in the foregoing article and mark it conveniently, the Governments of both Republics shall appoint, within a period not to exceed six months, following the ratification of the present Treaty, the respective Commissions in the manner they shall agree for this purpose.

## Article 3

Costa Ricans shall have a perpetual right of free navigation, for interior trade, in the waters of the San Juan and Colorado Rivers, under the same terms and subject to the same laws as Nicaraguans; corresponding to Nicaragua the eminent dominion and sovereignty over the aforesaid rivers [San Juan y Colorado and lake]. Further, they shall have free use of the Bay and port of San Juan de Norte, under the same terms and subject to the same restrictions as Nicaraguans. Nicaraguans shall have the same right of navigation, for the same purposes, and subject to the same rules, on the Sarapiquí, San Carlos and Frío Rivers, in that portion where these rivers cross Costa Rican territory, and this Republic shall have eminent domain and sovereignty, in full force, over the aforementioned rivers. In recognition to the respective sovereignty of both Nations, the vessels of the one entering into the waters of the other shall hoist, in addition to its own flag, the flag of the other in the respective place.

## Article 4

Costa Rica shall have the right to open in the territory of Nicaragua the necessary roads for importing and exporting its goods, through Lake Nicaragua and the Colorado River, the river and port of San Juan del Norte and, consequently, shall always occupy the surface of all the land comprised by said roads.

Nothing shall be paid by Costa Rica for exercising the right consigned in this article in her favor, provided that it uses wastelands for that purpose, but if it should need any private property, it shall proceed with the consent of the respective owners.

## Article 5

Salinas Bay, in the Southern Sea, shall be common to one and the other Republic and, consequently, its advantages and the obligation to concur to its defense shall also be common. And the Republic of Costa Rica shall also concur to the defense of the Bay of San Juan del Norte, if necessary, when the Republic of Nicaragua shall so request.

### Article 6

Under no circumstances, even if 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, neither in the port and bay of San Juan del Norte, nor in the San Juan and Colorado Rivers, or in the territory between those rivers and Lake, and the dividing line, nor in the San Carlos, Sarapiquí and Frio Rivers, or in the Salinas Bay, hereby declaring that the violation of this rule shall be considered a breach of trust.

### Article 7

Costa Ricans in Nicaragua and Nicaraguans in Costa Rica shall have the right to exploit the territories of both Republics, and especially that which is comprised between the San Juan and Colorado Rivers, and those on the banks of the Colorado River and Lake Nicaragua, without other restrictions than those set out by law for the natives of one and the other Republic, respectively.

### Article 8

Nicaragua may divert the course of the waters of the Colorado River, directing them to the San Juan River, in which case, once this river has been equipped, its right bank up to a distance of three miles below Castillo Viejo shall be the first part of the dividing line.

### Article 9

In case the Inter-oceanic Canal is built, it shall be, in all its extension from sea to sea, the true boundary between Costa Rica and Nicaragua, as long as it does not divert more than six geographical miles from the affixed dividing line. This shall not hinder the domain over the Canal that exclusively belongs to the Republic whose territory it crosses; and both agree, however, that the one that executes the project shall obtain for the natives of the other, the same advantages enjoyed by its own natives in the use and navigation of the Canal and freight and passenger rates.

### Article 10

Costa Ricans in Nicaragua and Nicaraguans in Costa Rica shall be considered nationals for the purpose of obtaining and exercising citizenship rights, without losing, by reason of the enjoyment of these advantages, their nationality of origin. And they shall also be free to practice any industry or profession, without other restrictions than those set out by law with respect to natives.

### Article 11

The titles, publications and other literary and professional documents, issued in any of the contracting parties, shall be admitted and recognized in the other, upon formally presenting them, duly authenticated, before the authority or entity in charge of endorsing them. Studies at scientific institutes of both Republics shall also be admitted, with the objective of gaining time and obtaining degrees and literary or professional titles, by certifying them with trustworthy documents before the respective entity.

### Article 12

Commerce between both Republics shall be similar in each one of them to domestic commerce, and shall be considered as if carried out from one port to another or from one internal location to another in the same country.

This article shall only be applicable for national products.

### Article 13

Both Republics undertake to conclude an extradition treaty, procure a uniform law code and adopt a common decimal system of weights, measures and currency, all in the shortest time possible.

### Article 14

Whenever there is an opportunity to reach an agreement for the Central American Union, Costa Rica and Nicaragua shall jointly endeavor to achieve this great initiative. Any of the two that makes attempts in this respect, or is invited to participate, shall provide immediate and complete notice to the other of the negotiations that take place, as soon as they begin and to the extent that they occur.

### Article 15

Neither of the two Republics may enter into any offensive or defensive alliances, which are detrimental or injurious for the other, and in the event that one of them is attacked by another power, the other shall be obliged, if unwilling or unable to provide assistance to the offended, to observe the strictest neutrality in relation thereto.

As regards any differences that may arise between both contracting parties, all of them, regardless of their origin or nature, shall be settled by arbitration.

### Article 16

The present Treaty shall be duly ratified and the instruments of ratification shall be exchanged at the capital city of Nicaragua within three months or earlier if possible.

In witness whereof, the Plenipotentiaries sign the present Treaty in duplicate at the city of Granada on the fifth of February of one thousand eight hundred and eighty-three.

A. Zambrana

F. Alvarez



## ANNEX 10

### NAVAS-CASTRO TREATY OF LIMITS. SAN JOSÉ, 19 JANUARY 1884.

The Republics of Nicaragua and Costa Rica, encouraged by the desire to put an end, on the basis of equity and brotherhood, to the differences that exist in relation to their boundary line, have resolved to enter into a Treaty. To this end, the President of the Republic of Nicaragua has designated Don Vicente Navas, Envoy Extraordinary and Minister Plenipotentiary, and the President of the Republic of Costa Rica, Doctor José María Castro, Minister of Foreign Affairs, who, after having communicated to each other their respective full powers, found in due form, have agreed upon and concluded the following articles:

#### Article I

The boundary line between the Republics of Nicaragua and Costa Rica is the right bank of the Colorado River, from its mouth in the Atlantic Ocean until it separates from the San Juan River, thence it follows the right bank of that River to a point at a distance of three English miles from the exterior fortifications of the Castillo Viejo; thence it runs along the circumference of a circle with a radius of three English miles from the exterior fortifications, and ends on the same right bank of the San Juan River; thence from this same bank up to a distance of three English miles from a point on the bank in front of the San Carlos fort; thence it runs along the circumference of another circle, with a radius of three English miles and at the center the aforesaid boundary point on the same bank in front of the San Carlos fort; from there to the mouth of the Frío River, in the Lake of Nicaragua, following the bank of this river to the mouth of the Sapoá River; and from this point an astronomic straight line extending to the center of Salinas Bay, demarcated by the intersection of its largest and smallest axis.

#### Article II

However, until the inter-oceanic canal of Nicaragua is opened to international traffic, Costa Rica shall not take possession of an area of land extending from the mouth of the Frío River to the mouth of the Sapoá River, and two English miles in width, measured from the shore of the Lake.

#### Article III

The restriction set forth in the foregoing article shall cease if the Government of Costa Rica builds a railroad line, at its own expense or by entering into a contract with any company, connected to the railroad line at

the port of Limón, and extending to the shore of the Lake, to the bank of the Frío river or to the bank of the San Juan river.

#### Article IV

In the event of the construction of the railroad line indicated in the foregoing article, the Government of Nicaragua reserves the right to set up a custom-house, with its respective employees and offices, at the starting point of the railroad line, either on the bank of the Lake or at any of the aforementioned rivers, with the objective of registering any merchandise which is imported to or exported from Nicaragua through the railroad line and the port of Limón. To this end, the contracting parties agree that Costa Rica shall not charge custom duties or other national or local taxes for in-transit merchandise in its territory, and Nicaraguan nationals shall enjoy the same privileges and franchises granted to or obtained by Costa Rican nationals in relation to the use of the said railroad line.

#### Article V

Nicaragua shall execute, on the right bank of the San Juan River and on the right bank of the Colorado River, hydraulic works and of any other nature which it considers convenient to improve navigation thereon. If the course of the waters of the Colorado river is deviated to the San Juan River, the right bank of the river to a distance of three English miles below the Castillo Viejo, shall be the starting point of the boundary line instead of the right bank of the Colorado River stipulated in Article I.

#### Article VI

In the zone described in Article II, as well as on the right bank of the San Juan River, comprised between the Castillo Viejo and the San Carlos fort, the tracts of land, franchises and privileges granted by Nicaragua in a contract entered into with Mr. A. G. Menocal on 24 April 1880 are reserved for the Canal Company, and the same reservation shall be maintained in favor of Nicaragua if the aforesaid contract expires and another is entered into for the same purpose.

#### Article VII

In general, the rights acquired by Costa Rica by virtue of this Treaty do not restrict in any way the freedom of Nicaragua to enter into new contracts for the purpose of building the Isthmus canal if the contract with Mr. Menocal expires, but Nicaragua agrees to insure Costa Rican nationals the same privileges and franchises obtained for Nicaraguan nationals in said contracts.

### Article VIII

For the purpose of performing the necessary measurements, fixing the boundary line and demarcating it with posts, the Governments of both Republics shall appoint, within six months after the ratification of this Treaty, the respective commissions in the manner they may establish by mutual agreement.

### Article IX

Costa Rica shall have the right to build, within the territory of Nicaragua, the roads which are necessary to import and export its goods through the Lake of Nicaragua, the Colorado River, and the river and port of San Juan del Norte, and therefore, shall always occupy the surface of all the land comprised within the said roads.

Nothing shall be paid by Costa Rica for exercising the right prescribed in this article, provided that it uses wastelands for that purpose, but if it requires any private property, it shall proceed, with the consent of its owners, or shall request an expropriation in conformity with the laws of Nicaragua.

### Article X

The Salinas Bay in the Southern Sea is common to each of the Republics and, therefore, the advantages and the obligation to concur to its defense are also common. And the Republic of Costa Rica shall also concur to the defense of the Bay of San Juan del Norte if required by Nicaragua.

### Article XI

Costa Rican nationals have the perpetual right of free navigation in the waters of the Lake and of the San Juan and Colorado rivers for internal and foreign commerce, subject to the same terms and laws as Nicaraguan nationals, and Nicaragua shall have eminent dominion and the highest sovereignty over said rivers and Lake. Further, they shall have the right to freely use the bay and port of San Juan del Norte, subject to the same terms and restrictions as Nicaraguan nationals. For the same purposes and subject to the same rules, Nicaraguan nationals shall have the same right to navigate the Sarapiquí, San Carlos and Frío rivers, in that part where the rivers cross the territory of Costa Rica, which shall have eminent domain and the highest sovereignty over the aforementioned rivers. In recognition to the respective sovereignty of both Nations, the vessels of one nation entering the waters of the other shall hoist, in addition to its own flag, the flag of the other in the respective place.

### Article XII

Costa Rican nationals in Nicaragua and Nicaraguan nationals in Costa Rica shall have the right to exploit the territories of both Republics, especially the territory comprised within the San Juan and Colorado rivers, as well as the land along the banks of the Colorado River and the Lake of Nicaragua, without any restrictions other than those prescribed by law for the citizens of each of the Republics, respectively.

### Article XIII

For no reason whatsoever, not even if the Republics of Nicaragua and Costa Rica unhappily find themselves in a situation of war, no act of hostility between them shall ever be permitted in the port and bay of San Juan del Norte, or in the San Juan and Colorado rivers, or in the territory between those rivers and the Lake and the border line, or in the San Carlos, Sarapiquí and Frío rivers, or in the Bay of Salinas, and it is hereby declared that the violation of this rule shall be considered a breach of trust.

### Article XIV

This Agreement shall be ratified and exchanged within fifteen months from this date. The exchange shall take place at this capital city or at the capital city of Nicaragua, upon due notice from both Governments.

In testimony thereof, the Plenipotentiaries sign this Treaty in duplicate and affix their respective seals, at the city of San José, Costa Rica, on the nineteenth of January of one thousand eight hundred and eighty-four.

(L. S.) Vte. Navas.

(L. S.) José M<sup>a</sup> Castro

After reviewing the foregoing Treaty, the Government approves it.

Managua, May 14, 1884.

*Cárdenas*  
Minister for Foreign Affairs,  
*Castellón*

## ANNEX 11

### **ROMAN-ESQUIVEL-CRUZ, GUATEMALA, 24 DECEMBER 1886.**

[Ratifications exchanged at Managua, June 1, 1887.]

(Traslation)

The Governments of the Republics of Nicaragua and Costa Rica desiring to terminate the question pending since 1871, viz., whether the Treaty signed by both on the 15<sup>th</sup> April, 1858, is or is not valid, have named respectively as Plenipotentiaries: Señor Don Antonio Roman, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua to the Government of Guatemala; and Señor Don Ascencion Esquivel, Envoy Extraordinary and Minister Plenipotentiary of Costa Rica to the same Government; who, having communicated their full powers, found in due form, and in conference with the Minister for Foreign Affairs of the Republic of Guatemala, Señor Don Fernando Cruz, designated to act as intervener and to interpose the good offices of his Government offered to the contending parties, and by them accepted, had agreed to the following Articles:--

ART. I. The question pending between the contracting Governments in regard to the validity of the Treaty of Limits of the 15<sup>th</sup> April, 1858, shall be submitted to arbitration.

II. The arbitrator of that question shall be the President of the United States of America. Within 60 days following the exchange of ratifications of the present Convention the Contracting Governments shall solicit of the appointed arbitrator his acceptance of the charge.

III. In the unexpected event that the President of the United States shall not be pleased to accept the Parties shall name as Arbitrator the President of the Republic of Chile, whose acceptance shall be solicited by the Contracting Governments within 90 days from the date upon which the President of the United States may give notice to both Governments, or to their Representatives in Washington, of his refusal.

IV. If, unfortunately, the President of Chile should also refuse, the Governments shall come to an agreement for the purpose of electing two other Arbitrators within 90 days, counting from the day upon which the President of Chile may give notice to both Governments, or to their Representatives in Santiago, of his refusal.

V. The arbitration shall be conducted in this manner:

Within 90 days of the notification to the Parties of the acceptance of the arbitration, the allegations and documents shall be produced.

The Arbitrator shall communicate the counter-allegations to the Representative of each Government within eight days of their being presented, in order that they may be answered within the 30 days following.

The Arbitrator shall give his decision, in order that it be valid, within six months from the date that the time expires for the presentation of answer to allegations, whether these be presented or not.

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

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

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

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

From the time the Treaty is declared invalid, and whilst there is not agreement between the Parties of there is not decision fixing the rights of both countries, those established by the Treaty of 15<sup>th</sup> April, 1858, shall be respected.

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

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

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

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

XI. This Treaty shall be submitted for the approbation of the Executive and Congress in both the Contracting Republics, and the ratifications shall be exchanged in Managua or San Jose de Costa Rica the 30<sup>th</sup> June next, or earlier if possible.

In witness whereof the Plenipotentiaries and Minister of Foreign Affairs of Guatemala have signed and sealed the same in Guatemala, the 24<sup>th</sup> day of December, 1886.

(L.S.) J. ANTONIO ROMAN

(L.S.) ASCENCION ESQUIVEL

(L.S.) FERNANDO CRUZ



## ANNEX 12

### GUERRA-CASTRO TREATY OF LIMITS. MANAGUA, 23 DECEMBER 1890.

The President of the Republic, to its inhabitants, makes known:

That Congress has ordered the following:

"The Senate and the House of Representatives of the Republic of Nicaragua

#### DECREE:

Sole: The Treaty of Limits between Nicaragua and Costa Rica, signed by their respective Plenipotentiaries on 23 December 1890, consisting of nine articles, is approved, the text of which reads as follows:

The Republics of Nicaragua and Costa Rica, being animated by the desire to give due compliance, in a friendly manner, to the Treaty of 15 April 1858 and arbitral award of the President of the United States of America, issued at Washington on 22 March 1888, and taking into account the difficulties which have not permitted, within the time period prescribed in Article 10 of the Arbitration Convention signed at Guatemala on 24 December 1886, the implementation of the measurements and demarcation set out in paragraph two of the aforesaid article, have resolved to conclude all matters conducive to the realization of said desire. For this purpose, the President of the Republic of Nicaragua has appointed his Plenipotentiary, D. Benjamín Guerra, Minister of Foreign Affairs, and the President of the Republic of Costa Rica, D. José María Castro, who having communicated to one another their full powers, found in good and due form, have agreed upon the following articles:

#### Article I

A second period of thirty months, beginning on next January 1, is fixed to carry out the measurements and demarcation prescribed in Article 3 of the Treaty of 15 April 1858 and in Article 10 of the Convention of 24 December 1886.

#### Article II

The Commissioners appointed by the Governments of Costa Rica and Nicaragua to carry out the demarcation of the boundaries between the two

Republics, according to the provisions of the Treaty of 15 April 1858 and the Arbitration Convention signed at the city of Guatemala on 24 December 1886, will proceed to its implementation on the Atlantic side, tracing a straight line, beginning at a point on the coast in front of the sea, two hundred meters east from the seawall being built by the Canal Company, and ending at the extremity on the right bank of the nearest stream of the San Juan River. From this point, the line shall continue along the right bank of the same stream up to the right bank of the Ánimas stream and that of the San Juan River, until it reaches the point indicated in the Treaty of 1858.

The two hundred meters mentioned in the first part of this article shall be measured from the coast, as it is on the date when the demarcation of the boundaries begins and in such way that the line defining the aforesaid two hundred meters forms a straight angle with the seawall.

The Commissioners shall fix the departure point on the coast in front of the ocean through coordinates.

#### Article III

To avoid any difficulties in the future regarding accretions in the territory that belongs to Nicaragua, to the east of the seawall, it is stipulated that, in such case, a straight line shall be traced from the starting point of the dividing line towards the true North, and all the land located west of said straight line shall belong to Nicaragua.

#### Article IV

For greater clarity, a reduced copy of the map of the San Juan del Norte Bay drawn up by the engineers of the Canal Company in December 1888 shall be attached to this Treaty. This map shall serve as a guide for the Commissioners of both Republics in tracing the dividing line, which is marked with a red line for identification purposes.

#### Article V

Nicaragua shall have the right to navigate on Harbor Head Bay and on that part of the Ánimas stream which is located in Costa Rican territory and flows out into the aforesaid Bay, in the same terms that Costa Rica has the right to navigate on the San Juan River, up to a point three miles below the Old Castle.

#### Article VI

Being of great importance for the two friend and brother States that the population of one State comes as close as possible to the population of the other State for greater respectability, linkage of interests and mutual

assistance, it is stipulated that if Costa Rica does not obtain, in its opinion, a competent extension of the coast at the Bay of San Juan del Norte, which is common to the two Republics; by interposition; at any time, of the land that according to this Convention should belong to Nicaragua, and it makes it difficult to load and unload all classes of merchandise, Costa Rica shall have the right, so that it has coastal access, as both Republics desire, to freely use that portion of land between the San Juan Bay and the right bank of the stream that is next to the starting point of the dividing line. This right shall be exercised over a surface limited in all its extension by two parallel lines, two hundred meters apart from each other. The purpose of the aforesaid right of use is to transport, load and unload all kinds of merchandise, without restriction, build railways and wharves; establish offices, commercial stores and residential houses, which shall be subject, as well as the persons who inhabit this tract of land, to the jurisdiction and laws of Costa Rica. The aforementioned right shall not terminate, unless it is necessary to excavate the land for any expansion of the port, in which case Costa Rica shall have coastal rights within its own territory.

#### Article VII

So that Nicaragua has sufficient space of non-rocky coast at Salinas Bay for loading and unloading all kinds of merchandise, it is stipulated that the dividing line between both Republics on that side shall begin at a point on the Sapoá River, as determined in the aforesaid award, and rather than continuing to the center of the Salinas Bay, as provided in the Treaty of 15 April 1858, it shall end at another point on the coast, two nautical miles from Punta Mala towards the southeast.

#### Article VIII

These stipulations shall not modify the rights of either of the two parties in the bays of San Juan del Norte and Salinas.

#### Article IX

This Convention, upon approval by the Executive branch of each of the contracting Republics and ratification by their respective Congresses, shall be exchanged at this capital city, within sixty days from the last ratification.

In witness of all the stipulations made in the foregoing nine articles, we, the Plenipotentiaries of Nicaragua and Costa Rica, sign this Treaty in duplicate and affix thereunto our respective seal at the city of Managua, on the twenty-third of December of the year one thousand eight hundred and ninety. Benjamin Guerra. José Ma. Castro. The Government: Having reviewed the foregoing Treaty, it is approved. Managua, 24 December 1890. Sacasa. Minister of Foreign Relations. Guerra.

Done at the Assembly Hall of the Senate. Managua, 11 November 1891.

Alejandro Argüello, S.P.

Jorge Bravo, S.S.

Franco. López G., S.S.

## ANNEX 13

### MATUS-PACHECO-LAINFIESTA PRELIMINARY TREATY OF PEACE. 26 APRIL 1898.

The National Legislative Assembly

#### DECREES

Sole. The Peace Treaty concluded between the Greater Republic of Central America and Costa Rica is hereby ratified, with the modifications set forth therein:

In neutral waters of the Pacific Ocean, aboard the U.S. warship "Alert", generously offered for the occasion by His Excellency Mr. William L. Merry, Plenipotentiary Minister of the United States of America to the Government of the Republic of Costa Rica, and finding themselves at Cabo Blanco, 9° 26' 45" latitude North and 85° 03' 30" longitude East, the undersigned, Manuel Colonel Matus, Plenipotentiary of the Greater Republic of Central America; Ricardo Pacheco, Plenipotentiary of the Republic of Costa Rica; and Francisco Lainfiesta, amicable mediator and Plenipotentiary of the Republic of Guatemala, having exchanged and examined their respective Full Powers and found them to be in due form, make known in the most solemn terms that the respective parties having stipulated previously their wish to amicably settle the disagreements that unfortunately have arisen between the Republic of Costa Rica and the Government of Nicaragua, which forms part of the Greater Republic of Central America, and that have led to the imminent danger that war might break out between them, a deplorable situation from any standpoint; and both being willing to achieve the civilizing and honorable aims which have caused the present meeting to take place, formulate and agree the following points of brotherly and peaceful agreement, by virtue of which from this moment onwards the contending parties cease and desist from any hostile intent by means of weaponry, and reestablish the good intelligence and harmony in which it is fit to exist, for the good of these sister peoples and the honor of Central America. The two countries therefore declare and agree:

#### Article I

The Greater Republic of Central America and the Republic of Costa Rica, respectively, in deference to the friendly plea interposed by the Government of Guatemala and the just claim of the general interests of Central America,

no less than the advantages to the sister peoples of Nicaragua and Costa Rica, today in disagreement, freely accept the recourse of a peaceful and amicable covenant that brings to an honorable conclusion the conflict that has led them to take up weapons.

#### Article II

Accordingly, the forces of both parties stationed on the border, with the exception of the small garrisons established also in times of peace, shall be simultaneously concentrated and licensed by both Governments, as soon as and on the day on which the mediating Minister so determines and upon his return to land makes known by telegraph the conclusion and signing of this Agreement. This act carries implicit that the two peoples shall return to their normal state of tranquility and the cultivation of their relations, temporarily interrupted by the menace of war.

#### Article III

Having taken recourse to the civilized and cultured means of arbitration, which even warlike peoples recommend when seeking to settle international disputes, the High Contracting Parties agreed to submit their mutual complaints and claims to the decision of a tribunal made up of three Central Americans citizens, one appointed by the Greater Republic of Central America, one by the Republic of Costa Rica, and a third by the Republic of Guatemala, the latter in the role of peaceful mediator.

#### Article IV

The aforementioned arbitrators shall meet in the capital of the Republic of Guatemala within a period not to exceed one month upon the ratification of the present Agreement by both parties, for the purpose of conveniently organizing and proceeding to the compliance of their commission, adjusting the arbitration procedures to the following rules:

1. Within one month following the date of establishment of the Arbitration Panel, the contracting Parties shall present, through their representatives, their respective detailed complaints and claims in writing;
2. On the date of expiration of the term referenced in the foregoing rule, the Arbitrator shall deliver to the representative of each Signatory Party a true copy of the demands submitted by the other Party so that it may file an answer within one month;
3. Upon lapse of said term and presentation or non-presentation of the answers, the Panel shall grant the Parties a one-month term to submit the evidence of the facts as may be required;

4. Upon expiration of said term and within the next two months, the Panel shall render its decision;

5. At the request of any of the Parties or ex-officio, the Arbitration Panel, at any stage of the process, may request either of the Parties to provide any documents, data or reports that may be required or deemed convenient.

The Panel, in agreement with both Parties, may reduce or increase the indicated terms, for the purpose of concluding the proceeding at an earlier date or better clarifying the facts.

#### Article V

The claims made by either of the Parties, regardless of their nature and scope, shall be freely submitted to the consideration and decision of the Arbitration Panel, in accordance with the Law of Peoples, in such terms as it deems fair and equitable.

#### Article VI

Both Parties declare that no claims shall be submitted to the Arbitrator regarding the boundary questions that were resolved in the Treaty of 15 April 1858, in the arbitral award of President Cleveland, or in the San Salvador Convention of 1896.

#### Article VII

The Arbitrators shall hear and render a decision acting as arbitrators and amicable compositeurs, taking into account the benevolence with which the annoying incidents that have occurred between brothers should be treated and the benefits of an immediate settlement, dictated by the amity that should prevail over the common interests of Central America.

Both contracting Parties undertake in the most formal and solemn manner to faithfully observe and comply with the arbitral decision as may correspond to each one, without making any claims of any nature.

#### Article VIII

A definitive Peace and Amity Treaty shall also be entered into in Guatemala City, within the time frame set by the interested Governments, between the Plenipotentiaries of the Republic of Costa Rica and the Greater Republic, one from each party, and a third to be appointed by the Government of Guatemala and who shall act as mediator. The aforementioned Treaty shall stipulate all of the conditions and commitments the parties see fit to agree upon for the purpose of ensuring between the people of Costa Rica and Nicaragua, in a stable and solid fashion, that cordial intelligence serves to

dispel all reasons for disagreement, with the aim that the peace and quiet which both are called upon to enjoy, are not altered again as has recently occurred. In addition, this definitive treaty shall include a solemn commitment by both peoples to renounce to the use of arms for settling their disputes before having first appealed to the beneficial recourse of arbitration.

#### Article IX

The Plenipotentiary Mediator in representation of Guatemala undertakes to request that his Government act as guarantor of the faithful compliance of the obligations assumed by each Party under said Treaty.

#### Article X

This Agreement shall be submitted immediately to the ratification of the legislatures of the States of Nicaragua, Honduras and El Salvador, for the purpose of obtaining the approval of these High Bodies as regards the submission of the respective complaints and claims to the decision of an arbitrator, so as to proceed without delay, once said higher authorization is issued, to comply with the provisions set out in the respective articles of this Treaty.

#### Article XI

The representatives of the Greater Republic of Central America and the Republic of Costa Rica, on behalf of their Governments, express their gratitude to the Government of Guatemala for its efficient cooperation in the amicable agreement reached by the parties, as well as to its worthy representative, the Honorable Minister Doctor Francisco Lainfiesta, who has so nobly interpreted the fraternal sentiments of his mission.

In witness whereof, and in full agreement, we hereby sign and seal three identical copies, as stated above, aboard the U.S. Navy warship "Alert", and in the presence of its Captain E. H. C. Leutze, who also sets his signature, certifying the position of the ship in neutral waters of the Pacific Ocean, at four in the afternoon on the twenty-sixth day of April of eighteen hundred and ninety-eight.

(L. S.) M.C. Matus

(L. S.) Ricardo Pacheco

(L. S.) Franco. Lainfiesta

(L. S.) E. H. C. Leutze, Commander

Managua, 2 May 1898

Having seen the Peace Preliminaries signed at four o'clock in the afternoon of the twenty-sixth day of April past, aboard the U.S. Navy warship "Alert", in neutral waters of the Pacific Ocean by Doctors Manuel Colonel Matus and Ricardo Pacheco, respectively the Ministers Plenipotentiary for the Greater Republic of Central America and of Costa Rica, and Mr. Francisco Lainfiesta, Envoy Extraordinary and Minister Plenipotentiary of Guatemala, the mediating power, for the purpose of reestablishing good intelligence and setting the means by which to resolve the difficulties that have arisen between the former; and having found that the aforementioned preliminaries are in full accordance with the instructions given to Minister Matus to that end, the Congress agrees to extend its full approval.

Rafael Reyes  
Pedro H. Bonilla  
E. Mendoza

Given in the Sessions Hall – Managua – 25 May 1898.

Alejandro Baca D.P.  
L.R. Mairena D.S  
Gabriel Rivas D.S.

Carry out. - National Palace – Managua, 26 May 1898.

J.S. Zelaya

Minister of foreign Affairs

Erasmo Calderón.



## ANNEX 14

### ZEPEDA-JUÁREZ-WHITE CANALIZATION CONTRACT. LEON, 27 AUGUST 1849.

LEÓN, 1849

Ministry of Foreign Home Affairs  
of the S.D. of the State of Nicaragua,

D.U.L.

Government House: Santiago de Managua

September 26, 1849

Mr. Prefect of the Department:

The President of the State has sent me the following decree.

"The Director of the State of Nicaragua to its inhabitants: Whereas the extraordinary Legislative Assembly has decreed the following: The Senate and House of Representatives of the State of Nicaragua, assembled at an extraordinary session,

#### DECREE:

ARTICLE 1. The maritime canalization contract concluded and signed in the city of León on the twenty-seventh of August last by Licentiates Hermenejildo Zepeda and Gregorio Juarez, Commissioners of the Government of the State, and Mr. David L. White, representative of the North American Company, is ratified, the text of which reads as follows:

"The Supreme Director of the State of Nicaragua and the Atlantic-Pacific Maritime Canalization American Company, made up of Messrs. Cornelius Vanderbilt, Joseph L. White, Nathaniel H. Wolfe and their partners, all citizens of the United States, being desirous of concluding the terms of a contract that facilitates transit through the isthmus of Nicaragua, from the Atlantic to the Pacific Ocean, through a maritime canal or railroad, have resolved for that purpose to appoint Commissioners, to wit: The

Supreme Director of the State of Nicaragua, Licentiates Hermenejildo Zepeda and Gregorio Juarez, and the aforementioned Company, Mr. David L. White, conferring upon them full powers to conclude and sign a contract for the aforesaid purpose, who, after exchanging their powers, have agreed upon the following articles:

#### ARTICLE 1

The State of Nicaragua grants to the Company the exclusive right and privilege to build a maritime canal through its territory, at its own expense and through a single route, from the port of San Juan de Nicaragua, to any other more feasible point on the Atlantic, to the port of El Realejo, the Gulf of Amapala or Fonseca, Tamarindo, San Juan del Sur, or any other point on the Pacific ocean that the Company's engineers designate, using the San Juan River, Lake Nicaragua, Tipitapa River, Lake of Leon, or any other rivers, waters or lands located within its territory, with the objective of uniting the two oceans and making use, for its construction and navigation, of the rivers, lakes, bodies of water and wastelands or private properties. The State further grants in like manner to the Company the exclusive right to dispose of, manage, and administer the canal based on the following articles:

#### ARTICLE 2

The dimensions of the canal shall be those that are necessary for transit of all types of ships, and the place where it shall flow into the Pacific, if two or more places are practicable, according to the decision of the engineers, shall be chosen to meet the best interests of the State and the Company.

#### ARTICLE 3

The Company undertakes to build at its own expense, at the ports situated on the extremities of the canal, customs houses with the necessary capacity for use by the State and the Company.

#### ARTICLE 4

The exclusive rights and privileges granted by the State to the Company in the present contract shall be enjoyed during a fixed term of eighty-five years, counted from the date that the canal is built and put in operation.

#### ARTICLE 5

By virtue of the present contract, the Company agrees to pay to the State for this concession the following sums of money, to wit: 1. Ten thousand pesos in an order of payment against the Company at the city of New York, as soon as the contract is ratified by the State Legislature; 2) Ten thousand pesos upon the expiration of one year, counted from this same date; and 3)

Ten thousand pesos on each subsequent year until the canal has been completed. The aforesaid sums shall be paid to the State in the city of Leon, or in New York City, as the State may choose. Likewise, the Company makes a free donation to the State of two hundred thousand pesos in Company shares, which shall be delivered to the State as soon as the certified shares are distributed by the Company.

#### ARTICLE 6

The State shall receive for its share in the canal's income, once it is in operation, the following interests: twenty percent of the annual net income during the first twenty years, after deducting an annual interest of seven percent for the capital employed in the construction; twenty-five percent of the annual net income during the following years, after deducting seven percent, until the full term stipulated in the present contract expires. Likewise, the State shall receive ten percent of the net income, without any deduction of interest, for any route that the Company establishes between the two oceans, whether by railroad or carriage, or by any other means of communication, during the twelve years granted in the present contract for the construction of a canal.

(...)

#### ARTICLE 17

The Company agrees to transport through the Canal all passengers, goods, merchandise and materials of any description that are entrusted to it, and further stipulates that the canal shall serve for the transit of vessels from all nations, subject to fixed and uniform rates established by the Company.

#### ARTICLE 18

The Company shall establish fees or tolls for the transport of passengers, goods, merchandise and property of any description, and for all types of vessels passing through the canal, which fees and tolls shall enter into force as soon as they are communicated to the Government of Nicaragua, which shall be bound to approve them within eight days from the date of receipt. At the same time, with the objective of drawing the broadest business to this route, the Company agrees to fix the aforementioned fees and tolls at the lowest price possible in accordance to the mutual interests of the State and the Company, and if the Company decides, at any given time, to change such fees and tolls, it shall be bound to notify such decision, not less than six months in advance, on the public newspapers of the State of Nicaragua, and at the major port cities of the United States.

## ARTICLE 19

The transit fees and tolls for products and goods originating from the State of Nicaragua and neighboring States shall be fixed at a more favorable rate agreed by the State and the Company.

## ARTICLE 20

The State grants to all the Company's steamships and sailboats, during the life of this contract, the right to enter and leave its ports, either on the Atlantic or Pacific, or in its inland rivers and bodies of water, and use thereof, free of all fees and tolls, for example, anchorage, tonnage, etc.

(....)

## ARTICLE 23

The exclusive right acquired by the Company under this contract to navigate on the lakes, rivers and waters of the State with steamships, from one sea to the other, shall be understood not to preclude natives from free inland navigation on sailboats or any other type of vessels other than steamships.

(....)

## ARTICLE 25

The Company shall carry on any of its steamships or sailboats navigating on the canal route, all official State correspondence, free of charge. In consideration thereof, the State agrees not to impose or collect any charges or fees on any Company correspondence.

(....)

## ARTICLE 27

The State of Nicaragua, with the objective of facilitating the colonization of the land next to the San Juan River, the canal to be built thereon and adjacent confluent and affluent rivers, makes a free donation to the Company of eight stations, or sections of land, situated at such points on any bank, or on both banks of the river or canal that the Company chooses, each section eight English miles in width, measured from the edge of the canal or river to the interior. The State further grants to the Company the right to transfer the lands comprised therein to the possession of settlers or any person or persons who wish to settle thereon.

These sections of land are granted under the following conditions: 1) They shall be chosen by the Company in such way that they are at least three English miles apart from each other; 2) None of them shall be chosen within

a distance of four and a half English miles from the mouth of the San Juan River; 3) The State reserves its right over those points that are necessary for military fortifications and public buildings; 4) The lands granted may not be transferred to settlers until six months have lapsed after the reconnaissance of the canal route begins; 5) The State reserves its eminent domain and sovereignty over said lands and its habitants; and 6) These lands may not be transferred to any Government.

(...)

#### ARTICLE 30

The Company shall have the exclusive right to build railways, carriage roads and bridges, and to set up boats and steamships on said rivers and lakes as necessary adjuncts for promoting the construction of the canal, but the Company hereby stipulates and agrees, if the construction and conclusion of the canal, or any part thereof, is not possible as a result of the occurrence of any act of God or inevitable accident, to build a railroad, a carriage road or a means of communication by water between the two oceans, if possible, within the same period stipulated for the construction of the canal, subject to the same terms, conditions, regulations and restrictions as may be applicable.

(...)

#### ARTICLE 32

The State also agrees to protect and defend the Company with respect to the full enjoyment of the rights and privileges granted thereto under this contract, and also agrees not to grant or contract to any Government, individual, or any other company the right to build a maritime canal, railroad, or any other inter-oceanic route through its territory, or the right to navigate on the rivers and lakes occupied by the Company for steamships, as long as this contract remains in force. However, if this contract ceases to have effect, then the State shall be free to contract any other individuals or companies, as it may deem most convenient.

(...)

#### ARTICLE 36

It is expressly stipulated by the State of Nicaragua that all vessels, products, manufactured goods and citizens of all nationalities shall be allowed passage through the canal (proposed to be built through the national territory), subject to the same duties and taxes established in respect of the United States, provided that said nations sign the treaties, stipulations and

guarantees hereinafter made between the State of Nicaragua and the United States with respect to the canal.

(...)

In witness whereof, we, the respective Commissioners, sign and seal this contract in triplicate at the city of Leon of the State of Nicaragua this twenty-seventh day of August, in the year of our Lord one thousand nine hundred and forty-nine. *Hermenejildo Zepeda. Gregorio Juarez. David L. White.*

ARTICLE 2: The present Contract shall also be ratified by the Representative of the Company, Mr. David L. White, who is fully and duly authorized for this purpose. Upon approval by the Executive branch, it shall be published and considered as a law of the State.

Done at the Sessions Hall of the House of Representatives in Santiago de Managua on this twenty-second day of September of 1849. *Apolonio Orozco, R.R. Santiago Solorzano, A.R. Rosalio Cortez, A.R.* To the Executive branch, Senate Hall, Santiago de Managua, September 25, 1849. *Jesús Robledo, R.S. Liberato Cortes, A.S. Toribio Terán, A.S.* Therefore: Execute. Santiago de Managua, September 26, 1849. *Norberto Ramirez*, To Licentiate Sebastián Salinas, Secretary of State at the Department of Foreign Affairs.

And by Supreme Order, I hereby transcribe it for your knowledge and other purposes.

Salinas

The present contract having been duly ratified by the Legislature of the State of Nicaragua, now, for this reason, I, *David L. White*, Commissioner on behalf of the U.S. company Atlantic Pacific Maritime Canal Company, vested with full powers conferred upon me by the parties for this purpose, hereby accept, ratify and confirm said contract, and each of the clauses and articles set out therein. In witness whereof, I have hereunto set my hand and affixed my seal. Done at the city of Managua, on this twenty-sixth day of September in the year of Our Lord, one thousand eight hundred and forty-nine. (Seal) *David L. White*

*Norberto Ramirez*, Supreme Director of the Republic of Nicaragua in Central America, whereas the Legislative branch of the Republic decreed yesterday, and the Executive branch sanctioned today, the solemn

ratification of the contract for the construction of a maritime canal from the Atlantic to the Pacific, which was signed on 27 August last by the Commissioners of the Supreme Government and the Representative of the Company of the United States of America, Mr. David L. White, therefore,

DECREES:

Sole Article: The Republic of Nicaragua accepts, ratifies and confirms each and every article in this contract. Therefore: publish, execute and circulate as a law of the State, delivering this signed copy to the above-named representative of the aforementioned Company, who has also delivered a signed copy, duly ratified, to the Secretary of State at the Department of Foreign Affairs.

Done at Santiago de Managua in the House of Government; sealed with the seal of the Republic, and initialled by the undersigned Secretary of State and the Department of Foreign Affairs, on this twenty-sixth day of September of one thousand eight hundred and forty-nine. (Seal) *Norberto Ramirez*. To Mr. Sebastián Salinas, Secretary of the Department of Foreign Affairs.



## ANNEX 15

### IRISARRI-STEBBINS CONTRACT. NEW YORK, 19 JUNE 1857.

The President of the Republic of Nicaragua to its inhabitants: Whereas the Constituent Assembly has decreed the following:

The C. A. of Nicaragua, in use of the full powers conferred upon it by the people of the Republic,

Decrees:

#### Article 1

Each and every part of the contract adjusted on 19 June last between Mr. Antonio José de Irisarri, Envoy Extraordinary and Minister Plenipotentiary of this Republic, and Mr. H.G. Stebbins, Chairman of the American Atlantic-Pacific Canal Company, and approved by the Government on 27 July last, is hereby ratified, which literally reads as follows:

Given that our highly esteemed Don Antonio J. Irisarri, Envoy Extraordinary and Minister Plenipotentiary of this Republic, near to the United States of America, by virtue of the powers granted, has concluded, decreed and signed an agreement at New York on 19 June last with Mr. H. G. Stebbins, President of the American Atlantic-Pacific Canal Company, regarding transit through the territory of this Republic and through an inter-oceanic railroad, which literally reads as follows:

Agreement between the Republic of Nicaragua, through its Envoy Extraordinary and Minister Plenipotentiary to the United States, and the American Atlantic-Pacific Canal Company. Whereas the Supreme Government of Nicaragua signed a contract on August 27, 1849, through its Commissioners Hermengildo Zepeda and Gregorio Juárez, with the American Atlantic-Pacific Maritime Canal Company, which was ratified by the Congress of the Republic of Nicaragua on September 22, 1849, amended on March 9, 1850, ratified and confirmed by the Congress of said Republic, and by decree of the Supreme Director on April 11, 1850. And whereas the dimensions of the maritime canal to be opened by the referred company were defined and stipulated in Article 2 of the referred contract. And whereas it has been ascertained and determined through detailed and complete surveys carried out by competent engineers that a

canal of the dimensions stipulated in the mentioned article cannot be constructed because the bottom of Lake Nicaragua is not sufficient.

And whereas, pursuant to Article 30 of said contract, the mentioned Company is obligated to construct and establish a railroad and water communication route between the two oceans in the event that the construction of the canal was impossible due to the reasons or causes mentioned herein.

And whereas it is desirable to establish a railroad and water communication route as soon as possible in such advantageous terms for both the Republic and the Company.

The Republic and the Company have agreed upon the following modifications and additions to the referred contract:

Art. 1. The Company is released from the obligation to construct the canal, but in its stead, the Company shall establish through the territory of the Republic, between the two oceans, a water communication route and railroad within two years from the last ratification of this contract by the competent authorities of Nicaragua. Said communication route and railroad shall be established and constructed as provided in Article 30 of the aforementioned original contract, under the same terms and subject to the same conditions, regulations and restrictions stipulated therein, except those that could be changed, modified or deleted by this contract. The water communication route shall run through the San Juan River and Lake Nicaragua, and the railroad shall be constructed from said lake to the Pacific.

Art. 2. Article 6 of the original contract is deleted and rescinded and, in its stead, the following shall be inserted, viz: The State shall receive one dollar and fifty cents, legal tender of the United States of America, or its equivalent in the currency of Nicaragua, for each adult passenger carried by said company through the State; and seventy-five cents, legal tender of the United States of America, or its equivalent as stated above, for each passenger under fourteen years of age, who is also carried in the same manner by the Company. These sums shall be paid at the point of transit in Nicaragua or in New York, and at such times as that Government may designate. And for the purpose of accurately ascertaining the number of passengers carried, two copies of the list of passengers shall be scrupulously prepared for each voyage and upon the arrival of each steamship to any Nicaraguan port, said copies shall be delivered to the employees hired by the company to operate the

steamships, or upon demand to the duly authorized officer or agent of the Government of Nicaragua. And the State in any case shall designate a person who shall have the right to board any of the steamships or other vessels of the Company, and to visit any of its offices and inspect the original passenger lists and any documents containing information on the number of passengers transported by said company. This article shall be applied to all passengers transported by the company through the carriage roads and water communication route during the two years granted for the construction of the railroad.

Art. 3 The company shall not transport any passenger to the Republic of Nicaragua, or receive money for fares or sell fares to any person who intends to stay in the State except for those persons or passengers who bear a passport or written permit signed by the consul or other agent designated by the State of Nicaragua who resides at the port of origin. This obligation shall be extensive to persons and passengers who do not stay in the territory of the State, and are in transit as part of their entire voyage and are traveling from one port to another port of the United States of America, said civil servants of the United States of America or Nicaragua, or bona fide agents or officers of the company. Given that the purpose and intent of this article is to prevent the carriage and disembarkation in Nicaragua of those persons who would be hostile to that State, the company commits that each and every company employee, officer and agent shall strictly comply with the provisions of this article. And if any person, without the knowledge of the company, or of the officers in charge of the steamships, secretly boards any of the steamships and is not discovered until such steamship has departed, said person shall not be allowed to disembark in Nicaragua without the permit from the competent authority of said State, and if said permit were refused, said person shall be returned to the port of origin.

Art. 4 In the event that said State was invaded by any public enemy or other, the steamships of the company may be used by the Government of Nicaragua to transport troops, ammunitions and supplies upon request to the authorities.

(...)



## ANNEX 16

### WEBSTER & HARRIS -ESCALANTE CONTRACT. SAN JOSÉ, 14 JULY 1857.

Don Rafael G. Escalante, Minister of Finance of the Supreme Government of the Republic of Costa Rica, authorized by H.E. the President of the same, and Messrs. William Robert Clifford Webster, a British subject, and Israel Chapman Harris, a citizen of the United States of America, have agreed to enter into a contract under the following terms:

Art. 1. Having appeared Messrs. Webster and Harris before H.E. the President of the Republic of Costa Rica, with the objective of obtaining a concession for exclusive transit rights of passage, via water and land, across the isthmus of Nicaragua, through the San Juan river, Lake Nicaragua, and from the Sapoá river to the bays of Salinas or La Virgen to San Juan del Sur in the Pacific Ocean and, *vice versa*, to Punta de Castilla in the Atlantic Ocean, as well as the exclusive right of steam navigation in Lake Nicaragua. Notwithstanding the foregoing, the Government of Costa Rica has the right to permit steam navigation in the San [Juan] river up to the Old Castle, the river San Carlos and Sarapiquí, for the internal trade of the country. The aforementioned Webster [and] Harris, who believe they have a right of transit, the former by virtue of a concession from Costa Rica, and the latter on the part of the Government of Nicaragua, have agreed to amicably settle their opposed rights of transit by jointly entering into the present contract, and notwithstanding that the Government of Costa Rica is oblivious to any acquired rights over the property of transit, both those alleged by Mr. Webster, as well as by Messrs. Charles Morgan and sons, of which company Harris is a partner, both because the contract of Webster was not fulfilled and because the Government of Costa Rica cannot recognize the rights alleged by the aforesaid Charles Morgan and sons; in any case, the Government of Costa Rica agrees to enter into a new contract with Messrs. W. C. R. Webster (Harris) and J. C. Harris, their heirs, executors or assignees, for a period of fifty years, counted from the date of this instrument, for an exclusive right of transit and the privilege to cross the Isthmus of Nicaragua, via water and land, from Punta de Castilla in the Atlantic Ocean and the San Juan river, Lake Nicaragua, and the Sapoá river, to the Bay of Salinas and San Juan del Sur, through Lake Nicaragua, the Sapoá and San Juan rivers, to Punta de Castilla in the Atlantic Ocean.

2. The Government of Costa Rica grants to Messrs. Webster and Harris, their heirs, executors or assignees, for the same period, the exclusive right of steam navigation in Lake Nicaragua and in the San Juan river.
3. The Government of Costa Rica grants to Messrs. Webster and Harris, their heirs, executors or assignees, for the same period, the exclusive right to transport on the indicated routes, via water and land, at such prices as they may deem convenient, passengers, [mail pouches], gold bars or coins, merchandise, or any other articles, free of duties or charges of any kind.
4. It is prohibited to pass through the transit (route) ammunition, gunpowder or war elements, except for rifles and weapons for private use, and owned by the passengers traveling on board said vessels, but said weapons must be packed to cross the route via water and land, unless the Governments of England and the United States guarantee the neutrality and security of said transit, in which case passengers may carry their weapons, in the understanding that, upon passing in front of El Castillo, they may not carry them and would pass packed or else the rapid streams would flood the steamer.
5. The Government of Costa Rica grants, assigns and transfers to the aforesaid Messrs Webster and Harris, their heirs or assignees, all the property, movable and immovable, that said Government [apprehended] in the aforesaid route, which consists of steamers, machinery, shops, houses, galleys and materials belonging to Morgan and Garrison, which the Government shall deliver in the same condition and in the amounts that exist at the time of delivery, which shall be done when the first part of the loan (to be discussed later) has been delivered to the Government of Costa Rica.
6. The Government of Costa Rica grants to Messrs. Webster and Harris, their heirs, executors or assignees, free of all duties, up to thirty acres of land in the bay of Salinas and in the Sapoá river; in Punta de Castilla, the necessary land for their houses and warehouses, and, in San Juan del Sur and La Virgen, those portions that Messrs. Morgan and Garrison previously had in the contract, as well as the various extensions they may need for furniture, [dikes] or routes, coal deposits, houses, offices, shops, warehouses and others as may be necessary for the sound operation of the transit route.
7. The Government of Costa Rica grants to Messrs. Webster and Harris, their heirs, executors or assignees, the privilege to introduce for both purposes of transit, free of all duties, all articles destined for use of the transit route or that may be necessary for the success of the company.

Likewise, the steamers shall pass from one to the other extreme of the transit route on the Atlantic and Pacific Oceans, as well as ocean steamboats and all vessels carrying materials or supplies for the use of the contractors or their assignees; and, in the same manner, passengers, mules, merchandise, gold bars or coins, machinery or other articles in transit from ocean to ocean shall be exempt from the payment of any duties not determined in the present contract. They are also permitted to [equip] and maintain a guard to safeguard the treasures or other valuable articles along the overland transit route, which may not exceed thirty men.

