



# INTERNATIONAL COURT OF JUSTICE

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## Press Release

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

#### Request for the indication of provisional measures

**The Court requests the Parties to refrain from sending to, or maintaining in the disputed territory, including the *caño*, any personnel, whether civilian, police or security; it authorizes Costa Rica, in certain specific circumstances, to dispatch civilian personnel there charged with the protection of the environment; and it calls on the Parties not to aggravate or extend the dispute before the Court or make it more difficult to resolve**

THE HAGUE, 8 March 2011. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today gave its decision on the request for the indication of provisional measures submitted by Costa Rica in the case concerning Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua).

In its Order, the Court indicates the following provisional measures:

“(1) Unanimously,

Each Party shall refrain from sending to, or maintaining in the disputed territory, including the *caño*, any personnel, whether civilian, police or security;

(2) By thirteen votes to four,

Notwithstanding point (1) above, Costa Rica may dispatch civilian personnel charged with the protection of the environment to the disputed territory, including the *caño*, but only in so far as it is necessary to avoid irreparable prejudice being caused to the part of the wetland where that territory is situated; Costa Rica shall consult with the Secretariat of the Ramsar Convention in regard to these actions, give Nicaragua prior notice of them and use its best endeavours to find common solutions with Nicaragua in this respect;

IN FAVOUR: President Owada; Vice-President Tomka; Judges Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Cançado Trindade, Yusuf, Greenwood, Donoghue; Judge ad hoc Dugard;

AGAINST: Judges Sepúlveda-Amor, Skotnikov, Xue; Judge ad hoc Guillaume;

(3) Unanimously,

Each Party shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve;

(4) Unanimously,

Each Party shall inform the Court as to its compliance with the above provisional measures.”

#### History of the proceedings

The history of the proceedings can be found in Press Releases Nos. 2010/38 of 19 November 2010 (on the Application instituting proceedings) and 2011/5 of 23 February 2011 (on the request for the indication of provisional measures submitted by Costa Rica).

#### Reasoning of the Court

##### **Prima facie jurisdiction** (paras. 49-52)

Having noted that Nicaragua, in the present proceedings, did not contest its jurisdiction to entertain the dispute, the Court considers that the instruments invoked by Costa Rica appear, prima facie, to afford a basis on which the Court might have jurisdiction to rule on the merits, enabling it to indicate provisional measures if it considers that the circumstances so require.

##### **Plausible character of the rights whose protection is being sought and link between these rights and the measures requested** (paras. 53-62)

The Court recalls that its power to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights of the parties pending its decision. Therefore, the Court may exercise this power only if it is satisfied that the rights asserted by a party are at least plausible, and that a link exists between the rights which form the subject of the proceedings before the Court on the merits of the case and the provisional measures being sought.

##### — Plausible character of the rights whose protection is being sought (paras. 55-59)

Costa Rica alleges that the rights claimed by it and forming the subject of the case on the merits are, on the one hand, its right to assert sovereignty over the entirety of Isla Portillos and over the Colorado river and, on the other hand, its right to protect the environment in those areas over which it is sovereign. Nicaragua, for its part, contends that it holds the title to sovereignty over the northern part of Isla Portillos, that is to say, the area of wetland of some three square kilometres between the right bank of the disputed *caño*, the right bank of the San Juan river up to its mouth at the Caribbean Sea and the Harbor Head lagoon (hereinafter the “disputed territory”), and argues that its dredging of the San Juan river, over which it has sovereignty, has only a negligible impact on the flow of the Colorado river, over which Costa Rica has sovereignty.

As regards the right to assert sovereignty over the disputed territory, the Court states that, at this stage of the proceedings, it cannot settle the Parties’ competing claims and is not called upon to determine once and for all whether the rights claimed by each of them exist; for the purposes of considering the request for the indication of provisional measures, the Court needs only to decide whether the rights claimed by the Applicant on the merits, and for which it is seeking protection, are plausible.

After a careful examination of the evidence and arguments presented by the Parties, the Court concludes that the title to sovereignty claimed by Costa Rica over the entirety of Isla Portillos is plausible. It adds that it is not called upon to rule on the plausibility of the title to sovereignty over the disputed territory advanced by Nicaragua. The Court points out further that

the provisional measures it may indicate would not prejudice any title, and that the Parties' conflicting claims cannot hinder the exercise of the Court's power under its Statute to indicate such measures.

