



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)

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

The Court finds that Nicaragua must refrain from any dredging and other activities in the disputed territory and must, in particular, refrain from work of any kind on the two new caños, and that it must fill the trench on the beach north of the eastern caño within two weeks

THE HAGUE, 22 November 2013. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today delivered its Order on the request for the indication of new provisional measures submitted by Costa Rica on 24 September 2013 (see Press Release No. 2013/23) in the case concerning Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), with which has been joined the case concerning Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica). This request was prompted by the construction by Nicaragua of two new artificial channels (or caños) in the “disputed territory”. That territory was defined by the Court, in its Order of 8 March 2011 indicating provisional measures (see Press Release No. 2011/6), as “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 [of 2011], the right bank of the San Juan river up to its mouth at the Caribbean Sea and the Harbor Head lagoon”.

Today, after reaffirming, unanimously, the provisional measures indicated in its Order of 8 March 2011, the Court indicated the following provisional measures:

- it decided, unanimously, that Nicaragua should refrain from any dredging and other activities in the disputed territory, and should, in particular, refrain from work of any kind on the two new caños;
- it also decided, unanimously, notwithstanding the provisions of the previous point and paragraph 86 (1) of the Order of 8 March 2011, that Nicaragua should fill the trench on the beach north of the eastern caño within two weeks from the date of the present Order, immediately inform the Court of the completion of the filling of the trench and, within one week from the said completion, submit to it a report containing all necessary details, including photographic evidence;

- it further found, unanimously, that, except as needed for implementing the obligation under the previous point, Nicaragua should (i) cause the removal from the disputed territory of any personnel, whether civilian, police or security and (ii) prevent any such personnel from entering the disputed territory;
- it also found, unanimously, that Nicaragua should cause the removal from and prevent the entrance into the disputed territory of any private persons under its jurisdiction or control;
- it also held, by fifteen votes to one, that, following consultation with the Secretariat of the Ramsar Convention and after giving Nicaragua prior notice, Costa Rica might take appropriate measures related to the two new caños, to the extent necessary to prevent irreparable prejudice to the environment of the disputed territory and that, in taking these measures, Costa Rica should avoid any adverse effects on the San Juan River; and
- lastly, the Court decided, unanimously, that the Parties should regularly inform it, at three-month intervals, as to the compliance with the above provisional measures.

Reasoning of the Court

1. Prima facie jurisdiction (paras. 21-23)

The Court recalls that Costa Rica seeks to found the jurisdiction of the Court in this case on Article XXXI of the American Treaty on Pacific Settlement signed at Bogotá on 30 April 1948 and on the declarations of acceptance of compulsory jurisdiction made by the two Parties. In its Order of 8 March 2011, the Court had already found that the instruments invoked by Costa Rica appeared, *prima facie*, to afford a basis on which the Court might have jurisdiction to rule on the merits. In these circumstances, the Court considers that it may entertain the present request for the indication of new provisional measures.

2. The rights whose protection is sought and the measures requested (paras. 24-33)

The Court recalls that the power to indicate provisional measures under Article 41 of its Statute has as its object the preservation of the respective rights claimed by the parties in a case, pending its decision on the merits thereof. Therefore, the Court may exercise this power only if it is satisfied that the rights asserted by the requesting party are at least plausible. Moreover, a link must exist 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.

The Court observes that the rights which Costa Rica seeks to protect are the rights it claims to sovereignty over Isla Portillos, to territorial integrity and its right to protect the environment in those areas over which it is sovereign. It finds that the rights for which Costa Rica seeks protection are plausible.

The Court then considers the issue of the link between the rights claimed and the provisional measures requested. In the view of the Court, this link does indeed exist in respect of the first three measures requested by Costa Rica, the first being aimed, in particular, at the cessation of work of any kind on the two new caños in the disputed territory, the second requesting that Nicaragua be ordered to immediately withdraw from the disputed territory any personnel, infrastructure and equipment introduced by it, or by any persons under its jurisdiction or coming from its territory, and the third aimed at ensuring that Costa Rica be permitted to undertake remediation works in the disputed territory on the two new caños and the surrounding areas, to the extent necessary to prevent irreparable prejudice being caused to the disputed territory. However, the Court does not consider it necessary to establish a link between Costa Rica's claimed rights and the fourth provisional measure sought, which is that each Party shall inform the Court as to its compliance with any provisional measures that may be indicated by the Court. In the Court's view, this request

does not aim to protect Costa Rica's rights but rather seeks to ensure compliance with any provisional measures indicated by the Court.

3. Risk of irreparable prejudice and urgency (paras. 34-50)

The Court recalls that, pursuant to Article 41 of its Statute, it has the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of the judicial proceedings. This power will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court has given its final decision.

The Court seeks to establish whether the situation in the disputed territory, and in particular, the caños and the trench situated near the eastern caño, as they currently stand, pose a risk of irreparable prejudice to the rights claimed by Costa Rica. Given the evidence before it, the Court is satisfied that, in view of the length, breadth and position of that trench, there is a real risk that the trench could reach the Caribbean Sea either as a result of natural elements or by human actions, or a combination of both. An alteration of the course of the San Juan River could then ensue, with serious consequences for the rights claimed by Costa Rica. The Court is therefore of the opinion that the situation in the disputed territory reveals the existence of a real risk of irreparable prejudice to the rights claimed by the Applicant in this case.

The Court moreover considers that there is urgency for the following reasons: (i) during the rainy season, the increased flow of water in the San Juan River, and consequently in the eastern caño, could extend the trench and connect it with the sea, thereby potentially creating a new course for the San Juan River; (ii) the trench could also easily be connected to the sea, with minimum effort and equipment, by persons accessing this area from Nicaraguan territory; (iii) a Nicaraguan military encampment is located only metres away from the trench; and (iv) Nicaragua advised the Court of the location of the dredgers, but did not rule out the presence in the disputed territory of other equipment that could be used to extend the trench. In this regard, the Court is not convinced that the instructions given by the President of Nicaragua to the Executive President of the National Port Authority to immediately cease the cleansing works in the Delta area and to withdraw the personnel and machinery in the disputed territory, and the assurances by which the Agent of Nicaragua indicated that his Government considers itself bound not to undertake activities likely to connect any of the two caños with the sea and to prevent any person or group of persons from doing so, are sufficient to remove the imminent risk of irreparable prejudice.

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The Court concludes from the foregoing that it ought to indicate provisional measures to address the new situation prevailing in the disputed territory and states that these measures will supplement those already in force under the Order of 8 March 2011.

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Composition of the Court

The Court was composed as follows: President Tomka; Vice-President Sepúlveda-Amor; Judges Owada, Keith, Bennouna, Skotnikov, Caçado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde, Bhandari; Judges ad hoc Guillaume, Dugard; Registrar Couvreur.

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Judge Cançado Trindade appends a separate opinion to the Order; Judges ad hoc Guillaume and Dugard append declarations to the Order.

A summary of the Order appears in the document “Summary No. 2013/3”, to which summaries of the opinion and declarations are annexed. In addition, this 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) under “Cases”.

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

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

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

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