8. The Government of Costa Rica grants to Messrs. Webster and Harris, their heirs, executors or assignees, the right to build the roads they may need across the Isthmus, as well as the bridges, dams, buildings and railroads that may be necessary and [beneficial] for the transit, and to cut and take wood and other materials from the country as may be necessary for [said] purposes and management of the steamers in the Lake and rivers, provided that they are taken from wastelands owned by the Government and not under private ownership, all without any kind of charges.

9. The Government of Costa Rica obliges to make every effort to obtain from the Government of Nicaragua a transfer of transit rights in favor of Costa Rica, either in the river, lake or road, [or at least] its official adherence to the concessions made in this contract.

10. The Government of Costa Rica commits to protect the contractors, their heirs, executors or assignees in the full enjoyment of the privileges and rights granted in this contract for a period of fifty years, counting those that attempt to disrupt the peaceful possession of their businesses, and also obliges not to give to any persons other than those [mentioned] in our contract, any of the aforementioned privileges during the term of this contract.

11. In consideration of the faithful performance of the obligations stipulated herein, on the part of the Government of Costa Rica, William Robert Clifford Webster and [Israel] Chapman Harris oblige to the following terms, to wit:

1. They shall organize a Company as soon as possible, and shall put in operation in the shortest time possible a steamer line between New York and San Francisco to communicate with the route, [via] the [Isthmus] of Nicaragua; the Company shall not [bring] to the transit route any filibusters or persons who could interfere in the political matters of the Governments of Costa Rica and Nicaragua and the said Company shall employ all its

influence and power to impede such persons from entering the country through any of the transit routes.

2. The aforesaid Webster and Harris Company [Ca] commits to advance to the Government, twice its obligations, the amount of \$ 500,000 five hundred thousand pesos, with an annual interest of seven percent (7%), which shall be deliverable in the same manner. Two hundred and fifty thousand pesos which shall be shipped precisely in New York on the [fifth] day of September next and the amount shall be delivered to the Government no later than on the 25<sup>th</sup> of the same month.

One hundred and fifty thousand pesos shall be shipped at the same port on the fifth day of November next, and delivered to the Government in San Jose on the 25<sup>th</sup> of the same month, and the remaining one hundred thousand pesos shall be shipped on the 5<sup>th</sup> of January next at the same port and delivered and (delivered) on the 25<sup>th</sup> of the cited month in San José to the Government, which amounts shall be received by the Government of Costa Rica in legal tender of the United States or of Great Britain, including a five percent premium over the values of said currency of payment in those countries, in such manner that a sterling pound worth five pesos shall be received with the same value of the gold coins of the United States that are worth five pesos. The Company shall pay all expenses incurred in the transportation of said loan and shall bear all risks until delivery is made to the Government in San José.

3. Said Company shall pay to the Government of Costa Rica, in case Nicaragua gives its adhesion to this Contract, the sum of two strong pesos, per head, for each adult passenger who crosses the Isthmus on the Company steamers and, in equal proportion, for those passengers who pay half and one-fourth of the toll, and they commit to guarantee that the total amount of such transit right shall not produce less than fifty-five thousand pesos each year, being the said Company obliged to complete, to the Government of Costa Rica, the referred amount of fifty-five thousand pesos, if such tolls do not reach that amount.

4. The said company commits to pay to Costa Rica, in case Nicaragua refuses its adhesion to this contract, the sum of one strong peso, per head, for each adult passenger who crosses the Isthmus on the company steamers through the Sapoá and Salinas route, and, in equal proportion, for those who pay half and one-fourth of the toll, guaranteeing, in such case, that the total amount generated by the transit route shall not be less than thirty-five thousand pesos each year, and the company shall pay to the Government the balance according to the same terms set out in the

foregoing article. Accordingly, the commitment acquired by the Government with respect to the consent of the Government of Nicaragua to the transit concessions in favor of Costa Rica, and guaranteed by the Government of Costa Rica the transit through Sapoá and Salinas; and vice versa, through Salinas, Sapoá and Punta de Castilla, has been amended.

(...)

9. It is understood that the Government of Costa Rica, in case Nicaragua denies its adhesion to this Contract, shall maintain the concessions made from Punta de Castilla in the Atlantic to the bay of Salinas, San Juan river, via Sapoá, and vice versa, from Salinas to Punta de Castilla, allowing the contractors to use, for two years, the road from La Virgen to San Juan del Sur, until the road from Sapoá to the bay of Salinas is built. However, in case Nicaragua gives its adhesion to this Contract, the Company may use the road through the river Sapoá, or from La Virgen to San Juan del Sur, as it may deem more convenient.

10. The contractors commit to make every effort to obtain the protection of the governments of Great Britain and the United States, in order to obtain from said Governments the guarantee and their double protection to impede any infringement of the rights and privileges granted.

11. The Company commits to present to the [Governor] of Castilla, through the Steamship Captains, a list of the passengers that are carried on board, whether going upstream or downstream on the river.

12. Messrs. Webster and Harris, their partners and assignees, commit to [faithfully] comply with the conditions of this Contract; it being understood that in case of non-compliance with the said clauses, this Contract shall be rendered null and without effect by the same Government, upon notice is served to the Company by the Government of Costa Rica, including evidence regarding said non-compliance, and the Company shall forfeit all [rights] and privileges granted by the Government in this contract, and shall also forfeit, in favor of the Government, any property that it may have acquired by virtue of [said] contract on the transit line.

13. All concessions, gratifications and obligations acquired by the Government with Mr. W. R. C. Webster, his partners and associates, by virtue of the contract entered into on the fourth of December of one thousand eight hundred and fifty-seven as amended, is declared null and without effect.

14. It is understood that in the hypothesis that the transit route for passengers and freight is done through Sapoá and Salinas, which would generate less tolls corresponding to the Government, and would not be sufficient other than to pay the interests of the loan for five hundred thousand pesos that the Company shall make to the Government; and, in such case, the Government shall contribute each year up to twenty thousand pesos for the payment of the principal of five hundred thousand pesos until the loan has been fully paid to the company.

15. The Government obliges to give to the Company bonds for the amounts it receives from the [said] loan, which shall indicate the manner in which they shall be paid and shall be issued for the amount requested by the said Company.

16. Whenever any dispute arises between the Government and the contractors in relation to the misinterpretation of any of the articles contained in this contract, an arbitrator shall be appointed by each party to examine the question and render a decision, which shall be final and binding. Said questions must be elucidated in San José, with the understanding that the company does not have the right to withhold any amounts that correspond to the Government by virtue of this contract before the award is rendered by the [said] arbitrators.

In witness whereof we sign this contract at the National Palace, in San José, Costa Rica, on the fourteenth of July of one thousand eight hundred and fifty-seven. (Signed) R. G. Escalante (Signed) W. R. C. Webster (Signed) J. C. Harris – National Palace, Chamber of the Department of Finance, San José, fourteenth of July of one thousand eight hundred and fifty-seven. The preceding contract is approved in all its parts (Initials). Initialed by H. E. (Signed by R. G. Escalante).

It concurs.  
(Calvo)

Minister of Foreign Affairs of the Supreme Government of the Republic of Nicaragua.

It concurs.

Managua, August 27, 1857  
(Signed) Juarez  
[Seal]

## ANNEX 17

### ZELEDÓN-ROSA PÉREZ CONTRACT, MANAGUA, 30 DECEMBER 1860.

Contract entered into between H.E. Don Pedro Zeledón, Minister of Foreign Affairs of the Republic of Nicaragua, on the one part, and Don José Rosa Pérez, commissioned by Messrs. John P. Yelverston, H. G. Stebbins, Nathaniel H. Wolfe, citizens of the United States of America, and their associates and shareholders of the former Atlantic-Pacific Maritime Canal American Company, on the other part, for establishment of an inter-oceanic way through the Nicaraguan isthmus.

#### Article I

The Government of the Republic of Nicaragua hereby constitutes John P. Yelverston, H. G. Stebbins, Nathaniel H. Wolfe, citizens of the United States of America, and their associates and shareholders of the former Atlantic-Pacific Maritime Canal American Company, their successors and representatives, as a political and incorporated company of the Republic with perpetual succession under the name of Central American Transit Company, and bestows upon them all powers necessary so that in their capacity as a political and incorporated company they may carry out the objectives of the present contract, always in accordance with the provisions contained thereon. And the aforesaid Central American Transit Company shall have absolute management of its business: it may issue, from time to time, statutes and regulations for its internal government and with respect to the election and term of its officers and employees; the issue, transfer and loss of its capital shares; and all matters concerning the administration of its interests; and may demand and be demanded in the courts of the Republic of Nicaragua in the same manner as Nicaraguan citizens, notwithstanding and without prejudice to the nationality of the individuals that comprise it.

The aforesaid Company shall appoint from among its shareholders a Board of Directors consisting of seven individuals. These shall appoint from among themselves a President, a Vice-President, and a Secretary of the Company; and the Board of Directors, together with the President, shall have the same powers of the Company itself, and its full representation, except as expressly limited by the Company, with the understanding that said powers shall not be limited with regard to the business or relationship between the Government of the Republic and the Company.

(...)

#### Article V

The essential object of the present contract being as it is to establish and maintain an inter-oceanic transit route across the isthmus of Nicaragua in the service of universal trade, the Central American Transit Company assumes the obligation, and the Government of the Republic grants the exclusive right to establish, as well as to administer, use and operate, for a term of fifty years, a route of communication and transit across the territory of the same Republic, between the Atlantic and Pacific oceans; to transport all kinds of passengers, luggage, chests, merchandise and properties by land or waters, by way of any ship, including steamships, common roads, railroads or other types, and carriages, wagons, animals and any other modes of transportation, both for transit passage from sea to sea, as well as for internal trade, importation and exportation from the Republic of Nicaragua.

#### Article VI

The inter-oceanic route that the mentioned Company will establish, as stated in the foregoing article, will be made up of two Sections: first, an east section, via water, from the port of San Juan de Nicaragua to another [port] of the Republic that the Company elects on the Atlantic Ocean, via the San Juan River and across Lake Nicaragua, or through any other rivers and lakes of the Republic that the Company elects, up to any point that the same Company elects on said rivers and lakes; and the other, a west section, via land, from the last mentioned point, in any direction that the Company elects, to the port of San Juan del Sur or any other of the Republic on the Pacific Ocean that the Company elects.

(...)

#### Article VIII

The aforesaid Company has the right and obligation to open the inter-oceanic route and to supply it with sufficient river and lake steamers, carriages or wagons, animals and other modes of transportation, as required by trade, by November of one thousand eight hundred and sixty; and to keep it open and supplied, as stated above, during the term of fifty years stipulated as the life of the present contract.

(...)

Signed and sealed in Managua City on this thirtieth day of December in the year of Our Lord one thousand eight hundred sixty, by Don Pedro Zedon [Zeledón] Minister of Foreign Affairs of the Republic of Nicaragua, and José Rosa Pérez, Commissioner of the shareholders of the capital stock of the former American Atlantic-Pacific Maritime Canal Company.



## ANNEX 18

### MOLINA - MORRIS INTER-OCEANIC TRANSIT CONTRACT. WASHINGTON, 10 NOVEMBER 1863

The President of the Republic to its inhabitants

Makes known:

That Congress has ordered the following:

The Senate and the Chamber of Deputies of the Republic of Nicaragua

Decree:

Article 1. The Inter-Oceanic Transit Contract entered into on November 10, 1863, between H. E. the Minister of Nicaragua, Mr. Luis Molina, and the Central American Transit Company, by which it has been ratified, is approved and ratified in all its parts, which reads as follows:

Contract made and entered into at the City of Washington, capital of the United States, on the tenth of November of one thousand eight hundred and sixty-three, between the Supreme Government of the Republic of Nicaragua, on the one part, represented by H. E. Mr. Luis Molina, and the Central American Transit Company, a corporation organized under the laws of the State of New Jersey, United States of America, represented by Francis Morris Esquire, President of said Company, on the other part.

Whereas the Government of Nicaragua desires to efficiently establish the inter-oceanic route within its territorial boundaries and jurisdiction, and has previously agreed to a certain provisional arrangement with the said Company as a consequence of the acts of the said Government in respect of [...] declared by it by virtue of the previous contract between the parties.

Therefore, for the adjustment and conclusion of any claims and actions that mark or originate in any way from the said previous contract and provisional arrangement, and for the complete and perfect substitution of a new contract, in all the business and each of its parts, it is recorded in this contract that the said parties have agreed upon and stipulated the following:

### Article I

All differences and controversies in respect to the contract previously made, namely: the transit contract approved on the twentieth of March of 1861 between the parties for the opening and operation of the inter-oceanic transit route or by virtue of the aforesaid provisional arrangement, are definitively adjusted and forever terminated by the provisions set out hereunder, being extinguished such disputes and controversies between the parties by the final and reciprocal exchange of the present contract, duly and fully ratified, in such manner that it constitutes a conclusive act according to the laws of each party.

### Article II

The said Company, without relinquishing its aforesaid creation and existence, according to the laws of the said State of New Jersey, and preserving the right to obtain any extension or amendment, or any other act of incorporation in accordance with the laws of the State of New Jersey, New York and Pennsylvania, or any of them, for the purpose of providing for the organization and government of the interested parties or who could become interested in the said Company in their mutual relations; however, for any business, interests and operations related to the object of this Contract, within the territorial jurisdiction of Nicaragua, it accepts and acknowledges the nationality of Nicaragua with the same latitude and in respect of all cases and similar effects that are applicable and correspond to a merchant of the United States domiciled in the territory of Nicaragua with objects of commerce, in accordance with the principles of the law of nations, except where these could be amended by the provisions of this contract, always with the understanding that, being the Company from the United States and comprised of U.S. citizens, it shall always have the same rights and remedies that would correspond, in accordance with the principles of the law of nations, in the case of denial of justice, recognized by that Code to a merchant of the United States domiciled in Nicaragua with objects of trade.

(....)

### Article IV

In consideration of this privilege, the said Company agrees to pay during the continuation of the referred purchase to said Government, in gold or silver coins of the United States, at the option of the said Government, and in Managua or New York, at the same option, by way of exchange, and in full satisfaction of all passenger tolls (capitation) on the transit route, the

amount of twenty thousand pesos (\$ 20,000) each year during the first seven years of the term of this contract; the annual amount of twenty-five thousand pesos (\$ 25,000) during the next eight years; and the annual amount of thirty thousand pesos (\$ 30,000) during the remainder of the term. And the Government of Nicaragua shall deliver notice, three months in advance, regarding the designated place of payment and whether payment shall be made in gold or silver. Further, so that the Government of the Republic has proper and accurate statistics regarding the amount of freight that passes through the inter-oceanic transit route granted in this contract, the Central American Transit Company also agrees to pay to the Government of Nicaragua, in addition to any other payments, five cents per ton over the amount of freight transported by it each year; and the Company shall send each year a sworn statement, which shall be conclusive with respect to the amount of said freight transported by her, paying upon delivery of said annual statement the five cents per ton that shall be paid as previously stipulated.

#### Article V

The Company obligates to open the inter-oceanic route between San Juan del Norte and San Juan del Sur within six months from the date on which the Minister of Nicaragua in Washington delivers written notice to the same Company in New York that the present contract has been ratified by Congress and has been approved by the Executive of Nicaragua, with sufficient steamers on the river and lake, and sufficient land transportation materials to carry five hundred passengers with their usual luggage, at least twice a month, in one single trip, and to keep the transit route open during the life of this concession. Further, in consideration of the privilege expressed hereunder, [the Company] agrees to invest, within a term of ten years, the sum of five hundred thousand pesos (\$ 500,000) in the development of improvements and establishments (permanent) on Nicaraguan soil, including the cost of a steam towboat that the company obligates to furnish, and including the improvements that the parties have agreed to make in the port of San Juan del Norte and in the San Juan River, outside and in addition to the cost of the steamers on the river and lake, which cost is not included in the expenditure referred above. And so that the Government of Nicaragua has proper knowledge of the expenditure, it may examine the books of the Company once a year through one or more agents appointed for this purpose.

#### Article VI

Further, by virtue of the aforesaid consideration, the said Company agrees to spend, within a term of six years, a minimum amount of sixty-five thousand pesos (\$ 65,000) in the improvements at the port of San Juan del

Norte, in the navigation of the San Juan River, improvements in the rapid streams, etc., in the following manner, and subject to the conditions and stipulations set out hereunder, to wit:

The Government of Nicaragua shall arrange for survey at the port of San Juan del Norte and the said San Juan River, by an expert from the Government, in order to determine whether said improvements may be permanent and, if so, how to commence and continue said improvements so that, upon completion thereof, the port and river shall not only be improved, but shall also be protected, if feasible, from any reduction in depth by the action of natural causes. The Company agrees to provide to the expert from the Government and to his group, all kinds of facilities to expedite the completion of such work, such as transportation, supplies, etc., etc. If, upon completion of said survey, the executive branch of the Government of Nicaragua approves the respective report presented by the expert, the Company obligates to commence immediately thereafter the improvement scheme thus recommended, and to continue such works according to the following stipulations: The Company agrees that the amount spent in the improvements thus recommended shall comprise at least the following: twenty-five thousand pesos in the improvements to be made at the port of San Juan del Norte, in addition to twenty-five thousand pesos in respect of the improvements to be made between the port of San Juan del Norte and the Colorado River; at least five thousand pesos in respect of the improvements to be made in the extension of the rapid streams at Machuca; an equal sum of five thousand pesos in the rapid streams at Castillo; and an equal sum of five thousand pesos in the rapid streams at Toro; for a total expenditure of fifteen thousand pesos in the improvements at the Machuca, Castillo and Toro rapid streams, bringing the total cost of the improvements at the sandbar and port of San Juan del Norte, and at the San Juan River, to at least sixty-five thousand pesos, without including the cost of the steamers on the same river or the cost of the towboat to be furnished at the port of San Juan del Norte. The Central American Transit Company obligates to pay to the Government of Nicaragua, in addition to any other expenditure or payment, the sum of five thousand pesos, in strong currency, to pay the government engineer who shall carry out the aforesaid survey. The Central American Transit Company hereby agrees to purchase, for the opening date or before the opening date of the transit route, as stipulated in this contract, and to maintain a steam towboat in operation while the depth of the sandbar is shallow, according to the stipulated dimensions, for the purpose of towing ships in and out of said port, loading and unloading passengers, luggage and freight, and making a connection at the port between larger ocean steamships and the steamers on the river. And the Company further agrees to hire a Captain for said towboat, who shall be a professional in his field

and shall have the duty of using the towboat, whenever it is not being used for any other purpose, to increase the depth of the sandbar at San Juan del Norte; and the said Company further agrees to commence, after this contract has been ratified and approved by the executive branch of Nicaragua, the implementation of temporary improvement works in the river and port, which shall be conducive, in the opinion of the government engineer, to the permanent improvement of the said port and sandbar.

#### Article VII

In compensation for the foregoing stipulations by the said Company, the Government agrees and grants the following:

As of the date of final ratification of this contract by the Government of Nicaragua, the said Company shall enjoy, for a term of twenty-five years, counted from the aforesaid date, and subject to the provisions regarding nullity during the life of this contract, as stipulated hereunder, the exclusive right of inter-oceanic transit for passengers, luggage, chests, treasures, cargo and articles of trade in general, by land or sea within the following limits: by way of water, said Company will have exclusive rights of navigation as part of the inter-oceanic traffic and only on that part from the San Juan river from the Atlantic through to bay of la Virgen in lake Nicaragua, or any other lacustrine port, between the boundary line of Costa Rica and the latitude of the town of San Rafael and the northern coast of the island of Zapatera, as the said Company may determine from time to time during the life of this contract, being said exclusive privilege of navigation expressly limited to the sole inter-oceanic transit route granted hereunder, with the understanding that the Company's exclusive privilege of inter-oceanic transit shall not restrict in any manner whatsoever internal trade in the country, in which the Company may employ its ships and other modes of transportation, without excluding competitors, and without any special exemption for its steamers other than mooring and tonnage fees, and the Company in all other respects related to said internal trade shall be on an equal footing with the citizens of the Republic of Nicaragua, whose right to navigate on boats or steamers in the internal waters of the Republic for the purpose of the said internal trade shall not be limited by these stipulations. And in respect of the land route for the said inter-oceanic transit, the said Company shall have the right to enjoy, for a term of twenty-five years, except if previously revoked and annulled according to the terms of this contract, the exclusive privilege to establish and use any railroad that it may put into operation between the said Lake Nicaragua and the Pacific Ocean, between the parallel latitude of San Rafael and the northern coast of the island of Zapatera and the boundary line between Nicaragua and Costa Rica; and in like manner, it shall also have the exclusive right to use and enjoy, in

respect of the inter-oceanic transit route, the road that exists between the bay of La Virgen and S. Juan del Sur, which the Company hereby obligates to improve and put in perfect condition, or any other similar road that may be opened and built in the tongue of land described heretofore. And the said Company hereby obligates to build and effectively put into operation, within four years from the date of notice regarding the ratification of the present contract, as part of the said inter-oceanic transit route, an adequate and sufficient railroad, including all adequate and sufficient locomotion materials and equipment, between Lake Nicaragua and the Pacific Ocean, from the bay of La Virgen to San Juan del Sur, or from any other point in the Lake to any other point in the Ocean that the Company may determine within the limits set out heretofore. It is also understood and agreed that any notice to be given by the Company to the Government of Nicaragua, in accordance with the terms of this contract, shall be delivered to the Government of Nicaragua, in the capital of the Republic, by the Resident Agent of the Company in the country, and any notice to be given by the Government of Nicaragua to the Company shall be delivered to the President of the Company in New York by the Minister of Nicaragua in Washington, or by its Consul in New York. This stipulation is not applicable to any judicial notices that may be served to the Company's Resident Agent in Nicaragua, as provided hereunder.

#### Article VIII

The Company obligates to transport, free of charge, on the regular trips made by its steamers on the river and Lake, the employees that the Government sends on public duty, as well as to relieve every three months the garrisons on the route, including their belongings, baggage and supplies, as well as the mail pouches of the Republic of Nicaragua.

(...)

#### Article X

Being the intention of the Government that the inter-oceanic route that the Company shall establish be open to service for all the nations of the world, the Company shall transport, on its route and under equal conditions, any persons and any type of merchandise that arrives for this purpose, either at the terminus ports of the route or at any regular stations or piers on the River or on the Lake, regardless of their nationality or place of origin. But the Government reserves the right to determine what troops, war ammunitions and foreign mail pouches may pass through its territory, and be carried or allowed to be carried by any means of transportation, even if these are not owned by the Company. The Company shall fix and shall deliver written advance notice to the Government regarding the general

schedule of its transportation prices on the route, with the understanding that it shall be identical for everybody; and the Company shall not evade in any way whatsoever, through payment of any discount or otherwise, the terms of this article regarding the establishment of a single tariff for everybody, which tariff shall not be altered, except if such alteration shall enter into effect six months after it has been communicated to the Government in writing.

(...)

### Article XII

If the Government of the Republic were a party to any previous contract or convention, still in force, or entered into hereinafter, for the construction of a maritime canal across its territory, and the duration of the rights and privileges stipulated in the present contract were not compatible with the terms and conditions of said contract or convention, then, in such case, the rights and privileges stipulated in the present contract would only remain in effect until the maritime canal works were completed, in accordance with the terms of said contract or convention, and shall not be hampered or impeded while said canal is not in full operation from ocean to ocean.

(...)

### Article XIV

For the purpose of facilitating the achievement of the objects of the present contract, the Government exempts, from all civil, military, national or municipal service, all the individuals who are employed by the Company on the route and have been at the service of the Company for three consecutive months, including the coachmen, wagon drivers, animals and vehicles of the Company, as well as the coachmen, wagon drivers, animals and vehicles of contractors carrying passengers; but this exemption shall have no effect in the event of a foreign invasion, except for the coachmen, wagon drivers, animals and vehicles of the Company. And the capital represented by the works on the route, as well as any kind of property employed in the service of the same, shall be at all times exempt from imposts, duties and levies on the part of any authority of the Republic.

### Article XVII

The Government warrants that all vessels arriving to the outfitted maritime ports, at each extreme of the inter-oceanic route, carrying passengers or freight of any class, as well as any vessels employed in the service of the same route, at all times may enter, leave, navigate and use

said maritime ports, as well as the Lake and the river of San Juan del Norte, exempted from mooring, tonnage and any other duties. And all vessels on the Lake and River employed in the Inter-Oceanic Transit, as well as all passengers and freight of any class that the Company transports on the transit route from ocean to ocean, shall be exempted from any registration, interruption and detention and from all duties or levies. But if the Government, owing to the circumstances, should deem it necessary for the security of the country to register the steamers, then they shall be registered when passing by one of the fortresses on the route. The Company, on its part, agrees that it shall not deliver any freight intended to remain in the country, unless written detailed notice is provided in advance to the tax agent at the place, being the same Company responsible for any breach of this provision on the part of its employees in accordance with the laws of the country.

#### Article XVIII

The Company, without being obligated to pay any tax or duty, may introduce into the Republic any materials, machinery and other things that are useful and necessary for the establishment, repair and use of the inter-oceanic line; it may take wastelands located within the Republic, as well as materials and firewood from said wastelands for the same purposes; it may occupy such places as it may require for the main establishments and accessories of the route, provided that such places are not intended for public works nor are privately owned, in which latter case the Company may occupy them after indemnifying the owner in advance at the fair price fixed by experts, with the understanding that the Company, upon introducing the aforesaid useful articles to the Republic, shall deliver written advance notice to the Administrator of the port where it intends to make such introduction, and provided that if the said Company occupies land or takes materials or firewood therefrom, as aforesaid, it shall deliver the respective notice in writing to the Prefect of the Department where the land is situated.

(...)

#### Article XX

The Government grants to the Company the exclusive privilege to establish, administer and enjoy, during the same term of the inter-oceanic route, a telegraph line between the two terminus ports of the same route, either submerged across the Lake, or built around it. The Company shall fix the general tariff of the telegraphic line, but the Government of the Republic shall only charge half of the price established, with the understanding that

the telegraph shall be considered an accessory work of the company of the inter-oceanic route that the Company shall establish.

(...)

### Article XXII

Upon expiration of the term of twenty-five years of the present contract, the Government of the Republic shall take possession of the inter-oceanic route, including all the works and property dedicated to its service, as well as the telegraph line and steamers, without being obligated to pay any compensation, and all the effects of the present contract shall terminate on that same date.

### THE GOVERNMENT:

Having read and examined the foregoing contract entered into between the Plenipotentiary Minister of this Republic in Washington, D. Luis Molina, by virtue of his competent powers, and the Central American Transit Company; and found in full compliance with the instructions given to this effect, and ratified by the same Company,

### RESOLVES:

1. The said contract is approved in each and every part. Consequently, pass to the Legislative Assembly for its ratification.

Done at Managua on the twentieth of January of 1864. Tomás Martínez (L. S.) The Minister of Foreign Affairs. Pedro Zeledón (L. S.)

Art. 2. The pre-inserted contract shall be considered a law of the Republic after the act of exchange of the ratifications has taken place.

Done at the Sessions Hall of the Chamber of the Senate. Managua, February 15, 1864. Vicente Quadra, P. S. Macario Alvarez, S. S. – Cleto Mayorga, S. S. – To the P. S. – Hall of the Chamber of Deputies. – Managua, February 17, 1864. – J. Guerrero, D. P. – Ramón Alegría, D. S. Jerónimo Pérez, D. S. – Therefore: Execute. – National Palace – Managua, February 18, 1864. – Tomas Martínez. The Secretary of Home Affairs – Rosalio Cortéz.

## ACT OF EXCHANGE

In the city of Managua of the Republic of Nicaragua, on the twentieth day of February of one thousand eight hundred and sixty-four, gathered at the National Palace in the Department of Home Affairs, H. E. Mr. Rosalío Cortéz, acting Minister of Foreign Affairs, and Colonel J. C. Woods, Special Commissioner of the Central American Transit Company, acting in the name and on behalf of this Company, vested with ample and special powers, with the objective of proceeding to the exchange and execution of the Transit Contract, entered into on the tenth of November of 1863, and ratified and approved on the 18<sup>th</sup> instant by the Legislative Assembly; and upon having communicated to each other their respective Full Powers, found in good and proper form, the original copies of the contract were compared and found to be of the same tenor, the exchange was made, and H. E. Mr. Rosario Cortéz, acting Minister of Foreign Affairs, received a copy in Spanish signed by the named Colonel Woods, Special Commissioner of the referred Company, placing in the hands of the same Mr. Woods another copy in Spanish signed by the same Minister of Foreign Affairs. And this act is recorded in Spanish and we sign in duplicate, earmarking one copy for the Republic of Nicaragua and another for the Company, on the date and place stipulated hereinabove.

(Signed) Rosalio Cortez

(Signed) J. C. Woods, Commissioner

Therefore:

DECREE:

Consider it a law of the Republic, and print and published as corresponds.

Done at Managua, on the 20<sup>th</sup> of February of 1864.

Tomás Martínez  
The Secretary of Foreign Affairs  
Rosalio Cortéz

Done at Managua, February 20, 1864.

## ANNEX 19

### F. A. PELLAS NAVIGATION CONTRACT. MANAGUA, 1 MARCH 1877.

MINISTRY OF TRADE.

Decree of March 16<sup>th</sup> ratifying the steam navigation contract

The President of the Republic makes known to its inhabitants:

That Congress has ordered the following:

The Senate and the Chamber of Deputies of the Republic of Nicaragua

#### DECREE:

Sole Article. The contract concerning steam navigation in the internal waters of the Republic, entered into on the first of this month between the Supreme Government and Mr. Francisco Alfredo Pellas, is ratified, which literally reads as follows: "Anselmo H. Rivas, Minister of Trade of the Supreme Government of Nicaragua, especially commissioned to enter into a contract concerning navigation in the internal waters of the Republic with Mr. Francisco Alfredo Pellas, a resident of Granada and the assignee of the contract entered into with Mr. J. E. Hollembeck and partners on the eighteenth of February of one thousand eight hundred and seventy, have agreed upon the following provisions:

The Government of Nicaragua grants to Mr. F. A. Pellas, partners and heirs, the exclusive privilege, for an eighteen year period, to navigate with steamboats the San Juan del Norte river and Lake Granada [lake Nicaragua] and transporting through them the fruits of the land as well as merchandise destined to the Republic's interior, reserving for herself [Nicaragua] the right to contract any other company and for the time that the Government decides, for the re-establishment of inter-oceanic transport, without

hindering the rights granted under the present Contract. The Republic make express reservation of the right to make a new one.

(...)

9. The Company obligates to stop each month, with its steamer in the lake, at the ports of Granada, La Virgen and San Ubaldo, or at the ports that may be designated as more convenient for trade in the departments of Rivas and Chontales. However, considering that the coast of Rivas is more dangerous during the summer months, the Company is authorized to make those trips with its Schooner from November to April, until the pier at San Jorge is completed, except when the Government requests the steamer to make a visit to said department.

THE GOVERNMENT:

Having embraced the preceding contract entered into with Messrs. John E. Hollembeck and partners on 18 February 1870, and transferred to Messrs. F. A. Pellas and partners.

RESOLVES:

Sole article. The foregoing contract is approved, leaving the previous [contract] of February 18, 1870, without effect, and to submit it to the constitutional ratification of the Legislative. Managua, March 5, 1877. Chamorro. Minister of Trade. Rivas.

Done at the Sessions Hall of the Chamber of the Senate. Managua, March 13, 1877. I. Maliaño, S. V. P. Isidoro López, S. V. S. José Gregorio Cuadra, S. S. To the Executive. Sessions Hall of the Chamber of Deputies. Managua, March 14, 1877. Francisco Reyes, D. P. Francisco del Castillo, D. S. Agustín Duarte, D. S. Therefore: Execute. Managua, March 16, 1877. Pedro J. Chamorro. Minister of Trade. A. H. Rivas.

## ANNEX 20

### CÁRDENAS -MENOCAL CONTRACT. MANAGUA, 23 MARCH 1887.

#### APPENDIX I

1877-03-23.

CONCESSION AND DECRESS OF THE REPUBLIC OF NICARAGUA  
TO THE NICARAGUA CANAL ASSOCIATION OF NEW YORK.

The President of the Republic to the inhabitants thereof:

Knowing that Congress has ordered as follows:

The Senate and chamber of deputies of the Republic of Nicaragua do  
Hereby decree—

ONLY ARTICLE. - The Contract for a maritime interoceanic canal entered  
into the 23d pf march, ult., between Dr. Adan Cárdenas, commissioned  
especially by the supreme Government, and Mr. A. G. Menocal, member  
and representative of the Nicaragua canal association organized in New  
York, is hereby ratified. This contract shall be a law of the Republic if Mr.  
Menocal accepts it as soon as he be notified witch the following  
modifications and upon the followings terms:

The undersigned, Adan Cardenas, commissioner of the Government of the  
Republic, party of the first part, and Aniceto Menocal, representative of the  
Nicaragua canal Association, party of the second part, both having sufficient  
power have entered into the following contract for the excavation of an  
interoceanic canal trough the territory of Nicaragua.

#### Article I

The Republic of Nicaragua the aforesaid Nicaragua Canal Association and  
Mr. A. G. Menocal, representative of the said association, accepts on its  
behalf for the purpose set forth in article 7, the exclusive privilege to  
excavate and operate maritime canal across its territory, between the  
Atlantic and Pacific Oceans.

## Article II

The canal shall be of sufficient dimensions for the free and commodious passage of vessels of the same size as the large steamers used for ocean navigation in Europe and America, provided that no locks used in said work shall be less than five hundred and fifty (550) feet in length and thirty feet in dept.

## Article III

The State declares this work to be of public utility.

## Article IV

The donation of the present privilege shall be for ninety-nine (99) years, to be counted from the day the canal shall be opened in universal traffic. During the along the aforesaid period the company shall have the right to construct and operate railway along the waole extent of the canal, or those parts of the same that may be considered convenient for the better service and operations of the said work.

## Article V

The Estate binds itself not to make any subsequent concession for the opening of a canal between the two oceans during the term of the present concession, and also to abstain from granting a concession for a railroad, such as might compete with the canal for the transportation of merchandise, during the same period; but nothing in this article shall prevent to Government of Nicaragua from constructing or permitting the construction of such railway, as it may deem advisable for commerce and internal traffic. Said Government also to have the right to construct or permit the construction of an interoceanic railway if in course of time it be demonstrated that the canal is not sufficient to satisfy the demands of the traffic all nations.

The grantee company shall have the right to establish such telegraph lines as it may deem necessary for the construction, management, and operation of the canal. The Government shall have-the right to occupy these lines for the public service without any remuneration to the company.

## Article VI

The Government of the Republic declares, during the term of this concession the ports at each extremity of the canal, and the canal itself, from sea to be neutral, and that consequently the transit trough the canal in case of war between two powers or between one or more and Nicaragua shall not be interrupted such cause; and that merchant vessels and individuals of all

nations of the world may freely enter the ports and pass through the canal without molestation or detention.

In general, all vessels may pass through the canal freely, without distinction, exclusion, or preference of persons or nationality, provided they pay the dues and observe the regulations established by the granted company for the use of the said canal and independencies. The transits of foreign troops and vessels of war will be subjected to the prescriptions relating to the same established by treaties between Nicaragua and other powers or by international law.- but entrance to the canal will be rigorously prohibited to vessels or war of such powers as may be at war with Nicaragua or with any other of the Central American Republics.

Nicaragua will endeavors to obtain from the powers that are to guarantee the neutrally that in the treaties that shall be made for that purpose they shall agree also to guarantee zone of lands parallel to the canal and also maritime zone in both oceans, the dimensions of which will be determined in such treaties.

(....)

#### Article XLVI

In view of the existence of an exclusive privilege granted by the Republic in favor to Mr. P. Alf. Pellas, by a contract ratified on the 16th. Of March 1877 for the navigation by steam on the lake and river for the purpose s of the internal commerce of the republic the canal company shall have the right of expropriation against Mr. Pellas as regard his rights and properties, on just assessments by experts after making a corresponding compensation according to the law of the Republic.

It is also stipulated that the company binds itself to pay government of the republic all it may from now on expend in any way for the improvement of the navigation of the river and the port of San Juan del Norte. This payment shall be made within six months of the date of the beginning of the works of the canal, and according to the original accounts of the corresponding office.

(....)

Done in the hall of sessions of the chamber of deputie- Managua, April 20, 1887.

-Tomas Armijo, P.- Luis E. Saenz, Secretary- Leopoldo M. Montenegro,  
Secretary- to the Executive Power- hall of the of the Senate- Managua, April  
23, 1887.-Joaquin Zavala, P. A. H. Rivas, S. - Eliodoro Rivas, S. -  
Therefore: be it executed. National Palace- Managua, April 24, 1887.- E.  
Carazo -the under secretary of the interior in charge of the office-Alejandro  
Canton.-Accepted on the same date.-Canton.- A. G. Menocal.

## ANNEX 21

NOTE FROM LEWIS CASS, SECRETARY OF STATE OF THE UNITED STATES, TO WILLIAM CAREY JONES, SPECIAL AGENT OF THE UNITED STATES TO CENTRAL AMERICA. WASHINGTON, 30 JULY 1857.

DOCUMENT 1081 JULY 30, 1857

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1081

*Lewis Cass, Secretary of State of the United States, to William Carey Jones,  
Special Agent of the United States to Central America.<sup>1</sup>*

WASHINGTON, July 30, 1857.

SIR: Reports have reached here which I trust however are not correct, that the Government of Costa Rica has formed projects of aggrandizement, and intends to appropriate to itself portions of the Territory of Nicaragua, thus converting the war which has just been terminated by the accomplishment of the object for which it was avowedly undertaken into a scheme for territorial acquisition. Such a design is so unjust in itself, in view of the circumstances, and so inconsistent with the public declarations of the Government of Costa Rica, when directing its forces, to march into Nicaragua, that the President is unwilling to believe the project is seriously meditated. Still the reports are of such a character as to render it proper you should communicate freely with the Governments of Costa Rica and Nicaragua on the subject. The question itself presents grave considerations, not only for them, but for all the other independent States of this continent, whose position and relations render the prosperity of each a subject of general interest to all of them.

You will bring to the recollection of the Government of Costa Rica the various circumstances which appeal forcibly to her sense of justice, against the project now imputed to her. Her own good faith is in the way of it. She would violate the solemn pledges given when she proposed to go to the aid of Nicaragua by attempting to convert this into a war of conquest. It may not be useless to refer to some of the public declarations which were made upon this subject in order to secure co-operation both in Nicaragua and elsewhere. Among these is the proclamation of the President of Costa Rica of March 1<sup>st</sup> 1856, in which it is said that "Ours is not a fight for a piece of land—not to secure ephemeral powers—not to achieve a wretched conquest," &c. And again in another proclamation of the same President of March 7<sup>th</sup>, he announces, that he will "command in person the expeditionary army about

<sup>1</sup> Special Missions, vol. 3.

to march in pursuit of the freebooters, now attempting to usurp the territory and the independence and liberties of the Central American States," and appointing D. Francisco Marie Oreamuno Vice President to exercise the supreme Executive power during his absence.

And these declarations are in conformity with the act of the National Congress of the Republic of Costa Rica which announced by its decree of February 26th, 1856, that the object of the war "is to protect the inhabitants of Nicaragua against the ominous oppression of the freebooters, and to drive them from the face of the soil of Central America."

And the same purpose was avowed in the proclamation issued by President Mora the 28th, February two days after the above decree was passed.

More solemn pledges of the objects of a State and of the line of policy to be adopted in their attainment, with a view to propitiate public opinion and to secure co-operation in a hazardous enterprise could not be given. They have passed into history and they cannot be violated with impunity. It would be a manifest breach of good faith to convert a war thus undertaken to defend a Sister State from "bandits", and possession thus acquired into a territorial conquest, and permanent occupation. An injustice of this kind might again light up the flames of war in Central America and postpone indefinitely the pacification of the country.

The people of the United States cannot be indifferent to the progress and prosperity of the Central American States, with which they are destined to have an important and mutually beneficial intercourse. It is the hope of the President that the political troubles which have so long harassed them, will be now brought to a conclusion and that a free and stable government and a wise course of administration will enable each of them to enter upon a career of improvement, which they have so many motives to pursue, and where they have so beautiful a region for all their exertions. But this hope will prove vain if they yield to a spirit of conquest and exhaust their energies in hostile efforts against each other instead of directing them to the peaceful advancement of their true interests.

Reference was made in your instructions<sup>1</sup> to the controversy, which has so long been pending, between Nicaragua and Costa Rica respecting their boundary. It is a question, with which the United States have no direct interest, except so far as it may affect the route from Ocean to Ocean by the San Juan River. There are peaceable and honorable modes of adjusting it far better than by a resort to force. And each of the parties has in turn proposed thus to arrange it, but from circumstances, comparatively trivial, the propositions have heretofore failed. It is the opinion of the President that these parties ought to be restored to the state they were in when the war commenced, and he recommends that they then have recourse to the mode pointed out in the sixth article of the Clayton-Bulwer treaty for the settle-

<sup>1</sup>See instruction dated May 15, 1857, above, this part, doc. 1086.

ment of all their differences. Experience must have satisfied them, that the time has come, when a mutual arrangement can be no longer safely delayed. If the course thus recommended be adopted and a spirit of good will prevails, those States will remove every cause of dissension existing between them and secure their future friendly relations so necessary to the prosperity of both.

The progress of events has rendered the inter-oceanic routes across the narrow portions of the American Continent a question of great importance to the commercial world, and especially to the United States, whose possessions extending along the Atlantic and Pacific coasts demand the speediest and easiest modes of communication. The magnitude of the subject it is even now difficult to appreciate, and from year to year it is destined to increase in interest. While the just rights of sovereignty of the States, occupying this region should always be respected, we shall expect that they will be exercised in a spirit befitting the occasion and the new circumstances that have arisen. No Government can close these gates of intercourse on the great highways of nations, and justify itself by saying they belong to us and we have the right to shut them. Such a pretension would not be tolerated. It is equally the interest and the policy of all these States to encourage the opening and the use of the transit routes, and to protect them against vexatious delays and interruptions. With the concurrence of the respective governments, a large foreign capital has been embarked in these enterprises, and of this the citizens of the United States have contributed their full proportion. Under these circumstances any efforts to interrupt the transit or to interfere with the rights of our citizens would be considered an unfriendly act by this government. While the United States are sensible that for the reasons already referred to, their interest in this great question is more important than that of any other Power yet they seek no peculiar privilege whatever. All they desire is that these routes be kept open and uninterrupted for the commerce and intercourse of all nations alike. And the President indulges the hope, that they may yet be considered by general consent as neutral highways for the world, not to be disturbed by the operations of war.

Considerations connected with this subject, independently of those already adverted to, would render a scheme of conquest by Costa Rica very unacceptable to the United States.

The transit grants which were made by Nicaragua were made when she was in full possession of the territory which they embrace, and they cannot be affected now by any forcible seizure of this territory on the part of Costa Rica. It is not believed that such a pretension will be asserted, but since the grants have been heretofore disapproved by that State, its authorities may be strongly urged, if a change of occupancy should occur to set them wholly aside, and repudiate all the rights to which they have given rise. It is proper, therefore, that the subject should engage your attention. I do not

understand that Costa Rica has ever claimed jurisdiction over the San Juan river but only the territory on its right bank, and the right of enjoying its navigation. How far her pretensions now extend and whether they have been increased by the events of the war, are not known here. There can be no reasonable objections to a mutual arrangement by which the free navigation of the river, shall be secured to her citizens, leaving the jurisdiction over it to Nicaragua. But this government would see with reluctance the establishment and occupation by Costa Rica of military positions along the river, by which its navigation might be liable to interruption whenever the two States should be embroiled in disputes. We have reason to believe that measures have already been taken with a view to such military occupation, and if you ascertain that such is the fact you will remonstrate with the Government of Costa Rica and present for its consideration the views herein urged.

An equitable adjustment of the conflicting claims of these two States might easily be arranged without subjecting the route of communication to different jurisdictions. It is desirable, that each of the inter-oceanic routes should pass through the territory of a single State, thus avoiding those jealousies and collisions which would be sure to arise from a political partition. Where therefore this object is already obtained by actual possession and by the exercise of jurisdiction, the territorial condition should not be disturbed, but under the most imperious circumstances. None such exist in this case, and you will make known to the authorities of Costa Rica the confident expectation of the United States, that the possession of the territory, over which the line of communication passes, will be left to Nicaragua. Keeping this object in view, the President will be gratified to learn, that the long continued controversy between Nicaragua and Costa Rica, concerning their boundary, has been amicably and satisfactorily adjusted.

I am, Sir, Your obedient servant [etc.]

## ANNEX 22

**NOTE FROM COLONEL JORGE CAUTY, DIPLOMATIC REPRESENTATIVE OF THE COSTA RICAN GOVERNMENT TO MR. SEGUNDO CUAREZMA, COMMANDER OF THE SAN CARLOS FORT. SAN CARLOS, 14 OCTOBER 1857.**

October 14, 1857

To Don Segundo Cuaresma, Commander of the Fort of San Carlos

Dear Sir,

By order of the General Headquarters of Costa Rica, I have been ordered to proceed immediately to demand that you surrender the custody of the Fort of San Carlos to the Costa Rican force under my command; and if it is not surrendered, to blockade it until it is reduced by hunger.

Since the instructions of my Government in this matter are to avoid in every way possible any Central American bloodshed and to treat the garrison and neighboring towns with all consideration, I invite you to come to consult with me under a pledge of honor and safe conduct to avoid the inconveniences and pains of a blockade, which I am prepared to maintain until the end.

It is necessary to note that the intentions of my Government in this matter is the better custody of this position against the dangers of filibusterism, and the regulation of some political affairs upon which depend the commercial interests of the whole of Central America, which the Government of Nicaragua cannot sufficiently guarantee. If you surrender, I offer you all the honors, as well as the necessary time for your justification and honor with safe conduct to wherever you wish to go with your entire garrison.

With the highest respect and consideration, I remain your obedient servant.

(Signed)  
Jorge J. Cauty"

To know who this gentleman Cauty was, it is necessary to read the letter addressed by Mr. Carey to the Secretary of State.

Punta Arenas del Pacífico  
September 19, 1857

To General Lewis Cass  
Secretary of State  
Washington

Sir:

.....  
The person alluded is Mr. Cauty, an Englishman who is interested and has pushed for the Webster contract of transit. His son is a colonel in the Army of Costa Rica and in charge of the lower part of the San Juan River. He participated in the capture of the River and of the lake steamships.  
.....

Very respectfully, sir, your obedient servant.

Wm. Carey Jones

## ANNEX 23

NOTE FROM WILLIAM CAREY JONES, SPECIAL AGENT TO THE UNITED STATES TO CENTRAL AMERICA, TO GREGORIO JUÁREZ, MINISTER OF FOREIGN AFFAIRS OF NICARAGUA. MANAGUA, 17 OCTOBER 1857.

DOCUMENT 1402: OCTOBER 17, 1857

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1402

*William Carey Jones, Special Agent of the United States to Central America, to  
Gregorio Juárez, Minister of Foreign Affairs of Nicaragua*<sup>1</sup>

MANAGUA, October 17, 1857.

SIR: The letter which you were pleased to direct to me under date of yesterday,<sup>2</sup> came opportunely to my hands. I am gratified at the expressions of confidence & good will which it contains, and especially with the assurance that the authorities of this Republic will co-operate in those matters which concern it that I am charged with on the part of the United States of the North. For the friendly offer in respect of other matters that I have in charge I am very thankful, & shall avail myself of it.

I have already had the satisfaction to write to the Department at Washington of the nature & character of the provisional authority existing in Nicaragua, and the approaching installation of a government based on a constitutional election.

This I first communicated in letters of the 27<sup>th</sup> ult from San Jorge [Jorge].<sup>3</sup> Subsequently, with more confidence, because of fuller information, in letters from Granada of the 2<sup>nd</sup> inst.<sup>4</sup> and recently in letters from this Capital, I have not hesitated to assure the Department at Washington of a peaceful result to the elections that have taken place, and the institution in pursuance of them, of a government that shall combine the qualities of fact and law. That this information will be well and pleasurable received by the government and people of the United States I should be warranted in saying, from knowledge of the sentiments of those authorities and of my fellow-citizens in common towards the Republics of this continent.

Happily I am able to give you further assurance in this respect. In the

<sup>1</sup>Special Agents: vol. 20, enclosed with Jones to the Secretary of State, November 2, 1857, below, this part, doc. 1400. <sup>2</sup>Above, this part, doc. 1401.

<sup>3</sup>No pertinent despatch of September 27, 1857, to the Secretary of State was found; but see the one of September 28, 1857 from the same place, above, this part, doc. 1396.

<sup>4</sup>Above, this part, doc. 1397.

letters which the Department of State at Washington has been pleased to direct to me I am constantly instructed that the United States, desiring in all respects the prosperity and happiness of the States of Central America, have an especial desire that they shall establish and maintain solid governments.

You will know therefore that it was very agreeable to me to make the communications which I found apt to the domestic politics of this State. As to the exterior, the government of the United States will know with regret that the question of limits between Nicaragua and Costa Rica remains open; & with still more regret that the government of Costa Rica holds, and shows an intent to hold, positions on the river San Juan and Lake Nicaragua which may affect the exclusive jurisdiction that belongs to Nicaragua on that line of interoceanic transit.