The Court finds that the right claimed by Costa Rica to request the suspension of the dredging operations on the San Juan river if they threaten seriously to impair navigation on the Colorado river or to damage Costa Rican territory is also plausible.

— Link between the rights whose protection is being sought and the measures requested (paras. 60-62)

Taking the view that the continuation or resumption of the disputed activities by Nicaragua on Isla Portillos would be likely to affect the rights of sovereignty which might be adjudged on the merits to belong to Costa Rica, the Court considers that a link exists between these rights and the first provisional measure being sought, which is aimed at ensuring that Nicaragua will refrain from any activity "in the area comprising the entirety of Isla Portillos".

The Court further believes that, since there is a risk that the rights which might be adjudged on the merits to belong to Costa Rica would be affected if it were established that the continuation of the Nicaraguan dredging operations on the San Juan river threatened seriously to impair navigation on the Colorado river or to cause damage to Costa Rica's territory, a link exists between these rights and the second provisional measure being sought, which concerns the suspension of Nicaragua's "dredging programme in the River San Juan adjacent to the relevant area".

Lastly, the Court considers that the final provisional measure sought by Costa Rica, aimed at ensuring that Nicaragua refrains "from any other action which might prejudice the rights of Costa Rica, or which may aggravate or extend the dispute before the Court" pending the "determination of this case on the merits", being very broadly worded, is linked to the rights which form the subject of the case before the Court on the merits, in so far as it is a measure complementing more specific measures protecting those same rights.

#### **Risk of irreparable prejudice and urgency (paras. 63-73)**

The Court recalls that it has the power to indicate provisional measures when irreparable prejudice could be caused to the rights which are in dispute, and that this power will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice may be caused to those rights.

It observes that Costa Rica maintains: (i) that "Nicaraguan armed forces continue to be present on Isla Portillos in breach of Costa Rica's sovereign rights"; (ii) that Nicaragua "is continuing to damage the territory of Costa Rica, posing a serious threat to its internationally protected wetlands and forests"; and (iii) that "Nicaragua[, which] is attempting to unilaterally adjust, to its own benefit, a River the right bank of which forms a valid, lawful and agreed border . . . cannot be permitted to continue to deviate the San Juan River through Costa Rica's territory in this manner, so as to impose on Costa Rica and the Court a *fait accompli*".

The Court points out that Costa Rica wishes the *status quo ante* to be restored, pending the Court's judgment on the merits, and has indicated that several of its rights, including its right to sovereignty and territorial integrity, are under threat of irreparable prejudice as a result of Nicaragua's activities.

The Court notes that Costa Rica adds that the works undertaken by Nicaragua in the disputed territory will have the effect of causing flooding and damage to Costa Rican territory, as well as geomorphological changes, and that the dredging of the San Juan river carried out by Nicaragua will result in similar effects, as well as significantly reducing the flow of the Colorado river.

It further observes that Costa Rica contends that the ongoing presence of Nicaraguan armed forces on Costa Rica's territory is contributing to a political situation of extreme hostility and tension which may lead to the aggravation and/or extension of the dispute.

The Court also notes that Nicaragua, having maintained that the activities carried out within its own territory, the environmental impact of which had been duly assessed beforehand, were not likely to cause imminent damage to Costa Rica, asserted that the cleaning and clearing operations in respect of the caño were over and finished, that none of its armed forces were presently stationed on Isla Portillos, and that it did not intend to send any troops or other personnel to the disputed area, nor to establish a military post there in the future.

However, the Court points out that Nicaragua has stated that, in connection with the current replanting of trees, its Ministry of the Environment "will send inspectors to the site periodically in order to monitor the reforestation process and any changes which might occur in the region, including the Harbor Head lagoon", and that since "[t]he caño is no longer obstructed", "[i]t is possible to patrol the area on the river, as has always been the case, for the purposes of enforcing the law, combating drug trafficking and organized crime, and protecting the environment".