It is the opinion of the government of the United States that the government of Costa Rica in inaugurating the war of which Nicaragua was lately the scene, precluded its-self by its public declarations from any territorial acquisitions or advantages in the result of it; and that therefore if the two States still differ as to a divisor line, the position in which they were anterior to the war ought to be restored, both in respect of fact and law, that is, leaving the Republic of Nicaragua in the exclusive jurisdiction of the transit. It is further the opinion of the United States that the route by way of the river San Juan and Lake Nicaragua ought to be under a sole jurisdiction, and that that jurisdiction ought to remain with the State which, in full possession of it, heretofore granted the use of it.

In this view, I am instructed to "remonstrate" with the government of Costa Rica in the event that it shall come to my knowledge that that State proposes to avail itself of the casualties of the war to hold territory or military positions not before in its possession, and which may make the interoceanic communication liable to interruption.

Further, I am directed, in that case, to bring to the mind of that government the declarations of disinterestedness by which it made its justification in the opening of hostilities with a view to propitiate the sympathy & procure the co-operation of these States.

The United States observe as a rule non-interference with questions exterior to their limits. But with regard to the Republics of this continent they necessarily feel an especial interest, as having themselves made the example of renouncing the control of a metropolis in the other hemisphere, and establishing republican instead of monarchical institutions in the new world.

This sentiment of sympathy and friendship might sometimes and with propriety, induce them to proffer as between contending States on this continent their good offices, though the questions at issue should not, beyond that friendly regard, have an interest for them. But in the present case the United States, have an especial interest; first in respect of the duty which the government owes to its citizens, who have entered into lawful

contracts, and invested time, money, and labor in the inter-oceanic passage referred to.

Secondly, in respect of their peculiar positions as embracing communities that border on both oceans, but with an immense non-populated district of country between them, and therefore requiring for their political, commercial, and social intercourse the use of those parts of the continent that offer easy communication from one to the other sea. And third, as one of the great maritime and commercial nations, concerned in the freedom of the seas and the non-interruption of the routes between them.

The United States have the opinion therefore that they may with entire respect to the States of Nicaragua and Costa Rica, present themselves in the pending question and even to say that they would regard as an act unfriendly to them any measure that should look to keeping the transit out of use, or in case of its being opened, to make it liable to interruption.

And in this category will be classed by the United States, whatever attempt on the part of the government of Costa Rica to take jurisdiction of, or occupy militarily, the river San Juan, the Lake of Nicaragua or any part of said route.

I am glad to know through your very acceptable note that the Republic of Nicaragua has not the intention, from any real, or supposed pressure of circumstances, to abandon the immense advantage that the possession of that route affords; hence, that the friendly recognition which the government of the United States accords to the ancient jurisdiction and sovereignty of Nicaragua in that entire line will not be forfeited for want of firmness on the part of this Republic.

In respect of this subject, I am instructed by the Department at Washington to "communicate freely" with the governments of Costa Rica & Nicaragua, and I am warranted in saying that the United States will not willingly see the jurisdiction of the route of transit divided, nor any control over it, or interference with it, exercised by more than one sovereignty.

Beyond this, the United States do not propose to make any suggestion as to what line, or on what terms these coterminous States shall compose the questions between them.

"Keeping in view," as I am instructed, a sole jurisdiction of the transit, the government at Washington will be glad to know of an arrangement by the concurrence of the two States, without extra-territorial intervention; and any arrangement thus mutually made which shall, as before set forth, preserve intact the transit, will have the cordial good will of the United States, and, as far as they are concerned, need not prevent the accordance of the free navigation of the river to the citizens of Costa Rica. I am further instructed however, and this is a point that I approach with delicacy; that the time has come when in one mode or another, the whole question ought to be resolved.

The prosperous advancement of the two Republics, Nicaragua and Costa Rica, requires it; and the positions and interests of the United States, it is hardly beyond reason in me to say, render it for them imperative.

The convention for that object which was made on the 6<sup>th</sup> July last by the special commissioners of Nicaragua and Costa Rica, (but not finally concluded) is known to me. In view of the relations that it was the intention of the government of the United States I should have with the authorities of these Republics, their friends and neighbors, it will not become me to express an opinion as to the precise limits that ought to be acceptable to the two States, nor to say more in that particular than I am specially instructed, namely, that pending a final settlement the Status quo ought to be restored and the settlement its-self to provide for a jurisdiction intact of the transit.

On this latter point I am confident that the Honorable Minister whom it is my privilege to address, will pardon me for the suggestion that the convention alluded to is hardly as clear, as in a complete arrangement would be desirable.

With that point made unequivocal, should the two contracting parties agree on the terms of that convention, no other State would have a right or a disposition to interpose, and the honorable gentleman and commander (General Cañas) to whom Costa Rica had the sagacity to submit the negotiation on her part may have the consciousness that he has not lost anything to his country.

In case a mutual arrangement cannot be speedily made I am instructed to suggest that the mode of arrangement mentioned in the sixth article of the treaty concluded 9<sup>th</sup> of April 1850, between the government of the United States and that of Great Britain, known as the Clayton & Bulwer treaty be resorted to. The friendly offices which, as I learn by your estimable note, have been invited by this government from that of Guatemala will I trust supercede the necessity of looking to the mediation of States more removed.

In either event, the friendship and good will of the United States toward the States of Central America and the fixedness of the upright & impartial judgement which they have formed in the case directly in consideration, may be relied on. It will give me much satisfaction if it should happen to me to co-operate with the representative which the State of Guatemala or any other of the States of Central America may empower to advise in the pending question; and it would be with pain that I should communicate to the government at Washington that internal negotiations had failed.

If the views of the United States as they are above expressed can be of any service in procuring a speedy solution of the question, this note will have been to a good purpose.

It will be interesting to the government of the United States, to be fully informed of the advices which this government may have of the intentions,

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desires or views of that of Costa Rica in respect of the river San Juan; the Lake, and the land transit; and I respectfully request of you the favor to communicate to me on this subject.

Permit me Sir, to subscribe myself with all respect [etc.].



## ANNEX 24

### NOTE FROM PEDRO RÓMULO NEGRETE, MINISTER PLENIPOTENTIARY OF THE GOVERNMENT OF EL SALVADOR TO GREGORIO JUÁREZ, SECRETARY FOR FOREIGN AFFAIRS OF NICARAGUA. 6 MAY 1858.

Farewell of Mr. Negrete

LEGATION OF SALVADOR NEAR THE GOVERNMENTS OF  
NICARAGUA AND COSTA RICA.

To the Honorable DON GREGORIO JUÁREZ,  
Secretary of State at the Ministry of Foreign Affairs  
of the Republic of Nicaragua

SIR, Having been signed at San Jose, Costa Rica, the important treaty of peace and limits between this and that Republic, which was concluded in the city of Rivas on April 26<sup>th</sup> last, according to the act of exchange of that date, the undersigned Plenipotentiary of El Salvador has the pleasure to inform you that he has just arrived to this Court to cordially greet the Government of Nicaragua, and to congratulate it for the conclusion of the serious questions that existed with Costa Rica and to announce the withdrawal of this Legation to the capital of El Salvador to inform its Government of the successful result achieved by the undersigned Minister of that Republic in those of Nicaragua and Costa Rica. In saying farewell, I am very pleased to state in this note that my heart vehemently wishes that the present social wellbeing of the Nicaraguans, the internal and external policy of its Government, and its well-founded hopes for improvement in all senses shall consolidate each day more and more and shall soon become a reality. El Salvador happy if it contemplates a great and prosperous Nicaragua! May the Supreme Legislator of societies illuminate the majestic Assembly that is sleeplessly working on the political constitution of this Republic! May the Divine Providence be prodigious in providing the assistance that the Government needs to better direct the peoples whose fate it has entrusted! These votes for Nicaragua shall always be made by El Salvador, its brother and defender.

This Legation, recognizing the attentions, gifts and honors it has received from the Government and people of Nicaragua, also consigns here its highest gratitude and fervent desires that the Government shall always find a powerful support in its people, and the people a paternal administration in the Government, as is seen today in Nicaragua with pleasure in Central America and with satisfaction in the world.

Animated by these desires, the Minister of the Republic of El Salvador bids farewell to the Honorable Mr. Juárez, reiterating the highest esteem he is worthy from his very attentive and very obedient servant.

PEDRO R. NEGRETE

ANNEX 25

NOTE FROM MIRABEAU B. LAMAR, UNITED STATES  
MINISTER RESIDENT TO NICARAGUA AND COSTA RICA, TO  
LEWIS CASS, SECRETARY OF STATE OF THE UNITED STATES.  
MANAGUA, 28 MAY 1858.

1436

*Mirabeau B. Lamar, United States Minister Resident to Nicaragua and Costa Rica, to Lewis Cass, Secretary of State of the United States:*

[EXTRACT]

No. 10

MANAGUA, NICARAGUA, May 28, 1858.

SIR: . . . During the same interview (the 26<sup>th</sup> inst.) a lengthy discussion took place in the presence of the Belgian Minister upon some points of the Treaty and upon the importance of its immediate ratification; but I could

<sup>3</sup> The omitted portion refers to two enclosures. Neither these, nor those mentioned in the following sentence giving details of the Kinney expedition, have been considered of sufficient importance to include in this publication. The treaty, improperly so-called referred to herein, is merely a pledge by Kinney and his men not to return to Greytown, "except with peaceable and friendly intentions, etc."

<sup>4</sup> Despatches, Nicaragua & Costa Rica (Central America), vol. 3. Received June 28.  
The two omitted portions of this despatch relate to his commission as minister resident and to claims.

get nothing out of the Secretary upon the subject, except that certain amendments and modifications had been forwarded to Mr. Buchanan and that as soon as Mr. Buchanan's answer was received—which, he said, would be in about eight days,—the Government would then be able to speak more definitely about its fate.

In a previous conversation with the same Minister Cortés, he asked—why were the Americans so anxious to enter Nicaragua as filibusters, while they are invited, under liberal colonization laws, to come as friends? I answered that there was no protection for my countrymen when they came under such invitation; for, at any moment that the Government or influential individuals became offended with, or jealous of them, they were liable to be persecuted, shot, or banished, and have their property confiscated. Under the guarantees of a Treaty they would come as peaceful and industrious citizens, and all would be well; but there being no Treaty, there is no safety and they must either keep out of the country, or come into it with arms in their hands for their own protection. He made no reply.

In my despatch, dated 28<sup>th</sup> April 1858,<sup>1</sup> I mentioned that President Martinez had proceeded to Rivas to meet there President Mora, of Costa Rica, for the purpose of settling the question of Boundary between the two Republics. On the return of the President to Managua, the acting minister of Foreign Affairs addressed me a note (Nº 1<sup>o</sup>)<sup>2</sup> enclosing a copy of the official Gazette, which, he said, would inform me of the happy results of the interview between the two Presidents at Rivas. I send herewith a copy of said Gazette and also my note—(Nº 2<sup>o</sup>)<sup>3</sup>—in reply to the Minister's. You will find in the Gazette a Treaty of limits between the two Republics, by which it appears that Nicaragua has conceded all that Costa Rica demanded and probably more than she ever expected to obtain. Under this Treaty Costa Rica now claims all Guanacaste, and the right bank of the San Juan, from three miles below Old Castillo, to the mouth of the river, including Punta Arenas. This concession was made as an inducement to Costa Rica to enter into another Treaty of alliance defensive and offensive against the Filibusters. Besides these two treaties, a triple convention was concluded between said Republics and Salvador, for the same avowed purpose. It is expected by these Governments that the two other States of Central America—Guatemala and Honduras—will soon unite in similar alliance. These treaties have not been published; they are only alluded to in the Editorials of the Official Gazette. All this is done—as it is said here—for the purpose of presenting a formidable front against “the common ennemy”;—and who is meant by the common ennemy will be readily comprehended by reference to President Martinez's late violent proclamation, which I forwarded with my last despatches.

<sup>1</sup> Above, this part, doc. 1432.

<sup>2</sup> See note 2, p. 675, above, this part.

<sup>3</sup> For the text of his reply, which was dated May 15, 1858, see above, this part, doc. 1434.

Mr. Belly—the Frenchman alluded to in a former dispatch—came with President Mora, and Negrete, the Salvador Commissioner, to Rivas; and without doubt exerted considerable influence in the negotiation which took place there. I am credibly informed that he publicly denounced the Irisarri Treaty in Costa-Rica, and spoke violently against the American people and of their desires of aggression upon Central America. He has been here several times but I have never seen him. He has confined himself to confidential communication with the Government, and no one seems to know for what purpose. The general understanding is that he is in secret negotiation for a right or charter to construct a rail-road from San Juan del Norte to some point of the Pacific—and this I think is probably true; in as much as some of the members of the National Assembly have been enquiring whether the United States would permit such an enterprise, or not. The idea is a popular one;—not from any desire for public improvement but on account of the hope which it inspires that a work of that kind constructed with french capital, and french labor; and owned and controlled by frenchmen would lead to the building up of a french power in this country which would be able to keep the Americans in subordination. Such are the hopes and desire of those who control the destiny of this nation. I do not suppose that said Belly has promised them any thing in the name of his Government; but I am certain that there prevails in this country a strong impression that France and England, as soon as they can have a pretext for so doing, will unite with Nicaragua and all Central America in a war against the United States. The nation is looking forward to this event; and the strong belief that it will sooner or later take place, has much to do in shaping the present policy and measures of this Government.<sup>1</sup>

The Belgium Plenipotentiary—Mr. Kint—arrived here about three weeks ago, and has just concluded a Treaty with this Government. He has negotiated similar treaties with all the Central American States, except Costa Rica; whither he will go in a few days for the same purpose. He is a gentleman well adapted to his mission, as he combines fine address and amiable temper with extensive knowledge, experience and considerable talents. He was in Guatemala at the time our Cass and Irisarri Treaty was discussed by that Government. He tells me that it met with severe opposition for a while; but the authorities finally recommended Nicaragua to ratify it without any amendments, or modifications. . . .

I have the honor [etc.].



## ANNEX 26

### NOTE FROM LORENZO MONTÚFAR, MINISTER OF FOREIGN AFFAIRS OF COSTA RICA, TO ANSELMO H. RIVAS, MINISTER OF FOREIGN AFFAIRS OF NICARAGUA. SAN JOSÉ, 22 JULY 1872.

Remarks of the Government of Costa Rica in refutation of the doubts expressed by the Government of Nicaragua regarding the validity of the Treaty of Limits

SAN JOSE, July 22, 1872.

SIR: I have received the letter that Your Excellency was good enough to send me on June 30.

In that letter, Your Excellency states there has been no intention to incite an immediate boundary resolution, but to expose what the Government of Nicaragua considers to be an unlawful act by an employee of this Republic.

Your Excellency continues to repeat the same that has been stated already to support the opinion of those who believe that the treaty of limits is illegal; you insist that the so-called "Desaguadero" in the royal decree of Aranjuez is not the San Juan; you affirm that various royal decrees, geographers and tradition show there are differences between one and the other; you state that the grant of grace made by the King of Spain was to conquer the territory indicated in the royal decree and that nobody will dare to assert that it was conquered; and you conclude by asking for a forthright explanation with respect to the conduct of the Chief of the guard posts.

Your Excellency will allow me to say that in your letter of May 22 you did not limit yourself to the question of the guard posts; you went beyond that; you stated that the *status quo* should be observed while the validity or invalidity of the treaty of 15 April 1858 was resolved. You added that said *status quo* should be understood as follows: Nicaragua exercises free navigation in the Colorado and uses all the points and places ceded to Costa Rica by virtue of the treaty of limits.

So the *status quo*, according to Your Excellency, is that Nicaragua possesses all of it as the absolute owner and lord.

Your Excellency expresses in that same letter that after the validity of the treaty has been admitted, it would be necessary to practice measurements, and you conclude by stating that Nicaragua had granted to Costa Rica vast territories contiguous to the right bank of the San Juan River.

In the presence of these concepts, it was necessary to say everything that is stated in the note of June 10.

Even in this letter I cannot limit myself to the question of the guard posts because Your Excellency does not limit himself to it since he insists on the boundary question and invalidity of the treaty of April 15, 1858.

By virtue thereof, allow me to say, Sir, that historian Juarros describes the boundaries of the District of Nicoya as follows:

"It is bound to the West by the Mayoralty or Alcaldía Mayor of Subtiava; to the South, by the Pacific Ocean; to the North, by Lake Nicaragua; and to the East, it extends along the borders of Costa Rica."

The same is stated by Alcedo in his Dictionary published in 1788.

The illustrious Don Francisco de Paula García Peláez asserts in his memoirs that the kingdom had five governments: Guatemala, Nicaragua, Costa Rica, Honduras and Soconuzco; and nine Alcaldías Mayores, to wit: San Salvador, Chiapas, Tegucigalpa, Sonsonate, Verapaz, Suchitepéquez, Nicoya, Amatique and Mines of Zaragoza.

In the well-known account of the Kingdom of Guatemala made by engineer Don Luis Diaz de Navarro in 1754, these words are found: "On January 19, 1744, I arrived to the mountain of Nicaragua, which is a very rough mountain, where the province of said name ends at the place I have explained in my first trip, and I entered the jurisdiction of Nicoya, which even though it is an Alcaldía Mayor separated from the Government of Costa Rica, it is considered a part of said province." Thereafter, the same author adds: "The capital of said province (Costa Rica) is the city of Cartago; its boundaries and jurisdiction are: in the northern sea, from the mouths of the San Juan River to the Shield of Veraguas of the Kingdom of Tierra Firme."

The La Flor River was the dividing line between Subtiava and Nicoya, as shown by the land titles and by the practices established in the respective administrations since immemorial times.

Three years after Independence, Nicaragua was suffering the scourge of a civil war because of the disagreements between Leon and Granada and Managua and Masaya that so much afflicted her.

Costa Rica, on the contrary, was established in absolute peace and tranquility.

The district of Nicoya did not want to run the fate of Nicaragua, agitated by discord, but to definitively belong to Costa Rica.

Costa Rica accepted this decision in 1825 with the approval of the Federal Congress.

When the Central American Union was dissolved, each State preserved the boundaries it had at that time, and this is the *uti possidetis* principle on which they rest today.

Consequently, Nicoya formed an integral part of Costa Rica until 1858 when the treaty of limits was signed.

By virtue of this treaty, Costa Rica separated from the La Flor River and withdrew to the Bay of Salinas.

The line that is guaranteed to Costa Rica by the treaty is insured by a possession of many years.

Further, in the division of the foreign debt, Costa Rica was given the part that corresponded to the territory I am talking about.

Costa Rica also recognized the part of the colonial internal debt that corresponded to that territory.

The royal decree of Aranjuez fixes the boundaries of Costa Rica from the mouth of the Desaguadero up to Veraguas.

Your Excellency says that the San Juan River is not what is called "Desaguadero" in the cited royal decree.

In my letter of June 10, I had the honor to state to Your Excellency the following:

"It is very important for the nations to fix their boundaries with the foreign, and the dividing lines between their provinces. For such purpose, it is sought, whenever possible, mountain ranges, rivers, lakes and seas as boundaries. In the Council of the King of Spain, this notorious truth was taken into account and the most remarkable and natural dividing line possible was fixed as the boundary between Costa Rica and Nicaragua: the San Juan River.

Nothing has been answered by Your Excellency with respect to this remark.

According to historian Juarros, the south bank of the San Juan was considered part of Costa Rica, which shows that what was called the Desaguadero is the San Juan.

The ancient names of the rivers on this side that fall into the San Juan confirm this same statement.

The river immediately next to the Old Castle is called "River of Costa Rica" in the ancient charts.

To maintain that the Desaguadero is not the San Juan, Your Excellency talks about decrees, geographers and tradition.

Your Excellency will allow me to say that neither those decrees nor those geographers have been presented to date.

Your Excellency knows very well that traditions are based on an enchainment of competent writers who, in a series of uninterrupted years or centuries, present facts as true, which attests to an absolute uniformity of beliefs.

I do not know that series of writers who accredit the tradition that Your Excellency refers to and those I have cited not only show that there is no absolute uniformity of beliefs in favor of the thesis maintained by Your Excellency, but that these beliefs have a completely different meaning.

Your Excellency says that the concession made by the King of Spain to Artieda Chirinos was conditioned to his conquering all the territory mentioned in the decree of Aranjuez.

Mr. Minister, before Artieda Chirinos, Pedrarias had already conquered that territory. The conquest was continued by Artieda and concluded by his successors. It is so stated by one of the aforementioned writers, citing "Décadas" by Herrera and other writers.

So, even if the rights of Artieda were conditioned, the condition was fulfilled.

Further, Costa Rica issued its fundamental law in 1825.

In said law (article 15), it fixed the mouth of the San Juan as the boundary with Nicaragua.

The neighboring Republic did not make any claim.

The Congress of Central America accepted the Costa Rican Constitution, and the Federal Authorities respected it until the pact of unity was dissolved in 1839.

The treaty of limits is objected by stating that the Constituent Congresses do not ratify treaties: therefore, the Constituent Assembly of Nicaragua that ratified our treaty acted as an ordinary Congress: that under such concept, it could not alter the fundamental laws of Nicaragua with respect to its boundaries.

Mr. Minister, this argument is only worth analyzing because it is presented by a person who has just been Minister of Foreign Affairs of Nicaragua: Licenciate Don Tomás Ayón.

The Congresses or Assemblies are the branch that has the power to enact laws.

There are two types of laws: fundamental and secondary.

The set of fundamental laws is called Constitution.

The collection of secondary laws is called common law, and said collections receive various names, according to the category to which they belong.

The Constitution is the basis and foundation of the common laws.

More power and authority is needed to enact fundamental laws than to enact secondary laws.

Constituent Assemblies are the supreme legislative branch.

Not only can they enact fundamental laws, but also secondary laws, for which they need less power.

The various Constituent Courts of Spain are manifest proof of this notorious truth.

The Constituent Assembly of France not only decreed the principles and the basis of the Constitution in 1789, but also abolished the tithes and offerings, enacted provisions against the nobility and issued other decrees of secondary order.

Fundamental and secondary laws have also been enacted by other Assemblies that the French people had.

The English Parliament, an ordinary legislative branch, also has the faculty to amend laws of fundamental order, which is tantamount to investing the legislative and constituent branch.

It cannot be objected that the ratification of treaties in England corresponds to the Crown because said ratification does not suffice when the English laws are amended by a treaty.

The treaty of Utrecht between England and France did not take effect because the English Parliament refused to approve a bill that was submitted to ratify the amendments that said treaty introduced in the laws of commerce and navigation.

In England, treaties are also submitted to Parliament if Great Britain is obliged to give any amount of money.

Without leaving the Central American sphere, we see that the Constituents enact secondary laws and ratify public treaties.

The treaty entered into between Costa Rica and Guatemala on March 10, 1848, was ratified in that Republic by a Constituent Assembly and, nevertheless, none of our publicists ever said that that treaty was null because constituent bodies cannot ratify public treaties.

Mr. Ayón, in his capacity as Minister of Foreign Affairs of Nicaragua, addressed a letter to the Secretariat under my charge, dated August 20, 1870, requesting that the Constituent Congress of this Republic ratify certain amendments in a treaty.

So, Mr. Ayón, in his capacity as Minister of State, believes that Constituent Congresses can ratify treaties, and, in his capacity as a publicist, asserts that they do not have such faculty.

Constituent Congresses that enact fundamental laws, which are the most important, also enact secondary laws, which are the least important.

Constituent Congresses only lack power to enact secondary laws when the call states very clearly and definitively that their only faculty is to decree the Constitution.

So people elect their representatives for that purpose, and only for that purpose.

But the Constituent of Nicaragua that ratified the treaty of limits was not only called to enact the fundamental law, as former Minister Ayón tells us in his pamphlet of June 10 of this year.

Moreover, if this Assembly can only enact fundamental laws, it could ratify the treaty of limits, according to the doctrines held by the Ministry of Foreign Affairs of Nicaragua.

Your Excellency affirms that the provisions regarding boundaries pertain to the category of fundamental laws; so then a Constituent Assembly could ratify the treaty because the constituent authority enacts fundamental laws.

The subtle distinction made by former Minister Ayón with respect to the Constituent of Nicaragua that ratified the treaty as an ordinary Assembly and not as a Constituent Authority, cannot satisfy anyone.

Said Assembly invests power to the august constituent authority, the first of all the government branches, that it never delegates nor could delegate, and all its acts should be considered to be executed in that high capacity.

Mr. Minister: I think it is useless, entirely useless, to officially continue this discussion because there is no Authority to settle the controversy.

If an Arbitration Tribunal existed to which the matter could have been submitted, it would be a good idea to make extensive allegations before it; but there is none, nor the Republic of Nicaragua has deemed appropriate to propose it.

It is useless to say and confirm that the treaty of limits was entered into by competently authorized Plenipotentiaries, that it was approved by the Governments of Costa Rica and Nicaragua, that it was ratified by the Congress of Costa Rica and by the Constituent Assembly of Nicaragua, that it was exchanged, that it was solemnly published as a boundary law, and that it has been enforced for fourteen consecutive years, during which time the Congresses of Nicaragua have used it as a basis for their deliberations. All of this is useless because, as stated to our Minister in Managua by General Zavala, a person competently authorized by the Government of Your Excellency to discuss this matter, the treaty is objected not because of a lack of indispensable formalities for its validity, but because it is believed that it injures Nicaragua.

That statement by General Zavala has been confirmed by the press of Nicaragua, which has even stated that the nullity of grievous treaties has prevailed in all the nations when they have been able to make it prevail: that Napoleon III annulled the treaties of 1815: that Germany tore up the treaty whereby Richelieu was snatching up Alsacia and Lorraine: that Russia has asked to be declared exempt from the obligations acquired in the treaty of Paris, and that one day Austria will tear up the Villafranca treaty.

Mr. Minister, if I proposed to myself to start analyzing this question, I would show that neither Napoleon III, nor Germany, nor any of the nations cited have said "we do not respect that treaty because it injures us; we do not respect it because we were forced to sign it."

What has happened many times is that when societies and the interests of the nations are modified, pre-existing conventions are also modified by mutual consent and even by force, but Costa Rica and Nicaragua do not find themselves in this situation.

In my letter of June 10, I had the pleasure to say that Costa Rica was not an overwhelming Power for Nicaragua when the treaty was signed: that it was a friendly nation, a sister nation that had gone to assist her during its

independence war, and had aided her against an enemy who issued decrees of slavery and death in that soil.

The terrible discords between Leon and Granada and the bloody fights between the parties that were called legitimist and democratic brought the filibuster invasion to Nicaragua.

When the neighboring Republic was invaded, Costa Ricans shed their blood and expended their wealth to save Nicaragua from foreign domination.

Costa Rica seized the steamers in the Lake and in the San Juan River: triumphantly took its flag to Punta de Castilla; impeded the incursion of the filibusters through the great river course, thus putting an end to the exterminating war that afflicted Nicaragua.

Sir, if Your Excellency will allow me to say, I do not understand how these acts of redemption can become today an accusation against Costa Rica and a basis for declaring the nullity of a treaty, the groundlessness of which will undoubtedly bring new disasters upon two bordering and fraternal peoples.

\* \* \* \* \*

Mr. Minister, the enunciated concepts are definitive, very definitive. They express that the guard posts should be deemed authorized for the foregoing and only for the foregoing.

For this reason, the conduct of those guard posts shall be approved by the Government of Costa Rica, when it is circumscribed to the provisions set forth in the pre-inserted paragraph, and disapproved when it extends beyond the provisions contained in the aforesaid paragraph.

The practice of the Nations and publicists shows us that free navigation of the rivers is obtained through conventions granted by the States whose territory they cross.

Free navigation in the Rhine was obtained through treaties.

Free navigation in the Escalda was obtained through treaties at the end of the past century.

Free navigation in the Elbe, Po, Danube, Mississippi, San Lorenzo, Plata and Amazon was obtained through treaties.

This universal practice has been the guiding principle of Costa Rica with respect to free navigation over the Colorado, motivated by a greater reason. This greater reason is that the Colorado River is located in its entire extension on Costa Rican territory.

With respect to this type of river, all publicists agree that the State to which they belong can legislate in respect thereof as corresponds to their interests.

Costa Rica, adopting the most liberal idea possible, established in article 12 of the Constitution that foreigners can exercise their industry and commerce, own real estate, purchase and transfer property, navigate the rivers and freely exercise their religion.

According to this concept, Nicaraguans can navigate the Colorado, and have no limitations other than those prescribed in the tax laws, so as to prevent contraband.

Those tax laws are limited to what I stated in my letter of June 10, and to what I have repeated in this letter, and do not extend beyond that.

So that the interests of Costa Rica do not suffer; so that Nicaragua does not suffer any damage; so that free navigation of the river is not interrupted; it would be convenient to devise a means that is conducive to a common agreement.

His Excellency the First Commissioner Designated will be pleased to hear those proposed by the Government of Nicaragua because he desires to reach a peaceful and friendly settlement.

I believe that the Government of Your Excellency will be animated by the same sentiments, and with this assurance, I have the honor to remain, Sir, your most dutiful servant.

LORENZO MONTÚFAR

To H. E. the Minister of Foreign Affairs of the  
Republic of Nicaragua

ANNEX 27

MESSAGE OF TOMAS AYÓN, STATE DEPARTMENT OF NICARAGUA, TO THE SENATE OF NICARAGUA, GIVING HISTORY OF THE BOUNDARY NEGOTIATION WITH COSTA RICA. MANAGUA, 8 JANUARY 1876.

APPENDIX "D."

*Message of the State Department of Nicaragua to the  
Senate of Nicaragua, giving History of the Boundary  
Negotiations with Costa Rica.*

SECRETARSHIP OF FOREIGN AFFAIRS OF THE  
GOVERNMENT OF NICARAGUA,  
MANAGUA, January 8, 1876.

To the Honorable SECRETARIES OF THE SENATE:

GENTLEMEN: I have the honor to send to you the correspondence between this Cabinet and that of Costa Rica about the boundary questions and the invalidity of the treaty of the 15th of April, 1858.

You will observe that the Cabinet of Costa Rica refuses to acknowledge the duties that were imposed upon that Government by the treaty of the 30th of July, 1868; not only denies the existence, fully authenticated, of the rights of Nicaragua, but also refuses to accept the only means of solving this difficulty—an impartial arbitration.

And as injustice is always accompanied by an absurdity, that Cabinet argues in defense of its position the very question that is in dispute, that is to say, that the territory in question belongs to Costa Rica. In that way the Government of Costa Rica assumes the extraordinary faculty of defining its own rights in the matter and imposing upon Nicaragua the obligation of acknowledging them, without taking into consideration the friendly ties that exist between the two countries, which have been guaranteed by an international convention, and in so doing places both Republics in a violent and strained position.

In order to establish its pretended sovereignty over the territory in question, that Government argues that the people of Guanacaste (Nicoya) voluntarily united with Costa Rica, and besides that, the same territory was annexed to it by a resolution of the Federal Congress of Central America. It is convenient in this connection to bring to memory some historical facts.

After the independence of the Kingdom of Guatemala, the District of Nicoya remained united to Nicaragua, and this was admitted by Costa Rica, for in her Constitution of the 21st of January, 1824, she established as the limit between the two States the River del "Salto."<sup>16</sup> This is a fact that cannot be disputed.

The pernicious influence of the old employees of the Spanish Government and the inexperience of the political parties formed in the first days of the Republics placed Nicaragua in disastrous anarchy. Under such unpleasant circumstances the first Central American Congress met. Costa Rica sent to it her deputies. Nicaragua could not do so. The representatives of Costa Rica taking advantage of this opportunity, solicited the annexation of Guanacaste to their State; but the Congress, acknowledging the misfortunes under which Nicaragua was laboring, did not receive the above proposition with much favor, and it simply declared by decree of the 19th of December, 1825, that said district would remain under the rule of Costa Rica until the demarcation of the territories of the States was made. The request of Costa Rica and the resolution of the Congress demonstrated that at the time of the independence, Guanacaste did not belong to Costa Rica.

This provisional state of things established by the Congress was legally altered. The assembly of Nicaragua met in 1826. Nicoya, acknowledging its old mother country, joined with the District of Nicaragua (now the Department of Rivas) in the election of a deputy, according to the decree of the 5th of May, 1824. Neither Costa Rica nor the Federal Congress expressed any disapprobation of this act. One of the first resolutions of the assembly was to protest before the Congress against the provisional annexation of Nicoya. Costa Rica then endeavored to make the district accept her Constitution, but the people refused to do so in a declaration dated the 15th of August, 1826, arguing that the annexation had been only provisional, and that the protest of the assembly to the resolution of the Federal Congress was pending; also protesting against the annexation.

The civil war, which had not completely ceased at that time, received new impulse in the years 1827 and 1828, and in the year 1829 three of the five States united to make war against the National Government, resulting in the change of the administration, but not securing the quietude that the stability of the country needed. The constant state of disturbance in which Central America remained was the reason why the Congress could not dictate any resolution about the limits of the States—a measure which, under the circumstances, undoubtedly would have complicated the situation still more. In the meantime Costa Rica, favored by public disturbances, was in possession of Nicoya, and still is in possession of this territory, comforted that the moderation with which Nicaragua has always treated this unpleasant affair is a guarantee to her. \* \* \*

With this object, and by order of the President of the Republic, I beg you to place the present before the Honorable Chamber with all the documents that accompany it, so that it will be pleased to mark to the Government the conduct that must be followed in this affair.

I have the honor to subscribe myself your most obedient servant;

TOMAS AVON.



## ANNEX 28

**NOTE FROM MR. FRANCISCO CASTELLÓN, MINISTER OF FOREIGN AFFAIRS OF NICARAGUA, TO MR. ASCENSIÓN ESQUIVEL, MINISTER OF FOREIGN AFFAIRS OF COSTA RICA.  
MANAGUA, 5 JUNE 1886.**

Mr. Minister:

Through the Official Gazette of that Republic, my Government has been informed of three regulations established by that of Your Excellency, which alter the situation admitted by the two States with respect to the territories and waters of the San Juan and Colorado, which is dealt with, in part, by a long-standing boundary question that regrettably has existed between both countries.

The first of these regulations establishes a Control Post that will reside at the mouth of the Colorado River, and will be dependent on the Office of the General Inspector of the Treasury. The second puts a national steamboat at the disposal of said control post and points out its attributions, among others, to "travel", at least once a week, the San Juan, Colorado, Sarapiquí and San Carlos rivers, the first in its entire extension where it is navigable for Costa Rica, the second in all its extension, and the last two along the whole stretch that is navigable by steamboat." The third mandates to establish a settlement on the left bank of the Colorado River, with the name of Irazu, and "authorizes" the occupation and cultivation of the wastelands that belong to the Republic, situated on the right of the San Juan River, downstream from the mouth of the San Carlos;" qualifies the mouth of the Colorado as a minor port, and establishes its franchise with regard to a considerable list of articles destined for different uses.

Having this Government challenged the validity of the Treaty of Limits of 1858, on which authority Costa Rica could support rights to the waters and territories to which such regulations refer; and having admitted the status quo of the question, it cannot be expected that either of the two parties will take any action that somehow modify it and make it appear as resolving it by itself.

Even assuming the validity of the Treaty of Limits, which this Government has not admitted, I must draw your attention to the circumstance that the government's disposition that a national steamer navigate the waters of the San Juan authorizes an act not granted by [the

1858] treaty, which in Article 6 reserves for this Republic, exclusively, the dominion and sovereignty over its waters, conceding to Costa Rica nothing more than free navigation with articles of trade.

The President, desiring that the annoying question does not arise again, which now more than ever could have terrible consequences for both nations, which are called to a common destiny and threatened by identical dangers, and that a disagreement does not extend which could hinder the development of the interests of one and the other Republic in the disputed territories, has instructed me to propose to Your Excellency's Government that the question concerning the validity of the 1858 Treaty be submitted to the arbitration of any of the Presidents of the Republics of the United States of America, Mexico, Chile or Argentina, thereby acting in conformity with the stipulations of article 2 of the Treaty of June 30, 1868.

Meanwhile, my Government claims, in the name of the friendship and positive interest of Nicaragua and Costa Rica, that [the Government] of Your Excellency suspend the execution of the regulations that have motivated this note, in order to avoid a repetition of the discussion which, without leading until now to a satisfactory solution, could taint the harmony between the two States.

Assuring Your Excellency that my Government would happily accept the arbitral award, whatever might be its nature, I am pleased to reiterate the assurances of my consideration and respect, and I remain at your service.

[S] – F. Castellon

His Excellency

The Minister of Foreign Affairs of the Republic of Costa Rica – San Jose.

## ANNEX 29

### NOTE FROM MR. ASCENSIÓN ESQUIVEL, MINISTER OF FOREIGN AFFAIRS OF COSTA RICA TO MR. FRANCISCO CASTELLÓN, MINISTER OF FOREIGN AFFAIRS OF NICARAGUA. SAN JOSE, 31 OCTOBER 1886.

Mr. Minister:

On this date I have the honor of addressing to Your Excellency the following telegram. 'The Government of Guatemala, desirous of finding a good solution to the pending difficulties between this and that Republic, offers its good offices to mediate. The Minister of Guatemala has informed me that he has addressed a letter to Your Excellency expressing the same thought. My Government accepts that friendly offer, and if that of Your Excellency has the same view, I beg you to let me know, if it is acceptable to you, that the negotiations be transferred to Guatemala. I consider it is advantageous, for the two Republics, that the question be further discussed before a mediating Government, because that way its good offices would undoubtedly be more efficient. Since our ordinary communications are somewhat slow, I would greatly appreciate if you send me your reply by telegraph. I remain, Sir, with all consideration, your obedient servant.  
ASENSIÓN ESQUIVEL.'

I am pleased to state that my Government confirms the terms in which that telegram was conceived, and that it will be pleasure if [the Government] of that Republic deigns to give its consent to the friendly proposal of the President of Guatemala, and to the objective of transferring the negotiations to the mediating Government.

My Government observes with regret that a solution has not been reached for the pending difficulties between this and that Republic, and as an example of the good understanding that should prevail between them, has hastened to embrace with utmost frankness the offer of good offices promised to both.

It will be satisfactory for my Government that [the Government] of Your Excellency, animated by the same sentiments, is willing to contribute with its good will to the disappearance of all reasons of disagreement that could alter the harmony in which both Republics are called to live.

I reiterate, Sir, the assurances of my most distinguished consideration and I remain your obedient servant.

[S.] – Asension Esquivel

His Excellency

Minister of Foreign Affairs of the Republic of Nicaragua. – Managua.

## ANNEX 30

### **NOTE FROM MR. JOSÉ J. RODRÍGUEZ, MINISTER OF FOREIGN AFFAIRS OF COSTA RICA TO MR. FRANCISCO CASTELLÓN, MINISTER OF FOREIGN AFFAIRS OF NICARAGUA. SAN JOSÉ, 11 NOVEMBER 1886**

Mr. Minister:

In a timely manner this Secretariat received Your Excellency's note, dated October 18 last, in which you explain the observations that you presented on August 2 against the contents of a letter that Mr. Peralta, Minister of Costa Rica in Washington, addressed to Judge Daly, in relation to the rights that correspond to Costa Rica in the canal that is projected to be opened through the waters of the San Juan River.

I have carefully examined the arguments and the interpretation that Your Excellency makes against the concepts of Mr. Peralta's letter, and I consider that Your Excellency does not distort the explanations and arguments with which this Secretariat supported the contents of Mr. Peralta's letter, in a note of August 19th of this year.

Your Excellency seems to find in the concepts of Mr. Peralta new pretensions by Costa Rica, or exaggeration of the rights it holds with respect to the San Juan River, but I think Your Excellency will be convinced that there are no new pretensions on the part of Costa Rica with respect to the San Juan River, considering that, in the aforesaid note of August 19, upon beginning to explain the words used by Mr. Peralta in his letter to Judge Daly, this Secretariat stated that the Government of Costa Rica "does not pretend to have today more territorial rights on the side of Nicaragua than those conferred to it by the treaty of April 15, 1858, which validity it argues, and that, as long as this convention is not invalidated, it shall regulate our participation in the canal. The part that may appertain to Costa Rica in the enterprise, cannot be fixed beforehand with mathematical precision; it will increase or decrease according to the direction that the line follows; but to determine this, it is necessary to take into account the Costa Rican territory that the canal or its accessories will occupy, and the rights that Costa Rica will waive in favor of the company, or due to the canal".

After this explanation by this Secretariat, I believe there is no reason to find new questions between Costa Rica and Nicaragua in Mr. Peralta's letter; and that the only one pending between these two Republics, is

reduced to the validity of the treaty of April 15, 1858, provoked by the Government of Your Excellency, and that, according to the agreement of both governments, will be submitted to arbitration.

This is the reply that, according to the instructions of the President of the Republic, I have the honor to give to Your Excellency's note, to which I referred at the beginning, and I take this opportunity to remain, Sir, your obedient servant.

(S.) – *Jose J. Rodriguez*

His Excellency

Minister of Foreign Affairs of the Republic of Nicaragua. - Managua

SECRETARIAT OF FOREIGN AFFAIRS

## ANNEX 31

**NOTE FROM MR. JOAQUÍN ELIZONDO, MINISTER OF FOREIGN AFFAIRS OF NICARAGUA, TO MR. CLETO VIQUEZ, MINISTER OF FOREIGN AFFAIRS OF COSTA RICA. MANAGUA, 14 FEBRUARY 1887.**

Dear Minister:

With special instructions from the President, I have the honor to call your attention to a very serious matter that has drawn, not without sufficient reason, that of the people and Government of Nicaragua.

It has become known, through reliable reports, that many days ago a Costa Rican engineer arrived at the point known as "Los Chiles", accompanied by some individuals: who is performing land measurements from that point up to Machuca, a place called "El Infierno," and opening paths and roads along the way, which, given the knowledge of that deserted zone, cannot be but strategic; and, moreover, when Costa Rican troops have arrived at the same place "Los Chiles".

The decision of the Government of Costa Rica last year to establish a customs post at the mouth of the Colorado River, as a dependence of the General Inspection Unit of the Ministry of Finance; to make available to said customs post a national steamship to carry out reconnaissance at least once a week on the San Juan, Colorado and Sarapiquí rivers; and to establish a village on the left bank of the second of these rivers to be named Irazú, was precisely the cause that rekindled the old border issue between the two Governments and the debate acquired such proportions that it seemed to close the door to a peaceful outcome. It was this aspect of the debate which led the President of Guatemala to offer his mediation, which after long debates, in which the Minister Plenipotentiary of Costa Rica did not seem as conciliating as expected, led to the signing on 24 December of a Convention at the capital of that Republic, which shall bind the two Contracting Parties, once it has been ratified, to submit to arbitration the question regarding the validity or nullity of the Treaty of Limits signed in 1858, for which they have appointed the President of the United States of America as arbitrator.

Having placed the difficulty in that position of civilizing expectation, it could not be assumed, judging the issue on the basis of the principles that are accepted by an educated people to govern their reciprocal

relations, that neither of the two contracting parties would take any step, before the question was defined through the agreed means, that could alter the conditions in which it was at the time I have indicated.

For all these reasons, the Government finds it is very strange that while it has withdrawn the troops that reinforced the garrisons of San Carlos and El Castillo, remaining there only a foot of peace, and at the time that Convention was approved, the Government of Costa Rica suddenly assumed the singular attitude in which it appears placed by the facts that given origin to this letter because, according to the spirit of the alluded Convention, as long as it is not ratified by the Congresses of the two Republics, the Government of Costa Rica does not have any right to exercise jurisdictional acts, that is valid due to the imminent sovereignty that Nicaragua exercises in the same territory, which does not correspond to that Republic. And, one of two propositions: either that Executive branch is prepared to carry forward the Arbitration Convention, or it is not willing to approve it. If the former, then it should not have altered in any way, much less as it has just done, the conditions of the matter when the question arose last June, and above all, after the mediation was accepted, and as a result, its arbitration; and if the latter, the good faith that the Government of Nicaragua has shown in this matter, as in all, the right to wait for that Republic to choose, in such event, the open road of frankness, and categorically and publicly deny its approval to that document.

I promise, Mr. Minister, that in view of the seriousness of the circumstances and the powerful reasons that I express herein, you will give me an explanation that clearly defines the intentions of the Government of that Republic regarding the current status of the boundary question by virtue of the respective convention, so that Nicaragua may understand the conduct that it should follow in relation to the same matter, in compliance with its most ineludible obligations to the Nation. And whatever these intentions may be, the President wishes that I demand, as I of course do, from the government of Costa Rica, as soon as possible, to cease the military engineering works, and to retire from the right bank of the San Juan River the troops to which I alluded at the beginning of this letter, so that no obstacle may hinder the Arbitration Convention from producing its legal results.

I sincerely hope that nothing will alter the cordial relations of friendship between Nicaragua and Costa Rica, and I am pleased to reiterate to Your Excellency the assurances of my distinguished consideration and remain at your service.

The Minister in charge of the Foreign Affairs Office.

(Signed) Joaquin Elizondo

His Excellency

Minister of Foreign Affairs of the Republic of Costa Rica  
San José



## ANNEX 32

### NOTE FROM MR. CLETO GONZÁLEZ VIQUEZ, MINISTRY OF FOREIGN AFFAIRS OF COSTA RICA TO MR. JOAQUÍN ELIZONDO, MINISTER OF FOREIGN AFFAIRS OF NICARAGUA. SAN JOSE, 21 MARCH 1887.

National Palace

Excellency:

I have the honor to reply to your Note of February 14<sup>th</sup> last, in which, with special instructions from the President of that Republic, you call the attention of my Government to a matter to which Your Excellency attributes manifest seriousness.

It refers to the fact that a Costa Rican engineer arrived some days ago to the point called "Los Chiles", accompanied by some individuals, took measurements from that point up to Machuca, place called "El Infiernito", and was opening paths and roads in that trajectory, which in the opinion of Your Excellency cannot be but strategic, given the knowledge about that deserted zone. You also say that Costa Rican troops have arrived at "Los Chiles".

With such motives, Your Excellency recalls the fiscal provisions issued by my Government last year concerning navigation on the Colorado and the establishment of settlements at the Sarapiquí and at the mouth of the river, which originated the discussion regarding the right to do so; and you conclude by requiring my Government so that, as soon as it is possible, it order to cease those military engineering works and to withdraw from the right bank of the San Juan river the troops alluded to in your letter.

I must confess to your Excellency that the tone of the note I am replying to, caused deep surprise to my Government because its conduct has not been incorrect, nor could have produced just alarm in Nicaragua; and I consider that the instructions that were followed by Your Excellency when addressing this Secretariat, were only the fruit of the momentary anger caused by erroneous perceptions and false statements by misinformed people. My Government, far from desiring new difficulties to ensue between the two republics, it is ready, and it has thus shown, to accept all peaceful and conciliatory means to end those pending, and has not moved away at all from its traditional custom of strictly complying with the

commitments it makes. It of course rejects the reproaches made by Your Excellency, and I am encouraged by the hope that Your Excellency will change opinion as I explain the facts so crookedly interpreted that reached the ears of that Government.

No military troop has been sent to "Los Chiles", or to any other point close to the Nicaraguan territory. There has been no need to do so: total peace has reigned in all the territories of the country, and there is no reason to think that Nicaragua pretends to be hostile towards us now that prudent negotiations have put past disagreements on the path to a peaceful arrangement.

Before Your Excellency's note arrived at this Secretariat, my Government did not know what points had been crossed by the Costa Rican engineer. But having left with the objective of fulfilling an official task near that zone, it is not unusual that he may have touched from "Los Chiles" up to the Machucha. I cannot believe that he would carry out jurisdictional acts outside of our territory; neither can I conceive the reason why Nicaragua would consider itself aggravated by acts that are carried out beyond the scope of its right. But if I put myself in the situation where an official commission actually touched Nicaraguan land, which would have occurred without due authorization or perhaps out of ignorance or imperious need, it would still be natural to expect tranquil tolerance on the part of that Government. Peace reigns between the two nations, and these just an instant ago ran to fortify, through a reciprocal agreement, the friendly and fraternal ties that unite them.

But it is inferred from Your Excellency's narration that the charge made to my Government is based on the belief that Mr. Alpizar was appointed to carry out a reconnaissance of strategic points. There has been no such appointment. Your Excellency knows the wealth of the fertile region of the Sarapiquí, San Carlos and Frio river; does not ignore perhaps the movement that has been recently introduced in these places by the roads that private individuals and the Government are building; he should recall that navigation on the San Juan provides an easy and safe way for smugglers to import merchandise from the port of San Juan del Norte to points of our territory, from where they can then be taken to the interior of the country, and that this traffic has been undermining for a long time our tax revenues.

So then, the Government is interested in exploring that valuable zone. It wants to sponsor the movement that has started there and, if possible, to conveniently open it to the workers who request it. On the other hand, has the duty to avoid the defalcation of customs duties derived from

smuggling, to impede the illegal exportation of natural products from those regions and to object to the undue importation that often takes place by those means. It is true that the Government commissioned Mr. Alpizar, through the Ministry of Finance, to carry out a reconnaissance not of the strategic points, but rather of the points which are more accessible for smuggling and of the zone in general, on the one hand, to facilitate industrial activity and, on the other hand, to establish customs posts at those locations which provide greater confidence to smugglers.

That is all. The Minister of War has not participated in the work of the commission. It was Finance that caused the measurement, gave instructions and was first interested in its performance.

Neither the accompaniment of Mr. Alpizar should have caused distrust. Consisting of few people, I do not see how another character other than peaceful could have been attributed to it.

The Arbitration Convention has obtained the approval of the Executive branch and there is no reason to fear that Congress will reject it. This indicates how far we are willing to calmly wait for the award of the arbitrator; in other words, to accept a decision that could be adverse to us, in exchange for maintaining a cordial understanding between the two countries and their respective governments. It is not credible, therefore, at this moment, to think about introducing distrusts that destroy the good harmony in which we live with Nicaragua.

Speaking of the Convention, I bring to memory the words of Your Excellency which entail a charge against Licentiate Ascension Esquivel, our Plenipotentiary. Your Excellency says that he did not seem, in the long conferences that prepared the pact, as conciliatory as would have been expected. I think Your Excellency has not been well informed. Proof of this is the Convention itself, which if not conceived to sacrifice Costa Rica, does not cause detriment to the interests of Nicaragua. Licentiate Esquivel was sent to defend ours and fulfilled his duty.

The previous explanations render useless, now that it is time to just wait serenely, all discussion about whether Costa Rica has the right or not to explore and recognize, if only militarily, the zone to which Your Excellency has referred. It is known that my Government has been upholding ever since the question concerning the validity or lack of validity of the Treaty of 1858 arose, that the terms of this should be considered as the definition of the status quo, until the controversy is resolved; that the dispute that exists between Costa Rica and Nicaragua does not refer to limits, but to the

validity of the treaty; and until it is not declared null, Costa Rica, as well as Nicaragua, have the perfect right to exercise any kind of sovereignty over the territories that the Convention attributes to them, which affirmations are not contradicted neither by the letter nor the spirit of the Arbitration Convention. Moreover, although my Government has no reason today to think otherwise, I repeat that such dispute is for the time being, if not sterile, inopportune, because the good understanding that we have recently reached puts upon us the duty of not agitating the moods with angry discussions, and waiting with tranquility the final solution that is forthcoming. This is what my Government thinks, and this is what seems to me well founded.

The fact that the President was absent from the capital, on a far trip to the south of the republic, precluded an immediate reply to Your Excellency's note.

With sentiments of high consideration, I remain your obedient servant.

(Signed)

Cleto Gonzalez Víquez

His Excellency

Minister of Foreign Affairs of Nicaragua.

## ANNEX 33

**NOTE FROM MR. PEDRO PÉREZ ZELEDÓN, CHIEF OF THE COSTA RICAN LEGATION IN WASHINGTON TO MR. THOMAS F. BAYARD, SECRETARY OF STATE OF THE UNITED STATES OF AMERICA, 30 JULY 1887.**

LEGATION DE COSTA RICA,

SIR: I have the honor to enclose a copy of the treaty signed at the city of Guatemala on the 24th of December, 1886, by plenipotentiaries of Costa Rica and Nicaragua with the friendly mediation of the Guatemalan Government, in which it was stipulated that both contracting parties should submit to the arbitration of the President of the United States of America the question whether the treaty of limits celebrated by them on the 15th of April, 1858, is or is not valid.

In the name and under special instructions of the Government of Costa Rica I request you to interpose your good and valuable offices with His Excellency the President in order that he may consent to render to my country the eminent service above referred to.

My Government hopes that such a marked favor will be obtained by it, and grounds its expectations upon the benevolent friendship shown to it by your Government and on the traditional interest that this great nation has always felt for the peace, tranquillity, and welfare of the other nations of America which are its sisters.

With protestations of my highest consideration, I am, your most obedient servant,

PEDRO PEREZ Z.

To the Honorable THOMAS F. BAYARD,

*Secretary of State,*



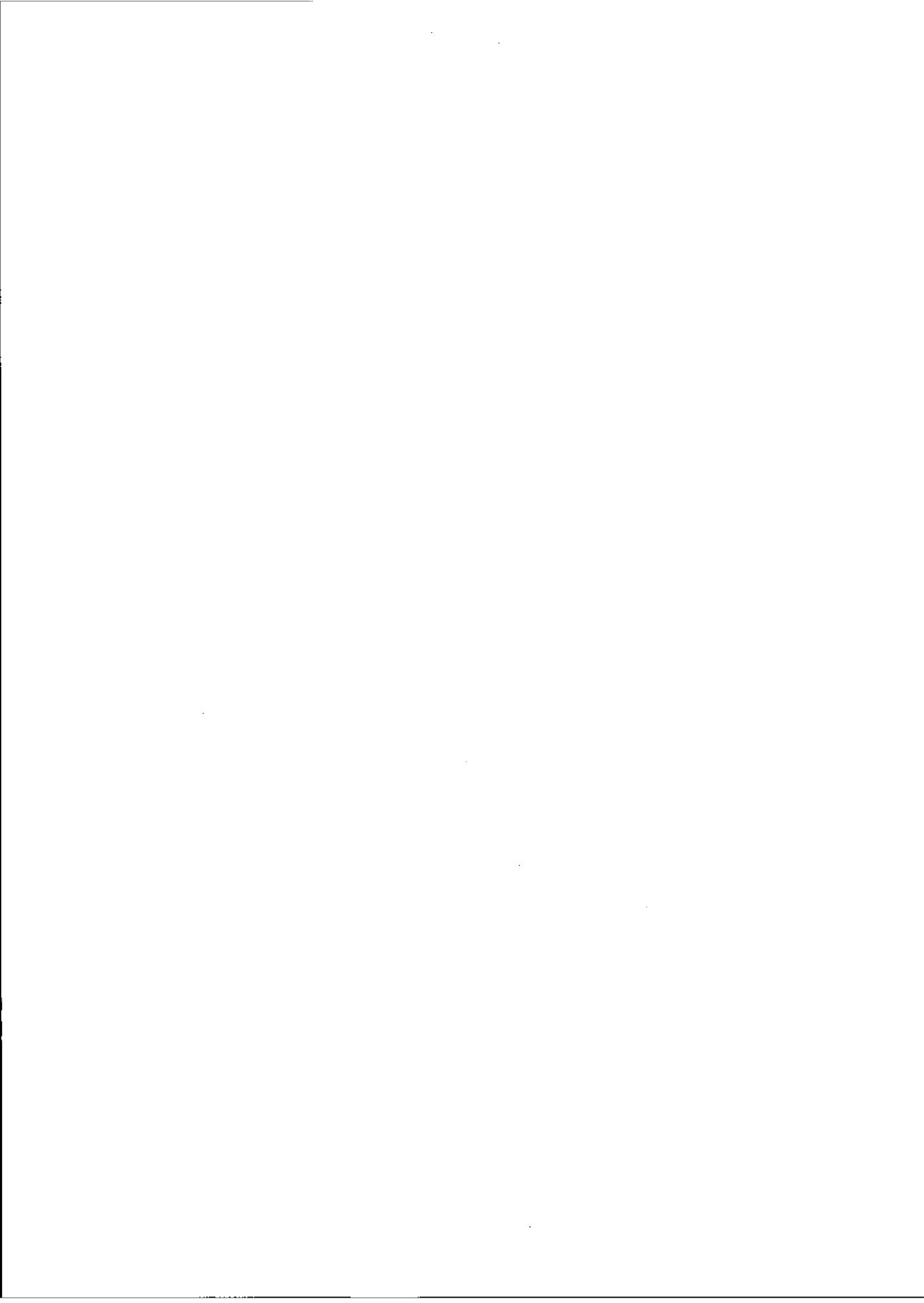
**ANNEX 34**

**TELEGRAM FROM MR. PEDRO GONZÁLEZ, UNDER  
SECRETARY FOR HOME AFFAIRS TO MR. ASCENSIÓN  
ESQUIVEL, MINISTER OF FOREIGN AFFAIRS OF COSTA RICA.  
28 SEPTEMBER 1887.**

Sir Minister: With I suffer I deeply regret to inform H. E ; that Treaty Carazo - Soto has not deserved the approval of the Congress, and that this one has closed today its extraordinary meeting.

With distinguished consideration, I am of kind H.E servant.

The Undersecretary of Interior in charge of the Office. (f) Pedro González



## ANNEX 35

### NOTE FROM MR. PEDRO PÉREZ ZELEDÓN, CHIEF OF THE COSTA RICAN LEGATION IN WASHINGTON TO MR. THOMAS F. BAYARD, SECRETARY OF STATE OF THE UNITED STATES OF AMERICA, 23 MARCH 1888.

Legation of Costa Rica

Washington, March 23, 1888

Sir:

I have had the honor to receive your Excellency's letter, dated yesterday, by which you inform me that His Excellency, the President of the United States, has announced his ruling in the question concerning the validity of the Treaty of Limits entered into by the Republics of Costa Rica and Nicaragua with regard to the other points of interpretation submitted and that Your Excellency has fixed the day of tomorrow, at twelve noon, to deliver to each of the representatives of the parties the document that contains the arbitral award.

It is highly satisfactory, for my Government and for me, the news that a question that for so many years has disturbed the tranquility of my country and that of the Republic of Nicaragua, its neighbor and sister; and at the appropriate time I will express to His Excellency the President the profound gratitude to which the Republic of Costa Rica is indebted for the eminent service it has received from him.

I shall go punctually at the time of the appointment to receive from Your Excellency's hands the arbitral award.

I reiterate, Sir, the assurances of my highest esteem and adhesion.

Pedro Perez Z.

His Excellency Mr. T. F. Bayard  
Secretary of State



## ANNEX 36

**NOTE FROM MR. PEDRO PÉREZ ZELEDÓN, MINISTER OF FOREIGN AFFAIRS OF COSTA RICA, TO MR. JOAQUÍN ELIZONDO, MINISTER OF FOREIGN AFFAIRS OF NICARAGUA. SAN JOSÉ, 25 SEPTEMBER 1888.**

Secretariat of Foreign Affairs

Minister:

By conduct of the distinguished diplomatic representative of this Republic before this Government, General Isidro Urtecho, I have had the honor to receive Your Excellency's appreciated letter dated in Managua on the first of this month.

In that letter, Your Excellency manifests to this Secretariat that he has received the three copies of the Canal Contract mentioned in the telegram that I sent you on August 9<sup>th</sup> last.

Your Excellency further adds that by replying to that telegram, you also express the satisfaction of your Government in light of the hope it had that with said contract mine contributed to provide facilities for the accomplishment of an enterprise, in which the future of these countries is linked; and that Your Excellency had nothing to observe about the contract, which on the contrary was a source of great pleasure for Your Excellency, if it did not entail serious difficulties for the execution of the Canal work, and did not imply the assumption of Nicaragua's ownership rights that invalidates the contract and makes it totally ineffective.

In support of these assertions, Your Excellency calls the attention of my Government to clause 11 of the Award issued by the President of the United States, where it declares that the Treaty of Limits of 1858 does not give Costa Rica the right to be a party to grants which Nicaragua may make for inter-oceanic canals, therefore, Costa Rica cannot intervene in a matter in which only Nicaragua is a party, without flagrantly breaching the arbitral award.

That affirmation is corroborated, according to Your Excellency, by the fact that the Canal Association is a creation of this Republic, by the concessions and privileges it has received from it; and Your Excellency

states that this fact shows that Costa Rica could not enter into an agreement with the Canal Company without first seeking the consent of Nicaragua.

Your Excellency also calls the attention of my Government to the circumstance that the aforesaid contract contains clauses that seriously injure the rights of Nicaragua, among others, the stipulation in article XLVIII, which grants to Costa Rica property rights in the Canal, which only correspond to Nicaragua by virtue of the dominion and sovereign jurisdiction it has over the territory and waters in which said work will be executed.

Your Excellency warns, however, that if after the definitive trace of the Canal becomes known, it were indispensable to use any part of the territory or waters of Costa Rica, in that case Your Excellency's Government would find it natural for Costa Rica to seek the indemnity to which it would be entitled.

Your Excellency concludes his important note by urging my Government to reconsider the canal contract that it entered into, so that it limits its action to the strict use of its rights.

The President of the Republic, who I have informed about Your Excellency's letter, has ordered me to reply as follows.

Far away from my Government's foresight was the Canal Contract entered into between Costa Rica and Mr. A. G. Menocal, in which special care was taken not to digress at all from the strict right of use of the Republic, defined by the treaty of April 15, 1858 and clarified and, to a certain extent, confirmed by the Award of the President of the United States, could give rise to the observations of Your Excellency's distinguished Government, when mine, on the contrary, has had and has the full and intimate conviction that the contract absolutely does not affect in any way the rights of Nicaragua, and it also has the conviction that through this negotiation Costa Rica has contributed, with no less effort than Nicaragua, to facilitate the realization of the grandiose enterprise for the canalization of the Central American isthmus, an enterprise that links, as Your Excellency has recognized, the future of these two countries. The Costa Rican contract instead of entailing difficulties for the execution of the works, removes the serious obstacles that could have otherwise arisen in the execution of the work, and removes them by all the means within the scope of this Republic, without implying in any way whatsoever any assumption of rights not pertaining to Costa Rica.

It is a good thing that this Republic is not obliged to be an essential and inevitable party in the canal concessions that Nicaragua grants within its own exclusive territory, although, in any case, and even if the territory and waters of Costa Rica are not touched, they should take into account the opinion and vote of Costa Rica as provided in article 8 of the Treaty of April 15, 1858; Costa Rica, in such case, after giving its consultative vote, and whether or not its opinion is adopted, will never pretend to be a party in the respective negotiation.

The case at hand is completely different. Authoritative public documents, known by all of us, show that the current project for the canalization of the Central American isthmus proposes to use the Bay of San Juan del Norte, in which Costa Rica has indisputable rights of co-sovereignty; it proposes to take advantage of many miles of the San Juan riverbed, where Costa Rica has, on the one hand, a perpetual right of free navigation and, on the other hand, that of a riparian nation; it proposes to divert the waters of that river and to give an outlet to the sea through exclusively Nicaraguan territory, drying the old course, or at least significantly reducing its flow volume, and it proposes to raise the level of the waters of the San Carlos river, which is exclusively Costa Rican, and flood an entire district of this Republic, or the valley of San Carlos, in a surface of many square miles.

The plan of the business company includes excavating part of the canal in the southern zone of the San Juan river, which pertains exclusively to Costa Rica, and also to locate another part of the canal in Costa Rican territory, on this side of the border, in the isthmus that joins the Great Lake and the Bay of Salinas; all of this if it were convenient for the Company, given the absolute freedom of action it has to adopt the route that results more practical and economic.

The company can choose the Bay of Salinas, as the extremity of the canal in the Pacific, if it deems convenient, in which Costa Rica has a co-sovereignty right.

Costa Rica has granted special concessions to the Canal Association for the construction and operation of a railroad dependent on the canal, which in many parts will be located, according to all probabilities, on exclusively Costa Rican territory. It has also made liberal concessions on exemption of custom duties and colonization of large masses of land, along the river and other points, to which it has granted ownership; it has guaranteed respect for the contracts entered into outside of the Republic; it will give force and effect to the regulations to be issued for the use of the

canal; and, finally, Costa Rica has restricted its freedom of action by committing not to grant new concessions for a canal in its entire territory, or for a railroad in the entire canal zone.

In short, Costa Rica has granted to the Company, as regards Costa Rican territory, no less broad rights, and, in some cases, broader than those granted by Nicaragua with regard to its own territory.

Therefore, to state and sustain, in light of such antecedents, all of which are constant in the respective contract, that Costa Rica is not a party to the transaction, that it has intervened in somebody else's business, and lacks the right to carry out said contract, is tantamount to denying the sovereignty and independence of this Republic.

It is true that Costa Rica is not a party to the concessions that Nicaragua grants for the canal, neither is Nicaragua in those that Costa Rica might grant; but both can grant on their own behalf, and independently, those which they may deem fit, with absolute freedom of action, stipulating for themselves whatever compensation they deem sufficient for giving up what is theirs.

Your Excellency expresses the idea that the Canal Company is a creation of that Republic because of the concessions it obtained from it, and my Government does not agree with this idea. The Canal Association owes its legal existence to the will of the people who form it and to the laws, by virtue of which it was incorporated in the State of Colorado of the American Union, and will later owe its existence to the Congress of the United States, if it reaches the incorporation that remains before it. My Government considers that both Costa Rica and Nicaragua have dealt with an Association that existed beforehand, and if in any way it might be thought that the concessions of Nicaragua have given life to the Association, it would also be clear that Costa Rica, to the same degree as Nicaragua, has contributed to that end with the concessions it has granted.

The assertion that because the Canal Company received privileges and concessions from Nicaragua, it cannot also receive them, separately, from Costa Rica, when it will ineluctably need them to carry its purpose into effect, presupposes that the Company lacks legal standing to validly deal and contract with whoever and whenever it deems convenient, with the freedom that all legal persons have, and which is granted by its incorporation letter.

Nothing would hinder to such degree the realization of the canal project than the negotiation of the freedom of the business company to contract, without needing the approval of the Government of Nicaragua.

It is regrettable that Your Excellency has not deemed it convenient to point out, one by one, and with acceptable precision, those points of the contract entered into by this Government, that according to Your Excellency seriously injure the rights of Nicaragua. The stipulation of article XLVIII on the ownership of Costa Rica in the canal, if the opportunity should arise as foreseen therein, cannot be more just if it is understood that Costa Rica only acquires ownership of that part of the canal that is located in its territory, and its right is limited, in the other cases, to a condominium, when it involves a section of the canal, in which Costa Rica has co-sovereign rights, as occurs in the bays of San Juan and Salinas, and that of free and perpetual navigation when it involves those sections where Costa Rica only has a right of passage, and not sovereignty or joint ownership. Costa Rica, therefore, has not stipulated in its favor, except that which is found within the limits of its right, established by the 1858 Treaty and confirmed by the arbitral award.

If upon making the definitive trace of the Canal, only the lands and waters pertaining to Nicaragua are occupied, as it would occur if, for example, a line starting from Brito were to end in Bluefields, without touching at any point the land, waters or rights of Costa Rica, it would be evident that this Republic could not pretend to have any kind of rights in the Canal, and it would surely not pretend to have them.

Your Excellency considers that the right of Costa Rica has been satisfied, even if its districts were flooded, its rivers were diverted, portions of its territory were occupied, its ports were taken advantage of and modified, or those in which it is co-owner, its forests or quarries were utilized, and, in short, Costa Rican lands and waters were used in the entire extension determined in the contract, by offering to recognize the indemnity that may correspond, when Costa Rica claimed it; and Your Excellency considers that this is the faithful and correct interpretation of the arbitral award.

Your Excellency will allow me to manifest that such an interpretation is flagrantly contrary to the wording and spirit of the award; which is inadmissible from any viewpoint, and consequently, Costa Rica will never consent to the use of something that pertains to it without its consent. The Company, knowing the rights of Costa Rica in part of the territory and waters which the Canal will cross, requested permission from

this Government even for carrying out the preliminary surveys, as it was appropriate, which was granted with the best will, and later requested and obtained the concessions that Your Excellency now observes. It can be assured, therefore, that not a step has been taken in this matter without first seeking the consent of this Republic.

In conclusion, Mr. Minister, my Government cannot have the satisfaction of fulfilling the wishes of Your Excellency regarding the reconsideration of the contract entered into with Mr. Menocal; on the contrary, taking into account the cordial relations that exist between Costa Rica and Nicaragua and the interest of a company that will bring so many benefits to both Republics, and which deserves all the sympathy and support from them, I take the liberty to beg Your Excellency to consider the reasons I have exposed herein to vindicate the rights of Costa Rica and so that this illustrated Government may be convinced that [the Government] of this Republic restricted itself to exercise its right in the negotiations entered into with Mr. Menocal.

In case these reasons do not produce the desired effect, my Government expects that Your Excellency's [Government] will deign to pinpoint the points of disagreement, so that, if inadvertently or due to any other involuntary cause of course on the part of Costa Rica, in any of them, not exposed in Your Excellency's aforesaid communication, the rights of Nicaragua were undermined, these be surmounted and the harmony that must reign between both countries be established, in a matter in which their respective interests are closely touched.

I can assure Your Excellency that my Government desires nothing more earnestly than to remove any reason that could serve as an opportunity for new discussions between this and that sister Republic, now that the old ones have happily ended with the award of the President of the United States; and I reasonably hope that in the spirit of equity and elevated justification that animates Your Excellency's Government and mine, they will know how to resolve the difficulties that Your Excellency points out on the understanding of the extension of the rights of Costa Rica and Nicaragua in the canal matter, without for an instant affecting the sincere and indestructible friendship that unites one and the other people and the Governments that rule them.

With my distinguished consideration and appreciation, I have the honor to remain your obedient servant.

(Signed) P. Pérez Zeledón.

## ANNEX 37

### NOTE FROM MR. RICARDO PACHECO, MINISTER OF FOREIGN AFFAIRS OF COSTA RICA TO THE MINISTER OF FOREIGN AFFAIRS OF NICARAGUA. SAN JOSÉ, 9 AUGUST 1895.

National Palace

Mr. Minister:

I have had the honor to receive your letter of June 11<sup>th</sup> last, by which Your Excellency, on behalf of your Government, protests certain affirmations contained in the Message delivered by the President of the Republic to the Constitutional Congress on May 8<sup>th</sup> last, regarding the conduct of the Government of Nicaragua in the implementation of the provisions set out in the Arbitration Convention signed at Guatemala on December 24, 1886.

Your Excellency begins by saying that the general terms in which the assertions of the cited document are conceived, obligate you to note that the border question has not been discussed with this Government during the present Administration of that Republic, and that the last efforts, suspended *de facto* by the revolution that erupted in Nicaragua on April 28, 1893, date back to the first months of that year.

In this regard, allow me to call your attention to the fact that the wording of said document does not lend itself to interpretation as an allusion to the present Government of that Republic. They certainly refer to operations that should have been put in practice in another epoch. All arguments that tend to show that the just complaint they involve does not constitute a direct charge against that Administration are uncalled for.

Incidentally, I am pleased to recognize that during the Government of President Zelaya the border question between the two Republics regarding their respective territories has not elucidated. However, this circumstance could not be an obstacle to refer, in general, to the Government of Nicaragua in that Message, without excluding this or that Administration that has not intervened in the matter because, as you know, the Government is a moral entity that should always be considered that way with respect to international matters, regardless of the changes that occur in its personnel and the differences of ideals and purposes that those changes

originate. The faith that should be given to international treaties that are respected and enforced cannot be based on any other principle, even if the Government personnel that executed them has disappeared from the political scene; and, on the other hand, solidarity in the succession of the Governments of a State is also universally recognized with respect to international obligations.

So then, if any of the Administrations of that Republic has hindered, in one way or another, as I will show hereunder, the effectiveness of the obligations consigned in the Treaty of 1858 and defined by the arbitral award, it is evident that the concepts cited by Your Excellency are victoriously defended against any objection that is only based on the circumstance that the Government personnel, whose conduct motivates the appreciation of the Message, no longer exists.

Your Excellency further states that it is not entirely true that Nicaragua, for one reason or another, has not concurred with its Commission, as she was obligated and is obligated, to practice the formal delimitation of the respective borders; and to support your statement, you immediately refer to all the acts that Nicaragua has executed in relation to this matter.

When the facts are exposed by you in this manner, seemingly there is no charge against Nicaragua as a result thereof, but a different thing happens when you take into account a multitude of very important details that served as a basis for the appreciation of the President of the Republic in that respect.-

I will refer to those details, begging you, in advance, not to see in the narration of these details, nor in the judgment formed by the Government in relation thereto, the slightest intention to intensify past disputes, or to relieve suspicions and resentments caused by them, but rather as an effort to make the words of the Presidential Message more sincere, so as to maintain harmony and concord, which are indispensable between neighbor and fraternal peoples.

After the arbitral award was issued, my Government appointed Engineer Don Luis Matamoros and Geometer Don Ricardo Alpizar to compose the Commission that, in agreement with that of Nicaragua, would carry out the delimitation, and it was communicated to you by letter of May 8, 1888, and at the same time inviting the Government of that Republic to do the same, which, by letter of July 1<sup>st</sup> of that same year, indicated that it had appointed, on its part, Licentiate Don Salvador Castrillo and Don W.

Climie. Another letter was sent by this Ministry on September 17 of the following year, asking you to kindly indicate, within the shortest time possible, the date when your commission would be ready to commence the works, since the Commission of Costa Rica was ready and only waiting for that notice. Then the Ministry under your charge indicated that the Commission had been appointed, that the delimitation had not been practiced owing to reasons beyond the control of that Government, that Commissioner Climie was absent at that time, and that Mr. Castrillo could not fulfill his mission because he was presently taking care of other matters.

That a personal impediment of the commissioners of that Republic to immediately concur to the delimitation could be an insurmountable obstacle for the realization of such important work when, on the other hand, it was urgent to carry it out because the short time period in which it had to be completed was elapsing, is inexplicable from all points of view, and the allegation that was made in that respect cannot be entertained as an excuse.

My Government waited for the Government of Nicaragua, obliged as it was to renew the negotiations, which had been postponed at its request, to advise that its commission was ready to commence the work. It did not happen that way. In view of that, the [Government] of Costa Rica addressed your Government, by letter of June 13<sup>th</sup> of that same year, indicating that seventeen months had already elapsed since the appointment of the Commissioners and only thirteen remained to carry out the marking of boundaries, and proposing bases for the execution of the works in an adequate and efficient manner.

That very important letter was not honored with an opportune reply until May 24 of the following year, that is to say, five and a half months later, when the Government of that Republic stated that it was ready to send its commissioners, without referring at all to the proposed bases. This Government urged your Government again, by telegram of May 26, to indicate if the aforesaid bases were acceptable and finally obtained a favorable reply from the latter via telegram on the next day.

And so, Mr. Minister, that silence of Nicaragua for such a long time, although it was her duty, as I stated, to renew the negotiations, and that she had received a letter from this Secretariat which had not deserved a satisfactory reply, is another basis that led my Government to believe that your Government was avoiding the coveted conclusion of our jurisdictional disputes.

Finally, the commissioners of both Governments were able to meet in San Juan del Norte on June 15, 1890, and at a conference held at seven in the evening of that same day at the government house in that port, to the great surprise of our Delegates, Doctor Don Modesto Barrios (who was substituting Mr. Castrillo), tenaciously maintained his claim against the express text of the arbitral award stating that "Punta de Castilla" should not be considered the starting point of the common border because the constant variation of those places has caused its separation from firm land and it would not remain on the right bank of the San Juan River. Engineer Matamoros tried in vain to make him see that the arbitral award determines the boundary of the aforesaid Punta, just like it was on April 15, 1858, as the starting point of the border on the Atlantic side; and that it was very easy to determine the actual location of that Punta during that year with the map of the "Peacock" (sic) or that of "Kansas" of the U.S. Navy. Doctor Barrios was inflexible; he insisted that the Award did not know those places, that by saying "just like they were on April 15, 1858" it assumed that said land (that of Punta de Castilla) was aggregated to the continent, and that the river always passes between her and San Juan del Norte, but that since it was currently cut by the river, the right bank of the river did not begin at that location.

Mr. Matamoros indicated that the purpose of the commission was not to interpret the award or the Treaty: that both were clear and easy to implement since they indicated specific points that could be easily determined with the aforesaid maps.

Then Doctor Barrios expressed a desire to reach an agreement, citing the Arbitration Convention signed at Guatemala that authorizes the Commission to separate from the actual border up to a distance of one mile, and proposing that the starting point be fixed at "Harbor Head". The reply to that was that it was necessary to first determine the distance between that point and the Punta and then practice the mediation. In reply, Mr. Barrios persisted to argue that such operation was impossible because of the constant variation of the places.

As you will note, the specious arguments made by Mr. Barrios cannot be construed in any other way than as excuses for not carrying out the delimitation. And this is virtually the meaning given in the same proposals of the cited gentleman, who after defending the part situated to the west of "Harbor Head" as Nicaraguan territory, requests that by virtue of the faculty consigned in the Arbitration Convention the latter place be fixed as the border. If he actually thought that "Harbor Head" was the border, as he defended at the outset, he would not have proposed, as he did later, that said

border be fixed, based on the authorization they had to penetrate Costa Rican soil up to one mile.

This kind of discussion, which could have been entertained as an allegation before the Arbitrator, although indefensible later when it was only a matter of enforcing the provisions set forth in an unappealable decision and in a perfectly valid Treaty, convinced our Commissioners that all efforts to dissuade those of Nicaragua from the unjust claims stated by Mr. Barrios were futile, and led to an agreement between both parties to suspend the works in the north, and to move to the Pacific, in order to initiate them again on that side. My Government accepted said disposition, confident that, as stated in the minutes drafted by all the commissioners in San Juan del Norte on June 17, as aforesaid, there was no possibility that any discussion would arise if the works were carried out at the Bay of Salinas. All the commissioners immediately went in direction to the south. They arrived at Rivas on June 23, and ours stayed there waiting for the return of those of that Republic who had gone to the interior. Time passed without the Commission of Nicaragua rejoining that of Costa Rica, so the latter decided to go to Managua to find out the reason of this delay, where it was told by Minister Delgadillo that he did not know anything about the matter. In view of this, my Government urged your Government to send its commissioners as soon as possible.

So much delay, Mr. Minister, on the part of that Republic, to order its agents to return to perform their tasks, was viewed by my Government, with all just reason, as a way to digress from the completion of the delimitation operations, which opinion was also corroborated by the inexplicable reply of Minister Delgadillo, to which I referred previously, and the weak excuse for the delay given by that Government in a telegram of July 18, stating that owing to grave and unforeseen difficulties its commissioners had not been able to concur, but would immediately leave in direction to the Bay of Salinas.

On August 4<sup>th</sup> next, the commissioners were at the location and began again their work. Not having accepted the Commission of Nicaragua the U.S. Navy ranger map of Bay of Salinas, which was presented by the Costa Rican Commission, a decision was made to make a survey; and on September 7<sup>th</sup> next, the mixed commission met in Rivas, with the objective of discussing the definitive tracing of the dividing line between the bay and Sapoá. The objective was to accurately determine the center of the bay of Salinas, in accordance with the provisions of the Award, when the commissioners of that Government, undoubtedly pretending to transform the mixed commission into a Supreme Tribunal so as to correct the defects

that the arbitral award contained in their opinion, calling attention to an "error" by President Cleveland, consisting of indicating that the western limit of the bay was the line, starting from "Arranca barba" to the westernmost point of "Punta Zacate", and requested to amend the lack of equity resulting from that, at the same time indicating that it was necessary to point out that the center of the coast was the starting point of the dividing line; and, as a third point of the same, the hill of "La Cruz", which place, as you know, indisputably belongs to Costa Rica.

Such unjustifiable pretensions, after having recognized in the minutes of the meeting held in San Juan del Norte that no difficulty would arise and no discussions of any nature would be possible if they started by the bay of Salinas, evidences an unyielding determination on the part of the Nicaraguan commission to indefinitely postpone the completion of its mission.

So, against the opinion of our agents, and notwithstanding their efforts to impede it, those of Nicaragua attempted, for the second time, to transform the Commission in charge of making the delimitation in accordance with the precise and indisputable bases fixed in the Treaty of 58, in the Arbitration Convention and in the award, into a deliberating body with respect to the equity of the Award. This new obstacle and the fact that the date on which the delimitation had to be concluded was getting close, without any possibility of realizing it in the short time period that remained, led to agreement to suspend the works, commissioning Messrs. Alpizar and Collins to perform some works, and the former, especially, for all those that were deemed convenient.

With such broad authorization, Mr. Alpizar was fulfilling his mission when the Government of Nicaragua, by telegram from that Ministry dated January 1, 1891, indicated that it had been informed that the aforesaid gentleman was performing work along the border and erecting markers of lime and stone, which your Government questioned because it considered that the term for completing the delimitation had expired and because the ratification of the "Castro-Guerra Treaty" was pending, and requested that the works be suspended if they were being carried out.

As you well know, the expiration of the agreed term to execute an unappealable sentence can never be seen as a cancellation of the duties it imposes upon the Parties; otherwise, the effectiveness of the sentence would remain at the will of the injured party and, consequently, its unbending decisions would be frustrated. Since the duties and rights of Costa Rica and Nicaragua established in the aforementioned Treaty and Award with respect

to the borders are imprescriptible, the obligation to delimit them must also be imprescriptible, and by virtue thereof, the fact that the Government of Nicaragua invoked the expiration of the term reveals a tendency to hinder the course of the operations that should have been facilitated, all the more reason if we consider that Mr. Alpizar was at his position in accordance with the agreement and with the authorization of both commissions, and that his work could be ratified or rectified by your Government.

As regards the pending approval of the "Castro-Guerra" Treaty, it was not sufficient reason for that Government to oppose the delimitation given that said Treaty, even if it had been ratified by Costa Rica, did not affect at all the marking of the border between the Castle and Sapoa, which was precisely the operation being carried out by Mr. Alpizar, which gave origin to your telegram to which I have been referring.

Subsequent to that incident, and as a consequence of the border dispute that arose between both Governments because armed troops from that Republic had penetrated into the place called "Los Patos", my Government proposed to your Government, on November 20, 1892, with the objective of definitively resolving the border issue between both countries in an honorable and effective manner, the appointment of two Engineers, one by each Government; as well as a third engineer, whose appointment would be requested to the American Government, so that they fix the markers in accordance with the ruling. To this rational and conciliatory proposal, the Government of Nicaragua replied that, in its opinion, the "Castro-Guerra" Treaty ended all subsequent difficulties and was waiting for the ratification of Costa Rica to proceed to the exchange.

The implicit rejection of the reasonable means of settlement proposed that said reply involved clearly indicates that the Government of Nicaragua was not thriving at that time with the best desires to concur with its commission to the territorial delimitation. That is the only consequence that can be deduced, given the cause alleged by that Government, since nothing new was established in the "Castro-Guerra" Treaty to delimit the border in the zone where "Los Patos" is located, which uncertain situation for your Government gave room to the proposal of my Government that it was irrelevant to cite this Draft Treaty as an effective way to end the disputes.

After referring to how Nicaragua has complied with the provisions of the Convention of Guatemala and the Arbitral Award, you present a formal protest on behalf of your Government with respect to the solemn

declaration made by President Yglesias and contained in the following words of the Message.

"In the disputes that have arisen with Nicaragua due to the boundary jurisdiction, the Government has adopted, as a starting point to maintain and defend the sovereignty of Costa Rica, the material border delimitation made by the Costa Rican Commission, which adjusted its work to the provisions prescribed in the "Cañas-Jerez" Treaty of April 15, 1858, which were confirmed and defined by the Award of the President of the United States of North America, Mr. Grover Cleveland".

Your Excellency immediately adds that the Government of Nicaragua does not accept such declaration because both clause 3 of the invoked Treaty and clause 10 of the Arbitration Convention acknowledge its right to participate in the tracing of the dividing line and to intervene in the demarcation and to sanction it with its presence and acquiescence, and that as long as the borders are not fixed, Costa Rica and Nicaragua will have to respect the status quo and abide by the general principles of the Law of Nations to resolve any jurisdictional disputes that arise.

With respect to the aforesaid protest of your Government, I must say that the expressed words do not constitute the slightest ignorance of the rights that assist Nicaragua to intervene in the delimitation of our common border, neither does the resolution of this Government, to which they refer, hinder the unhampered exercise of those same rights. It is needless to say that your Government can send its commissioners, at any time it wishes, to review the operations of our commissioner and, in case they find them to be irregular, can notify my Government in this respect, which shall not wait to send its own, so that after they start again the works that have been suspended since 1891, they may complete this very important project. However, as long as that Republic does not indicate the manner how this matter will be carried out, it is only natural that Costa Rica, who needs to maintain, just like any country, the most cordial and frank friendship with its neighbors, provides something that, without impairing the rights of others, gives effectiveness to its own rights and removes all reason for subsequent confrontations.

Otherwise, the great efforts of both Republics to put an end to their disputes would be worthless, thereby undermining the incontestable authority of the Award and offending the dignity of the Arbitrator, who, opportunely and with such high spirit of conciliation, gladly responded to our common call and put himself at the service of peace among these Republics.

There is certainly an unknown right, Mr. Minister, not in the words of the Message, but in the question they refer to, and it is that Costa Rica has the provisions of a Treaty declared valid by a firm ruling so that they be executed without delay. To exercise that right, at least in part, is the norm of conduct that this Government has adopted, with the absolute certainty that the interests of that Republic shall not be aggrieved at all because the marking of our commissioners faithfully adjusts to the provisions of that Treaty, something that your Government has never doubted.

As regards the obligation that both Governments have to consult the status quo of the borders and the general principles of the Law of Nations with respect to any future jurisdictional disputes, I believe it is unnecessary to ponder at length since it is an incontrovertible doctrine that the positive international law resulting from the treaties and arbitral awards is the criteria that, first and foremost, should serve as the basis to resolve the conflicts between two countries; and that there is a boundary treaty between Costa Rica and Nicaragua, a point that Your Excellency cannot overlook.

I have extensively disturbed the illustrated attention of Your Excellency and I will conclude, but before I do, I would like to make known to that Government the following:

The Government of Costa Rica trusts that the present Administration of Nicaragua is animated, as you have stated, by the most sincere sentiments of good harmony with friend countries and brotherhood towards the Central American peoples and that it feels more obligated than any other to put an end in the best way possible to its long-standing border question.

Since there is a unity of ideals and purposes between the Governments of both Nations on this matter, and since the yearned conclusion of that litigation solely depends on Nicaragua concurring to execute what has been already resolved with respect to the borders in a conclusive manner, we are at a propitious moment to remove from the line that marks the common fate of both Nations the only obstacle capable of rekindling unfounded suspicions and maintaining latent motives of discord.

To this end, my Government urges your Government to accept the proposition made to Mr. Sacaza (sic), relative to the appointment of Engineers by both Parties, who, in agreement with a third, whose appointment will be requested to the President of the United States of North America, would be in charge of practicing the delimitation of territories. The Government of Costa Rica hopes that such a procedure, which can be

easily and immediately implemented in accordance to justice, as well as the interests and aspirations of both Peoples and Governments, will be accepted by Your Excellency's Government.

With sentiments of high appreciation and very distinguished consideration, I am your dutiful servant.

(Signed)  
Ricardo Pacheco

It concurs

San Jose, November 1, 1895

His Excellency, the Minister of Foreign Affairs of the Republic of Nicaragua, Managua

## ANNEX 38

### **NOTE FROM MR. RICARDO PACHECO, MINISTER OF FOREIGN AFFAIRS TO THE SECRETARY TO THE DIET OF THE GREATER REPUBLIC OF CENTRAL AMERICA, 31 JULY 1897.**

Sir:

I have the honor to confirm to Your Excellency my cablegram of yesterday, which reads as follows:

(Here the cablegram of July 30, 1897)

By this same letter, I have the honor to send to each of the dignified members of the Most Excellent Diet printed copies of the reports that the Border Commissions presented to the Honorable Mr. Alexander, Engineer Arbitrator, due to the dispute that exists between them with respect to the status of Punta de Castilla, the starting point of the common border between Costa Rica and Nicaragua on the Atlantic side.

The simple reading of those documents suffices to convince the most concerned spirit that the news regarding the pretensions of Costa Rica over the river and port of San Juan cannot be even remotely explained by any part of the exposition of rights that assist Costa Rica, which was presented to the Engineer Arbitrator, and provides a solid basis to the opinion formulated by that Government that said rumor is the work of restless and disassociating spirits, sworn enemies of this peaceful people.

No less conclusive evidence of my assertions is the interpretation given to a decree issued by Congress, harmless as to its international scope, but highly and significantly important for the agricultural future of the fertile districts of our territory, such as that of June 11<sup>th</sup> last, that allows to import certain goods via the San Juan and Colorado [rivers], export products from San Carlos, Sarapiqui and Parismina, Tortuguero and Colorado, and exempts specific articles from the payment of import duties.

It takes no effort whatsoever to understand that the licence to introduce merchandise into the valleys that the decree refers to has to be subordinate to the conditions set for the navigation of the San Juan River, and that this is an interior river, not open by its sovereign to foreign traffic. It should be understood that such permit was referred only to Costa Rican ships, which under the Treaty of 58 and the Arbitral Award of President Cleveland, have

a right to do it, which cannot in lack of a national authorization, be utilised to embark and disembark products through ports not open to sea trade.

Only anticipating, as it was done, the species relative to our tendencies to appropriate ourselves of the river and Port of San Juan could aims attributed to the decree, with any appearance of credibility, which it does not have; however, having shown the absurdity and falsehood of said statement, any reason for the baseless interpretation to which I have been referring disappears.

I have the honor to present to the Most Excellent Diet the testimony of my respect and high consideration, and I remain, Sir, your obedient and confident servant.

Ricardo Pacheco

To His Excellency

The Secretary of the Diet

of the Greater Republic of Central America

San Salvador

## ANNEX 39

**NOTE FROM MR. JULIO MARTÍN, DIRECTOR OF ADENA, TO  
MR. ALFONSO ROBELO, AMBASSADOR OF NICARAGUA IN  
COSTA RICA. SAN JOSÉ, 27 SEPTEMBER 1993.**

ADENA

Telephone 506 269309 Fax 506 278861  
PO Box 772 –1002 Paseo de los Estudiantes  
San Jose, Costa Rica  
San Jose, September 27, 1993

Mr. Alfonso Robelo  
Ambassador of the Republic of  
Nicaragua in Costa Rica  
Hand delivered

Dear Mr. Robelo,

I take this opportunity to respectfully greet you and to request, on behalf of ADENA (Association of Nautical Sports) and the organizing Committee, that you interpose your good offices so that the authorities of your country, as the sovereign over the San Juan River, grant us the respective permit to carry out the first INTERNATIONAL SARAPIQUI BARRA DE COLORADO NAUTICAL RALLY.

This activity, which has the main purpose of delivery donations, totaling over one million colones, to six of the schools located on the banks of the River, will take place on Saturday, 9 October 1993, at 11:01 am, and is being organized in coordination with the Development Associations of Puerto Viejo de Sarapiqui and Barra del Colorado.

We estimate that the participation of an excess of 75 boats will significantly reactivate the commercial sectors in all the zones where they pass. Attached you will find a map of the route, where you will note that we will use the waters under your sovereignty for approximately 45 minutes.

Having no other matters for the time being and looking forward to a positive reply to this request, I remain with all consideration.

Sincerely yours,

(Signed)  
Julio Martin O.  
Director

## ANNEX 40

**NOTE FROM MR. ERNESTO LEAL, MINISTER OF FOREIGN AFFAIRS OF NICARAGUA TO MR. ALFONSO ROBELO, AMBASSADOR OF NICARAGUA TO COSTA RICA, 8 OCTOBER 1993.**

MINISTRY  
OF  
FOREIGN AFFAIRS

Managua, Nicaragua  
October 8, 1993  
IA-X-0659-93

Engineer  
Alfonso Robelo Callejas  
Ambassador of Nicaragua in Costa Rica  
San Jose.

Excellency,

In relation to the request for permission to carry out a boat competition in the San Juan River, which was presented, through you, by the *Asociación de Deporte Náutico de Costa Rica* (ADENA) and the organizers of the INTERNATIONAL SARAPIQUI-BARRA DE COLORADO RALLY, I hereby inform you as follows:

The Ministry of Foreign Affairs acknowledge receipt of said request and declares that in exercise of the sovereignty and supreme control that Nicaragua exercises on the San Juan River, and in answer to the request presented, the Chancellery of the Republic [of Nicaragua], on this occasion, has decided to grant the corresponding AUTHORIZATION for the holding of the tourist Rally with regard to the Trinidad – El Delta stretch.

In addition, it is necessary to inform the Costa Rican Nautical Association of Sport (ADENA) that it will be the responsibility of the organizers of the event, as well as of the participants in it, to properly handle garbage, plastic waste and oil, to avoid contamination and any damage to the environment in which the competition will be held.

We hope that in the future any similar request will be presented sufficiently in advance in order to analyze them and give an adequate reply.

Having no other matters of reference, I take this opportunity to greet you.

Sincerely,

/s/ Illegible  
ERNESTO LEAL SÁNCHEZ  
Minister

[Seal:] MINISTRY OF FOREIGN AFFAIRS  
MANAGUA REPUBLIC OF NICARAGUA  
CENTRAL AMERICA.

cc: file

## ANNEX 41

**NOTE FROM MR. BERND NIEHAUS, MINISTER OF FOREIGN AFFAIRS OF COSTA RICA TO MR. ALFONSO ROBELO, AMBASSADOR OF NICARAGUA TO COSTA RICA, SAN JOSE, 15 MARCH 1994.**

The Minister of Foreign Affairs and Worship

Mr. Ambassador:

I have the honor of addressing your Excellency to make reference to the events which have taken place in recent days in the zone of the San Juan River where officers of the illustrious Government of Nicaragua have proceeded to charge a toll tax to Costa Rican vessels navigating in the aforesaid river, with the objective of transporting tourists.

As Your Excellency well knows, the Cañas-Jerez Treaty of Limits between Costa Rica and Nicaragua provides in Article 6 that: "The Republic of Nicaragua shall have exclusive dominion and supreme control of the waters of the river San Juan from its outlet from the lake until it empties into the Atlantic; but the Republic of Costa Rica shall have perpetual rights, in the said waters; of free navigation from the river's mouth to three English miles below Castillo Viejo for the purposes of commerce, [objetos de comercio] whether with Nicaragua or the interior of Costa Rica, by way of the rivers San Carlos or Sarapiquí or any other route proceeding from the tract on the shores of San Juan that may be established as belonging to this Republic. The vessels of both countries may indiscriminately approach the shores (atrascar) of the river where the navigation is common to both, without the collection of any class of imposts unless so established by the two Governments"

According to the information in the possession of the Government of Costa Rica, officers of the Government of Nicaragua have established a toll tax collection post at La Trinidad in front of the mouth of the Sarapiquí River, in which zone, according to the Cañas-Jerez Treaty, Costa Rica has the right of free commercial navigation. I must inform Your Excellency that the Minister of Public Security of Costa Rica, Mr. Luis Fishman, has contacted representatives of the Ministry of Defense of Nicaragua, without having received any satisfactory reply to date.

Further, a few days ago I personally talked with His Excellency, the Minister of Foreign Affairs of Nicaragua, Eng. Ernesto Leal, who told me that, according to information in his possession, the Government of Nicaragua had established a toll post outside of the area of free navigation, but in the light of the reiterated facts and the precise information which has been communicated to me by the Ministry of Public Security of Costa Rica on this same date, I hereby request Your Excellency to communicate to Minister Leal the statements set forth herein, in order to obtain a prompt reply.

For these reasons, I hereby convey to Your Excellency the concern of the Government of Costa Rica in the light of these events, as well as the express request that said actions cease immediately.

In this respect, I would like to express to Your Excellency the firm will of the Administration of President Rafael Angel Calderón Fournier to instruct the respective Costa Rican authorities to initiate talks with their Nicaraguan counterparts, with the objective of finding a solution to the aforementioned problem, based on the full respect of the provisions of Article 6 of the Cañas-Jerez Treaty.

Notwithstanding the foregoing, I reiterate to Your Excellency the assurances of my highest esteem and consideration.

(Signed)  
Bernd H. Niehaus Q.  
The Minister of Foreign Affairs and Worship.

His Excellency  
Mr. Alfonso Robelo Callejas  
Ambassador of the Republic of Nicaragua  
CITY

**ANNEX 42**

**NOTE FROM MR. JUAN RAFAEL LIZANO, MINISTER OF HOME AFFAIRS, POLICE AND PUBLIC SAFETY OF COSTA RICA TO MR. JOSE ANTONIO ALVARADO, MINISTER OF HOME AFFAIRS OF NICARAGUA. SAN JOSE, 15 JULY 1998.**

DM 357

Mr. José Antonio Alvarado  
Minister of Governance  
REPUBLIC OF NICARAGUA

Minister,

In accordance to our telephone conversation yesterday, in which I informed you that our public forces have been hindered from navigating on the San Juan River carrying regulation weapons in activities related to the provisioning and changing of the guard at the posts located on the right bank of said rivers, in Costa Rican territory, I hereby express the following:

Colonel Talavera, the Chief at the respective Military Region of the Nicaraguan Army, indicated to our officers that they could not allow our police personnel to pass due to superior orders.

I reiterate that in spite of the location of the border posts of our police in national territory, the only means of access in some cases is the San Juan River, reason for which the activity of provisioning and changing our border guards finds itself absolutely impaired by the unilateral decision taken by Nicaraguan authorities. As you know, the inhospitable and dangerous border zone obliges our police to carry regulation weapons for their personal safety and that of the vessel carrying supplies.

I wish to reiterate that the vessels used for the activities described earlier do not bear artillery and the weapons used by our police officers form part of their endowment of personal supplies, and in no way run counter to the bilateral international norms in force regarding the use of this waterway.

I kindly request that you give the necessary orders to resolve this difficult situation, reiterating our will to collaborate with the Nicaraguan authorities for the benefit of our common border security.

Yours truly,

/s/ Illegible

[Seal:]

MINISTRY OF HOME AFFAIRS, POLICE AND PUBLIC SAFETY.

JUAN RAFAEL LIZANO S.

MINISTER

Cc: File

## ANNEX 43

**NOTE FROM MR. WALTER NIEHAUS, VICE MINISTER OF FOREIGN AFFAIRS AND WORSHIP OF COSTA RICA TO MR. ADÁN GUERRA, VICE MINISTER FOREIGN AFFAIRS OF NICARAGUA. SAN JOSE, 23 DE MARCH 2000.**

The Deputy Minister of Foreign Affairs and Worship

DVM-167-2000

Mr. José Adán Guerra  
Vice-Chancellor  
Republic of Nicaragua  
Hand Delivered

Dear José Adán:

I have carefully read with surprise your letter of today, 23 March 2000, since it was clearly stated in Costa Rica's closing argument during the round of negotiations held on Wednesday, 15 March, before the Chancellors, the OAS Secretary General, Mr. César Gaviria and you, that there were two drafts to be considered by the parties: a draft proposed by Costa Rica and another draft proposed by Nicaragua. Further, it was agreed that both texts would be submitted to the respective consultations.