**Consideration of the provisional measures requested by Costa Rica, and decision of the Court**  
(paras. 73-85)

In the light of this information, the Court considers the first provisional measure requested by Costa Rica, namely that "[p]ending the determination of this case on the merits, Nicaragua shall not, in the area comprising the entirety of Isla Portillos . . . : (1) station any of its troops or other personnel; (2) engage in the construction or enlargement of a canal; (3) fell trees or remove vegetation or soil; (4) dump sediment".

Taking note of Nicaragua's statements concerning the ending of the works in the area of the caño, the Court concludes that, in the circumstances of the case as they now stand, there is no need to indicate the measures numbered (2), (3) and (4) as set out above.

However, given that Nicaragua intends to carry out certain activities, if only occasionally, in the disputed territory, including on the caño, the Court finds that provisional measures should be indicated, since this situation creates an imminent risk of irreparable prejudice to Costa Rica's claimed title to sovereignty over the said territory and to the rights deriving therefrom, and gives rise to a real and present risk of incidents liable to cause irreparable harm in the form of bodily injury or death.

The Court therefore considers that each Party must refrain from sending to, or maintaining in the disputed territory, including the caño, any personnel, whether civilian, police or security, until such time as the dispute on the merits has been decided or the Parties have come to an agreement on this subject. The Court further concludes that each Party has the responsibility to monitor that territory from the territory over which it unquestionably holds sovereignty, and that it is for the Parties' police or security forces to co-operate with each other in a spirit of good neighbourliness, in particular to combat any criminal activity which may develop in the disputed territory.

Having observed that, in the disputed border area, Costa Rica and Nicaragua have respectively designated, under the Ramsar Convention, the "Humedal Caribe Noreste" and the "Refugio de Vida Silvestre Río San Juan" as wetlands of international importance, the Court considers that, pending delivery of the Judgment on the merits, Costa Rica must be in a position to avoid irreparable prejudice being caused to that part of the "Humedal Caribe Noreste" wetland where the disputed territory is situated. It finds that, for this purpose, Costa Rica must be able to dispatch civilian personnel charged with the protection of the environment to the said territory, including the caño, but only in so far as it is necessary to ensure that no such prejudice be caused. It adds that Costa Rica must consult with the Secretariat of the Ramsar Convention in regard to

these actions, give Nicaragua prior notice of them and use its best endeavours to find common solutions with Nicaragua in this respect.

As regards the second provisional measure requested by Costa Rica, requiring Nicaragua to suspend its dredging programme in the San Juan river adjacent to the relevant area, the Court finds that it cannot be concluded at this stage from the evidence adduced by the Parties that the dredging of the San Juan river is creating a risk of irreparable prejudice to Costa Rica's environment or to the flow of the Colorado river; nor has it been shown that, even if there were such a risk of prejudice to rights Costa Rica claims in the present case, the risk would be imminent.

Having pointed out that it has the power under its Statute to indicate provisional measures that are in whole or in part other than those requested, or measures that are addressed to the party which has itself made the request, and that its orders on provisional measures have binding effect and thus create international legal obligations which both Parties are required to comply with, the Court considers it appropriate in the circumstances to indicate complementary measures, calling on both Parties to refrain from any act which may aggravate or extend the dispute or render it more difficult of solution.

The Court adds that the decision given in the present proceedings in no way prejudices the question of its jurisdiction to deal with the merits of the case or any questions relating to the admissibility of the Application, or relating to the merits themselves, and that it leaves unaffected the right of the Governments of Costa Rica and Nicaragua to submit arguments in respect of those questions.

#### Composition of the Court

The Court was composed as follows: President Owada; Vice-President Tomka; Judges Koroma, Al-Khasawneh, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cañado Trindade, Yusuf, Greenwood, Xue, Donoghue; Judges ad hoc Guillaume, Dugard; Registrar Couvreur.

Judges Koroma and Sepúlveda-Amor append separate opinions to the Order. Judges Skotnikov, Greenwood and Xue append declarations to the Order. Judge ad hoc Guillaume appends a declaration to the Order. Judge ad hoc Dugard appends a separate opinion to the Order.

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A summary of the Order appears in the document "Summary No. 2011/1". The present press release, the summary of the Order and the full text of the Order can be found on the Court's website ([www.icj-cij.org](http://www.icj-cij.org)) under "Cases".

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