In this state of things, in the letter I sent you yesterday, I repeated the text of the draft that Costa Rica presented at said meeting, except that some text was added in paragraph 10, last sentence. Further, I carefully placed this additional text in brackets.

That last paragraph in brackets tries to further clarify paragraph 10 by providing: "Said navigation shall always take place under the protection of an extensive and sufficient exchange of information as may be necessary to safeguard the exclusive dominion and sovereign jurisdiction of Nicaragua over the San Juan River, as well as Costa Rica's right of free navigation in the river (Illegible text) and those which may be necessary for the protection of said enjoyment."

Said expansion of paragraph 10, as you can see, does not impair any rights either of Nicaragua or Costa Rica, and it was sent to your office with the genuine intention of improving the understanding of the text and facilitating the dialogue.

Upon clarifying the above situation, I reiterate my will to maintain the dialogue concerning this theme under the auspices and facilitation of the Secretary General of the OAS, Mr. César Gaviria, and to hold the meeting scheduled for 12:30 p.m. on 29 March in your country, as agreed.

With the assurances of my consideration,

/s/ Illegible

Walter Niehaus

Cc: Mr. Camilo Granada

## ANNEX 44

### NOTE FROM MR. ROBERTO ROJAS, MINISTER OF FOREIGN AFFAIRS AND WORSHIP OF COSTA RICA TO MR. FRANCISCO XAVIER AGUIRRE, MINISTER FOREIGN AFFAIRS OF NICARAGUA. SAN JOSE, 26 OCTOBER 2000.

The Minister of Foreign Affairs  
DM-332-2000  
Excellency,

I am pleased to address you in reference to the situation that arose on 21 October last when military authorities of the Republic of Nicaragua precluded the realization of the VII International Nautical Rally Sarapiquí River / San Juan River, on the waters of the San Juan River, on the waters of the San Juan River, which has taken place without delays on six previous occasions, and which had been reported to the Nicaraguan authorities more than a month in advance.

This act constitutes a serious violation to the rights of free navigation of the Republic of Costa Rica on the San Juan River, set out in the Cañas-Jerez Treaty, the 1888 Cleveland Award and other instruments of international law governing this matter.

The Government of the Republic of Costa Rica hereby expresses its most energetic protest for the events that took place and respectfully requests the corresponding explanations, at the same time requesting that situations that violate the right of free navigation of Costa Rica on the San Juan River be avoided in the future.

Within this context, I take this opportunity to refer to note MRE-VH-JI/483/10/00, which attempts to explain the situation that took place with members of Costa Rica's Judicial Investigation Body on 26 September last, who were precluded to freely navigate on the San Juan River in the performance of their pertinent duties.

In this regard, the Government of Costa Rica considers that the above-cited note does not satisfactorily respond to the explanations requested in our Note DVM-420-00 on 28 September 2000, and confirms the violation to our perpetual right of free navigation on the San Juan River, notwithstanding the report of passage made by the Costa Rican authorities.

The Government of Costa Rica fraternally urges the illustrious Government of Nicaragua, in order to strengthen the positive development of bilateral relations between both countries, to contribute to the consolidation of this linkage by ceasing all actions that violate the terms of the legal instruments governing relations between both nations.

I take this opportunity to reiterate to Your Excellency the assurances of my consideration and esteem.

(Signed)  
Roberto Rojas

His Excellency  
Francisco Xavier Aguirre Sacasa  
Minister of Foreign Affairs  
Republic of Nicaragua.

## ANNEX 45

**NOTE FROM MR. ROBERTO TOVAR, MINISTER OF FOREIGN AFFAIRS AND WORSHIP OF COSTA RICA TO MR. NORMAN CALDERA, MINISTER FOREIGN AFFAIRS OF NICARAGUA. ALAJUELA, 26 SEPTEMBER 2002.**

DM-300-02

Doctor  
Norman Caldera  
Minister of Foreign Affairs  
Republic of Nicaragua  
His Office

Dear Mr. Minister:

I am pleased to put on record some references concerning the document we have signed today in the city of Alajuela, Costa Rica.

First and foremost, I wish to reiterate that in a peace and harmony context we are encouraged to successfully implement economic integration projects, particularly the U.S.-Central America Free Trade Agreement, the Puebla Panama Plan, the Central America-European Union partnership agreement, and the creation of a special fund for Costa Rica-Nicaragua binational development. All this in favor of our peoples, who deserve the best opportunities for their socioeconomic growth.

Consistent with the spirit of transparency prevailing in these conversations, we also understand that Nicaragua keeps its reserve at the International Court of Justice. In turn, during the next three years today's legal situation will remain unaltered. That is to say, in words typically used in our countries, it will be frozen.

Additionally, it is worth stating that armed civil guard navigation will not be an issue to be dealt with during the period mentioned in the above paragraph.

After said period, each Party will be free to take the actions considered most suitable to its interests.

I appreciate your integrationist vision and your ongoing concern over the well-being of the neediest sectors, principles I fully share with you and which undoubtedly have guided our decisions.

I am sure these ideals will lead us to jointly seek the resources needed for reaching our common objectives.

Truly yours,

Roberto Tovar Fajardo

## ANNEX 46

### **NOTE FROM MR. MIGUEL LEÓN, PRESIDENT, ADENA TO MR. MAURICIO DÍAZ DÁVILA, AMBASSADOR OF NICARAGUA TO COSTA RICA. SAN JOSE, 14 JULY 2003.**

Asociación de Deportes Náuticos de Costa Rica  
Tel. 240-8775 Fax 240-6251  
Email: [adena@deportes-nauticos.com](mailto:adena@deportes-nauticos.com)  
San Jose, July 14, 2003.

Mr. Mauricio Diaz Davila  
Ambassador of Nicaragua in Costa Rica  
Hand delivered

Mr. Excellency,

The Board of Directors of the Costa Rican Nautical Sports Association (ADENA) cordially and warmly greets you.

As we have been doing for the last 7 years, our sport association is organizing the traditional international nautical event in the Costa Rican and Nicaraguan fluvial routes, specifically in the Sarapiqui River and San Juan River of Nicaragua. It consists of a rally or timed nautical family trip at low speed.

For this reason, we respectfully request your assistance in obtaining the authorization of the Government of your country through its different Ministries, specifically the Immigration and Naturalization Service, the Army, the Ministry of Natural Resources and any other you may consider appropriate. Likewise, were it possible, and considering that this is a sporting event, we request that you intercede on our behalf so we might be exempted from charges for visas (Migration) and Clearance Certificate fees(Army).

The event will take place on Saturday, September 13<sup>th</sup> of this year, from Puerto Viejo de Sarapiqui (Costa Rica) to the confluence of the Sarapiqui River with the San Juan River (Trinidad de Nicaragua), then continuing to San Juan del Norte (Nicaragua, Indio River lake complex), and returning, through the same route, on Monday, September 15.

The organization of the event is shared by the Management of the Indio River Lodge, where we will stay for 3 days and 2 nights.

It is our custom to take some gifts for the rural schools where we pass. In this particular case, we intend to take some supplies to the school in San Juan del Norte, Nicaragua. It would be very helpful for us if you or your staff could find out how we can contact the teachers at said educational center so as to inquire about their immediate primary needs and see how we can mitigate them.

Our commitment, as always, is to guarantee full respect for the laws of your country and sites, like national parks and protected areas, where we demand the highest care insofar as the conservation of Nature is concerned, which includes that most of our boats pass the pollution standards required as of 2006 to ensure the "non-pollution" of the waters of the rivers and their surroundings.

On behalf of our Association, in my own name, and sports in general, I thank you in advance for your invaluable assistance.

With the assurances of my highest consideration and esteem, I remain

Cordially yours,

(Signed)  
Miguel A. Leon Soler  
Director

cc: Alfredo Lopez, Manager, Indio River Lodge

## ANNEX 47

### **NOTE FROM MR ROBERTO TOVAR MINISTER OF FOREIGN AFFAIRS AND WORSHIP OF COSTA RICA TO MR. NORMAN CALDERA, MINISTER OF FOREIGN AFFAIRS OF NICARAGUA. SAN JOSE, 6 DECEMBER 2004.**

The Minister of Foreign Affairs and Worship

DM-566-04

Excellency:

I have the honor of addressing Your Excellency to acknowledge receipt and reply to your Note MRE/DM-JI/1485/11/04 of 12 November 2004, in which you refer to the Operating Manual published by the Ministry of Foreign Relations and Worship of Costa Rica on the occasion of the 15<sup>th</sup> Latin American Summit of Heads of State and Government.

In this respect, with the spirit of brotherhood which characterizes the relations between Costa Rica and Nicaragua, this Ministry wishes to express that indeed the international boundaries of Costa Rica with Nicaragua were established in the Territorial Boundary Treaty signed between Costa Rica and Nicaragua on 15 April 1858 (Jerez-Cañas Treaty), which was ratified by the Cleveland Award of 22 March 1888. The sentence of the Central American Court of Justice of 30 September 1916 does not define the boundaries between both States, since they were established in the Jerez-Cañas Treaty and subsequently developed by the Alexander Awards.

I take this opportunity to reiterate to Your Excellency the assurances of my highest consideration and esteem.

(Signed)  
Roberto Tovar Faja

(Seal:) Ministry of Foreign Affairs  
San Jose, Costa Rica

Excellency  
Mr. Norman Caldera Cardenal  
Minister of Foreign Affairs of the  
Republic of Nicaragua.



## ANNEX 48

**NOTE FROM MR. MIGUEL A. LEÓN, PRESIDENT, DIRECTIVE BOARD, ADENA TO MR. FRANCISCO FIALLOS NAVARRO, AMBASSADOR OF NICARAGUA TO COSTA RICA. SAN JOSÉ, 27 MAY 2005.**

Dr. Francisco Fiallos Navarro  
Ambassador of Nicaragua  
To Costa Rica

Excellency,

Receive you warm and affectionate greetings of the Board of directors of the Association of Nautical Sports of Costa Rica (ADENA).

As we have been organizing for several years, our sport association is preparing a traditional international nautical event in Costa Rican and Nicaraguan pluvial routes, specifically on the Sarapiquí River in Costa Rica and San Juan de Nicaragua River. It is a *Rally or familiar nautical stroll of low speed* valid for the Nautical National **Championship of Rallies ADENA 2005**. The event will be called "International Rally of the Friendship Costa Rica - Nicaragua".

I kindly request your assistance obtaining the authorization of the Government of your country through its different Ministries, specifically the Immigration and Naturalization Service, the Army, the Ministry of Natural Resources and any other you may consider appropriate. Likewise, were it possible, and considering that this is a sporting event, we request that you intercede on our behalf so we might be exempted from charges for visas (Migration) and clearance certificate fees (Army).

The event will be carried out on Saturday 2 July of the current year, starting from Puerto Viejo de Sarapiquí (Costa Rica) to the confluence with the San Juan River (Trinidad de Nicaragua), continuing to San Juan del Norte, Nicaragua (lacustrine complex of the Indio River) returning, by the same route, on Sunday 3 July.

The organization of the event is shared with the Administration of Hotel River Indio Lodge where we will stay during 2 days and 1 night.

We use to bring some presents to the rural schools where we journeyed. In this particular case, we will bring as gift some equipment to the school of San Juan del Norte, Nicaragua.

Our commitment, as always, is the absolute guarantee of the respect of the Laws of your country and the sites as National Parks and reserves, where we ask the participants, the maximum cares as far as the conservation of the environment. That includes that our boats fulfill the pollution regulations, in force since 2006. We also guarantee the "non-pollution" of the waters of the rivers and its contours. The participant boats, boats and water motors, are sport style. Like in the past, we will take a list with the personal information of each participant and their assistants, as well as the technical characteristics of each boat for Migration requirements, MARENA and the Army.

In name of our Association, my name, one as well as of the sport in general, I thank you in advance for your kind help.

I look forward to hearing from you.

I reiterate once again our most expressive gratitude for your assistance.

With the assurances of my highest consideration and esteem, I remain cordially yours

Ing. Miguel A. León Soler  
President Directive Board

c.c Sr. Minister of Foreign Affairs of Costa Rica  
Sr. Minister of Home Affairs of Costa Rica  
Institute of Sport, Costa Rica (ICODER)  
Costa Rican Motor Federation (FECOM)  
Dr. Alfredo López, Gerente Río Índio Lodge

Files

## ANNEX 49

### **NOTE FROM MR. MIGUEL A. LEÓN, PRESIDENT, DIRECTIVE BOARD, ADENA TO MR. FRANCISCO FIALLOS, AMBASSADOR OF NICARAGUA TO COSTA RICA, SAN JOSE, 8 JUNE 2005.**

ADENA

Asociación de Deportes Náuticos de Costa Rica

Tel. 240-8775 Fax 240-6251

Email: adena@deportes-nauticos.com

San José, June 8, 2005

Dr. Francisco Fiallos Navarro  
Ambassador of Nicaragua in Costa Rica  
Hand delivered

Mr. Excellency,

I cordially and affectionately greet you on behalf of the Board of Directors of the Costa Rican Nautical Sports Association (ADENA).

Due to logistical reasons and negative results of our survey regarding participation at the International Rally of Friendship between Costa Rica and Nicaragua, the Board of Directors was forced to eliminate this event scheduled for next Saturday, July 2 of this year. We thank you in advance for the good offices that we requested from you before the different authorities of your country, informing you that they are no longer necessary and kindly ask you accept our apologies for the time you dedicated to this case.

To celebrate the Independence of Central America in the next month of September of this year, we are planning a similar event to the archipelago of Solentiname in the Great Lake of Cocibolca, of course with the approval of the Nicaraguan Government. We will seek to make it an international event with the participation of colleagues from Nicaragua and, if possible, from other countries of Central America. At the appropriate time, we will be requesting again your invaluable assistance in the pertinent official procedures.

I reiterate once again our most expressive gratitude for your assistance.

With the assurances of my highest consideration and esteem, I remain  
cordially yours,

(Signed)

Eng. Miguel A. Leon Soler  
President, Board of Directors.

cc: Minister of Foreign Affairs of Costa Rica  
Minister of Public Security of Costa Rica  
Costa Rican Sports Institute (ICODER)  
Costa Rican Motor Federation (FECOM).

## ANNEX 50

### **NOTE FROM MR. NORMAN CALDERA MINISTER OF FOREIGN AFFAIRS OF NICARAGUA, TO MR. BRUNO STAGNO, MINISTER OF FOREIGN AFFAIRS AND WORSHIP OF COSTA RICA. MANAGUA, 2 JUNE 2006.**

MRE/DM/588/06/06

Excellency,

I have the honor to address Your Excellency in reference to the statements made to the diverse media by Mr. Fernando Berrocal, Minister of Internal Affairs, Police and Security of your illustrious Government.

In this respect, on the 26<sup>th</sup> of this month, the news agency ACAN-EFE reproduced the statements of the Minister concerning the creation, in a short term, of a specialized policy force for the surveillance of the border with Nicaragua and Panama, for which he expects to mobilize 300 policemen to the zone in the next months, motivated by the fact that, when he received that ministry on May 8 last, he found "a country with open borders".

In particular, the Minister indicated that at the border with Nicaragua, where 12 police control posts currently exist according to that information, there are plans to increase surveillance and control with 39 more posts.

Likewise, the news agency ACAN-EFE reported on Monday 29 of this month and year that Minister Berrocal informed that "the reason to create the border police is to fight drug-trafficking, migration and smuggling" and that "we are simply forming a border police in the north (Nicaragua)..."

In this regard, the Government of Nicaragua, respectful of the measures that Costa Rica and other States adopt in relation to their own security, wishes to put on the record –as expressed by Minister Berrocal- that no militarized presence of the public forces of Costa Rica has existed in the border with Nicaragua for several decades and, on the contrary, it has been a practically non-existent presence, considering that no reasons exist to justify a measure of this nature.

There have been public expressions at the highest level in relation to the sensitive content of the new Migration Law of Costa Rica in the area of

human rights -qualified as "draconian" by President Oscar Arias himself- which added to this increase in force where the migratory theme is one of its purposes, forces my Government, as Your Excellency will understand, to maintain a position of great concern and vigilance.

Nicaragua is respectful of the security policies adopted by third States, but it has the obligation to watch over and try to prevent –within a framework of respect to the Sovereignty of other States- any violation to the fundamental rights of Nicaraguan nationals, regardless of their migratory status. This leads me to request to your illustrious Government the adoption of all those measures that could prevent an eventual violation of the rights of our migrants, taking into account that, in the past – including the recent past- both Governments have accompanied similar concerns of third States, such as the Mexican case.

Likewise, I manifest to Your Excellency that the Government of Nicaragua, in the spirit of good neighborliness and cordiality that governs bilateral relations, wishes to make an express reserve of its position with respect to this situation, especially as regards any eventual implication that could be given in relation to the case presented by the Government of Costa Rica on September 29, 2005, to the knowledge and decision of the International Court of Justice.

I take this opportunity to reiterate to Your Excellency the assurance of my highest and most distinguished consideration.

(Signed)  
Norman Caldera Cardenal

[Seal:] MINISTRY OF FOREIGN AFFAIRS  
Managua  
REPUBLIC OF NICARAGUA  
CENTRAL AMERICA

Excellency  
Bruno Stagno  
Minister of Foreign Affairs and Worship  
Republic Of Costa Rica  
Hand delivered.

**ANNEX 51**

**NOTE FROM MRS. THAIS CHING ZAMORA, DIRECTOR,  
HEALTH UNIT OF THE COSTA RICAN SOCIAL SECURITY  
INSTITUTE TO MR. LEOPOLDO RAMIREZ, AMBASSADOR OF  
NICARAGUA TO COSTA RICA. PUERTO VIEJO DE SARAPIQUI,  
19 JUNE 2006.**

**COSTA RICAN SOCIAL SECURITY INSTITUTE HEALTHCARE UNIT  
– PUERTO VIEJO DE SARAPIQUI CENTRAL NORTH REGION.**

**TELEPHONE: 766-63-07 FAX: 766-61-61**

June 19, 2006  
358-2006

Mr. Leopoldo Ramírez Eva  
Ambassador of Nicaragua  
SAN JOSE, COSTA RICA

**RE: AUTHORIZATION FROM THE GOVERNMENT OF NICARAGUA  
TO NAVIGATE ON THE SAN JUAN RIVER TO PROVIDE  
HEALTHCARE SERVICES TO THE COSTA RICAN BOUNDARY  
COMMUNITIES**

Dear Sir,

We hereby request authorization from the Government of Nicaragua so that officials from the Health Unit of the Costa Rican Social Security Institute at Puerto Viejo de Sarapiquí may navigate the San Juan River to provide healthcare services to the communities of Tambor, San Antonio and Fátima. A medical visit to each of these locations is scheduled every 22 days. The Basic Integral Health Services Team (EBAIS) is made up of a physician, a nursing assistant, a pharmaceutical technician, a primary healthcare technical assistant and an office clerk (5 persons).

The transportation service to be used by the institution is: J&L Transportes Acuáticos S.A., Legal Identity Card 3-101-345313.

Name of boat : "Furia L"

Owner : Mr. Jorge Lao Jarquín, identity card 4-102-714  
License : 2116  
Fuel : Gasoline  
Overboard : hp  
Engine : Yamaha  
Length : 5-50  
Prop : 0.70  
Beam : 2.05  
Power : 100 HP  
Series : 308G31  
Model : F100AEPL  
Registration record : TOME 0009, ENTRY 407068SEC; 003,  
DATE 07 05 2001  
Movements Records : TOME: 0013, ENTRY 101692SEC002  
Flag : Costa Rican

Due to the nature of our objective, we request that the issuance of a 6-month permit be considered.

Having no other matters of reference, we remain

**PUERTO VIEJO DE SARAPIQUI HEALTH AREA**

/s/ Illegible

Dr. Thais Ching Zamora

DIRECTOR

[Seal:] PUERTO VIEJO SARAPIQUI

cc: Dr. Amalia Carvajal Alvarado, Central North Regional Director  
HEALTH UNIT.

File

**MANAGEMENT SOCIAL SECURITY COSTA RICA**

## ANNEX 52

**NOTE FROM MR. RODRIGO ZAMORA, COMUNIDAD DE ALIANZA CRISTIANA Y MISIONERA DE HORQUETAS, TO MR. LEOPOLDO RAMIREZ, AMBASSADOR OF NICARAGUA TO COSTA RICA. HORQUETAS DE SARAPIQUI, 30 JUNE 2006.**

Comunidad Alianza Cristiana y Misionera de Horquetas

Horquetas de Sarapiquí, June 30, 2006

Messrs.  
Embassy of Nicaragua  
Hand delivered

To the attention of Mr. Leopoldo Ramírez E.

Dear Sirs,

We affectionately greet you and thank God for the functions that are carried out in your distinguished Embassy, strengthening the ties of friendship and brotherhood between your country and ours.

Our organization “Comunidad Alianza Cristiana y Misionera” is located at Horquetas de Sarapiquí and we are interested in carrying out missionary work that includes social assistance in the schools of Tambor and Remolinito and we have scheduled a trip for 7 July 2006. Since we must navigate a short distance that corresponds to the San Juan River, we request permission from you to make this journey because we want to abide by your strict regulations in said zone.

We do not have set dates for our subsequent journeys, but we would like to have permission to navigate that short distance and we ask for a waiver on charges inasmuch as the purposes for making use of that stretch are of social interest and the aforesaid communities have few resources.

We would like to count with your broad understanding and good will  
that will be rewarded by God. Thanking you in advance for your attention,  
we remain

Truly yours,

/s/ Illegible  
Rodrigo Zamora  
PASTOR  
Identity Card # 1-900-192

## ANNEX 53

### NOTE FROM MR. LEOPOLDO RAMIREZ, AMBASSADOR OF NICARAGUA TO COSTA RICA TO MRS. THAIS CHING ZAMORA. SAN JOSÉ, 6 JULY 2006.

Embassy of Nicaragua  
San Jose July 6, 2006  
ENCR/NFE/EMC/01-2006

Doctor  
Thais Ching Zamora  
Director  
Puerto Viejo de Sarapiquí Health Area  
Costa Rican Social Security Institute  
Central North Region

Dear Dr. Ching,

I have the pleasure to refer to your kind Note No. 358-2006 of June 19, 2006, received on 06/20/2006, in which you request "AUTHORIZATION FROM THE GOVERNMENT OF NICARAGUA TO NAVIGATE THE SAN JUAN RIVER TO PROVIDE HEALTHCARE SERVICES TO THE COMMUNITIES OF TAMBOR, SAN ANTONIO AND FÁTIMA". In this respect, upon consulting the Ministry of Foreign Affairs of Nicaragua, a special authorization is hereby issued to navigate the San Juan de Nicaragua River for the stated purposes, which may not be used for any purpose or places other than those indicated or in breach of Nicaragua's full Sovereignty over the San Juan River.

This permit will remain valid for three months and may be renewed, upon prior official request from the Costa Rican Social Security Institute to this Embassy for its respective processing with the central government of the Republic of Nicaragua.

This permit is a gesture of friendship, good neighborhood and courtesy of good faith that may not be used in any other form or with the intent to harm.

Having no other matters of reference, I remain.

Sincerely yours,

(Signed)  
Leopoldo Ramirez Eva  
Ambassador

## ANNEX 54

### NOTE FROM MR. LEOPOLDO RAMIREZ, AMBASSADOR OF NICARAGUA TO COSTA RICA TO MR. RODRIGO ZAMORA, COMUNIDAD DE ALIANZA CRISTIANA Y MISIONERA DE HORQUETAS. SAN JOSÉ, 6 JULY 2006.

Embassy of Nicaragua  
San Jose July 6, 2006  
ENCR/NFE/EMC/02-2006

Mr Rodrigo Zamora  
Bishop  
Comunidad Alianza Cristiana y Misionera de Horquetas  
Horquetas, Sarapiquí  
Costa Rica

Dear Bishop,

I have the pleasure to refer to your kind letter dated June 30, 2006, received on 07/06/2006, in which you request "AUTHORIZATION FROM THE GOVERNMENT OF NICARAGUA TO NAVIGATE ON THE SAN JUAN RIVER IN ORDER TO ACCOMPLISH HUMANITARIAN MISSION WHICH INCLUDE SOCIAL ASSISTANCE IN TAMBOR AND REMOLINITO'S SCHOOLS". In this respect, upon consulting the Ministry of Foreign Affairs of Nicaragua, a special authorization is hereby issued to navigate the San Juan de Nicaragua River for the stated purposes, which may not be used for any purpose or places other than those indicated or in breach of Nicaragua's full Sovereignty over the San Juan River.

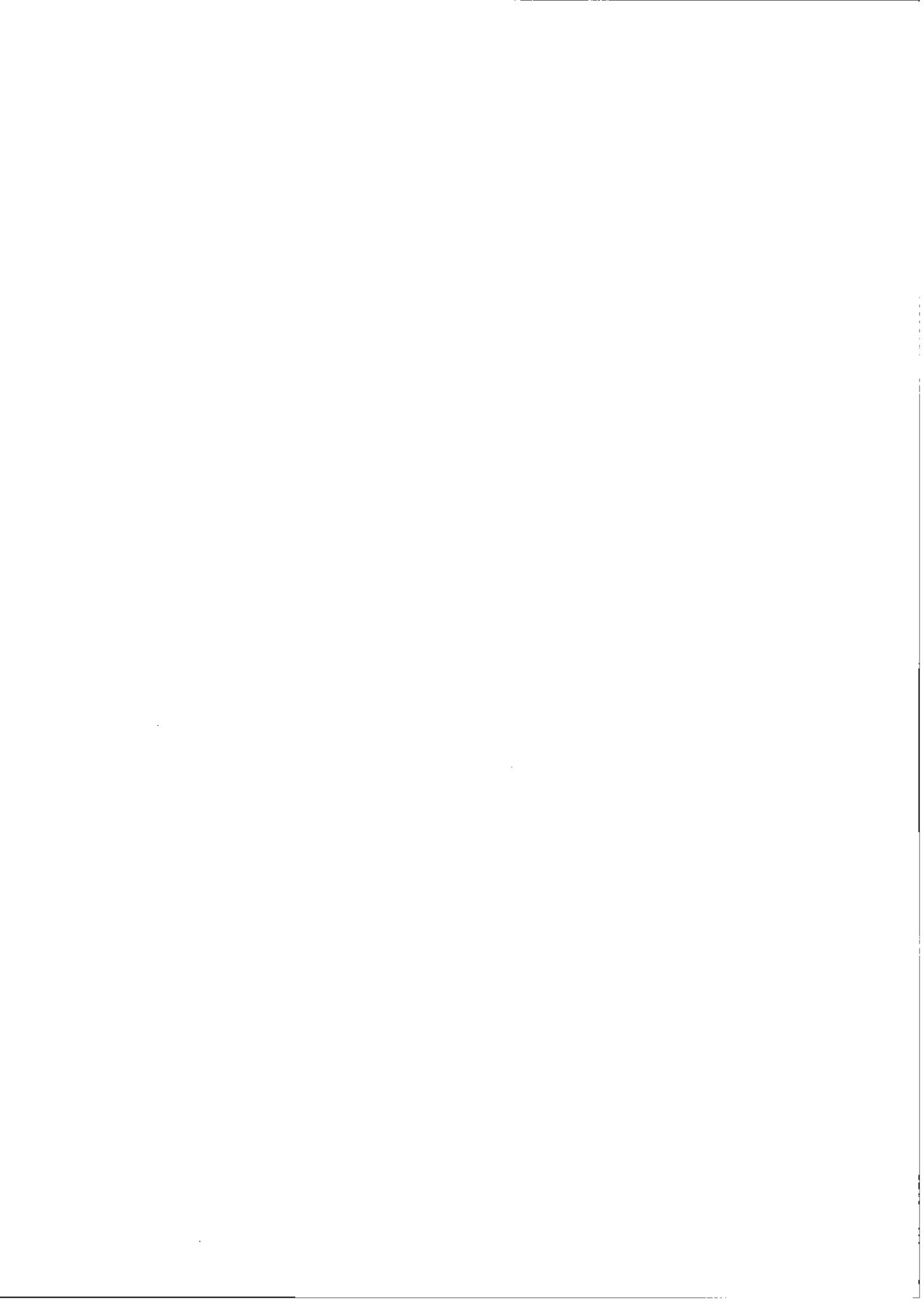
This permit is a gesture of friendship, good neighborhood and courtesy of good faith that may not be used in any other form or with the intent to harm Nicaragua in any manner or circumstance.

This authorization to navigate is valid for 07 July 2006.

Having no other matters of reference, I remain.

Sincerely yours,

(Signed)  
Leopoldo Ramirez Eva  
Ambassador



## ANEXO 55

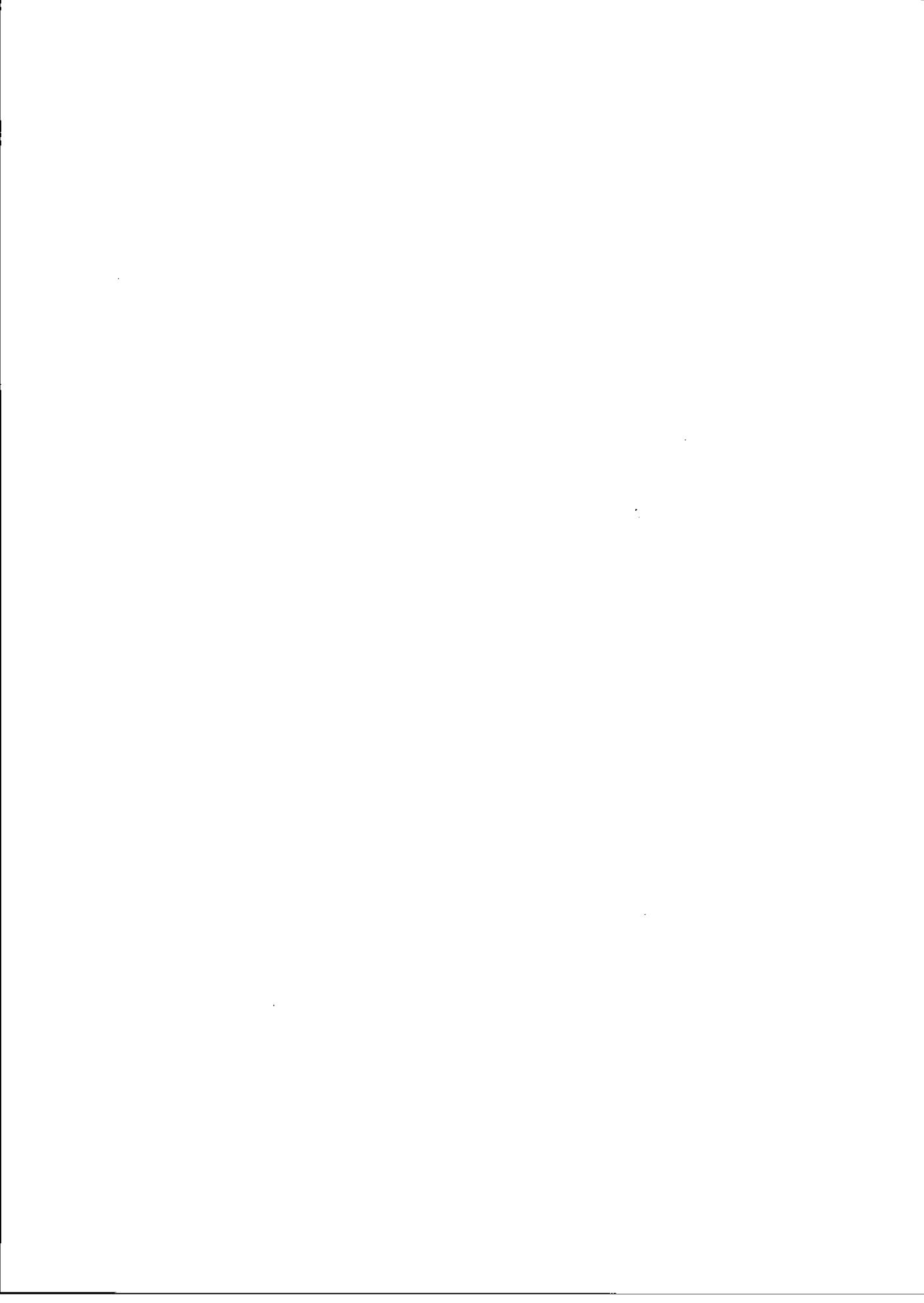
### **DECREE OF THE CENTRAL AMERICAN FEDERAL CONGRESS, APPROVING THE ANNEXATION OF NICOYA TO COSTA RICA. 9 DECEMBER 1825.**

"The Federal Congress of the Republic of Central America, considering the reiterated petitions of the authorities and municipal bodies of the peoples of the Party of Nicoya, in that it be segregated from the State of Nicaragua and added to that of Costa Rica: the *de facto* union by the same peoples to said State of Costa Rica at the time of the commotions in Nicaragua; and the local situation of the Party itself, has decided to decree and declare:

ART. 1. For the time being, and until the demarcation of the territory of the States is carried out as prescribed in Art. 7 of the Constitution, the Party of Nicoya will continue separated from the State of Nicaragua and annexed to that of Costa Rica.

ART. 2. Consequently, said Party will recognize the authorities of Costa Rica, and will have in its Legislature the representation that corresponds.

ART. 3. This decree will be communicated to the Assemblies of Nicaragua and Costa Rica. Pass to the Senate. Issued at Guatemala on the ninth of December of 1825.



## ANNEX 56

### DECREE REVOKING THE RIGHTS AND PRIVILEGES GRANTED TO THE AMERICAN ATLANTIC AND PACIFIC SHIP CANAL AND THE ACCESSORY TRANSIT COMPANY. GRANADA, 18 FEBRUARY 1856.

WHEREAS, the Republic of Nicaragua, on the 22nd day of September 1849, granted to the American Atlantic and Pacific Ship Canal Company, certain rights and privileges, which said rights and privileges were subsequently modified, by decree of the 11th day of April 1850; and

WHEREAS, in consideration of said rights and privileges, said Company agreed to construct a Ship Canal across the territory of the Republic from the port of San Juan de Nicaragua, or any more feasible point on the Atlantic to the port of Realejo, Gulf of Fonseca, Tamarinda, San Juan del Sur, or any point on the Pacific Ocean, which the Engineers of the Company might decide upon; or in case that the construction, and completion of said Canal or any part of it, should become impossible, by any unforeseen want, or insurmountable obstacle of nature, to construct a railroad, or rail and carriage road and water communication between the two oceans: and

WHEREAS, the said American Atlantic and Pacific Ship Canal Company, have not constructed the said Canal nor commenced the same, but on the contrary have abandoned the undertaking, and declared it impracticable and have also failed to construct a railroad or rail and carriage road, as they agreed to do: and

WHEREAS, the said American Atlantic and Pacific Ship Canal Company was bound by the terms of said Charter to pay the Republic of Nicaragua, ten thousand dollars annually, and ten per cent on the nett profits of any route the Company might establish between the two oceans, during the term allotted for the completion of the Canal, and in furtherance thereof, and

WHEREAS, the said American Atlantic and Pacific Ship Canal Company have failed to pay annually said ten thousand dollars, together with the ten per cent nett profits, falsely and fraudulently alleging that no profits were made, and no commission due; and

WHEREAS, by the said Charter it was stipulated that for the purpose of settling all matters in dispute between the State and the Company,

Commissioners should be appointed by the State on the one part and the Company on the other; and

WHEREAS, on the 12th day of November, 1855, the Republic of Nicaragua, notified the said Company to appoint commissioners, under the Charter, and the said Company expressly refused the same; and

WHEREAS, by the decree of the 9th day of March 1850, the said Company was made a body politic and corporate, with perpetual succession, by the name & description of "The American Atlantic and Pacific Ship Canal Company "; and

WHEREAS, on the 14th day of August 1851, the Republic of Nicaragua with the sole object of facilitating the maritime canal, and in accordance with the desires expressed by the company of said canal, to divide and separate from the contract of the 22nd September 1849, the part therein relating to the navigation by steam of the waters of Nicaragua, did constitute a new company, designated by the name of "Accessory Transit Company " and consisting of the same persons comprising the American Atlantic and Pacific Ship Canal Company, and subject to the same obligations. Now therefore, the Supreme Provisional Government of Nicaragua in virtue of its faculties,

DECREES:

1. The grant to the American Atlantic and Pacific Ship Canal Company of date 22nd September 1849 and the modification thereof made 11th April 1850, and all the privileges therein contained are revoked and annulled. The acts of incorporation of date 9th day of March 1850, and of the Accessory Transit Company of date 14th day of August 1851, are annulled: and the said American Atlantic and Pacific Ship Canal Company and Accessory Transit Company, are dissolved and abolished except for the purposes hereinafter mentioned.
2. Sr. Don Cleto Mayorga, Sr. Don Edward J. C. Kewen and Sr. Don George F. Alden, (any two of whom may act) are hereby appointed a board of commissioners with full powers to examine, liquidate, and ascertain the amount due by the American Atlantic and Pacific Ship Canal Company, and Accessory Transit Company to the State, with full powers to send for persons and papers, and to enforce respect and obedience to all their orders and decrees.

3. The said board shall proceed at once to discharge their duties and for this purpose shall notify the agents of the companies, residing in Nicaragua, to appear before them forthwith, to give all evidence that may be required of them, and with the privilege to defend the interests of their principals.
4. The said companies shall be considered as still in existence, for the purpose of conducting this examination and for the purpose of being held collectively responsible for such sum as may be ascertained to be due to the State, but for no other.
5. For the purpose of securing the payment of such amount the said board find due, they are hereby commanded to cause all the property of said company to be seized forthwith, and held by responsible persons subject to the order of said board.
6. That the transit of passengers across the Isthmus may suffer no interruption, the board are authorized to deliver to such responsible persons as may make application, all of said property so seized, upon their executing a bond in a sum one fourth greater than its appraised value, and with the condition that the same shall be forthcoming when called for by the said board, and that the undertakers in the bond shall continue to transport the passengers who may arrive on the side of the Pacific and Atlantic oceans and the expenses of transporting said passengers shall be charged against the said companies.
7. Before allowing the said property to be bonded the board shall cause the same to be fairly appraised by three competent persons appointed for the purpose.
8. The board shall proceed summarily and with dispatch. And on determining the amount due from the companies to the State, shall report their proceedings immediately to the Government.
9. The corporation of the board of commissioners as well as of the appraisers by them appointed, will be hereafter determined.
10. Let this be communicated to the proper authorities.

[Signed]  
PATRICIO RIVAS



## ANNEX 57

### DECREE NO. 139. NICARAGUA ACCEPTS THE WAR DECLARED BY COSTA RICA. MANAGUA, 19 OCTOBER 1857.

Decree No. 139 in which this Government accepts

The war made against it by that of Costa Rica

The Supreme Government of the Republic of Nicaragua to its inhabitants.

Considering that the deference of the Government of the Republic has not sufficed to contain the objects of Costa Rica and the hostile operations that it has executed to effect the expropriation of the San Juan river, Lake [...], isthmus between San Juan del [...] Virgen, so that the entire transit line remains under its power.

Bearing in mind that on August 5 the Minister of Foreign Affairs rejected the cession made by the Government of Nicaragua of the district of Guanacaste and of the right bank of the San Juan River, from a point two miles below Castillo Viejo to Punta de Castilla:

Having the Captain of the San Carlos steamer, Mr. Cauty, ordered the blockade of the Fort of San Carlos and the surrender of the public force in charge of its custody, all under the orders of the Commander General of the Republic of Costa Rica, as evidenced by the note that said Captain addressed to the Commander of that fortification, of which a printed copy is attached hereto, has agreed to declare and

#### DECREES:

Art. 1. Nicaragua accepts the war declared by the Government of Costa Rica and will vindicate its rights which have been deliberately violated by the conduct of that Government.

Art.2. The Republic of Nicaragua will protect and preserve its rights along the entire transit route, from San Juan del Norte, through the river and lake, to San Juan del Sur, as well as the rights it has in the district of Guanacaste, including its lands, forests and rivers.

Art.3. The necessary force will be organized to execute the provisions of this decree.

Art. 4. Notify the respective parties. Done in Managua, October 19, 1857.  
Tomas Martinez. Máximo Jerez.

## ANNEX 58

DECREE ORDERING THE COMMANDERS OF PORTS AND  
PERFECTS OF THE FRONTIERS OF NICARAGUA NOT TO  
PERMIT ANY FOREIGN PERSON TO GO INTO THE INTERIOR  
OF THE COUNTRY, UNLESS PRESENTING A PASSPORT ISSUED  
BY THE RESPECTIVE MINISTERS OR CONSULS AT THE PORTS  
OR PLACES OF THEIR DEPARTURE. NICARAGUA, 11  
SEPTEMBRE 1862.

37TH CONGRESS, }     HOUSE OF REPRESENTATIVES.     { Ex. Doc.  
3d Session.     }    { No. 1.

### MESSAGE

TO THE

PRESIDENT OF THE UNITED STATES

TO THE

TWO HOUSES OF CONGRESS

AT THE

COMMENCEMENT OF THE THIRD SESSION

OF

THE THIRTY-SEVENTH CONGRESS.

Document 1, 1862.—Read, and ordered that the usual number of the message and documents be printed.

VOLUME I.

WASHINGTON:  
GOVERNMENT PRINTING OFFICE.  
1862.

[Translation.]

NATIONAL PALACE,  
Managua, September 11, 1862.

Mr. MINISTER: The president of the republic to its inhabitants: Considering the necessity of putting the republic on its guard against the inconveniences and dangers which in all time, and especially under present circumstances, may happen to it from emigration from abroad without the precautions which are observed by civilized nations in similar cases, in the use of his extraordinary powers in the department of police decrees:

ART. 1. From and after the last day of November next the commanders of ports and prefects of the frontiers of Nicaragua shall not permit any foreign persons who have not previously settled in the republic to go into the interior, unless they present a passport from the respective ministers or consuls thereof at the ports or places of their departure, in which passport is to be given the name and surname of the person in whose favor it is issued, his profession or trade, the purpose for which they come and their nationality, the signature of the minister or consul and the seal of the republic.

ART. 2. The ministers or consuls of the republic, in issuing these passports, will observe the following rules: 1st. The treaties of Nicaragua with any nations, and reciprocal privileges to the respective subjects or citizens. 2d. That they who solicit the passport are not discharged criminals, and that if they have no money they are not, on the other hand, beggars, or sick or crippled persons, who come to rely on public charity, and that neither are they men without profession or trade, vagabonds, or persons badly provided for. 3d. That neither are they freed negroes or other degraded castes of people, unless they have a

special permission for themselves or on account of others to go into the interior. Art. 3. That in case of coming with a design to colonize, they must have permission from the government, ratified by the chambers, and must in no wise be under the protection of another government.

Art. 3. In order that this decree may reach the knowledge of all persons who may be interested in it, the ministers of this republic at foreign courts, to whom it will be immediately communicated, shall make it known to those of the respective nations and shall procure its publication in the principal newspapers, communicating it to the consuls of the republic, and appointing them at places where there are none and where they may deem them necessary.

Art. 4. With the same object, the list of our consuls abroad and of those who may be newly appointed, shall be communicated to the commanders of our ports and to the prefects on the frontiers.

Art. 5. Central Americans and Spanish Americans only will be permitted to go to the interior on a passport of the respective port or frontier authorities, which will be issued in the same form and under rules 1st and 2d of art. 2.

Art. 6. Notwithstanding all that is hereinbefore provided, persons who go into the interior of the territory of the republic by evading the foregoing provisions or by practicing deception in regard to their place of departure, nationality, profession, trade, or purpose for which they come, will be liable to be sent out of the country at their own cost and to other proceedings to which their acts may have given rise; to which intent the authorities of the frontiers who may give or issue passports will make a list, setting down the circumstances that the passports ought to contain; which list they will transmit at the first opportunity to the ministry of the interior, and said ministry will cause it to be published in the official newspaper for the knowledge of the local authorities.

Art. 7. When the transit from one ocean to another is open, nothing of what is hereinbefore provided shall include passengers, but only those persons who come to go into the interior or to reside in the republic, and the company cannot leave them on our territory except upon these conditions, but must carry them away in the same vessels which brought them.

Given at Managua, on the 11th of September, 1862.

THOMAS MARTINEZ.

And I communicate it to your excellency for your knowledge and for fulfillment so far as your excellency is concerned, the honor befalling me of subscribing myself your excellency's obedient servant.

PEDRO ZELEDON.

His Excellency Señor Don Luis Molina,

*Minister Plenipotentiary of Nicaragua, &c., &c., &c.*



## ANNEX 59

### PRESIDENTIAL DECREE 527, CREATING THE SOLENTINAME ARCHIPELAGO NATIONAL MONUMENT. GAZETTE NO. 78. 23 APRIL 1990.

#### CREATION OF PROTECTED NATURAL AREAS IN SOUTHEAST NICARAGUA

Decree No. 527 of April 17, 1990

Published in Gazette No. 78 of 23 April 1990

THE PRESIDENT OF THE REPUBLIC OF NICARAGUA

In exercising the powers vested upon him,

Whereas:

#### I

Pursuant to article 60, Chapter III, of the Political Constitution of Nicaragua, it is a duty of the Revolutionary Government and a right of Nicaraguans the preservation of the environment, protection and proper exploitation of our natural resources and those sites and territories that constitute important or unique elements of the natural patrimony of the country, for the purpose of promoting and regulating its rational use, pursuing a sustainable development model that contributes to better living standards of our people, scientific research, education, production, recreation and peace.

#### II

A group of areas exist in the natural ecosystems of southeast Nicaragua with different categories of management and use and a variety of resources of important ecological, economic and scientific value that should be protected.

#### III

Natural resources and tropical humid forests, for wanting of knowledge

regarding their biological, economic and scientific importance, historically have been subject to continuous deterioration, wherefore it is necessary to develop actions to manage and protect the few reserves that exist on the planet.

#### IV

The purpose is to harmonize the socioeconomic development of Nicaragua, particularly in southeast Nicaragua, with the conservation and rational use of the natural resources contained in this part of the national territory, with the objective of contributing to a socially just and environmentally healthy model.

#### V

The IRENA Organic Law and the Law for the Creation of National Park Services in force empower and regulate the creation and management of Protected Natural Areas, such as national parks, national monuments, refuges and reserves.

#### DECREES:

#### CREATION OF PROTECTED NATURAL AREAS IN SOUTHEAST NICARAGUA

Article 1. The Southeast Protected Natural Areas are hereby created, with an unalienable character, located and comprised within the boundaries described below:

a) Solentiname National Monument in the area occupied by the Solentiname Archipelago, considered as a special area for environmental management and recovery given its natural, historical and cultural importance.

The area has a territorial extension of 189.3 square kilometres. It is located in the southeast corner of the Great Lake of Nicaragua. The description of this boundary comprises approximately one kilometre of waters adjacent to the Archipelago, beginning at a point located at 1241.2 North latitude, continuing east 12.4 kilometres to a point located at 122 West longitude and 1241.2 North latitude, continuing 18.2 kilometres southeast to a point located at 733 West longitude and 1225.4 North latitude, turning four kilometres southeast up to a point located at 730 West longitude and 1224 North latitude, continuing 11 kilometres northeast up to a point located at 722.8 West longitude and 1232.2 North latitude, continuing 13.2 kilometres

west up to a point located at 709.6 West longitude and 1232.4 North latitude, continuing 8.8 kilometres north to the starting point of this description.

b) The area of Los Guatuzos Wildlife Refuge in the wetlands of Lake Nicaragua is a nesting, breeding and protection zone for a large variety of flora and fauna species, as well as for scientific research, and involves some controlled human activity.

The area covers approximately 437.5 square kilometres. This description begins at the mouth of the Pizote River in Lake Cocibolca at 609 West longitude and 1227.4 North latitude. This boundary runs east over the lakeshore up to the town of San Carlos at the origin of the San Juan River, thence continues downstream the San Juan River up to its confluence with the Medio Queso River, following the course of this river up to the boundary line at 7.55 West longitude and 1225 North latitude, thence continues over the boundary line, passing markers number 12 and 13, up to the point where the Pizote River crosses the border between Nicaragua and Costa Rica at 609 West longitude and 1221.4 North latitude, thence proceeds north along the course of the river up to the starting point of this description.

c) The Historical Monument “Fortaleza de la Inmaculada” is an area of great historical and tourism importance. It has a territorial extension of approximately 37.5 square kilometres. The description of this boundary begins at marker number 6 of the border between Nicaragua and Costa Rica at 778 West longitude and 1212 North latitude, from where it proceeds downstream the Poco Sol River up to its mouth in the San Juan River, thence proceeds downstream the course of the latter up to marker number 2 of the aforementioned border at 188 West longitude and 1217 North latitude, thence proceeds southwest over the border, passing markers number 3, 4 and 5, up to marker number 6, the starting point of this description.

d) The San Juan River-Indio-Maiz Great Biological Reserve, covering approximately 2,950 square kilometres, is an area of great national and international importance given that it contains one of the few reserves in the planet of virginal tropical humid forests of great interest for the scientific community.

It comprises forest areas, the boundaries of which begin at the mouth of the Bartola River in the San Juan River at 791 West longitude and 1214 North latitude, continuing upstream the Bartola River up to its origin north of

Cerro El Diablo at 805 West longitude and 1223 North latitude, continuing along the water parting that divides the basins of the Indio River with that of Bartola and San Cruz, passing by Cerro Romerón at a point located at 797 West longitude and 1229 North latitude until it reaches an altitude at 804 West longitude and 1243 North latitude. The boundary turns northeast over the water parting that divides the basins of the Maíz and Agua Zarca rivers, passing an altitude at 813 West longitude and 1254 North latitude up to Cerro Chiripa at 819 West longitude and 1253 North latitude, thence continues north, always over the waters parting the basins to an altitude located at 818 West longitude and 1260 North latitude.

Thence the boundary turns northeast over the waters parting the basins of the Maíz and Pijibaye rivers up to an elevation of 237 meters at 181 West longitude and 1265 North latitude. The boundary continues northeast in a straight line up to the mouth of Caño Hondo in the Atlantic Ocean at a point located at 192 West longitude and 1267 North latitude.

(...)

Article 5. IRENA is authorized to draft the preliminary regulations of this law and to submit them to the President of the Republic for approval.

Article 6. This Law shall take effect on the date of its publication in any mass media, without prejudice to its subsequent publication in the official bulletin "La Gaceta".

Done at Managua City on the sixteenth of April of nineteen ninety, "Year of Peace and Reconstruction", Daniel Ortega Saavedra, President of the Republic.

**ANNEX 60**

**DECREE 28-94 DECLARING NICARAGUA'S SOUTHEAST REGION A SUSTAINABLE DEVELOPMENT TERRITORY. 8 JUNE 1994.**

**DECLARATION OF THE SOUTHEAST REGION OF NICARAGUA AS "SUSTAINABLE DEVELOPMENT TERRITORY"**

**DECREE No. 28-94 passed on 4 June 1994**

**Published in Gazette No. 106 of 8 June 1994**

**THE PRESIDENT OF THE REPUBLIC OF NICARAGUA**

**WHEREAS**

**SOLE**

The conservation of the environment and protection and rational use of natural resources and those areas of the national territory that constitute natural ecosystems is a fundamental interest of the Government in the pursuit of a sustainable development model.

**THEREFORE**

In exercising the powers conferred upon him by the Political Constitution,

**HAS ISSUED**

**The following Decree:**

**DECLARATION OF THE SOUTHEAST REGION OF NICARAGUA AS "SUSTAINABLE DEVELOPMENT TERRITORY"**

Article 1. The Southeast Region of Nicaragua is hereby declared a Sustainable Development Territory for rational use of natural resources,

conservation of the environment, biodiversity and development based on the capacity of use of the soil and in particular ecotourism.

Article 2. The Inter-institutional Agreement adopted by the Nicaraguan Agrarian Reform Institute, the Ministry of Agriculture and Livestock and the Nicaraguan Institute of Natural Resources and the Environment on 29 June 1991, relative to the agro-ecological zoning of the southeast region for sustainable agricultural development, forestry exploitation and recovery and conservation of the Indio-Maíz Biological Reserve and other protected areas of the territorial system of the southeast region of Nicaragua.

(...)

Article 7. This Decree shall enter into force on the date of its publication in any mass media, without prejudice to its subsequent publication in the official gazette. Publish in the Official Gazette.

Done at Managua City, Presidential House, on the fourth of May of nineteen ninety-four, on the Week of the Environment. VIOLETA BARRIOS DE CHAMORRO, PRESIDENT OF THE REPUBLIC OF NICARAGUA.

## ANNEX 61

### **DECREE 66-99, UPDATING AND DEFINING THE CATEGORIES AND LIMITS OF PROTECTED AREAS LOCATED IN NICARAGUA'S SOUTHEAST TERRITORY. 31 MAY 1999.**

DECREE No. 66-99 passed on 31 May 1999.

Published in the Gazette, Official Bulletin No. 116 of 18 June 1999.

THE PRESIDENT OF THE REPUBLIC OF NICARAGUA,

WHEREAS

The General Law on the Environment and Natural Resources and regulations thereof, the Law on the Organization, Competence and Procedures of the Executive Branch and Regulations on Protected Areas being in force, which constitute the framework of the Integrated System of Protected Areas for Peace (SIAPAZ), it is convenient to adjust existing regulations on protected areas in the southeast territory of Nicaragua to said legal instruments.

## II

Article 154 of the General Law on the Environment and Natural Resources confers powers to the Ministry of the Environment and Natural Resources to update and delineate the boundaries and categories of the National System of Protected Areas, and Article 98 of the Regulations on Protected Areas provides that said adjustments shall be made by decree.

THEREFORE

In exercising the powers conferred by the Political Constitution of the Republic of Nicaragua,

HAS ISSUED

The following Decree:

**UPDATE AND PRECISION OF CATEGORIES AND BOUNDARIES OF PROTECTED AREAS LOCATED IN THE SOUTHEAST TERRITORY OF NICARAGUA.**

**Article 1. PURPOSE.** The purpose of this Decree is to update and delineate the categories and boundaries of Protected Areas located in the southeast territory of Nicaragua pursuant to the General Law on the Environment and Natural Resources No. 217, published in Official Gazette No. 105 of 6 June 1996, and Decree No. 14-99 regarding Regulations on Protected Areas of Nicaragua, published in Official Gazettes No. 42 and 43 of March 2 and 3, 1999, respectively.

**Article 2. CATEGORIES OF PROTECTED AREAS.** Pursuant to articles 20, numeral 7) and 154 of the General Law on the Environment and Natural Resources 217, and articles 8, numeral 7), 98 and 99, respectively, of Decree No. 1499 regarding Regulations on Protected Areas, the following categories of Protected Areas in the southeast territory of Nicaragua are updated and delineated:

1. "Los Guatuzos" Wildlife Refuge to "Los Guatuzos" Wildlife Refuge areas;
2. "Solentiname Archipelago" National Monument to "Solentiname" National Monument;
3. Historical Monument "Fortaleza de la Inmaculada Concepción de María" to Historical Monument "Fortaleza Inmaculada" area;
4. "Cerro Silva" Natural Reserve to "Cerro Silva" Natural Protected Areas of National Interest;
5. "Indio Maíz" Biological Reserve to the part of the San Juan River-Indio Maíz Great Biological Reserve that possesses said category;
6. "Punta Gorda" Natural Reserve to the part of the San Juan River-Indio Maíz Great Biological Reserve that possesses said category; and

7. "San Juan River" Wildlife Refuge to the part of the San Juan River-Indio Maíz Great Biological Reserve that possesses said category.

Article 3. BOUNDARIES OF PROTECTED AREAS LOCATED IN THE SOUTHEAST TERRITORY OF NICARAGUA. For all purposes, the following Protected Areas are updated and delineated:

1. "Los Guatuzos" Wildlife Refuge This refuge comprises some marshes or wetlands of Lake Nicaragua. Since it is a nesting, breeding and protection zone for a great variety of flora and fauna, it is suitable for scientific research and involves certain controlled human activity. It has a territorial extension of 437.5 square kilometres and it is located within the following metes and bounds:

The boundary begins at the mouth of the Pizote River in Lake Cocibolca at UTM coordinates 122 6670 N, 697 900 E. It continues along the lakeshore, in direction to the east, up to the town of San Carlos, where it flows into the lake and gives origin to the San Juan River up to its confluence with the Medio Queso River. It continues upstream along the course of this river until it reaches the border at the point of intersection located at 1225000 N (northing) 755000 E (easting). It continues along the border line, passing markers 12 and 13, until it reaches the intersection of the Pizote River with the border between Nicaragua and Costa Rica at 1221400 N, 699000 E, continuing north downstream the course of the river up to the starting point of this description.

2. "Solentiname Archipelago" National Monument. Located in Lake Nicaragua, it is a special area of environmental management and recovery given its natural, historical and cultural importance. It has a territorial extension of 189.3 square kilometres, and it is located within the following metes and bounds:

The area is located at the southeast corner of Lake Nicaragua. The description of this boundary comprises approximately 1 kilometre of waters adjacent to the Archipelago. The boundary begins at UTM coordinates 1241000 N, 722000 E, thence proceeds southeast to a point located at 1225000 N, 733000 E, thence proceeds southwest to a point located at 1224000 N, 730000 E, thence runs northwest to a point located at 1232000 N, 722000 E, thence continues west to a point located at 1232000 N, 710000 E, thence proceeds north to a point located at 1242000 N, 710000 E, and thence continues east to a point located at 1241000 N, 722000 E, the starting point of this description.

3. Historical Monument “Fortaleza de la Inmaculada Concepción de María” has a territorial extension of 37.5 square kilometres, and it is located and comprised within the following metes and bounds:

The boundary begins at Marker No. 6 on the border between Nicaragua and Costa Rica at UTM coordinates 1212650 N, 678600 E, thence continues downstream the Poco Sol River up to its outlet into the San Juan River, thence continues downstream along the course of the latter up to Marker No. 2 of the aforesaid border at 1216700 N, 788550 E, thence proceeds southwest along the border, passing Markers No. 3, 4, 5 and 6 at 1212650 N, 678600 E, the starting point of this description.

4. “Cerro Silva” Natural Reserve. Established as a Forestry Reserve, it is comprised within the following natural boundaries: Escondido River, Mahogany River, Cerro Silva, Cerro Cabeceras del Kukra, the confluence of the Serrano and Chiquito rivers, the confluence of the Mora and Punta Gorda rivers, and Punta Gorda River up to its outlet into the sea. It has a territorial extension of 3,394 square kilometres, and it is located and comprised within the following metes and bounds:

Cerro Silva Natural Reserve shall be comprised within the following perimeter:

NORTH: From the mouth of the Escondido River on the north bank in the Bay of Bluefields, it proceeds upstream up to its confluence with the Mahogany River; WEST: It proceeds upstream the Mahogany River up to its source where it crosses the municipal border of Nueva Guinea at 1315150 N, 803960 E. From this point, it continues in a straight line up to its confluence with the Piedra Fina River at 1308770 N, 801600 E, thence continues upstream to a point located at 1306810 N, 804540 E, thence continues southeast in a straight line to its intersection with the highest point (405 meters above sea level) of the hill where the headwaters of the Kukra River begin. From this point, it continues south in a straight line up to its confluence with an affluent of the Chiquito River at 1295235 N, 806490 E, thence continues downstream along this course up to its confluence with the Chiquito River, thence continues downstream up to its confluence with the Serrano River. From this point, it proceeds southeast in a straight line, passing by the highest point (285 meters above sea level) until it crosses the Mora River at 1275550 N, 804595 E, thence continues downstream along this course up to its confluence with the Punta Gorda River.

SOUTH: Punta Gorda River to its outlet into the Caribbean Sea. From this point, it proceeds northeast along the coast up to the outlet of the Escondido

River on the northern bank of the Bay of Bluefields, the starting point of this description.

Excluding the town of Bluefields, it is comprised within the following boundaries (UTM coordinates: Zone 17): The boundary begins at the Sconfra River at N 1333700, E 195940, thence proceeds downstream said river up to one of its headwaters at 1325450 N, 194650 E. From this point, it proceeds south in a straight line up to its intersection with one of the headwaters of the Musulaina Creek River at 1323975 N, 194670 E. From this point, it continues downstream said river up to its mouth at the Bay of Bluefields, then proceeds northeast along the coast, passing the town of Bluefields, up to a point located at 133 3700 N, 195 940 E, the starting point of this description.

5. "Indio Maíz" Biological Reserve. The reserve covers 2,639.8 square kilometres, and it is located and comprised within the following metes and bounds: The boundary begins at the Bartola River at UTM coordinates 1214950 N, 792400 E, thence continues downstream along the Bartola River up to a point at 1216627 N, 797554 E. From this point, it proceeds north along the trail passing by the following coordinates:

N	E
1217627	797428
1218627	797453
1219627	797402
1220627	797348
1221627	797301
1222627	797247
1223627	797196
1224627	797139
1225627	797079
1226625	797022
1227122	796353
1227953	796901
1228802	797450
1229641	798004
1230522	798423
1231515	798497
1232407	798948
1233305	799401
1233472	800365
1233592	801367

1234416	801163
1235348	800793
1236261	800853
1237185	801240
1238160	801447
1239144	801651
1240123	801817
1241116	801765
1242116	801720
1243116	801671

Until it crosses the Aguas Zarcas River at 1243968 N, 801639 E, thence continues downstream until it crosses the La Venada channel of said river at 1251700 N, 806750 E. From this point, it continues upstream up to its headwaters at 1252150 N, 809300 E, thence proceeds northeast, passing over altitudes of 461 m.a.s.l. and 413 m.a.s.l., up to the Piedra Fina River at 1256625 N, 813550 E. From this point, it proceeds upstream until it crosses an affluent of said river at 1256700 N, 814850 E. The boundary thence continues upstream up to a point located at 1256800 N, 816850 E. From this point, it proceeds northeast, passing over altitudes of 388 m.a.s.l., 474 m.a.s.l. and 491 m.a.s.l., up to one of the headwaters of the Pijibay River at 1260500 N, 818500 E. From that point, it continues downstream the Pijibay River, always 1,000 meters south, respectively, to the right bank of the same river up to the mouth in the Punta Gorda River, proceeds southwest over the coast up to a point at N 123 5675, E 189 235 (zone 17), thence proceeds west in a straight line until it crosses the north boundary of the El Pescado Lagoon at 1235675 N, 189000 E (zone 17). The boundary continues southwest from El Pescado Lagoon until it crosses the Ebo River, thence continues upstream along said river until it crosses the Pampy River. From this point, it proceeds downstream the Pampy River until it crosses the Indio River, thence continues upstream said river up to its confluence with the Casa Alta River, thence proceeds upstream said river until it crosses the wetland at 1210750 N, 196500 E (zone 17), thence proceeds southwest along the edge of the wetland until it crosses again the Casa Alta River at 209825 N, 195650 E (zone 17), thence proceeds upstream the Casa Alta River until it crosses again the wetland at 1209075 N, 194705 N (zone 17), thence proceeds north along the edge of the wetland until it crosses a river (without name) at 1211200 N, 192240 E (zone 17), thence proceeds northeast, downstream the river, until it crosses again the wetland at 1211100 N, 192550 E (zone 17), thence runs along the wetland until it crosses another river (without name) at 1208000 N, 191800 E (zone 17), thence proceeds downstream until it crosses again the wetland at 1208125 N, 192430 E (zone 17), thence continues along the edge of said wetland

until it crosses the Caño Deseado River at 1206440 N, 191160 E (zone 17), thence proceeds downstream along said river where it crosses the wetland at 1207180 N, 192670 E (zone 17). The boundary thence proceeds along the wetland until it crosses the San Juanillo River at 1206260 N, 194950 E (zone 17), thence proceeds downstream said river until it crosses again the wetland at 1205700 N, 194800 E (zone 17), thence continues southeast over the wetland until it crosses the El Misterioso River at 1203650 N, 195350 E (zone 17), thence proceeds upstream said river until it crosses again the wetland at 120025 N, 194900 E (zone 17). From this point, it continues over the wetland until it crosses again the El Misterioso River at 1203650 N, 195370 E (zone 17), thence continues downstream until it crosses again the wetland at 1203025 N, 194900 E (zone 17), thence continues along the edge of the wetland until it crosses the Silico Lagoon at 1202480 N, 199450 E (zone 17), thence proceeds southwest, upstream the Silico Lagoon, along the edge of the lagoon and wetland up to a point located at 1199250 N, 199160 E (zone 17). From this point, it proceeds southeast in a straight line where it crosses a contour, 10 meters above sea level, at 1199050 N, 199300 E (zone 17), thence proceeds along the contour until it crosses the wetland at a point located at 1196450 N, 201400 E (zone 17). From this point, it continues south along the edge of the wetland up to a point located at 1195801 N, 201750 E (zone 17). From this point, it continues southwest a distance of two kilometres from the south bank of the San Juan River up to the Bartola River at 1214950 N, 792400 E, the starting point of this description.

6. "Punta Gorda" Natural Reserve. This reserve is part of the former San Juan River-Indio Maíz Great Biological Reserve. It has a territorial extension of 549 square kilometres and it is located and comprised within the following metes and bounds:

The boundary begins at the confluence of the Punta Gorda River with the Pijibay River at UTM coordinates 1269250 N, 185375 E (zone 17). From this point, it proceeds southwest upstream the Punta Gorda River up to its confluence with the Agua Zarca River at 1272825 N, 804750 E, thence continues upstream said river until it crosses a river (without name) at 1251700 N, 806750 E. From this point, it proceeds upstream up to its origin at 1252150 M, 809300 E, thence proceeds northeast, passing over altitudes of 461 and 413 meters above sea level, up to the Piedra Fina River at 1256625 N, 813550 E. From this point, it continues upstream until it crosses an affluent of said river at 1256700 N, 14850 E, thence continues upstream up to a point located at 1256800 N, 816850 E. From this point, it proceeds northeast, passing over altitudes of 388, 474 and 491 meters above sea level, up to one of the headwaters of the Pijibay River at 1260500 N, 818500 E. From this point, it continues downstream the Pijibay River, always at a

distance of 1,000 meters south from the right bank of the same river, up to its confluence with the Punta Gorda River at 1269250 N, 185375 E (zone 17), the starting point of this description.

7. "San Juan River" Wildlife Refuge is part of the former San Juan River-Indio Maíz Great Biological Reserve and covers 430 square kilometres. It is located and comprised within the following metes and bounds:

The boundary begins at the Bartola River at UTM coordinates 214950 N, 792400 E. From this point, it proceeds downstream the Bartola River until it crosses the north bank of the San Juan River at 1214050 N, 790700 E. From this point, it proceeds west until it crosses the south bank of the San Juan River at 1214050 N, 790450 E. From this point, it continues downstream the San Juan River, along the border with the Republic of Costa Rica, up to the Caribbean Sea at 209500 N, 208650 E. From this point, it proceeds northwest over the coast up to 1235675 N, 189235 E (zone 17), thence proceeds west in a straight line until it crosses the north bank of the El Pescado Lagoon at 1235675 N, 189000 E (zone 17), thence proceeds southwest from the El Pescado Lagoon until it crosses the Ebo River, thence continues upstream said river until it crosses the Pampy River. From this point, it proceeds downstream the Pampy River until it crosses the Indio River, continuing upstream said river up to its confluence with the Casa Alta River. It continues upstream along said river until it crosses the wetland at N 121 0750, E 196 500 (zone 17). It continues southwest along the edge of the wetland until it crosses again the Casa Alta River at N 120 9825, E 195 650 (zone 17). It continues upstream along the Casa Alta River until it crosses again the wetland at N 120 9075, N 194 705 (zone 17). It continues north along the edge of the wetland until it crosses a river (without name) at N 121 1200, E 192 240 (zone 17). It proceeds northeast, downstream along the river, until it crosses again the wetland at N 121 1100, E 192 550 (zone 17), continuing along the wetland until it crosses another river (without name) at N 120 8000, E 191 800 (zone 17). It continues downstream until it crosses again the wetland at N 120 8125, E 192 430 (zone 17), continuing along the edge of said wetland until it crosses the Caño Deseado River at N 120 6440, E 191 160 (zone 17). It continues downstream along said river where it crosses the wetland at N 120 7180, E 192 670 (zone 17). The boundary continues along the wetland until it crosses the San Juanillo River at N 120 6260, E 194 950 (zone 17), thence upstream said river until it crosses again the wetland at N 120 5700, E 194 800 (zone 17). It continues southeast over the wetland until it crosses the El Misterioso River at N 120 3650, E 195 350 (zone 17), thence continues upstream said river until it crosses again the wetland at 1203025 N, 194900 E (zone 17). From this point, it proceeds over the wetland until it crosses again the El Misterioso River at 203650 N,

195370 E (zone 17), thence continues upstream until it crosses again the wetland at 1203025 N, 194900 E (zone 17), thence continues along the edge of the wetland until it crosses the Silico Lagoon at 1202480 N, 199450 E (zone 17), thence proceeds southwest, upstream the Silico Lagoon, along the edge of the wetland and said lagoon up to 1199250 N, 199160 E (zone 17). From this point, it proceeds southeast in a straight line where it crosses a contour 10 meters above sea level at 1199050 N, 199300 E (zone 17), thence continues along the contour until it crosses the wetland at 1196450 N, 201400 E (zone 17).

From this point, it proceeds south along the edge of the wetland up to a pointed located at 1195800 N, 201750 E (zone 17). From this point, thence proceeds southeast, always at a distance of 2 kilometres from the south bank of the San Juan River, up to the Bartola River at 1214950 N, 792400 E, the starting point of this description .

(....)

Article 9. REPEALS. Decrees No. 527 and 28-94, published in Official Gazette No. 78 of April 23, 1990, and Official Gazette No. 106 of June 8, 1994, are hereby repealed, as well as any provision opposed thereto.

Article 10. EFFECTIVE DATE. This Decree shall take effect on the date of its publication in the Official Gazette.

Done at Managua, on the thirtieth of May of nineteen ninety-nine.  
ARNOLDO ALEMÁN LACAYO, President of the Republic of Nicaragua.  
ROBERTO STADTHAGEN VOGEL, Minister of the Environment and Natural Resources.



## ANNEX 62

### POLITICAL CONSTITUTION OF COSTA RICA. 8 JUNE 1917 (ART. 5).

#### CONSTITUENT NATIONAL ASSEMBLY

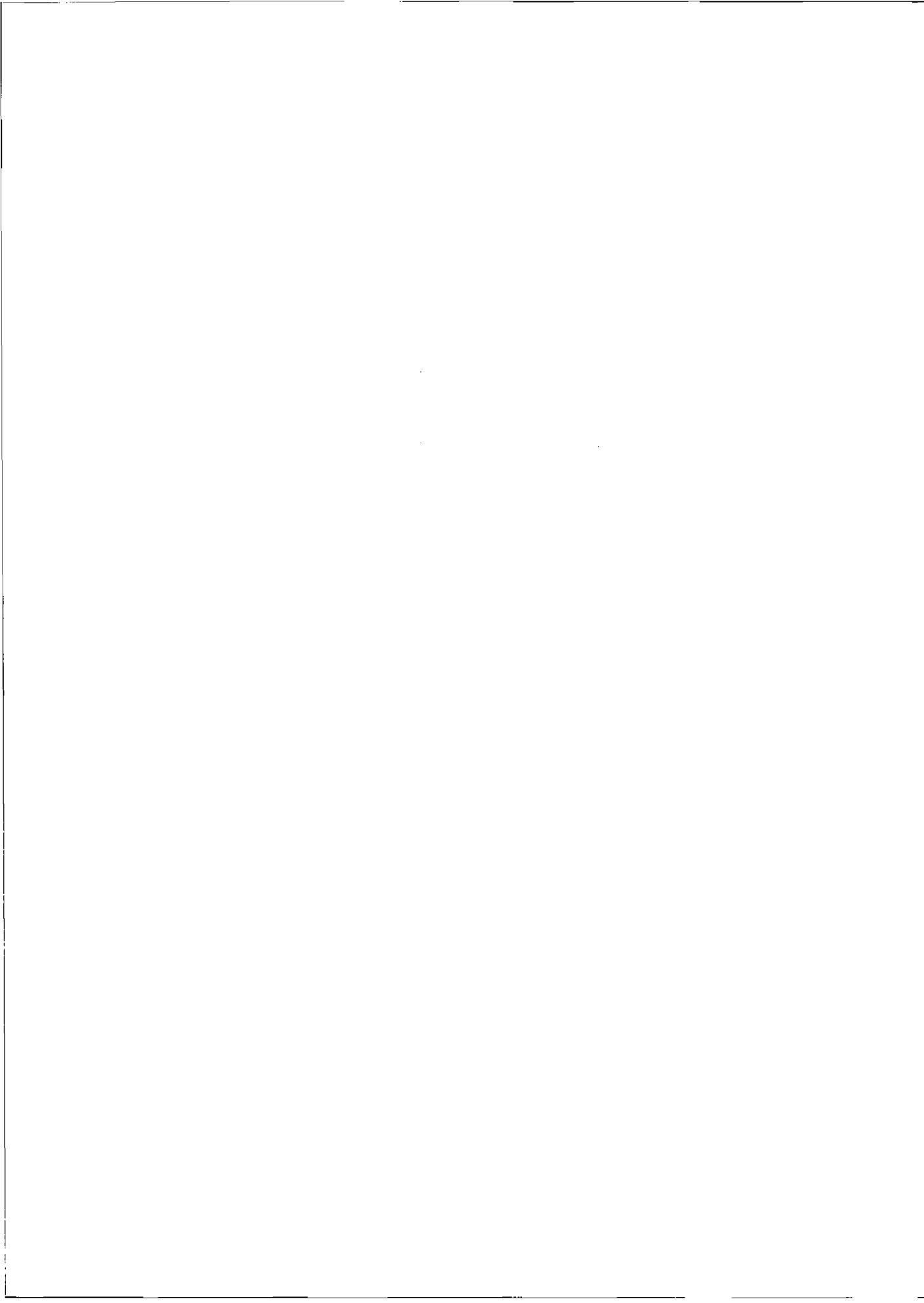
#### POLITICAL CONSTITUTION

#### CHAPTER I

##### The Republic and the Government in general

Article 5. The territory of the Republic, comprised between the Atlantic and Pacific oceans, is bounded to the northwest by the Republic of Nicaragua, from which it is separated by the line fixed by the Cañas-Jerez Treaty of April 15, 1858, and by the Cleveland award of March 22, 1888. To the southeast, it is bounded by the Republic of Panama, from which it is divided by the line defined by the Loubet award of September 11, 1900, the Anderson-Porras Treaty of March 17, 1910, and the White Award of September 12, 1914.

(...)



## ANNEX 63

### **POLITICAL CONSTITUTION OF COSTA RICA. 7 NOVEMBER 1949 (ART. 5).**

We, the Representatives of the people of Costa Rica, freely elected members to the National Constitutional Assembly, invoking the name of God and reaffirming our faith in democracy, decree and enact the following

#### **CONSTITUTION OF THE REPUBLIC OF COSTA RICA.**

##### **TITLE I**

###### **THE REPUBLIC**

###### **SOLE CHAPTER**

**ARTICLE 1.** Costa Rica is a free and independent democratic Republic.

(...)

**ARTICLE 5.** The national territory is bounded by the Caribbean Sea, the Pacific Ocean, and the Republics of Nicaragua and Panama. The boundaries of the Republic are those fixed by the Cañas-Jérez Treaty of April 15, 1858, ratified by the Cleveland Award of March 22, 1888, with respect to Nicaragua, and by the Echandi Montero-Fernández Jaén Treaty of May 1, 1941, with regard to Panama.

The Coco Island, located in the Pacific Ocean, is part of the national territory.

(...)



## ANNEX 64

### JURISPRUDENCE REGARDING ARTICLE 46 OF THE 1949 COSTA RICAN CONSTITUTION.

#### ARTICLE 46.

Monopolies, freedom of trade, agriculture and industry.

Private monopolies, as well as any act, even if originated by virtue of law, which may threaten or restrict freedom of trade, agriculture or industry, are prohibited.

Action by the State directed to prevent any monopolistic practices or tendencies is in the public interest.

The companies organized as de facto monopolies shall be governed by special legislation.

Establishment of new monopolies in favor of the State or the Municipal Governments shall require the approval of two-thirds of the full membership of the Legislative Assembly.

#### JURISPRUDENCE

##### Constitutionality

The exercise of the freedoms established in the Constitution is not absolute and may be subject to regulation and even restrictions when higher interests are at stake. The Forestry Law protects higher ranking interests than merely individual (interests) of the holder or owner of the land subject to forestry regulation, thus the restrictions imposed by said Law on agricultural labor and which have been accused as unconstitutional, do not injure the guarantee of article 46 of the Political Charter inasmuch as what the State has done is restrict the exercise of the property attributes for reasons of social interest. (Full Court, ext. s. 5-17-84).

(...)

The freedom of trade that exists as a constitutional guarantee is the right that any person has to engage, without restrictions, in a commercial

activity legally permitted that is more convenient for his interests. But in the exercise of that activity, the person is subject to the regulations established by law, such as would be the fixing of consumer prices, determination of the salaries to be paid to the workers and, eventually, limitation of profits as deemed convenient. Thus the exercise of trade does not entail the right to unrestricted freedom, especially in the face, as in the instant case, of a regulation that is considered of general interest. (Full Court, ext. s. 11-27-80). (Dissenting vote of five Justices). (Full Court, ord. s. 7-9-7).

(...)

Freedom of trade is subject to legal regulations and if the fixing of maximum selling prices by the Executive Branch in the case at hand is supported on the Law for the Defense of Consumers (No. 5665 of 28 February 1975), the constitutionality of which has not been challenged, the Executive Decree in question does not violate article 46 of the Constitution. (Full Court, ext. s. 11-16-78).

(...)

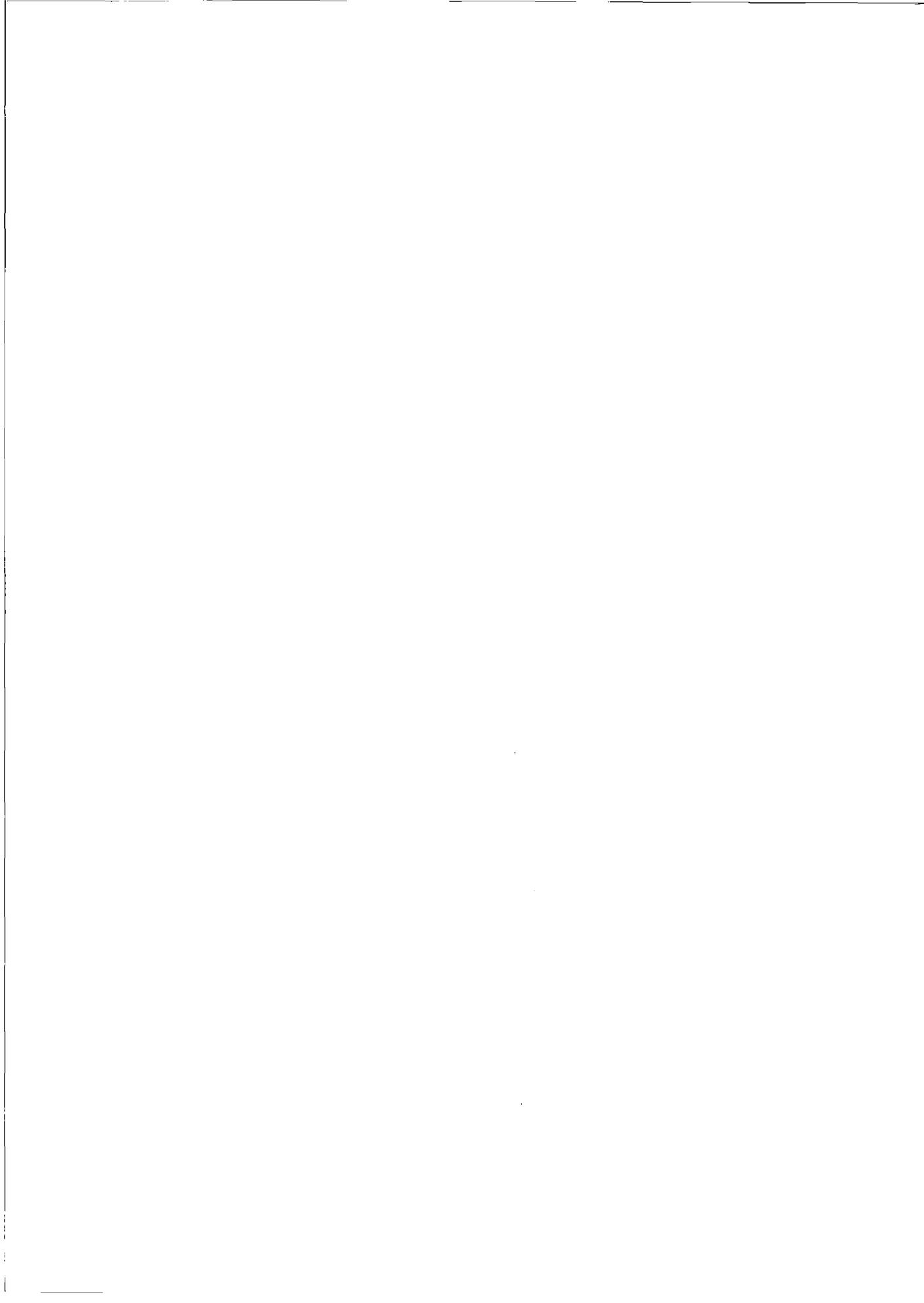
Free exercise of labor and trade, in spite of their benefits and advantages, must be subject to regulation and, in certain cases, subject to restrictions, not in an effort to make hateful discriminations, but, on the contrary, with the objective of making them more advantageous and useful, on the basis of avoiding that the lack of certain regulations permits abuses to the benefit of a few and to the detriment of a majority.

Absolute and unrestricted freedom cannot be conceived in the sense that it cannot be subject to some restrictions that are established to make them possible within social coexistence. The regulation of the commercial activity is not prohibited by the Constitution itself, inasmuch as the rights it consecrates for its exercise require certain restrictions for individual benefit and the public good. In synthesis, in order to exercise our rights and, at the same time, guarantee the rights of the rest, it becomes necessary to define and limit the sphere of our powers. This is possible on the basis of dictating restrictive measures and, in certain cases, on the basis of imposing penalties for those who commit abuses and infringe the prohibitive rules. (First Chamber of the Court, No. 64 of 6-9-81).

(...)

The freedom of trade, consecrated in article 46 of the Constitution, is not a subjective right of an unrestricted or absolute character given that, like all laws, it is subject to regulations or limitations of general interest.

Therefore, the Ministry of Finance has not acted arbitrarily in dictating the order by way of which it prohibits the importation of beans by the appellant company through the border with the Republic of Nicaragua, inasmuch as it did so within the reasonable scope of its powers, and in view of the necessity of solving the serious problem that the Minister sets out in his answer to the complaint, related to the economic policy of the Government of the Republic and the harmful consequences that the massive importation of the grains would have in the current circumstances. (Full Court, s. 8-7-75).



## ANNEX 65

### **POLITICAL CONSTITUTION OF NICARAGUA. 9 JANUARY 1987 AS MODIFIED IN 1995 (ARTS. 1, 138, NUMERAL 12, 150 NUMERAL 8 AND 182)**

#### **TITLE I. FUNDAMENTAL PRINCIPLES**

##### **SOLE CHAPTER**

Article 1: Independence, sovereignty and national self-determination are irrevocable rights of the people and the foundation of the Nicaraguan nation. All foreign interference in the internal affairs of Nicaragua or any attempt to undermine these rights is an attack upon the life of the people. It is the duty of all Nicaraguans to preserve and defend those rights.”

(...)

Article 138: The National Assembly has the following powers:

(...)

12. To approve or reject all international treaties, conventions, pacts, agreements and contracts covering economic, international trade, regional integration, defense and security; those which increase the external debt or commit the credit of the nation and those that constitute an obligation to the internal legal order of State.

Said instruments shall be presented to the National Assembly within fifteen days from the date of execution; shall only be considered and debated in general terms and shall be approved or rejected no later than sixty days after submission to the National Assembly. Upon expiration of this term, it shall be deemed as approved for all legal effects.

(...)

Article 150: The President of the Republic has the following powers:

8. To direct the international relations of the Republic. To negotiate, enter into and sign treaties, conventions or agreements and other instruments set

forth in subparagraph 12) of article 138 of the Political Constitution to be ratified by the National Assembly.

(...)

Article 182: "The Political Constitution is the fundamental law of the Republic; all other laws will be subordinate to it. No law, order, treaty or other arrangement that opposes or alters the constitution will be valid."

(...)

## ANNEX 66

### JUDGMENT OF THE CONSTITUTIONAL CHAMBER OF THE SUPREME COURT OF COSTA RICA. EXP: 00-007391-0007-CO - RES: 2001-08239. SAN JOSE, 14 AUGUST 2001.

Case: 00-007391-0007-CO

Res: 2001-08239

CONSTITUTIONAL DIVISION OF THE SUPREME COURT OF JUSTICE. San Jose, at sixteen hundred hours on August fourteenth two thousand one.-

Action of unconstitutionality filed by F. J. A. U., holder of identity card number (...), and C.V.P., identity card number (...) against the International Treaty signed by and between the Presidents of the Republics of Costa Rica and Nicaragua, Miguel Angel Rodríguez Echeverría and Arnoldo Alemán Lacayo on June twenty-ninth two thousand, relating to the free navigation of Costa Rican boats on the San Juan River, the acts setting forth the agreement issued by the national authorities; that is, the diplomatic note sent by the President of Costa Rica to the leader of Nicaragua on June twenty-eighth two thousand, and the acquiescence of Costa Rican government officials with the interpretation relating to the scope of that agreement by Nicaraguan Government officials. Miguel Angel Rodríguez Echeverría, President of the Republic of Costa Rica, Walter Niehaus Bonilla, Minister of Tourism, temporarily serving as Minister of Foreign Relations and Worship, and Román Solís Zelaya, on behalf of the Office of the Attorney General of the Republic, also intervened in the proceeding.

(...)

Whereas,

VII. As to the violation of the Cañas-Jerez Treaty and the Cleveland Arbitral Award complained of by way of the challenged act. Clear as to the substantive and jurisprudential background which establish the rights held by the State of Costa Rica with respect to the San Juan River, and based on the premise that in accordance with Articles 5 and 7 of the Political Constitution, the aforementioned international instruments are part of the constitutional parameters which this Court must enforce vis-à-vis the actions of its authorities and inhabitants, the Court must decide whether the note

sent by the President of Costa Rica to the President of Nicaragua on June twenty-eighth two thousand – as affirmed by plaintiffs – is contrary to the spirit and text of the said provisions; answered by the President of Nicaragua on June twenty-ninth two thousand, stating – as to the pertinent parts herein – his will to uphold the status in effect prior to July nineteen ninety-eight. With respect thereto, the Court holds that the challenged act does not appear to seek any modification whatsoever of border regulations in force and effect between the two countries, inasmuch as the text specifically alludes to reestablishing a *modus operandi* which had been in use temporarily, prior to July nineteen ninety-eight. On the one hand, the contents of the note do not contradict the Cañas-Jerez Treaty, the Cleveland Award and the judgment of the Central American Court of Justice. It is not contradictory, inasmuch as the said instruments provide that Nicaragua has complete sovereignty and authority over the San Juan River, while Costa Rica holds the perpetual right to use its lower banks for commercial, revenue and security purposes. The referenced note states only that the Government of Costa Rica shall inform its peer in Nicaragua each time its police force must navigate on the San Juan River with law enforcement equipment. It is worth noting that in the note at issue, the said navigation is not subject to obtaining a permit, but to – as was stated – simple communication, which is entirely in keeping with the terms of the instruments governing the matter. The possibility for navigation by other types of Costa Rican boats is not limited in any way whatsoever either, and there is no waiver of any other rights held by Costa Rica in respect of the lower banks of the San Juan River. In fact, in the challenged note, the President of the Republic of Costa Rica clearly shows the will of its Government to return to the practice existing between both countries prior to July nineteen ninety-eight, at which time the Government of Nicaragua prevented the movement of armed Costa Rican police officers in the waters of the San Juan River. Therefore, we find that the note at issue does not dispute the rights acknowledged to the Costa Rican State in respect of the San Juan River, wherefor, it cannot be understood that either the repeatedly mentioned international instruments, or Articles 5 and 7 of the Political Constitution have been violated.

VIII. Conclusion. On the basis of the foregoing arguments, this Court concludes that the diplomatic note sent by the President of the Republic of Costa Rica on 28 June 2000 to the President of Nicaragua, is not unconstitutional, and consequently declares the present action of unconstitutionality without basis, dismissing it from the Court.

Therefore:

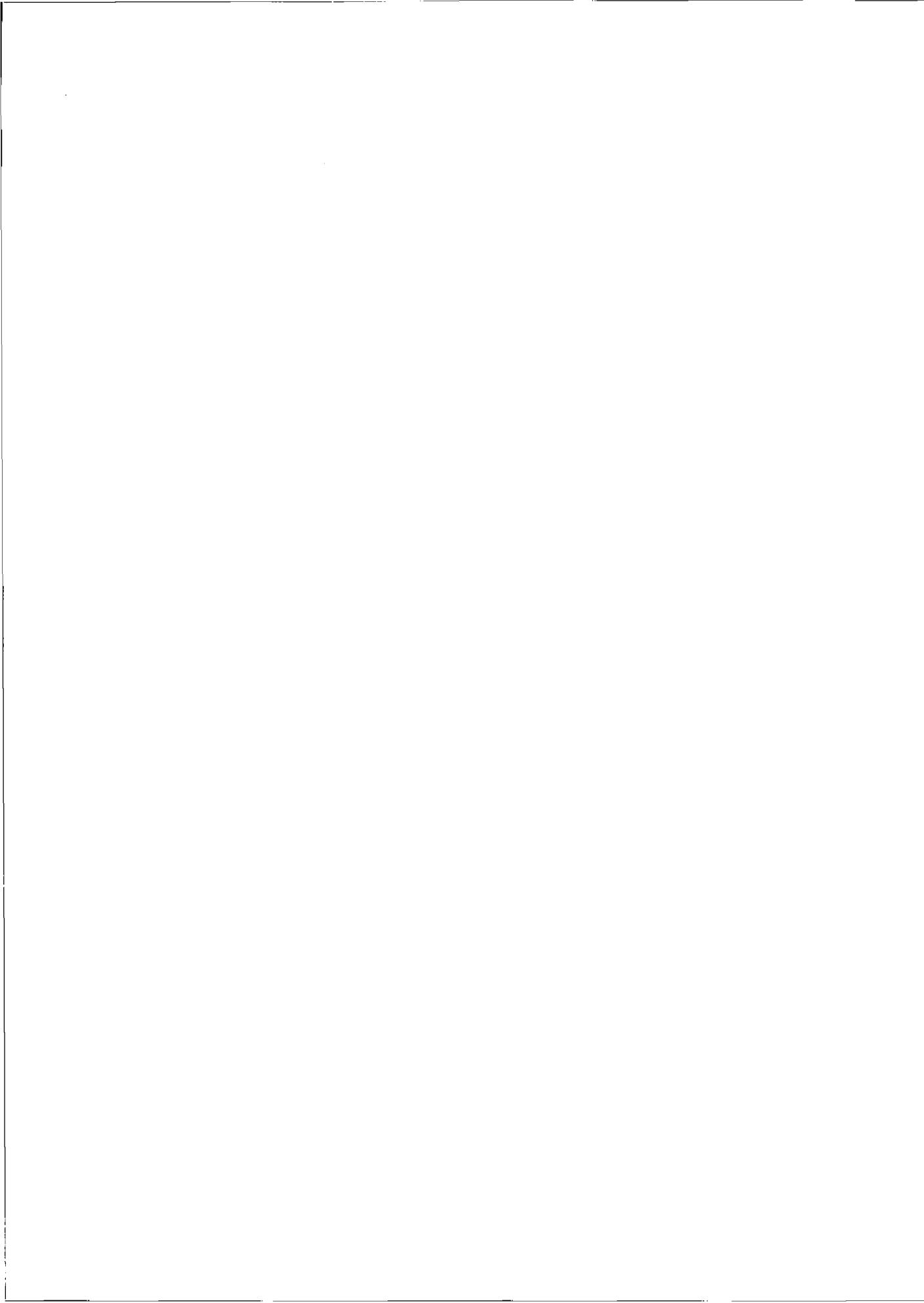
The action, as to the diplomatic note signed by the President of the Republic of Costa Rica on July twenty-eighth two thousand, addressed to the President of the Republic of Nicaragua, is rejected. As to the remainder, the action is rejected outright.

Luis Fernando Solano C.

President, *Ad Interim*

Luis Paulino Mora M. Eduardo Sancho G.  
Carlos M. Arguedas R. Adrián Vargas B.  
Susana Castro A. Alejandro Batalla B.

MCP/oc/4céd.-



## **ANNEX 67**

### **LAW N° 7410. GENERAL LAW OF THE COSTA RICAN POLICE (ART. 24) SAN JOSÉ, 26 MAY 1994.**

(...)

#### **Article 24. Attributions:**

The border Police has the following attributions

- a) To patrol and protect maritime, land and air borders, including public buildings where customs and immigration activities are carried out.
- b) To enforce the political Constitutional, international treaties and laws that guarantee the integrity of the national territory, territorial waters, the continental shelf, the patrimonial sea or exclusive economic zone, the air space and the exercise of the rights that correspond to the State.

(...)



## ANNEX 68

### **RESOLUTION OF THE REPUBLIC OF NICARAGUA'S NATIONAL ASSEMBLY ON THE JOINT COMMUNIQUÉ CUADRA - LIZANO, 30 JULY 1998. ORDINARY SESSION # 5. MANAGUA, 18 AUGUST 1998.**

WHEREAS.

SOLE:

That the Joint Communiqué of the past July 30th of 1998 between the Minister of Defense of Nicaragua and the Minister of Interior, Police and Public Security of Costa Rica, trying to authorize the navigation of boats of the Public Force of Costa Rica in the San Juan River, it is violating and harmful to the national sovereignty of the Nicaraguan territory, clearly established in the Jerez-Cañas Treaty, the Cleveland Award and consecrated in our Political Constitution.

THEREFORE:

In use of the faculties that grants the Political Constitution of Nicaragua and the General Statute of the National Assembly,

RESOLVES:

I

To annul in total and definitive form and declared unconstitutional the pretended authorization contained in the subscribed Joint Communiqué between the Ministers of Defense of Nicaragua and the Minister of Interior, Police and Public Security of Costa Rica, the past July 30th of 1998, relative to the navigation of Costa Rican ships with armed men on the San Juan River, for being violating and harmful to the national sovereignty that exerts Nicaragua with exclusive character on this river.

II

To ratify the terms contained in the official diplomatic correspondence made public by the Ministry of Foreign Affairs of Nicaragua, the 11<sup>th</sup> of August 1998, in which, in accordance with the official position of this honorable National Assembly, it declares without any legal value, and therefore null

and nonexistent the Joint Communiqué related in Point 1 of the present Resolution.

### III

To reiterate the integrity of our territorial rights and the sovereignty of Nicaragua in the San Juan River, in agreement with the Jerez – Cañas Treaty, the Cleveland Award and the Political Constitution of Nicaragua.

Given in the Room of Sessions of the National Assembly of Nicaragua, the eighteenth of August of the year ninety nine eighty

(Signature)

PRESIDENT OF THE NATIONAL ASSEMBLY

(Signature)

SECRETARY OF THE NATIONAL ASSEMBLY

ANNEX 69

REPLY OF THE REPUBLIC OF NICARAGUA TO THE CASE OF  
THE REPUBLIC OF COSTA RICA SUBMITTED TO HIS  
EXCELLENCY HON. GROVER CLEVELAND, PRESIDENT OF  
THE UNITED STATES. 1887. WASHINGTON 1887. P. 49

R E P L Y

OF THE

REPUBLIC OF NICARAGUA

TO THE

CASE OF THE REPUBLIC OF COSTA RICA,

SUBMITTED TO HIS EXCELLENCY,

HON. GROVER CLEVELAND,

*President of the United States.*

ARBITRATOR.

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

MANUSCRIPT, MARCH,  
1887.

war? It is claimed such navigation is needed to protect commerce. Against whom is such protection needed? Certainly not against Nicaragua, for that cannot be interfered with, even in case of actual hostilities. No other power can interfere, because the sovereign right vests solely and exclusively in Nicaragua.

The presence, then, of armed vessels would be a menace to the peace of Nicaragua, and cannot be admitted, either under the laws of nations or the provisions of this treaty.

Vessels of the revenue service are akin to vessels of war. While they have not all the means of aggression as the former, still they are armed vessels, capable of enforcing their demands by force, and must be classed in the same category as vessels of war. Neither have they the right, under a commercial license, to invade the territory, domain, or sovereignty of the Republic of Nicaragua.

Nor does the treaty of 1868, by which Costa Rica becomes entitled to enjoy the rights of the "most favored nation" in Nicaragua, change the force or effect of the foregoing. By this term is meant those rights which may be accorded simply as matter of favor as contradistinguished from those rights acquired from mutual concessions, reciprocity, or in consideration of some equivalent. The concessions to other nations referred to by Costa Rica are not matters of favor, but have been granted in consideration of advantages gained by Nicaragua, and hence do not extend to other nations.

#### TENTH.

As the reasons for making the stipulations of Article VIII have disappeared, must Nicaragua be still obliged not to grant canal concessions through her territory?

ANNEX 70

**GEORGE L. RIVES REPORT. 2 MARCH 1888.**

Assistant Secretary of State.

To the President:

SIR: On the 24th day of December, 1886, the Republics of Costa Rica and Nicaragua, by a Treaty signed on that day, agreed that the question pending between the Contracting Governments in regard to the validity of the "Treaty of Limits" of the 15th April, 1858, should be submitted to arbitration. It was further agreed that the Arbitrator of that question should be the President of the United States of America; that within sixty days from the ratification of the Treaty of Arbitration the contracting Governments should solicit of the Arbitrator his acceptance of the charge; that within ninety days from the notification to the parties of the acceptance of the Arbitrator they should present to him their allegations and documents; that the Arbitrator should communicate to the representative of each Government, within eight days after their presentation, the allegations of the opposing party, in order that the opposing party might be able to answer them within thirty days following that upon which the same should have been communicated; that the decision the Arbitrator must be pronounced within six months from the date upon which term allowed for the answers to the allegations should have expired; and that the Arbitrator might delegate his powers, provided he did not fail to intervene directly in pronouncing the final decision. It was further provided that if the Arbitrator's award should determine that the Treaty of the 15th April, 1858, was valid, the same award should also declare whether Costa Rica has the right of navigation of the river San Juan with vessels of war or of the revenue service ; and that he should in the same manner decide, in case of the validity of the Treaty, upon all the other points of doubtful interpretation which either of the parties might find in the Treaty and communicate to the other within thirty days after the exchange of ratifications of the Treaty of arbitration.

(....)

No decision of this question is, however, necessary; for it is only important, for present purposes, to point out that no precise line of demarcation can be found in any of the earlier documents. Nor is this surprising in view of the fact, to be inferred from the evidence that the

region through which the line ran was a rough, densely wooded and thinly settled country, where no need was felt of any exact delimitation in the days of the Spanish dominion.

But with the establishment of the Federal Republic, and still more, with the dissolution, the questions of boundary began to assume importance.

The Federal Constitution seems to have provided by its Article VII for the demarcation of each State; but nevertheless nothing was done towards the establishment of the line between Costa Rica and Nicaragua.

In 1838 Costa Rica seems to have urged upon Nicaragua – then assuming the rank of an independent State upon her withdrawal from the Federation – a desire for a recognition of the annexation of Nicoya. In 1846, 1848 and 1852 other fruitless negotiations were undertaken with a view to settling the boundary; and in 1858, when the Treaty of Limits was signed, the question, in one form or another, had been before the two Governments for at least twenty years.

That the documentary evidence was slight and unsatisfactory, has been already shown; and that Costa Rica had for nearly the same period of twenty years laid claim to more territory than she obtained under the Treaty of Limits, fully appears from her decree of 'Basis and Guaranties' of the 8th March, 1841- which asserts as the boundaries of Costa Rica the line of the River La Flor, the shore of Lake Nicaragua, and the River San Juan.

I now proceed to state the history of the negotiations which resulted in the Treaty in question, and of the executive and legislative acts which are relied on by Costa Rica as constituting a sufficient ratification.

The long and bitter struggle in which Nicaragua and other Central American States had been involved, and of which the part played by Walker and the filibusters was the most notorious incident, came to an end in 1857. The Republic of Costa Rica had taken part in that struggle, and her case states as a fact that at the close of the contest the Costa Rican troops held military positions on both sides of the San Juan. The argument of Nicaragua seems to imply that such possession was not taken until after the close of the war; but the fact itself is not in dispute. It was regarded by Nicaragua at the time, as constituting a *casus belli*; and Costa Rica having failed to withdraw her troops, war was declared by Nicaragua on the 25<sup>th</sup> November, 1857,- although negotiations for a settlement of the difficulty still continued, but without success.

In this posture of affairs the Republic of San Salvador offered mediation through its Minister Colonel Don Pedro Rómulo Negrete. Owing principally, as it would seem, to Colonel Negrete's earnest efforts, the opposing Governments appointed Ministers Plenipotentiary, who met with the Salvadorian Minister at San José de Costa Rica, and there concluded the Treaty of Limits, - the validity of which is now under examination.

By that instrument, the boundary line is made to begin at Punta de Castilla, at the mouth of the San Juan River; thence it follows the right or Southern bank of that stream to a point 3 miles below the Castillo Viejo; thence it runs along the circumference of a circle drawn round the outworks of the Castle as a center, with a radius of three miles, to a point on the Western side of the Castle, distant two miles from the River; thence parallel to the San Juan and the Lake, at distance of 2 miles therefrom to the Sapoá River; and thence in a straight line to the center of Salinas Bay on the Pacific Ocean. The Treaty further provides that surveys shall be made to locate the boundary; that the Bay of San Juan del Norte and Salinas Bay shall be common to both Republics; and that Nicaragua shall have, exclusively, dominion and supreme control of the waters of the San Juan - Costa Rica having the right of free navigation for the purposes of commerce in that part of the River on which she is bounded. It was further agreed that in the event of war between Costa Rica and Nicaragua, no act of hostility was to be practiced in the Port of the River of San Juan, or on the Lake of Nicaragua; and the observance of this article of the Treaty was guaranteed by the Republic of San Salvador.

It is admitted by the parties to the present arbitration that the Treaty was duly ratified by Costa Rica on the 16<sup>th</sup> April, 1858; and that it was not ratified at all by San Salvador. It is further established that there was some ratification by representatives of Nicaragua - but whether or not such ratification was sufficient is one of the points now in controversy, and it is therefore necessary to examine fully the powers and the proceedings of the Nicaraguan authorities.

The Republic of Nicaragua, as appears from the evidence, was a Constitutional Government of limited powers, which were defined by a written Constitution. Nicaragua, as one of the States of the Central American Republic, adopted her first Constitution on the 8<sup>th</sup> April, 1826. Upon the dissolution of the Federal Republic she assumed the rank of an independent nation; and in 1838 adopted a new Constitution, which her representatives now contend was in full force and vigor at the time of the execution of the Treaty of Limits. The full text of the Nicaraguan Constitution of 1838 is not contained in the arguments which have been laid

before the Arbitrator; but it sufficiently appears that power was vested in an elective President and a Congress. It also appears that by Article 2 (cited in full below), the boundaries of the State were defined; and that by Article 194, quoted in the argument of Nicaragua, a complicated method of amendment was provided, of which the only feature now necessary to notice is that no proposed amendment shall take effect until it has been approved by two successive Legislatures.

In 1857 the necessity for a complete revision of the Constitution of 1838 seems to have been generally recognized. The long and exhausting conflicts which had been waged from 1854 to 1857, and the existence, during the greater part of that time, of two hostile governments, each claiming to exercise constitutional and supreme power throughout the country, had demonstrated, to the satisfaction of the inhabitants, the importance of changes in the organic law. Accordingly a Constituent Assembly, with ample powers, was duly elected. The due election, and the full constituent powers of this body, are facts not disputed in the arguments now submitted on behalf of Nicaragua.

In November, 1857, the Constituent Assembly met, and addressed itself at once to the task of framing a new Constitution for Nicaragua, as well as of legislating upon the ordinary affairs of the nation.,

On the 18<sup>th</sup> of January, 1858, the previous negotiation with Costa Rica having failed, the Assembly ordered new Commissioners to be appointed to negotiate treaties of peace, limits, friendship, and alliance between Nicaragua and Costa Rica.

On the 5<sup>th</sup> February, 1858, a further and supplemental decree on the same subject, was adopted, which is as follows:

The Constituent Assembly of the Republic of Nicaragua, in use of the legislative faculties with which it is invested, decrees:

Article 1. For the purpose that the Executive may comply with the decree of January 18 instant, the said Executive is hereby amply authorized to act in the settlement of the difficulties with Costa Rica in such manner as it may deem best for the interest of both countries, and for the independence of Central America, without the necessity of ratification by the legislative power.

Article 2. Such treaties of limits as it may adjust shall be final, if adjusted in accordance with the bases which separately will be given to it; but, if not, they shall be subject to the ratification of the Assembly.

What were the separate bases of negotiation given to the Nicaraguan Executive does not appear from any of the documents submitted to the Arbitrator. But it is not distinctly asserted by the representatives of Nicaragua that such instructions were disregarded in the negotiation of the Treaty. - the arguments relied on to prove its invalidity resting upon entirely different grounds, which will be stated hereafter.

On the 15<sup>th</sup> April, 1858, the Treaty of Limits was signed by the Plenipotentiaries of Costa Rica, Nicaragua and San Salvador; and on the 26<sup>th</sup> April, 1858, ratifications were personally exchanged by the Presidents of Costa Rica and Nicaragua, who met for the purpose on Nicaraguan territory at the City of Rivas. The Treaty had not then been passed upon by the Assembly, the decree of ratification being by the President alone. It is as follows:

TOMAS MARTINEZ, the President of the Republic of Nicaragua:

Whereas General Máximo Jerez, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua to the Republic of Costa Rica, has adjusted, agreed upon and signed, on the 15<sup>th</sup> instant, a Treaty of Limits, fully in accordance with the bases which, for that purpose, were transmitted to him by way of instructions; finding that said Treaty is conducive to the peace and prosperity of the two countries, and reciprocally useful to both of them, and that it facilitates, by removing all obstacles that might prevent it, the mutual alliance of both countries, and their unity of action against all attempts of foreign conquest; considering that the Executive has been duly and completely authorized by legislative decree of February 26<sup>th</sup> ultimo to do everything conducive to secure the safety and independence of the Republic; and by virtue, furthermore, of the reservation of faculties spoken of in the Executive decree of the 17<sup>th</sup> instant:

Does hereby ratify each and all of the articles of the Treaty of Limits, made and concluded by Don José María Cañas, Minister Plenipotentiary of the Government of Costa Rica, and Don Maximo Jerez, Minister Plenipotentiary of the Supreme Government of Nicaragua, signed by them on the 15<sup>th</sup> instant and ratified by the Costa Rican Government on the 16<sup>th</sup>. And the additional act of the same date is likewise ratified.

On the 28<sup>th</sup> May, 1858, thirty-two days after the ratification, and forty-three days after the signature of the Treaty of Limits, the following decree was passed by the Constituent Assembly:

The Constituent Assembly of the Republic of Nicaragua, in use of the legislative powers vested in it, decrees:

Sole Article. The Treaty of Limits concluded at San José on the 15<sup>th</sup> of April, instant, between General Don Máximo Jerez, Minister Plenipotentiary from this Republic, and General Don Jose Maria Cañas, Minister Plenipotentiary from the Republic of Costa Rica, with the intervention of Colonel Don Pedro Rómulo Negrete, Minister Plenipotentiary from Salvador, is hereby approved."

On the 19<sup>th</sup> August, 1858, the Constituent Assembly adopted the new Constitution, of which it is only needful to cite the first Article, viz:

The Republic of Nicaragua is the same which was, in ancient times, called the Province of Nicaragua, and, after the independence, State of Nicaragua. Its territory is bounded on the East and Northeast by the Sea of the Antilles; on the North and Northwest by the State of Honduras; on the West and South by the Pacific Ocean; and on the Southeast by the Republic of Costa Rica. The laws on special limits form part of the Constitution

(....)

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

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

G. L. Rives.  
DEPARTMENT OF STATE, March 2, 1888.

## ANNEX 71

### GEORGE L. RIVES REPORT (SECOND). 2 MARCH 1888.

If the Treaty of the 15<sup>th</sup> April, 1858 is valid, what is its true meaning in respect of the various matters submitted for decision?

One question of interpretation is formulated by the Treaty of Arbitration itself, and eleven others are submitted by Nicaragua under the sixth article of the Treaty.

The preliminary question, which is expressly raised by the Treaty of Arbitration, is as follows: "If the Arbitrator's award should determine that the Treaty [of 1858] is valid, the same award shall also declare whether Costa Rica has the right of navigation of the River San Juan with vessels of war or of the revenue service."

The answer to this question depends upon a consideration of Article VI of the Treaty of 1858, which reads as follows:

(...)

[page number 210-212 of the handwritten version]

The right of Nicaraguan vessels to land freely on the Costa Rican side confers no right on Costa Rica to maintain a river police. She has undoubtedly the right to establish Custom Houses along the River, and to maintain a force of revenue officers. But this force need not necessarily patrol the river in boats. This may be a convenient way of preventing smuggling; but it is not so necessary an incident to the right of Costa Rica to enforce her customs laws as to be inevitably implied *ex necessitate* from the provisions of the Treaty.

The stipulations of Article IV throw no light on this question. All that article requires is that Costa Rica should repel foreign aggression on the river with all the efficiency within her reach. If under the terms of the Treaty, Costa Rica is not permitted to maintain vessels of war on the River she cannot be regarded as derelict if she fails to oppose foreign aggression in that quarter by her naval forces. Impossibilities are not required. Costa Rica would only be bound to contribute to the defence of the stream by land, a mode of defence, it may be added, which seems better adapted to a River of the size and character of the San Juan.

The matter is less clear when we consider the rights conferred by this Treaty in the light of international usage, for the present case appears to be one without exact precedent, which must be governed by analogies more or less remote.

(...)

[page number 218-219 of the handwritten version]

The preliminary question of interpretation, as to the right of navigation of the San Juan by public vessels of Costa Rica should, therefore, in my judgment, be answered by saying that the vessels of war and of the revenue service belonging to Costa Rica have the same privilege of navigating the River San Juan as are usually accorded in their territorial waters by civilized nations to the public vessels of friendly powers in time of peace, -- but no other, or greater privileges.

(...)

The question, as propounded, is some what ambiguous, but it may be answered thus: The Treaty of April 15, 1858, gives Costa Rica a right to be a party to grants for inter-oceanic canals only in cases where the construction of the canal involves an appropriation or flooding of Costa Rican territory, - or an encroachment on the harbors of San Juan del Norte or Salinas, or the destruction or serious impairment of the navigation of the River San Juan in any of its branches and at any point more than three miles bellow Castillo Viejo.

I have thus considered all the questions submitted to the arbitrator, and I respectfully advise that an award be made in accordance with the foregoing views. I submit herewith a form of award which, if my conclusions be approved, maybe executed in triplicate, -one copy to be filed in the Department of State, and the others to be delivered to the representatives of the Governments of Costa Rica and Nicaragua respectively.

G. L. Rives  
Department of State  
Washington  
March 2<sup>nd</sup>, 1888

(6)

with public vessels to not in any respects inconsistent with the right of navigation for purposes of Commerce; that by the usage of nations navigation of territorial waters by foreign public vessels can only be forbidden by express stipulation, as in the case of the Barbadoes, and that under Art. IV Costa Rica must be permitted to maintain her vessels on the San Juan in order to quench and defeat the revolt the efficiency with which the force of these requirements may be carried out once.

The prohibition of acts of hostility on the River, cannot be construed as conferring on Costa Rica a right to maintain upon its waters public vessels in time of peace. The interpretation would seem to be the other way.

The right of Nicaragua to land fully on the Costa Rican side of the river on Costa Rica to maintain a river police, she has undoubtedly the right to establish Custom houses (ibid) the River, and to

Maintenance

Maintain 10 pieces of revenue officers. But these forces need not necessarily patrol the river in boats. This might be a convenient way of preventing smuggling; but it is not so necessary an incident to the right of Costa Rica to enforce her Customs laws or to be immediately supplied ~~or susceptible~~ from the provinces of the Republic.

The stipulations of Article IV, tends to light on this question. It shall first article requires that Costa Rica shall expect foreign opposition on the River with all the efficiency within her power. Under the terms of the Treaty, Costa Rica is not permitted to maintain vessels of war on the River, nor cannot be regarded as derelict if she fails to oppose foreign opposition to that greater by her naval forces. Impossibilities are not required. Costa Rica would only be bound to contribute to the defense of the river by land. A mode of defense, it may be called, which seems better adapted to achieve

of



ANNEX 72

DRAFT AWARD PREPARED BY G. L. RIVES AND HANDED TO  
THE ARBITRATOR MR. GROVER CLEVELAND. 17 MARCH 1888

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Note. The following is the draft award prepared by  
me and handed to the President. The conclusions  
appearing thereon in this case made by the  
President and are all in his own handwriting.  
G. ROVER CLEVELAND, March 17, 1888.

President of the United States [Signature]  
to whom it shall concern, Greetings:

The functions of Arbitrator having been con-  
ferred upon the President of the United States by vir-  
tue of a Treaty signed at the City of Guatemala on the  
twenty-fourth day of December, one thousand eight hun-  
dred and eighty-six, between the Republics of Costa Rica  
and Nicaragua, whereby it was agreed that the question  
pending between the contracting Governments in regard to  
the validity of ~~the~~ <sup>this</sup> Treaty of Limits of the fifteenth  
day of April, one thousand eight hundred and fifty-eight,  
~~should~~ be submitted to arbitration; that the Arbitrator  
~~in this question~~ <sup>should</sup> be the President of the United  
States of America; that if the Arbitrator's award should  
determine that the Treaty was valid the same award should  
also declare whether Costa Rica has the right of navi-  
gation of the River San Juan with vessels of war or of  
the revenue service; and that in the same manner the  
Arbitrator should decide in case of the validity of the  
Treaty upon all the other points of doubtful interpre-  
tation which either of the parties might find in the  
Treaty and should communicate to the other party with-  
in thirty days after the exchange of the ratifications  
of the said Treaty on the twenty-fourth day of December  
one thousand eight hundred and eighty-six.

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

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

*and in view of the fifth clause of said last named Treaty*  
And the Arbitrator having ~~thereafter~~ delegated his ~~power~~ <sup>full</sup> powers to the Honorable George L. Rives, Assistant Secretary of State, who, after examining and considering the said several allegations, documents, and answers, made his report in writing thereon to the Arbitrator;

Now therefore, I, GROVER CLEVELAND, President of the United States of America, do hereby make the following decision and award.

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

Second. The Republic of Costa Rica had ~~the~~ <sup>the</sup> ~~right~~ <sup>right</sup> to send ~~aid~~ <sup>aid</sup> to the ~~Stipulations~~ <sup>Contract</sup> in the sixth article thereof, has not the right of navigation of the River San Juan with vessels of war; but she may navigate said river with such ~~aid~~ <sup>to the</sup> ~~Spanish~~ <sup>American</sup> forces as

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may be ~~improperly~~ ~~relatively~~ and ~~concerned~~  
privileges of navigating the River San Juan with ~~the~~  
~~with~~ ~~the~~ ~~enjoyment~~ ~~of~~ ~~the~~ ~~functions~~ ~~of~~  
~~sole~~ ~~or~~ ~~of~~ ~~the~~ ~~Revenue~~ ~~service~~ ~~or~~ ~~civilized~~  
~~Commerce~~ ~~"accorded~~ ~~to~~ ~~him~~ ~~in~~ ~~said~~ ~~activities~~  
~~usually~~ ~~accord~~ ~~in~~ ~~their~~ ~~territorial~~ ~~waters~~ ~~to~~  
~~be enjoyed by the~~ ~~Country~~ ~~of~~ ~~the~~ ~~Powers~~  
the public vessels of friendly powers in time of peace;  
as may be ~~properly~~ ~~enjoyed~~ ~~to~~ ~~the~~ ~~Navigation~~ ~~of~~  
~~but no other or greater privileges~~ ~~and enjoyment~~.

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

1. The boundary line between the Republics of Costa Rica and Nicaragua on the Atlantic side begins at the ~~extremity~~ ~~of~~ ~~Punta~~ ~~de~~ ~~Castilla~~ ~~at~~ ~~the~~ ~~most~~ ~~westerly~~ ~~of~~ ~~the~~ ~~islands~~ ~~which~~ ~~lie~~ ~~near~~ ~~the~~ ~~south~~  
~~limit~~ ~~of~~ ~~the~~ ~~Rio~~ ~~San~~ ~~Juan~~ ~~de~~  
of the Harbor of San Juan del Norte; and all of such  
islands ~~which~~ ~~have~~ ~~been~~ ~~formed~~ ~~by~~ ~~a~~ ~~process~~ ~~of~~ ~~attraction~~  
fiftieth day of April 1858. The number  
of description from the card with which, in 1858, entered  
of any account to at said Punta de  
Castilla at the extremity of the Punta de Castilla, are  
Castilla is to be governed by the laws  
and restrictions of the territory of the Republic of Costa  
aplicable to the subjects.

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

3. By the central point of Salinas Bay is to be understood the centre of the geometrical figure formed as above stated. The limit of the Bay towards the ocean is a straight line drawn from the extremity of Punta Arranca Barba nearly true South to the Western-

most portion of the land about Punta Sacate, the said line being marked AB on the chart of Salinas Bay annexed to the original answer of the Republic of Nicaragua filed with the Arbitrator. The central point of the Bay, as thus fixed, is marked C on the said chart, and is in Latitude  $11^{\circ} 03' 48''$  North, Longitude  $85^{\circ} 43' 30.4''$  West from Greenwich; taking the summit of Salinas Island to be in Latitude  $11^{\circ} 03' 10''$  North, Longitude  $85^{\circ} 43' 38''$  West from Greenwich.

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

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

6. The Republic of Costa Rica cannot prevent the Republic of Nicaragua from executing at her own expense ~~such~~ and within her own territory works of improvement, ~~on~~ the River San Juan; provided such works of improvement do not result in the occupation or flooding of Costa Rican territory, or in the destruction or serious impairment of the navigation of the said River ~~in~~ any of

its branches, and at any point more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858. The Republic of Costa Rica can prevent the Republic of Nicaragua from executing at her own expense works of improvement in the City of San Juan del Norte. The Republic of Costa Rica has the right to demand indemnification for any places belonging to her on the right bank of the River San Juan which may be occupied without her consent, and for any lands on the same bank which may be flooded or damaged in any other way in consequence of works of improvement.

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

8. The Republic of Costa Rica has the same privilege of navigating the River San Juan with men-of-war or revenue cutters as civilized nations usually accord ~~as far as possible~~ <sup>right of the</sup> ~~to their~~ <sup>to the</sup> ~~countries~~ <sup>public vessels</sup> of ~~of navigating~~ <sup>in the</sup> ~~territorial waters~~ <sup>territory</sup> to the public vessels of friendly powers in time of peace; but no other or greater privileges.

9. The Republic of Costa Rica can deny to the Republic of Nicaragua the right of deviating the waters of the River San Juan in case such deviation will result in the destruction or serious impairment of the

navigation of the said River ~~in~~<sup>any</sup> any of its branches and  
~~where Costa Rica is entitled to navigation~~<sup>to the same</sup>  
at any point more than three English miles below Castillo  
Viejo, measuring from the exterior fortifications of the  
~~said castle as the same existed in the year 1858.~~

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

River ~~in~~ any of its branches and at any point more than  
three English miles below Castillo Viejo measuring from  
~~Castillo Viejo the same.~~  
~~the exterior fortifications of the said castle as the~~  
~~same existed in the year 1858.~~

11. The Treaty of Limits of the fifteenth day of April, one thousand eight hundred and fifty-eight, given to the Republic of Costa Rica the right to be a party ~~to grants for inter-oceanic canals~~ <sup>does not</sup> ~~which may be made through~~ in cases where the construction of the canal will involve an ~~approaching~~ <sup>dangerous</sup> ~~action or flooding of Costa Rica's territory, or an en-~~ ~~closure "as in "but" inserted in Article~~ ~~crossment on the harbors of San Juan del Norte or~~ ~~VIII of the Treaty, should I issue there~~ ~~Salinus Bay, or the destruction or serious impairment~~ ~~"activities" or "concentrations." It would limit~~ ~~of the navigation of the River San Juan in any of its~~ ~~branches and at any point more than three English miles~~ ~~necessary; and, the same being so~~ ~~below Castillo Viejo measuring from the exterior fort~~ ~~ifications of the said castle as the same existed in~~ ~~the year 1858. The Republic of Costa Rica has the~~ ~~right to demand (such) compensation as she chooses for~~ ~~the concessions she is asked to make; but is not entitled~~ <sup>she</sup> ~~as a right~~ ~~to share in the profits that the Republic of Nicaragua~~ ~~may reserve for herself as a compensation for such fav-~~ ~~ors and privileges as she, in her turn may concede.~~

In testimony whereof I have hereunto set my hand <sup>(and have caused the Seal of the</sup> ~~United States to be hereunto affixed.~~

Done in triplicate at the City,

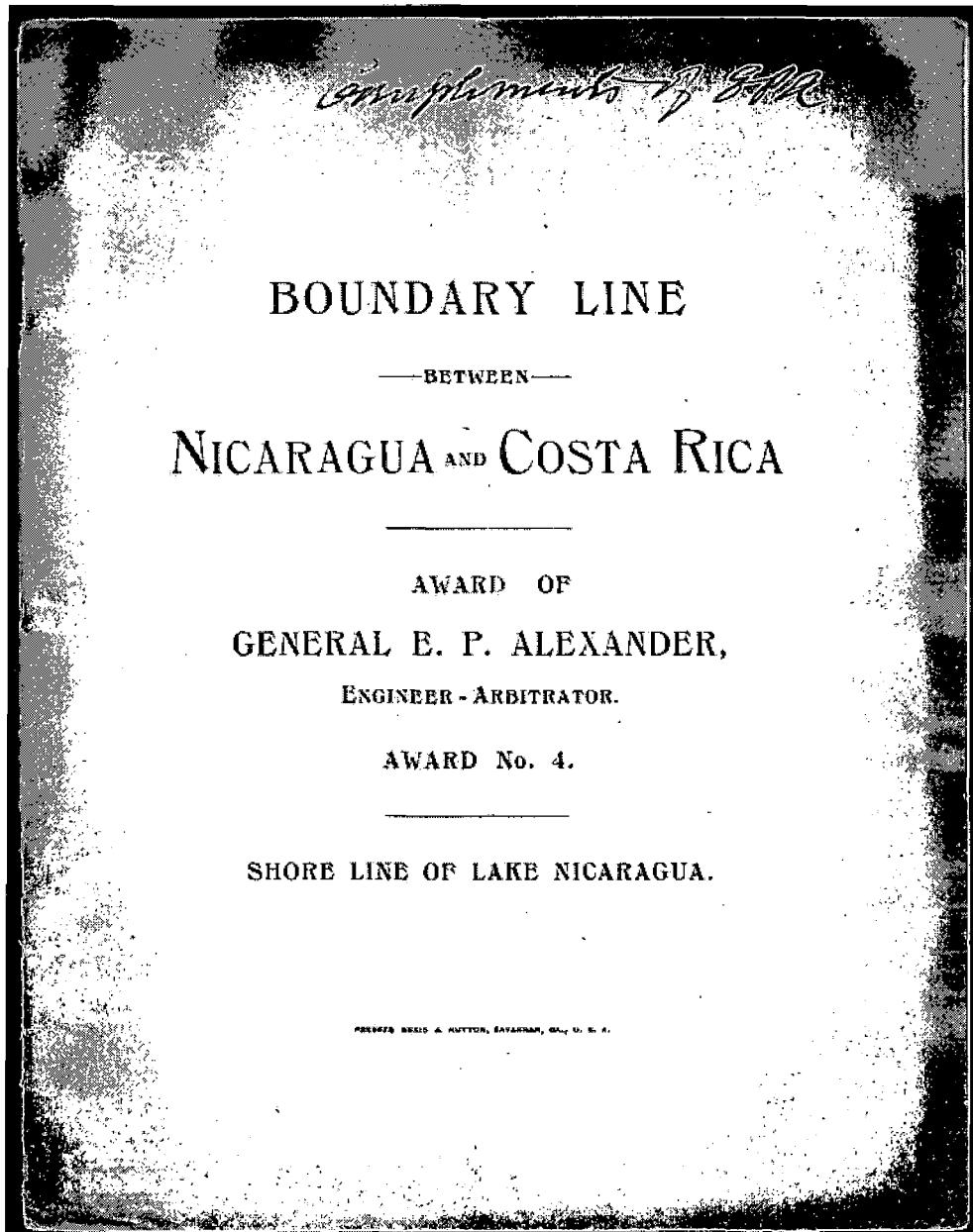
of Washington on the  
day of in the year one thousand  
and eight hundred and eighty-eight,  
and of the independence of the United  
States the one hundred and twelfth;

By the President.

John C. Calhoun  
Secretary of State.

*Annex*  
ANNEX 73

ALEXANDER, ENGINEER-ARBITRATOR: AWARD NO. 4. SAN  
JUAN DEL NORTE, NICARAGUA, 26 JULY 1899.



# BOUNDARY LINE

—BETWEEN—

## NICARAGUA AND COSTA RICA.

AWARD OF ENGINEER-ARBITRATOR.—No. 4.

SAN JUAN DEL NORTE, July 26th, 1899.

*To the Boundary Commissions of  
Costa Rica and Nicaragua:*

GENTLEMEN:

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

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

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

1st. Extreme high water; the level reached only in years of maximum rainfall, or some extraordinary conditions.

2nd. Mean high water; the average high level of average years.

3rd. Mean low water; the average low level of average years.

4th. Extreme low water; the lowest level reached in years of minimum rainfall, or other extraordinary conditions.

5th. Mean water; the average between mean high water and mean low water.

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

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

Between all permanent lands and permanent waters usually runs a strip of land, sometimes dry and sometimes submerged. We may call it, for short, semi-submerged. Its value for ordinary purposes is much diminished by its liability to overflow, but, as an adjunct to the permanent land, it possesses, often, very great value. If the owner of the permanent land can fence across the semi-submerged he may save fencing his entire water front. He also can utilize whatever agri-

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cultural value may be in the semi-submerged land in dry seasons. Both of these values would be destroyed and wasted if the ownership were conferred upon the owner of the water. Therefore equity always, and law generally, confers it upon the owner of the permanent land.

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

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

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

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

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

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

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



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

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

In argument against Nicaragua's claim of the extreme high water line, Costa Rica appeals to the general custom of geographers and scientific men in making ordinary topographical maps, who never adopt the extreme lines of overflows for the outlines of lakes. This argument of general custom has great weight, but it is equally against Costa Rica's claim for the mean low water line. Wherever wet and dry seasons prevail, general custom treats mean high water as the normal

state, always to be understood where no other level is expressed, and its line is assumed as the lake boundary in all ordinary topographical maps. Two quotations from Commander Lull's report of his Nicaraguan Canal survey will illustrate. (Rep. Sec. Navy 1873, p. 187.)

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

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

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

I am led to the same conclusion, also, from the standpoint of the two-mile-wide strip of territory.

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

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

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

"In reply I am cabling you to-day, as follows: 'Alexander, Greytown, Six; the six meaning, as per your letter, 106.0 as mean high level of lake. This elevation of 106.0 is, to the best of our knowledge, (Mr. Davis, our hydrographer) the mean high water for a number of years. \* \* \*'

"The highest level of the lake in 1898 was 106.7, last of November. The elevation of our bench mark on inshore end of boiler at San Carlos is 109.37 \* \* \*"

A complete copy of this letter will be handed you; and also blue-prints of the maps made by the Commis-

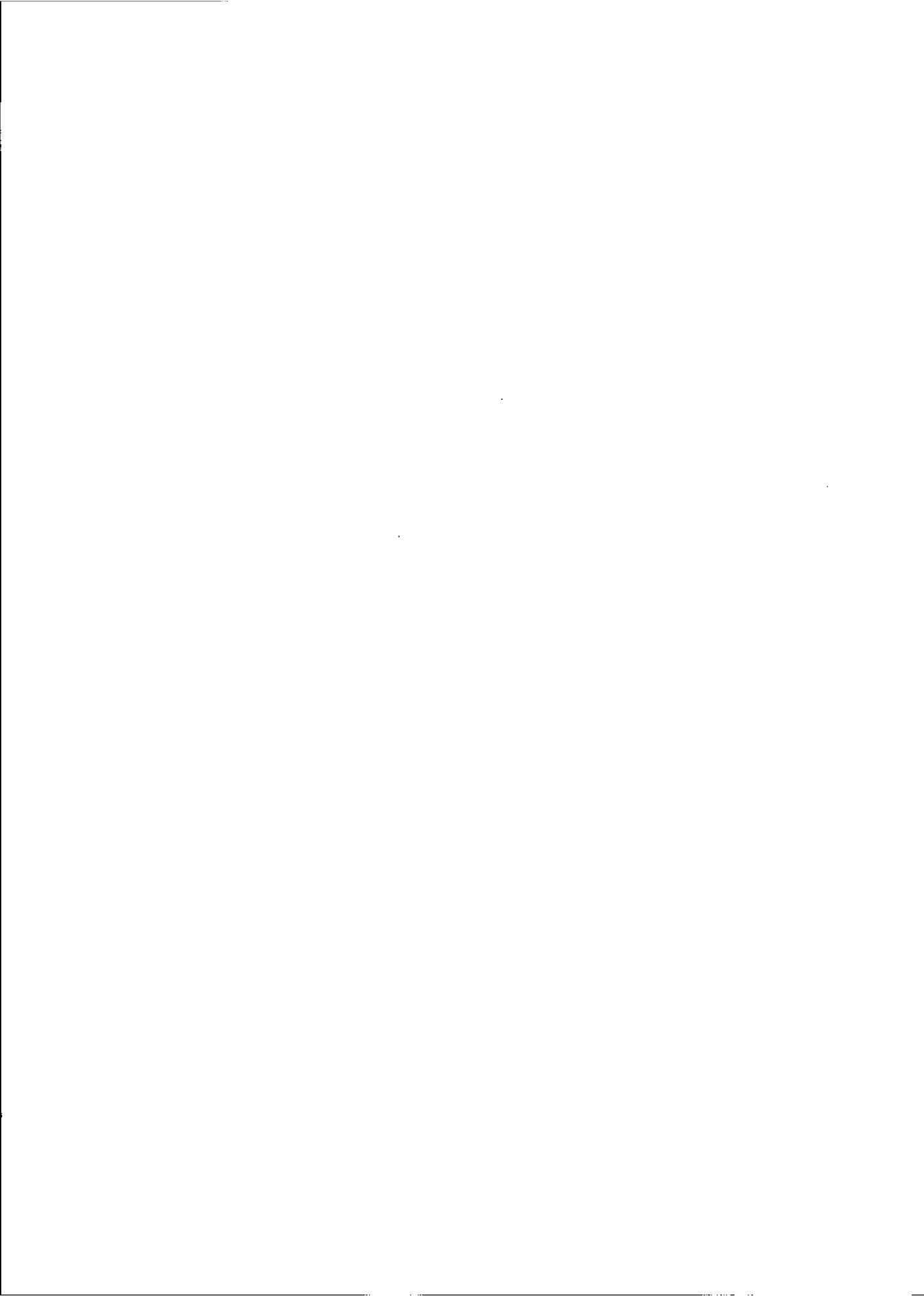
sion of the lower end of the lake, which may facilitate your work.

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

The shore line of Lake Nicaragua, at the level of 106.0 feet, by the bench marks of the United States Nicaragua Canal Commission, shall be taken as the bank of said lake referred to in the treaty of 1858.

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

E. P. ALEXANDER,  
*Engineer-Arbitrator.*



## ANNEX 74

"OBJETO" DICCCIONARIO DE LA LENGUA CASTELLANA POR LA REAL ACADEMIA ESPAÑOLA, 10 EDICION, MADRID, IMPRENTA NACIONAL. 1852.

(....)

OBJECT. m. Something perceptible by one or more of the senses, or with respect to which they are exercised to which a thing is directed or aimed. *Objectum.* || It is also called the conclusion or end of the acts of the powers. *Objetum.* || The aim or goal of a specific action or effort. *Finit. scopus.* *objetum.* || The subject or matter of a science, such as the OBJECT of theology, which is God. Among physicians, it is divided into material and formal. Material is the subject matter of the science, and formal is the aim; in medicine, for example, the "material" is the disease and the "formal" is the health. *Objetum, vei materiale vel formale facultatis.* || Ant. To object to, to take exception to, find fault with. || Ant. Fault and exception. || *OF ATTRIBUTION.* Called the main or final aim to which all acts or powers are targeted, and by extension, it is said of other things that are mainly attempted. *Attributionis objectum.*



## ANNEX 75

### YEARBOOK OF THE MINISTRY OF FOREIGN AFFAIRS OF COSTA RICA. 1888 (PP. 3-4).

(...)

The President of the United States of America, Mr. Grover Cleveland, issued his arbitral award on March 22 of this year, in which he declares the validity of the Treaty of April 15, 1858, and defines the rights of the two Republics as concerns navigation on the San Juan River, concessions for the excavation of the inter-oceanic canal and other important points expressed in the aforesaid award, which document appears among the annexes.

The President of the United States has proven himself worthy of the gratitude of Costa Rica and Nicaragua by accepting the duty that these have entrusted to his erudition and highest respectability; and for having put an end, with his illustrious decision, to the sole motive for disagreement that separated these two countries.

The eminent service provided by the Honorable President of the American Union shall be appreciated more each day because it is to be expected that from this day forward Costa Rica and Nicaragua, for the good of the two peoples, will work united with the same ideals in the enterprises directed to develop their wellbeing and progress.

(...)



## ANNEX 76

### YEARBOOK OF THE MINISTRY OF FOREIGN AFFAIRS AND WORSHIP OF COSTA RICA. 1900. (PP. 10-11).

(...)

This Secretariat is pleased to announce that the setting of boundaries between this Republic and that of Nicaragua will be completed shortly. Two important questions were presented last year to the decision of the Arbitrator: the location of the line parallel to the Lake and the fixing of the terminus of the dividing line at the Bay of Salinas. Both questions were decided according to law by the Honorable General Alexander who, without a doubt, was able to make an accurate interpretation of Mr. Cleveland's award, which established, in a conclusive manner, the intelligence of the Cañas-Jerez Treaty. With respect to the terminus of the line at the Bay of Salinas, it should be noted that it was fixed by the Arbitrator precisely at the place that Costa Rica as always defended, through its various Boundary Commissions, as the center of that Bay. Therefore, it is only necessary to complete the setting of the boundaries, the material work in a relatively small part of the line and to place the markers there.

(...)



## ANNEX 77

**DE PERALTA, MANUEL M. "HISTORIA DE LA JURISDICCIÓN TERRITORIAL DE LA REPÚBLICA DE COSTA RICA", MADRID, 1891, PP. 38.**

### Extract

(...)

55. Rodrigo de Contreras, Governor of Nicaragua protested them and filed a claim against Diego Gutiérrez for the part over which he believed he had a right in the Desaguadero. The Council of Indias, after hearing the parties, ruled on March 16, 1541, confirming the terms of the Royal Charter to Diego Gutiérrez. Contreras appealed this sentence and the Council amended it on April 9<sup>th</sup> next, upholding the power granted to Gutiérrez to enter through the Desaguadero and to occupy and take whatever had not been taken up to fifteen leagues before reaching the lake, but depriving of the navigation and fishing enjoyment in common with the Governor of Nicaragua in the lake and in the fifteen leagues of the river, counted from its origin in the lake. No other objection was made with respect to the Royal Chapter taken with Gutiérrez and, in particular, it is important to mention here that neither the Audience of Panama, nor the Duchy of Veragua protested the provisions of the Crown in favor of Gutiérrez.

(...)



## **ANNEX 78**

### **YEARBOOK OF THE MINISTRY OF FOREIGN AFFAIRS AND WORSHIP OF COSTA RICA 1998-1999. (P. 35).**

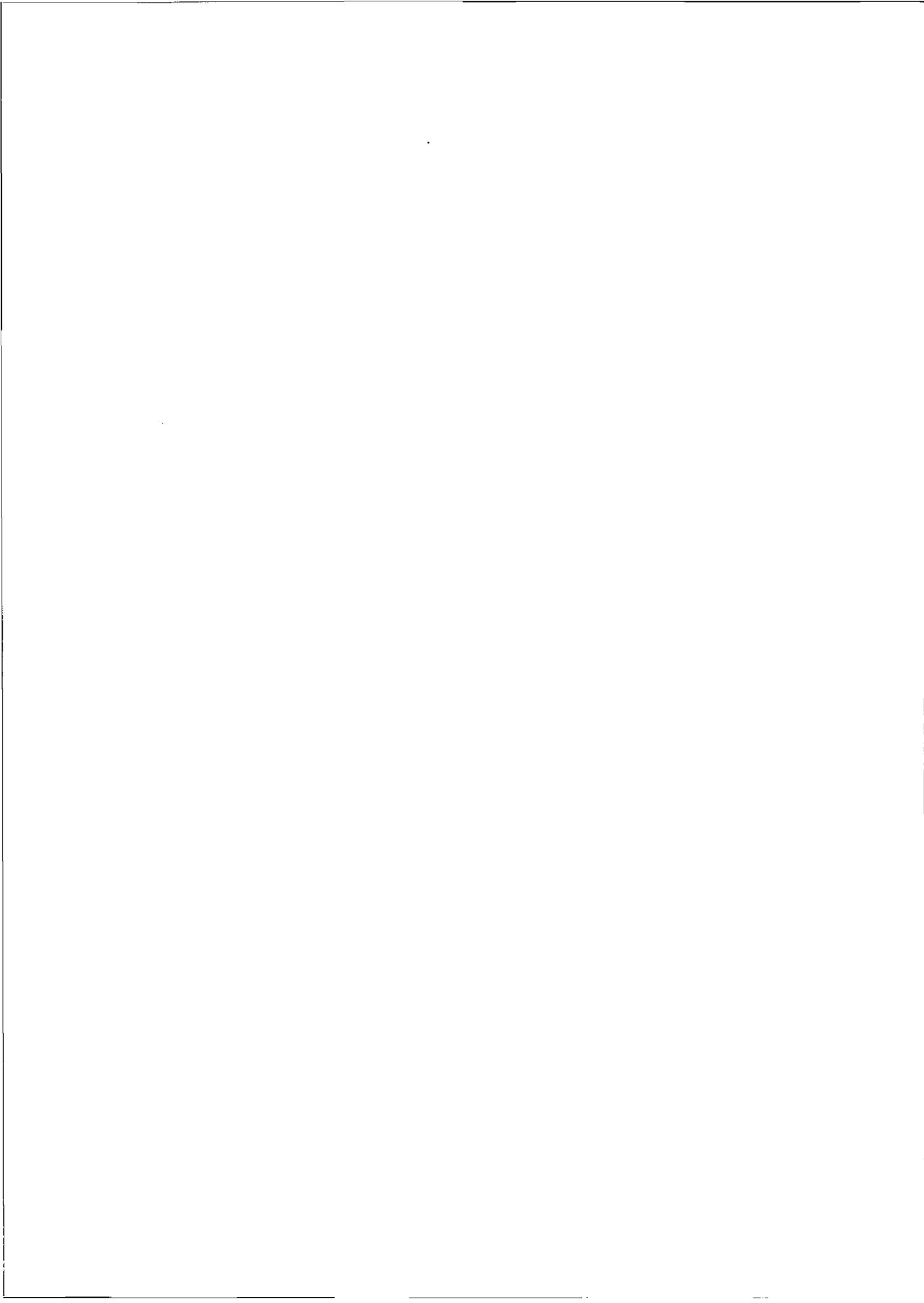
[Page 35]

On that same August 12, Chancellor Rojas stated to the press that Costa Rica would seek to exhaust diplomatic means to resolve the conflict, but that if no solution was possible, he would consider a complaint before the International Court of Justice. He announced that the Nicaraguan authorities would be asked to point out the mechanisms that should be employed in the future to sign agreements with Nicaragua because they could not endorse letters that were later questioned. He also ruled out the possibility of taking reprisals against Nicaraguans who illegally reside in Costa Rica. Costa Rican Public Security authorities, on the other hand, announced that navigation by vessels of the Nicaraguan armed forces would be prohibited in the Colorado River, where Nicaragua does not enjoy any right of navigation.

On August 13, President Rodríguez stated that the prohibition imposed by Nicaraguan authorities on free passage of vessels carrying police members with their service arms violated Costa Rica's rights of free navigation in the San Juan River and urged the Nicaraguan Government to settle the disputes through peaceful means.

In statements published by the news agency ACAN-EFE on August 14, 1998, the Vice-President of Nicaragua, Enrique Bolaños, qualified the prohibition on navigation by members of the Costa Rican civil guard in the San Juan River as a prudent measure to avoid incidents with Costa Rica. With respect to the unilateral annulment of the Lizano-Cuadra agreement, Bolaños said that another type of arrangement would be sought to maintain good relations between Central American neighbors and brothers. He also stated that the agreement was annulled because Nicaragua is a Constitutional State and the agreement was unconstitutional.

(...)



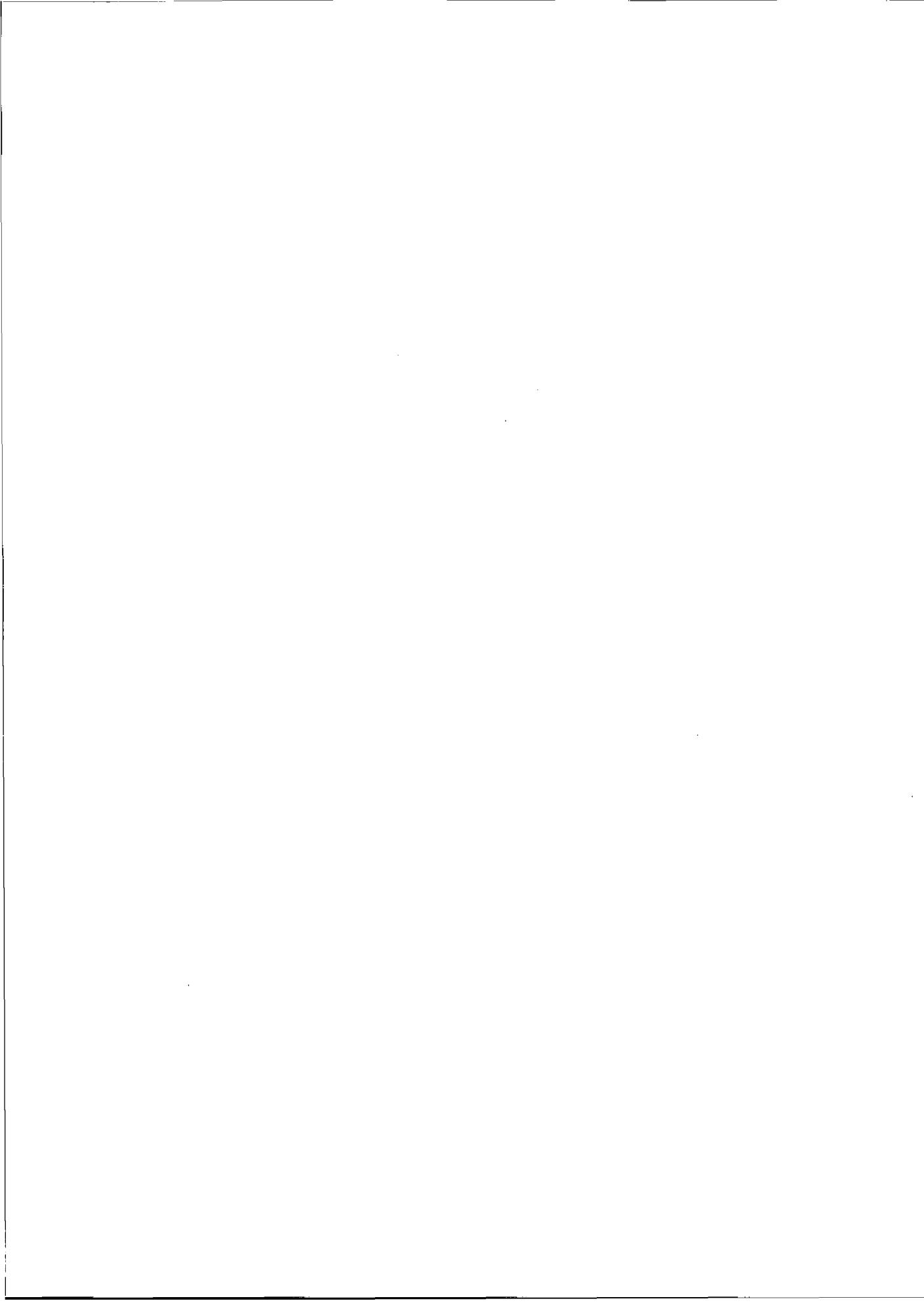
## **ANNEX 79**

### **YEARBOOK OF THE MINISTRY OF FOREIGN AFFAIRS AND WORSHIP OF COSTA RICA 2001-2002. (PP. 143-144)**

#### **ANNEXED N°1**

#### **PRESS OFFICE CHRONOLOGY OF THE COSTA RICAN DIPLOMACY**

... “On 11 January: Chancellor Roberto Rojas, in referring to aspects related to Nicaragua, emphasized that Costa Rica’s perpetual rights of free navigation in the San Juan River are those established in the Cañas-Jerez Treaty and clarified by the 1888 Cleveland Arbitral Award. “Costa Rica does not want any right that does not correspond to it according to those international instruments”. We know that the national laws cannot be against to International Treaties reason why we trusted that the Congress of Nicaragua - if it is that it is required of an internal law - approves a law that is consistent with the right International”, said the Chancellor. And with respect to the actions of administrative return of illegal undocumented people and who carried out the migratory authorities in those days, it emphasized that our country did not have any spirit to mistreat to Nicaragua “... but our authorities are forced to make fulfill the existing legal dispositions in the matter of enter the country of foreigners. This sense, the illegal migrantes can enter the national territory without documents, neither here nor in no country of the world”....”



## ANNEX 80

**"NICARAGUA Y COSTA RICA". EDICIÓN DEL CENTROAMERICANO. 24 OCTOBER 1857. (NICARAGUA AND COSTA RICA).**

GUATEMALA GAZETTE  
Monday, November 23, 1857

[EXTERIOR]

NICARAGUA

(From the *Centro Americano* of October 24)

### NICARAGUA AND COSTA RICA

An event of great importance for both countries and perhaps very disastrous for the interests of Central America, will be the object of our weekly tasks. Friends enthusiastic with the reorganization of the country in one single nation, we see with deep sentiment all the steps that tend to alienate the will of the peoples from that grandiose object, and any measures that somehow show that we are incapable of governing ourselves through our own Government, as the enemies of our nationalities continually shout on the press. We have considered that questions of this nature would always exist among brother States, which could translated at the present time as the expression of the perennial rivalries that have always haunted the Central American peoples; and that is why we have demanded the vigorous intervention of all the States in those matters that could affect general interests.

The idea of starting quarrels between brother States in the critical circumstances in which they find themselves; when an active and vigilant enemy is waiting for the smallest pretext to justify its usurpation in these coveted countries; when the entire world has its eyes fixed on these regions, from which it is rightfully expected that the painful lesson they just received will be fruitful in happy results for its political being; such idea, we say, has seemed so strange for us that we have rejected it as proper of an insane person, like an act of suicide in which the person who sadly committed it would drag all those that in some way were connected to his destiny.

But the ill-advised Government of Costa Rica, without stopping to consider the terrible consequences that the spark of a civil war in Central America would have at this time (we cannot give any other qualification to a war between brother States), has engaged in an outburst of hostilities against Nicaragua, making use of the advantages it obtains in the river to obstruct its commerce. Colonel Cauty, on behalf of his government, has called on the Commander of San Carlos to surrender the point that the Government has entrusted to his defense, and later has made the same call to the Governors of Oriente and Mediobia, pieces of which we publicize further below.

Such outrageous conduct on the part of the Costa Rican Government towards Nicaragua, without any precedent to justify its actions, gives the Government of Nicaragua the right to harass Costa Rica by any means, however, knowing that quite often an innocent people is dragged by the imprudence of its leaders to unjustifiable acts, we advise our Government that its hostilities be targeted only to the administration, and is thus compromising with its rash acts the future of the people it governs and of all those in Central America.

## ANNEX 81

### **"PAÍS OBLIGADO A INTEGRARSE" COSTA RICAN NEWSPAPER "LA NACIÓN". SAN JOSE, 19 MAY 2002. (COUNTRY FORCED TO INTEGRATE)**

LA NACION.COM  
NATIONAL NEWS

#### **COUNTRY FORCED TO INTEGRATE Abel Pacheco talks about the "Central American embrace"**

(...)

Pacheco to informal dialogue on the river.

President Abel Pacheco does not want, for now, any formal dialogue with Nicaragua to discuss the mess created by the navigation of Costa Rican armed police on the San Juan River.

His argument is that "formalisms arouse distrust, which perverse leaders take advantage of, and we do not want to give room to that", he said yesterday when he confirmed that his next trip to Nicaragua has a date: June 20.

On that Thursday he will informally discuss the issue with Nicaraguan President Enrique Bolaños, who invited him to a festival in Masaya, where they will eat the typical "vigorón" (chicharon with yucca and a salad) and drink "pinolillo".

He will spend the night there and his intention is to have contact with the people because he considers that this is what has been lacking for a long time between the two countries.

The dispute concerning the navigation of Costa Rican police on the San Juan River began in July 1998 when Managua vetoed passage of Costa Rican police with arms.

Since then, a series of bi-national efforts have been made to find a way out, but these have not been unsuccessful.

Yesterday, Pacheco considered that the quarrels must end and we must seek a way out "as civilized people".

He stated that it involves a discussion between brothers where no imperialist threat exists from either of the parties.

"We must understand that it is absurd that a country with no army is fighting over the passage of armed persons on a navigable river that is drying up. So, what's this row about?" asked the President.

## ANNEX 82

**"TOVAR RECONOCE SOBERANÍA NICA". NICARAGUAN NEWSPAPER "LA PRENSA". MANAGUA, 18 FEBRUARY 2005. (TOVAR RECOGNIZES NICARAGUAN SOVEREIGNTY)**

LA PRENSA

Tovar recognizes Nicaraguan sovereignty

Assures that President Pacheco was misinterpreted

Ludwin Loáisiga López

Every drop of the river San Juan is Nicaraguan, stated yesterday the Chancellor of Costa Rica, Roberto Tovar Faja, correcting the President of his country, Abel Pacheco, who just three days ago said that his country will maintain sovereignty over this waterway.

"Since 1858 nobody doubted the sovereignty over the river. A drop of the San Juan River is a Nicaraguan drop", stated Tovar after signing a Border Development Program with Nicaraguan Chancellor Norman Caldera.

"The San Juan River is absolutely an inalienable property of Nicaragua," he emphasized.

The question concerning the San Juan River jumped this week to the public scene due to the statements of President Pacheco, who insinuated that sovereignty over these waters also corresponds to Costa Rica.

Tovar assured that the remarks of the Costa Rican President were misinterpreted.

The Costa Rican Chancellor said that the final position of his country comprises three points: the San Juan River is Nicaraguan, it should serve to unit both nations, and that Costa Rica has some rights over those waters.

General Javier Carrion, Head of the Nicaraguan Army, clarified on Wednesday that sovereignty over the San Juan River belongs to Nicaragua and for some time armed Costa Rican delegations were allowed to navigate the river, by way of a bi-national agreement, no longer in effect, for the purpose of combating criminal groups.



## ANNEX 83

### **COMMUNIQUÉ OF THE MINISTRY OF FOREIGN AFFAIRS AND WORSHIP OF COSTA RICA: "COSTA RICA ANNOUNCES FILING OF APPLICATION, BEFORE THE INTERNATIONAL COURT OF JUSTICE, ON HER RIGHTS OF NAVIGATION ON THE SAN JUAN RIVER, SAN JOSE, 28 SEPTEMBER 2005.**

Ministry of Foreign Affairs and Worship  
Institutional Communication Directorate  
TELEPHONE (00 506) 256 65 61 FAX 256 67 37  
E-Portal: [www.rree.go.cr](http://www.rree.go.cr)

The Government of Costa Rica announced today that in the next hours it will submit before the International Court of Justice, headquartered in The Hague, a complaint regarding its navigational rights in the San Juan River, which were granted to her by the pertinent legal instruments.

The decision was announced by the President, Dr. Abel Pacheco de la Espriella, and the Minister of Foreign Affairs and Worship, Roberto Tovar Faja, at a press conference held at the Presidential Office, at 16:00 hours, this Wednesday, September 28, 2005.

The Chancellor explained that today he instructed the Ambassador of Costa Rica, Edgar Ugalde, to submit the complaint before the International Court of Justice, headquartered at The Hague.

The Costa Rican measure will be communicated in the next hours to the Government of Nicaragua through a note that the Minister of Foreign Affairs and Worship of Costa Rica, Roberto Tovar Faja, will remit to the Minister of Foreign Affairs of Nicaragua, Norman Caldera.

The President of Costa Rica, Dr. Abel Pacheco de la Espriella, stated that in spite of the advances and opportunities derived from the Agreement signed by the Chancellors of Costa Rica and Nicaragua on September 26, 2002, "the question concerning Costa Rica's rights in the San Juan River still persists as the only source of dispute between our two countries."

He recalled that the mediation and arbitration mechanisms proposed by Costa Rica were not accepted by Nicaragua. "Consequently, in accordance with the principle of peaceful co-existence between nations and in strict

compliance with Costa Rica's tradition to respect international law, we have decided to bring the case to the knowledge of the International Court of Justice."

"We hope that this historical moment will generate authentic national unity", stated President Abel Pacheco, and added that "Costa Rica and its rights are above any particular interest".

On his part, the Costa Rican head of diplomacy stated that Costa Rica comes before "the highest international judicial organ, with the objective of surmounting forever the only source of disagreement with Nicaragua."

He reaffirmed that his country "is not requesting more rights or less rights than those granted to Costa Rica by the pertinent legal instruments."

He stated that "to appear before the International Court of Justice could never signify a disruption of friendship between two peoples. Both Costa Rica and Nicaragua have accepted the Court as a means to guarantee peaceful co-existence and mutual respect between the nations."

"We come before the International Court of Justice in the sincere hope that its eventual decision will contribute to ensure that no reason for discord will ever exist between Costa Rica and Nicaragua", added the Minister of Foreign Affairs.

"I harbor the hope that through this means we will leave future generations a relationship of fraternity and friendship between our countries without causes that affect them. It is our historic responsibility", stated the Minister of Foreign Affairs, Roberto Tovar Faja.

Institutional Communication

(Costa Rica - ICJ - 686)

Wednesday, September 28, 2005.

ANNEX 84

**TEXT FROM THE NATIONAL RADIO AND TELEVISION CHAIN  
ADDRESSED BY THE PRESIDENT OF THE REPUBLIC [OF  
COSTA RICA], DR. ABEL PACHECO. 2 OCTOBER 2005**

Communication, Information and Press  
Presidency of the Republic  
Costa Ricans, good evening:

You will recall that at the beginning of this administration, we found that the differences concerning the question of free navigation of Costa Ricans in the San Juan River had not been resolved and, on the contrary, threatened to turn into a conflict of greater scope.

On the other hand, we faced a broad array of possibilities of working together with our northern neighbors to overcome the condition of underdevelopment and poverty that affects our peoples.

Thus, faithful to the way of being of Costa Ricans, we strived for a bilateral understanding on this and other important matters in the relation of the two sister nations, and we gave ourselves a period of three years to reach a definitive agreement on the dispute to settle all our differences.

The agreement that was signed by the Chancellors on September 26, 2002, allowed us to achieve many of the expected goals.

However, upon the expiration of that agreement, a reality is still present, which is the only source of discord between Nicaragua and Costa Rica: the scope of the rights of free navigation that Costa Rica has in the San Juan River, which sovereignty Costa Rica has never questioned and never will object. We well know that the San Juan is Nicaraguan.

To resolve this matter, Costa Rica has proposed mediation or arbitration to Nicaragua on various occasions, but Nicaragua has never accepted these solution mechanisms.

Now, having exhausted the three-year period for seeking a bilateral understanding, and Nicaragua not willing to go to arbitration, we have made the decision that we, Costa Ricans, will present our case and explain our

legitimate right to the International Court of Justice, headquartered at The Hague, which is the highest judicial body of the United Nations.

This is a civilized, peaceful and legally correct way to settle disputes among peoples, among nations.

In the past, the Government of Nicaragua has gone there to settle its disputes with other countries.

Thus, there is nothing strange, unfriendly or hostile in this decision of the Costa Rican Government.

It is purely and simply the exercise of a legal action of an international nature, so that independent and objective judges issue a resolution that will forever end the only source of disagreement between the sister nations of Costa Rica and Nicaragua.

We do not ask for more rights, nor accept fewer rights, than those granted to us by the pertinent legal instruments.

Ladies and gentlemen:

Costa Rica and Nicaragua are sister nations, neighboring nations, they both need to continue working together in the struggle to overcome underdevelopment and eradicate poverty that prevails especially in the border zone.

We have significantly advanced in the integration process with the other nations of the region and it is necessary that we continue on this path.

In Costa Rica, there are important companies with Nicaraguan capital, while important national companies are engaged in productive activities in our sister nation.

Our commercial flows are important for the economies of both countries.

We have made important strides in the development of the objectives of the Plan Puebla-Panama and we have in process a Free Trade Agreement with the United States, Central America and the Dominican Republic, as well as negotiations with the European Union for a similar agreement, and already we anticipate similar alliances with Japan, China and MERCOSUR, so it is not a time for disputes.

Neither are retaliations necessary nor appropriate, nor antagonism between peoples who are brothers.

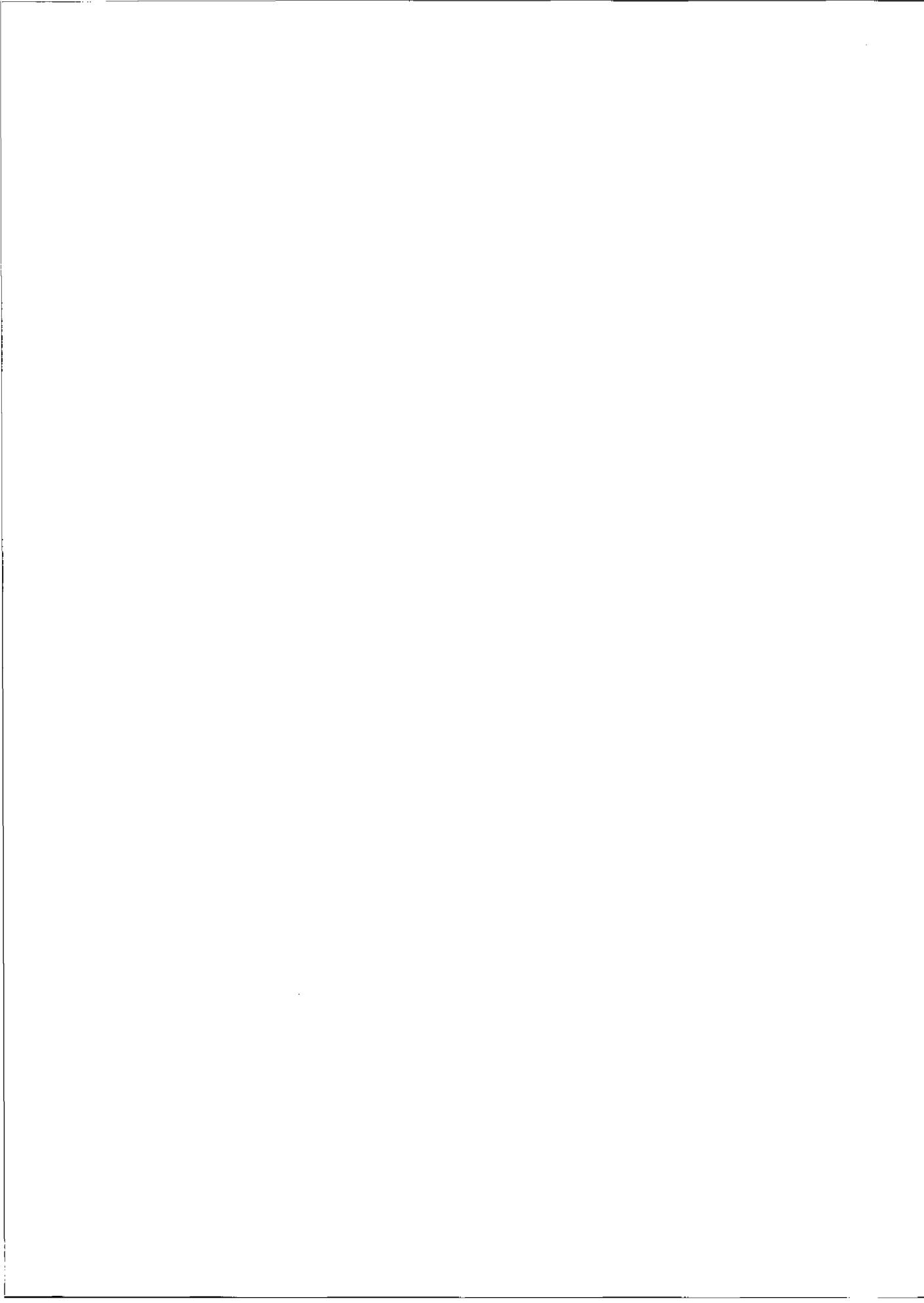
In addition to geography, in addition to history, we are united by common challenges, opportunities that we should jointly take advantage of, and a world that sees Central America as a single block.

Therefore, an issue –that will be resolved through the application of international law instruments– should not affect the friendship between two peoples nor the bi-national and regional work that we must push forward in an effort to achieve the highest levels of human development for our two nations.

I ask Costa Ricans to behave as we always have done; with prudence, with good judgment, with respect and with great faith in justice.

I call upon our Nicaraguan brothers to act with prudence and good judgment, and to work together as a way for achieving better living conditions for both countries, which they both deserve.

May God bless the homes of our two nations.



## **ANNEX 85**

**"GOBIERNO DESECHARÁ ARMAS DE GUERRA" PERIÓDICO "LA NACIÓN". SAN JOSE, 6 JUNE 2006. (GOVERNMENT WILL DESTROY ITS MILITARY ARMAMENT)**

Nicholas Aguilar R. [naguilar@nacion.com](mailto:naguilar@nacion.com)

The Government will sell or destroy its military armament, namely the M-16 guns that the Public Force currently has, announced the Minister of Public Security yesterday, Fernando Berrocal.

"We do not need military arms not even to protect the borders. It is necessary to change them by official police guns", expressed the Minister Berrocal when recognizing that he must "take a decision" in a short time.

Berrocal made this declaration after the recovery of 15 M-16 guns robbed in a police delegation in Guácimo, Limón, the previous week.

The M-16 are military armament donated to the Public Force several years ago.

Those guns were constructed in the sixties. The United States troops used them in the war of Vietnam.

### **Not more for the Police.**

Berrocal reiterated that the Police must not have those arms. "It seems to me a barbarism that in a delegation as the one of Guácimo were 15 M-16".

According to his declarations, he has already asked the Director of the national arsenal a report on the armament distributed in the police posts of the whole country to determine how many arms are for a military use and to gather them for their destruction, sale or storage.

He added: "we are going bring many of those arms to the arsenal and we will leave some in the regional Directions of the Public Force, only those that are needed".

The M-16 can perforate bullet-proof helmets and vests. It is an assault rifle that uses the Armed Forces of the United States.

Minister Berrocal stressed that “there is a great amount of arms that do not comply the requirements of a civilist police”. Therefore, he did not discard to sell them to save funds that allow to acquire “police arms”.

“We did not need military arms, never”, emphasized the holder of Public Security.

ANNEX 86

**ROYAL CHARTER TO DIEGO ARTIEDA. EL PARDO, 1  
DECEMBER 1573.**

[fol. 44 v.]

The King

Royal Charter with Captain  
Diego de Artieda

Corrected

WHEREAS you, Captain Diego de Artieda, being desirous of serving Our Lord God, and with the intent that the Holy Catholic Faith and evangelical law be propagated, and our Crown, revenues and Royal patrimony be enlarged, have proposed and have resolved to go, in our name and at our expense, to discover and colonize the province called Costa Rica, in our Indias in the Ocean Sea, and that you will endeavor in all possible ways to bring the native Indians of that land to an understanding of our true God, and to our submission and obedience; and you have pleaded that we give you license to do this, and in that respect, we have mandated a royal writ and Royal Charter be drawn. And having been read by the members of our Council of the Indies, in keeping with the aforesaid, and our earnest desire for the conversion and instruction of the Indians of the said province, and that our Holy Catholic Faith and evangelical law be preached and taught to them so they may be saved, we have considered and consider it fit, and have agreed to make and grant to you, for the said discovery, colonization and pacification, a royal writ, Royal Charter and accord in the following manner:

[I] Firstly, you, Captain Diego de Artieda, offer to discover, settle and pacify the said province of Costa Rica, at your own expense and mission, without obliging us to come to your aid with any other thing from our Treasury to help you in that respect; and that you will spend and are to expend twenty thousand ducats; and that to go on the said discovery, you will have in the ports of Sanlúcar de Barrameda or Cadiz, during the entire month of January first ensuing in the year one thousand five hundred and seventy-four, or no later than [fol. 45] at the end of the month of April of said year, three vessels, two of high-board, and the other a galley, frigate or

caravel, sufficient for navigation; and that all three vessels will have a carriage of up to four hundred and fifty tons, with the best possible caulking, outfitted with artillery and equipped with sails, rigging, cables, anchors and mariners and seamen as may be necessary for your service and government, and all the rest that may necessary for them; and that you will be ready to set sails and begin your voyage with one of the fleets that went to the mainland or New Spain in the year seventy-four.

(...)

[II] 2 – Moreover, you have offered, for the said purpose, to make and gather in these our Kingdoms, and to take on the said vessels to the said province of Costa Rica, at least two hundred men, a hundred of them married, and all useful for the said discovery, colonization and pacification; and that you will have them together and ready to set sail at one of the said ports of Sanlúcar or Cadiz by the end of the month of April first ensuing, as aforesaid, each equipped with the necessary and convenient weapons, such as swords, daggers, harquebus, ballasts, helmets, bucklers, lances and whatever else may be necessary for the journey.

(...)

[V] 5 – And after the said three vessels have been visited and are ready as aforesaid, you offer to leave, with the help of God, from one of the said ports and to go with the said vessels and people and supplies, together with one of the said fleets from the mainland or New Spain, whichever left first on the said next year of one thousand five hundred and seventy-four, with everything in good order for the said discovery, colonization and pacification, and well armed and ready for war, and to take your course to the said province of Costa Rica.

[fol. 46]

And once you arrive there, you offer to discover the entire coast of the said province, from the mouths of the *Desaguadero* to the confines of Veragua, in the North Sea, and that you will take possession on Our behalf of whatever has not been taken; and you will discover all the inland of the said province up to the South Sea, from the place called Chomos, from where the province that corresponding to the part of Guatemala takes its name, straight to the valleys of Chiriquí, until you reach the said province of Veragua; and you will populate three towns in the said province of Costa Rica, one of which will be provincial and the other two suffragan, in the most comfortable, fertile, abundant and necessary parts, so that the

colonization and pacification of the said province may proceed from there; one of which will be at the port of Bocas del Drago, in the North Sea of the said province; and if you should deem it is not convenient to make and populate the said town there for any just causes, you will populate it in another of the seaports on the said coast, where it may be more necessary, convenient and useful for the population of the said province, treatment and trade of the Spaniards, and people residing therein; and the second of the said three cities you will populate in the mediterranean of the said province, in the valley [fol. 46 v.] of Guarco; and the other in the province of Garavito, or in another more comfortable part on the shores of the South Sea.

(...)

[XII] 12 –Firstly, we give you license and authority to discover, settle and pacify the aforesaid Province of Costa Rica and other lands and provinces contained therein, from the North Sea to the South Sea in latitude and in longitude from the border of Nicaragua in the Province of Nicoya, straight to the valleys of Chiriquí, up to the Province of Veragua, on the southern part, and on the northern part, from the mouths of the Desaguadero, that belong to Nicaragua, all across the land, to the Province of Veragua. And we bestow upon you the Governorship and Captaincy General of the said province of Costa Rica and of all the other lands comprised therein, as aforesaid; for the rest of your life, and of your son or heir, or person that you may appoint; with a salary of two thousand ducats per year, which amount is to be paid you out of the rentals and revenues pertaining to us in the said province, and if there were none, we will not be obliged to pay you [fol. 48 v.] any part of the said salary; and for that, we will mandate that title and necessary instructions be given to you.

(...)

(XL) 40 – Moreover, we offer you, Captain Artieda, that after you have fulfilled this writ and Royal Charter, as you have offered, we will take into account your services to honor you and give you vassals in perpetuity and the title of Marquis or another.

Therefore, after you, Captain Diego de Artieda, have fulfilled the contents of this royal Charter in the manner that you have offered, and the instructions and provision that we give you and hereinafter mandate be given to you for the said province and settlement therein and for the good treatment and conversion and doctrine of the Indians, we hereby promise you and assure on our faith and Royal word, that whatever you need from us

we will mandate be kept and complied; and that it not be contravened or breached in any way, provided that if you do not fulfill what you have offered, as aforesaid, we will not be obliged to mandate that anything of the aforesaid be kept, but rather we will mandate that you be punished and action be taken against you like any person who does not keep and comply with the mandates of his King and natural Lord; and for your security, we have mandated that the present be issued, signed by our hand, rubricated by our Secretary Antonio de Eraso and issued by those of our said Council (fol. 54) of the Indias. Done at El Pardo, on the first day of December of one thousand five hundred and seventy-three. I THE KING. Rubricated by Antonio de Eraso. Issued by the President Juan de Ovando, Licentiate Castro, Mr. Gómez Zapata, Licentiate Botello Otalora, Gasca, Gamboa and doctor Santillán and Licentiate Espadero.

## ANNEX 87

### MR. FRANCISCO MARIA OREAMUNO, DIPLOMATIC MISSION IN NICARAGUA (INSTRUCTIONS). SAN JOSE, 26 JULY 1838.

Instructions carried by the special Minister appointed to the Government of Nicaragua.

1<sup>st</sup> Celebrating an express and mutual recognition of both States independence, sovereignty and liberty, perpetually delimiting their territory dividing line and providing for the mutual exchange of defendants and Treasury debtors, regardless of their nature and residence, who are claimed by the competent authority.

2<sup>nd</sup> Celebrating, as a result, the closest friendship between Nicaragua and Costa Rica and pledging mutual defense of their reciprocal independence, sovereignty, and liberty, specifying the relief supplies to be provided by sea and land, in the case of being invaded by foreigners or by any other States of the Republic, or by any person trying to depress such rights by force and under nationality denomination or character.

3<sup>rd</sup> Establishing the obligation of actively cooperating in the creation of a general government, preserving and sustaining it, contributing to its expenses with a proportional allotment, and recognizing the national debt and also contributing to its amortization in a proportional manner.

4<sup>th</sup> Establishing principles to help each other when legitimate respective authorities are disowned or attacked by internal factions.

5<sup>th</sup> Requesting the cooperation of the Government of Nicaragua for the diocesan chapter to authorize a capitular vicar in the spiritual jurisdiction of Costa Rica, with the same powers possessed by the Nicaraguan vicar and reporting only to said chapter; and for the chapter to give its express consent concerning the diocese division, specifying the involvement this Government should have in appointing clergymen and capitulars while the bishopry for Costa Rica is provided.

6<sup>th</sup> Establishing both States' reciprocal obligation of fixing the main road leading from one to the other to their respective borders, without levying traffic on it.

7<sup>th</sup> Since a tobacco contract was entered into by that Government and this one in the year 823, according to which the former still owes a certain amount, he will previously settle the account and through the corresponding installments will collect the remainder.

8<sup>th</sup> He will similarly claim the indigenous community funds belonging to this State and existing in times of the Spanish Government at the Nicaraguan Government's general treasury.

9<sup>th</sup> He will also claim the rustic and urban farm sales taxes, which, located in this State and sold by neighbors and residents of that one, have been paid there.

10<sup>th</sup> He will additionally ask for payment of obligations the late Pedro Muñoz and his creditors assumed in the State of Nicaragua upon Nicoya district tithe auction sales, in the three-year period elapsed after its annexation to Costa Rica.

11<sup>th</sup> Similarly, he will ask for the armament which former Chief Cerdá took away in the year 27 from the Costa Rican division that was returning from the national army, along with gear it was bringing, or otherwise he will determine an indemnity payment.

12<sup>th</sup> After these debts have been acknowledged, the Minister may grant terms for repayment of the amount owed to this State by the Nicaraguan State on account of the tobacco contract entered into in the year 23, the indigenous communities, and the indemnity for the armament taken away in Managua.

13<sup>th</sup> He will also be able to compromise and conform in reference to the late Pedro Muñoz's debt, resulting from Nicoya district tithe auction sales, referred to in the tenth paragraph of these instructions, and by the sales taxes paid so far, as mentioned in the ninth instruction.

14<sup>th</sup> He will ask for new instructions on any new incidents or propositions on matters not covered in the preceding articles, providing extensive information on related issues.

15<sup>th</sup> Concerning the treaties he enters into, the Minister will not leave until he receives their ratification or reforms for him to stipulate them, unless an unforeseen and very dangerous event forces him to leave before completing his mission, in which case he will render account through an express dispatch: and if unfortunately he should become sick and seriously ill, he

will pass on these instructions and the files documenting them to the secretary, who shall keep them while expecting orders before returning.

16<sup>th</sup> In all businesses concerning the mission, the secretary will authorize communications with the Government of Nicaragua and with this one. He will also authorize the treaties, pacts, or agreements entered into.

17<sup>th</sup> He will set down Costa Rica's freedom to navigate on the San Juan River and its freedom from export duties on its fruits leaving through the same river, since its territory contains the Sarapiquí River, the water of which increases the San Juan River flow. If necessary, this covenant shall include the prohibition of introducing foreign goods or merchandise to Costa Rica through the same waterway, in case entered goods could not be registered to pay duties at this State customs: and a fifth, fourth, or third of the annual liquid returns in favor of Nicaragua may be agreed upon, providing exports are done freely.

Given in the city of San José, on the twenty sixth day of the month of July, eighteen hundred and thirty eight.

*(Signature of Mr. Braulio Carrillo, Chief of State)*

Reserved instructions in addition to those given on this date to the Minister appointed to the Government of Nicaragua.<sup>1</sup>

1<sup>st</sup> On the first instruction, it should be borne in mind that State sovereignty should know no other limits but those established by public international law between independent nations, and that their freedom is so vast they can become politically organized as they deem it best. In demarcating the dividing line it should also be considered that Costa Rica owns the Nicoya District, and thus the dividing line should go from La Flor to the right banks of the San Juan River, this being the river flowing from Lake Nicaragua to its mouth on the Atlantic: its right bank, downstream to the sea, should be recognized as belonging to Costa Rica, even though the waters belong to Nicaragua; the same recognition should be made with respect to the coast, from the San Juan River mouth to Escudo de Veraguas; and on the South from the gulf of Papagayo, at La Flor, to the Chiriquí River. For the purposes of exchanging persons convicted of crimes committed in the territory of one State and at large in other, and for Treasury debtors, the competent authority for claiming them may be either the Superior Court of

Justice or the Supreme Chief of State; but if the latter is the claimant it should do it through its minister of Justice to the Chief of the petitioned State; and if the Court is the claimant, it should do it through its secretary to the Court of the petitioned State through its secretary; and no more formalities should be required in either case.

2<sup>nd</sup> In the second instruction it should be considered that Costa Rica is not encumbered by expensive obligations, bearing in mind it cannot by now fear anything from the interior of the Republic nor from abroad, because it has no quarrel with anybody: and that concerning this provision, it would be desirable to determine as much as possible the relief supplies, with the assisted State being obliged to pay them back after a fair settlement.

3<sup>rd</sup> As to the third instruction, in providing for the creation of a general government, it should be kept in mind that revenues so far known as federal should now accrue to the States: and for national debt repayment the population base should be used as the basis for apportionment.

4<sup>th</sup> On provisions concerning the fourth instruction, request for relief supplies should be made by the legitimate authority, and relief should not be granted without this requirement.

5<sup>th</sup> Concerning the fifth instruction, in order to get the possible advantages, the Minister will get directly in touch with the cathedral chapter, after securing Government cooperation; and in case the chapter absolutely refuses its express consent for dividing the diocese, or if it refuses to authorize a State Government-appointed clergyman with capitular vicar powers, the Minister will also refuse State contribution through ecclesiastical revenues to maintain the Nicaraguan miter and cathedral chapter. On this matter, he will also be able to file with the Nicaraguan constituent assembly a request for it to recognize the diocese division, acknowledging Costa Rica's justice and rights.

6<sup>th</sup> While there is no document at our office, it has been claimed the debt from the tobacco contract entered into in the year 823 between this Government and those of Granada and León was transferred to the national Government; therefore, since this business will be dealt with all the needed slyness and cleverness, provided he will reject the above-mentioned transfer, the corresponding vouchers will be required, and if they are authentic the solvency proofs will be required; and since this will not be produced, the transfer will be revoked so Nicaragua will acknowledge this debt in favor of Costa Rica.

7<sup>th</sup> If the Government of Nicaragua should promote a tobacco contract, the Minister shall welcome proposals made and will render account on them, reporting what is convenient, and telling that Government that this Government shall instruct him on the matter, and that this being a long-term contract there will be no difficulties in entering into it.

8<sup>th</sup> If an advantageous outcome is secured for Costa Rica on the first six public instructions, the Minister may be generous concerning the claims; that is to say, splitting the tithe debt, splitting or waiving the sales tax debt, granting long terms and no interests on the tobacco and community debts; and should the Government of Nicaragua promote the reincorporation of the Nicoya District, or openly refuse to recognize the dividing line established in the first of these instructions, the Minister will be able to waive half, two thirds, or even the entire debt, if necessary; but acting in such a way that the decided endeavor or interest in keeping the department is not known: waiting, prudence, and cunning, without detriment to good faith and decorum, are very sound bases in achieving a good result.

9<sup>th</sup> Public instructions will be reserved for the ultimate case of an inevitable commitment, cleverly making believe that his mission only consists of settling several accounts; but that he will enter into other negotiations convinced of the good disposition of this Government and its wishes for harmonizing in all manners with the Government of Nicaragua.

10<sup>th</sup> These instructions shall be well guarded, and only the secretary shall be able to register them when the interest of the negotiation so requires it, making him aware that they are of a reserved nature in the case referred to at the end of the fifteenth public instruction.

Given in the city of San José, on the 26<sup>th</sup> of the month of July, 838.

*(Signature of Chief Carrillo)*



## ANNEX 88

### PROPOSITIONS WEBSTER -CRAMPTON. WASHINGTON D.C, 30 APRIL 1852.

The Undersigned Daniel Webster Secretary of State of the United States and John F. Crampton Envoy Extraordinary and Minister Plenipotentiary of Her Britannick Majesty having taken into consideration the state of the relations between the Republics of Costa Rica and Nicaragua in respect to the boundaries between those Republics and between the Republic of Nicaragua and the territory claimed by the Mosquito Indians and being mutually desirous that all pending differences respecting those questions should be amicably, honorably and definitively adjusted do in behalf of their respective Governments earnestly recommend to the respective Governments of the Republics of Nicaragua and Costa Rica an accommodation and settlement of these differences upon the following Basis.

#### ARTICLE I

The Mosquito Indians may reserve to themselves out of the territory heretofore claimed or occupied by them on the Eastern Coast of Central America a district of country and the jurisdiction over the same to be bounded as follows namely beginning on the shore of the Caribbean Sea at the mouth of the River Rama which is (according to Bailey's map of Central America published in London November 1850) 11°34m north latitude and 83°46m West Longitude running thence due West to the meridian of 84°30m West Longitude from Greenwich thence due north on said meridian to the river Segovia Fantasma or Wanz thence down said river to the Caribbean Sea thence southerly along the shore of said sea to the place of beginning and all the rest and remainder of the territory and lands lying Southerly or Westerly of said reservation heretofore occupied or claimed by the said Mosquitos including Greytown they shall relinquish and cede to the Republic of Nicaragua together with all jurisdiction over the same in consideration of the nett receipts for a period of three years from all duties levied and collected at Greytown at the rate of ten per cent ad valorem on all goods imported into the state—The period of three years to commence on the day when Nicaragua shall formally take possession of and enter into the occupancy of said Town.— And the said nett receipts shall be payable quarterly or every three months to such agent or agents as may be appointed to recieve them.

And the said Republic of Nicaragua hereby agrees not in any way to molest or interfere with the Mosquito Indians within the territory herein reserved by them—

It is also understood that any Grants of land which may have been made by said Mosquitos since the first of January 1848 in that part of the Mosquito territory hereby ceded to Nicaragua shall not be disturbed provided the said Grants shall not interfere with other legal grants made previously to that date by Spain by the Central American Confederation or by Nicaragua or with the privileges or operations of the Atlantic Ship Canal Company or Accessory Transit Company and shall not include territory desired by the Nicaraguan Govt for forts arsenals or other public buildings—

#### ARTICLE II

It is also understood that nothing in the preceding article shall preclude the conclusion of such voluntary compact and arrangement between the state of Nicaragua and the Mosquito Indians by which the latter may be definitively incorporated and united with the state of Nicaragua, it being stipulated that in such case the said Mosquito Indians shall enjoy the same rights and be liable to the same duties as the other citizens of the said state of Nicaragua— The municipal and public authority in the town of Grey-Town shall be held and exercised by the Government of Nicaragua but said Government shall lay no duties of tonnage nor any duties of impost on goods imported into Greytown intended for transit across the isthmus or for consumption in any other state than that of Nicaragua except such tonnage duty as may be necessary for the preservation of the Port and Harbour and the erection and maintenance of necessary light houses and beacons—And no duty for this or similar purposes shall exceed say 12 cents per ton on each vessel.

#### ARTICLE III

The boundary between the Republics of Nicaragua and Costa Rica shall begin on the South Bank of the Colorado at its confluence with the sea at high water mark on said river thence along said South Bank also at high water mark to the confluence of the Colorado with the river San Juan thence at hight water mark along the South Bank of the San Juan to its source on lake Nicaragua thence at high water mark along the South and West Shore of that lake to the point nearest the mouth of the river La Flor River thece by a direct line drawn from that point to the mouth of the said river in the Pacific Ocean-- It is understood however that Costa Rica retains the right in common with Nicaragua to navigate said rivers and lake by sail vessels, barges or vessels towed but not by steam but this right is in no wise to

interfere with the paramount right in Nicaragua or her grantees to appropriate the waters of said rivers and lake to a ship canal from Ocean to Ocean or from the Caribbean Sea to said lake— It is also understood that the Company entitled the American Atlantic and Pacific Ship Canal Company shall have the privilege of locating on the south bank of the St John river four of the eight stations or sections of land referred to in the 27<sup>th</sup> Article of the amended charter of said Company as ratified by the Government of Nicaragua on the 11th April 1850— If however the said Company should desire to locate more than the said four sections on the south side of the San Juan, the Governments of Nicaragua and Costa Rica will amicably agree in regard to the terms of such location.

#### ARTICLE IV

Neither the Government of Nicaragua nor the Government of Costa Rica shall be at liberty to erect or suffer to be erected any wharf wall embankment or other structure, or to do or suffer to be done any act or thing whatever in the harbor of Greytown in any part of the Colorado or San Juan rivers or on the shore of Lake Nicaragua which shall obstruct the free operations of the ship canal or Transit company or hinder the passage of their boats in, along and through the said harbor of Greytown and rivers Colorado or San Juan— And if after a proper survey of the route for a Ship Canal between the two oceans it shall be found that it would be preferable for that canal to pass in part along the Southern Bank of the river San Juan or the Colorado river the Government of Costa Rica engages to grant any lands and to afford any facilities which may be necessary for the construction of the said canal.

#### ARTICLE V

Whereas it is stipulated by the second article of the Convention between Great Britain and the United States of America concluded at Washington on the nineteenth day of April 1850 that vessels of the United States or Great Britain traversing the said Canal shall in case of War between the contracting parties be exempt from blockade detention or capture by either of the belligerents and that that provision should extend to such a distance from the two ends of the said Canal as might thereafter be found expedient to establish— Now for the purpose of establishing such distance within which the vessels of either of said nations shall be exempt from blockade, detention or capture by either of the belligerents, it is hereby declared that it shall extend to all waters within the distance of twenty five nautical miles from the termination of said Canal on the Pacific and on the Atlantic coasts.

## ARTICLE VI

Whereas by the seventh article of the said Convention it was among other things stipulated that if any persons or company had already made with any state through which the proposed Ship Canal might pass "a contract for the construction of such a canal as that specified in said Convention to the stipulations of which contract neither of the contracting parties in that Convention had any just cause to object and the said persons or Company had moreover made preparations and expended time money and trouble on the faith of such contract it was thereby agreed that such persons or Company should have a priority of claim over every other person persons or company to the protection of the Government of the United States and Great Britain and should be allowed a year from the date of the exchange of ratifications of that Convention for concluding their arrangements and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking it being understood that if at the expiration of the aforesaid period such persons or Company should not be able to commence and carry out the proposed enterprise than the Governments of the United States and Great Britain should be free to afford their protection to any other persons or Company that should be prepared to commence and proceed with the construction of the Canal in question,—And whereas at the time of the signature of the said Convention a company styled the American Atlantic and Pacific Ship Canal Company had with the Government of the Republic of Nicaragua a contract for constructing a Ship Canal between the said Oceans but for reasons deemed sufficient by the Govts of Great Britain and the United States have not hitherto been able to comply with the stipulation which gave them a claim to the protection of the said Governments. And whereas no other Company has claimed such protection on the same conditions it is therefore agreed that the further time of one year from the exchange of the ratifications of this Convention shall be allowed the said Company to comply with the stipulation aforesaid—

## ARTICLE VII

And whereas by another Charter of the 11th April 1850 to the American Atlantic and Pacific Ship Canal Company the state of Nicaragua with a view to facilitate the construction of that Canal has authorized the said Company to separate from their contract of the 22<sup>d</sup> of Sept 1849 the part relating to the navigation of the waters of Nicaragua by steam under the title of the Accessory Transit Company and whereas the said Accessory Transit Company has for some time past been in full and successful operation the Governments of Great Britain and of the United States hereby engage to extend their protection to the said Accessory

Transit Company in the same manner and to the same extent as by the aforesaid Convention of the 19<sup>th</sup> April 1850 and by this Convention the said protection is extended to the Atlantic and Pacific Ship Canal Company but as the main object of the said Convention—between Great Britain and the United States of America was to provide for an inter Oceanic Ship Canal between the Atlantic and Pacific and as that object is still deemed paramount to every other mode of transit the protection hereby extended to the Accessory Transit Company shall not be construed to interfere with the right to construct said Canal by the Company which has undertaken to construct the same or in case of their failure by any other person or Company which may be authorized to construct the same and every Grant and privilege conferred upon said Accessory Transit Company shall be subject to the paramount right and privilege of any other persons or Company to construct maintain and use such Canal— Finally these propositions so far as they respect the Governments of Nicaragua and Costa Rica are advisory and recommendatory and the immediate attention of those Governments to their consideration is earnestly invoked— To insure a prompt decision Mr. Wyke Consul General of Her Britannick Majesty clothed with full power for that purpose, Mr. Kerr Chargé d'Affaires of the United States to Nicaragua and Mr. R. M. Walsh, appointed Special Agent on the part of the United States to the Government of Costa Rica are authorized to communicate the arrangement proposed to those Governments respectively and unless the aforesaid Governments of Nicaragua and Costa Rica shall promptly and without unnecessary loss of time concur in the general Basis of this arrangement and adopt proper measures for carrying it into effect then the Governments of Great Britain and the United States will immediately as between themselves jointly adopt such measures as they shall deem advisable to carry into full execution the Convention between those Governments of 19th April 1850 and to accomplish the design therein contemplated of an inter-oceanic communication by Canal from the Atlantic to the Pacific Oceans by the way of the river San Juan and the lake Nicaragua—



## **ANNEX 89**

### **AUTHORIZATION TO NAVIGATE ISSUED BY THE EMBASSY OF NICARAGUA IN COSTA RICA. SAN JOSE, 6 JULY 2006. # 1**

Embassy of Nicaragua

#### **AUTHORIZATION TO NAVIGATE No. 01/2006**

The Embassy of Nicaragua in Costa Rica, by authorization from the Ministry of Foreign Affairs of Nicaragua, grants this special authorization to navigate on the San Juan de Nicaragua River to the boat called "Furia L", owned by Jorge Lao Jarquín – J&L Transportes Acuáticos S.A., legal identity card 3-101-345313.

The boat must carry the Costa Rican and Nicaraguan flags.

The main characteristics of the boat are:

Name of boat	:	Furia L
Owner	:	Jorge Lao Jarquín
License	:	2116
Overboard	:	hp
Motor	:	Yamaha
Length	:	5-50
Prop	:	0.70
Beam	:	2.05
Power	:	100 HP

[H/written:]Illegible

Series : 308G31  
Model : F100AEPL  
Registration record : TOME 0009, ENTRY 407068SEC; 003,  
DATE 07 05 2001  
Movement record : TOME: 0013, ENTRY 101692SEC002  
Flag : COSTA RICAN AND NICARAGUAN.

Nicaraguan authorities have the right to cancel this permit in case of any breach of the Nicaraguan laws. Furthermore, the holders of this permit must subject to routine inspections by the respective authorities.

This authorization to navigate on the San Juan River is issued and shall be valid from 06 July to 06 October of two thousand and six.

Done at San José, Costa Rica, on the sixth of July of two thousand and six.

(Signed)

Leopoldo Ramírez

Ambassador

Karla E. Carcache H.

Deputy Chief of Mission w/consular functions

## **ANNEX 90**

**AUTHORIZATION TO NAVIGATE GRANTED EMBASSY OF NICARAGUA IN COSTA RICA ON BEHALF OF MINISTRY OF FOREIGN AFFAIRS OF NICARAGUA. No. 02/2006. SAN JOSÉ, JULY 6, 2006.**

Embassy of Nicaragua

**AUTHORIZATION TO NAVIGATE  
No. 02/2006**

The Embassy of Nicaragua in Costa Rica, by authorization from the Ministry of Foreign Affairs of Nicaragua, grants this special authorization to navigate on the San Juan de Nicaragua River to the boat called "Steed", owned by Geovany Navarro, legal identity card C.I. 2-476-607, in accordance with letter dated 30 June 2006, receipt on 6 July 2006, asking "AUTHORIZATION FROM THE GOVERNMENT OF NICARAGUA TO NAVIGATE ON THE SAN JUAN RIVER IN ORDER TO ACCOMPLIANCE HUMANITARIAN MISSION WICH INCLUDE SOCIAL ASSISTANCE IN TAMBOR AND REMOLINITO'S SCHOOLS".

The boat must carry the Costa Rican and Nicaraguan flags.

The main characteristics of the boat are:

Name of boat	:	Steed
Owner	:	Geovany Navarro
License	:	L 1532
Motor	:	Suzuki
Length	:	7.40 mts

Prop : 50 cms  
Beam : 2.00 mts  
Power : 21p  
Series : 11501f253601  
Model : 2003  
Registration record : L 1532  
Flag : COSTA RICAN AND NICARAGUAN.

Nicaraguan authorities have the right to cancel this permit in case of any breach of the Nicaraguan laws. Furthermore, the holders of this permit must subject to routine inspections by the respective authorities.

This authorization to navigate on the San Juan River is issued and shall be valid from 07 July of two thousand and six.

Done at San José, Costa Rica, on the sixth of July of two thousand and six.

(Signed)  
Leopoldo Ramírez  
Ambassador

Karla E. Carcache H.  
Deputy Chief of Mission w/consular functions

## ANNEX 91

### AFFIDAVITS OF COLONEL RICARDO SÁNCHEZ. 7 DECEMBER 2006.

PUBLIC DEED NUMBER SIX (6) CONTAINING A NOTARY STATEMENT. In Managua City, place of my domicile and residence, at two in the afternoon on December 7, 2006, BEFORE ME, MARTHA LORENA MURILLO ARGÜELLO, of legal age, married, a resident of Managua, Attorney and Notary Public of the Republic of Nicaragua, duly authorized by the HONORABLE SUPREME COURT OF JUSTICE to keep an original record of deeds during a five-year period that expires on May 9, 2011, there appears Nicaraguan Army Colonel RICARDO SÁNCHEZ MÉNDEZ, of legal age, married, a military, a resident of this City of Managua and the holder of ID card number zero, zero, one, two, four, zero, two, five, six, zero, zero, three, five, R (001-240256-0035R), who is personally known to me and has the necessary legal capacity to bind himself and enter into contracts, particularly for the purpose of executing this act, and states: ONE: That he wishes to refer to the claim filed by Costa Rica against Nicaragua before the International Court of Justice on September 29, 2005. TWO: That from December 2002 to this date, he has been the Chief of the Southern Military Detachment, a military jurisdiction that geographically belongs to the Department of Río San Juan, located to the southeast of the national territory. That in the zone under his charge, there are ten border posts, to wit: El Castillo, Boca de Bartola, Boca de San Carlos, Sarapiquí, Delta, San Juan de Nicaragua. Papaturro, Río Frío, Las Tablillas and Palo de Arco. There are plans to set up another one in Boca de Sábalos. Each post has seven officers, except for the post located at Sarapiquí", which is the headquarters of the Second Infantry Company in border zone number two, encompassing a geographic area of more than 100 kilometers from El Castillo to San Juan de Nicaragua. For navigation protection and security operations, it has two manned vessels. THREE: As regards Costa Rican civil navigation, the appearing party states that Costa Rican vessels carrying tourists usually enter the San Juan de Nicaragua River by Sarapiquí, originating from Puerto Viejo in Costa Rica territory and continue to the Tortuguero, also in Costa Rican territory. However, while navigating the San Juan de Nicaragua River, they must report at each post, where a spot check is made by reviewing the list of persons and verifying that they are not carrying any weapons, drugs, explosives, or any other flammable materials that could put the vessel at risk, while ensuring that the vessel meets all safety requirements for navigation. After this task is performed, the clearance certificate is issued. Nicaraguan migration

authorities check the passport and consular visa of each person. For this task, the Migration Authority has staff in Boca de San Carlos, Sarapiquí, Delta y San Juan de Nicaragua. The vessels of Costa Ricans living along the costa Ricans banks of the San Juan de Nicaragua River are also checked and clearance certificates are issued free of charge. FOUR: The appearing party further states that he maintains good relations with the Costa Rican Civil Guard. In 2003, he initiated confidence-building activities with the eight and fourth public security forces. He exchanges information with Commissioner César Esquivel and another Commissioner by the name of Cubero regarding crimes that take place in the zone. He has scheduled meetings with them, which are alternatively held, sometimes in Nicaraguan territory and other times in Costa Rican territory. That he also supports the Civil Guard and Costa Rican population in humanitarian activities. He further emphasizes that since he has held this position, the Costa Rican Civil Guard has not navigated the San Juan de Nicaragua River, nor has he received any permission request to engage in this activity. He knows that the Costa Rican Civil Guard usually re-supplies its posts by land, for which purpose they have feeder roads, and he has even observed that a highway is being built in their territory, running parallel to the San Juan River. FIVE: During the time he has held this position, he has been able to verify that the vessels transporting articles of trade in the San Juan de Nicaragua River belong to Nicaraguan citizens who cross over to Costa Rican territory to buy basic consumption goods. The appearing party, having stated the foregoing, was advised by me of the value and legal transcendence of this Power of Attorney, the value of the general clauses that guarantee the validity of this instrument, and the special clauses contained in this instrument, as well as the scope of the implicit and explicit waivers made hereunder. And I, the Notary, read the entire document to the appearing party, who states its concurrence, approves and ratifies each and every clause, without making any amendment, and signs with the undersigned Notary. I attest to all related matters. /s/ Illegible RICARDO SÁNCHEZ MÉNDEZ /s/ Illegible MARTHA LORENA MURILLO ARGÜELLO (Attorney and Notary Public) COPIED BEFORE ME FROM THE FRONT OF FOLIO NUMBER SIX TO THE FRONT OF FOLIO NUMBER SEVEN OF MY REGISTER OF DEEDS NUMBER ONE KEPT DURING THIS YEAR AND, AT THE REQUEST OF MR. RICARDO SÁNCHEZ MÉNDEZ, I ISSUE THIS FIRST CERTIFIED TRUE COPY ON TWO STAMPED SHEETS, WHICH I SIGN, SEAL AND INITIAL IN MANAGUA CITY, AT TWO THIRTY IN THE AFTERNOON ON DECEMBER 7, 2006.

MARTHA LORENA MURILLO ARGÜELLO.  
ATTORNEY AND NOTARY PUBLIC.