

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

DÉLIMITATION MARITIME
DANS LA MER DES CARAÏBES
ET L'OCÉAN PACIFIQUE

(COSTA RICA c. NICARAGUA)

ORDONNANCE DU 31 MAI 2016

2016

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

MARITIME DELIMITATION
IN THE CARIBBEAN SEA
AND THE PACIFIC OCEAN

(COSTA RICA v. NICARAGUA)

ORDER OF 31 MAY 2016

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INTERNATIONAL COURT OF JUSTICE

YEAR 2016

31 May 2016

2016
31 May
General List
No. 157MARITIME DELIMITATION
IN THE CARIBBEAN SEA
AND THE PACIFIC OCEAN(COSTA RICA *v.* NICARAGUA)

ORDER

Present: President ABRAHAM; Vice-President YUSUF; Judges OWADA, TOMKA, CAÑADO TRINDADE, GREENWOOD, DONOGHUE, GAJA, SEBUTINDE, BHANDARI, GEVORGIAN; Judge ad hoc AL-KHASAWNEH; Registrar COUVREUR.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 48 and 50 of the Statute of the Court and Article 67 of the Rules of Court,

Makes the following Order:

Whereas:

1. By an Application filed in the Registry of the Court on 25 February 2014, the Republic of Costa Rica (hereinafter “Costa Rica”) instituted proceedings against the Republic of Nicaragua (hereinafter “Nicaragua”) with regard to a dispute concerning maritime delimitation in the Caribbean Sea and the Pacific Ocean.

2. By an Order dated 1 April 2014, the Court fixed 3 February 2015 and 8 December 2015 as the respective time-limits for the filing of a Memorial by Costa Rica and a Counter-Memorial by Nicaragua. The Memorial and the Counter-Memorial were filed within the time-limits thus prescribed.

3. At a meeting held by the President with the representatives of the Parties on 28 January 2016, the Parties agreed that it was not necessary to file a Reply and a Rejoinder.

4. By a letter dated 13 April 2016, the Registrar informed the Parties, pursuant to Article 67, paragraph 1, of the Rules of Court, that the Court was considering arranging for an expert opinion in accordance with Articles 48 and 50 of its Statute, entrusted to one or several experts, asking such experts to collect, by conducting a site visit, all the factual elements relating to the state of the coast between the point located on the right bank of the San Juan River at its mouth and the land point closest to Punta de Castilla, as those two points can be identified today. The Parties were further informed that the Court had fixed 3 May 2016 as the time-limit within which they might present their positions with respect to any such appointment, in particular their views on the subject of the expert opinion, the number and mode of appointment of the experts, and the procedure to be followed. They were advised that any comments that either Party might wish to make on the reply of the other Party should be furnished by 13 May 2016 at the latest.

5. By a letter dated 3 May 2016, Costa Rica welcomed the exercise by the Court of its power to arrange for an expert opinion. It suggested that the Court consider appointing a committee of three experts, composed of geographers who were independent of both Parties, and that the Parties should have the opportunity to make observations on the identity of the experts appointed. Costa Rica proposed that a number of matters be covered in the terms of reference for the experts. It expressed the wish that the Parties should have the opportunity to provide comments on the experts' report in writing before the beginning of the oral proceedings, and that any comments that either Party might wish to make on the comments of the other Party should also be provided in writing in advance of the oral proceedings. Finally, Costa Rica made certain proposals regarding logistical matters.

6. By a letter dated 3 May 2016, Nicaragua, for its part, stated that it considered that there was no need to carry out a site visit, asserting that, since the location of the starting-point of the land boundary on the Caribbean coast had been established by various instruments, the determination of the starting-point of the maritime boundary between the Parties was a mere technical and legal task that did not require a site visit. Nicaragua nonetheless added that if, having taken into account its position, the Court considered that a site visit was necessary, Nicaragua would be ready to express in due time its position towards the terms of reference for the expert(s) and their appointment, and to assist them to the fullest possible extent.

7. By letters of 13 May 2016, each of the Parties reiterated its position.

8. The Court considers that there are certain factual matters relating to the state of the coast which may be relevant for the purpose of settling the dispute submitted to it, which concerns in particular the delimitation of the maritime boundary between the Parties in the Caribbean Sea, and that, with regard to such matters, it would benefit from an expert opinion. Having heard the Parties pursuant to Article 67, paragraph 1, of the Rules of Court, and possessing all the information needed for the purpose of its decision, the Court is now in a position to define the subject of the expert opinion, state the number and mode of appointment of the experts, and lay down the procedure to be followed.

9. The decision to arrange for an expert opinion in no way prejudices the question of the determination of the starting-point or the course of the maritime boundary between the Parties in the Caribbean Sea, nor any other question relating to the dispute brought before the Court, and leaves intact the Parties' right to adduce evidence and submit their arguments on those subjects, in accordance with the Rules of Court.

* * *

10. THE COURT,

Decides that:

- (1) An expert opinion shall be obtained, which will be entrusted to two independent experts appointed by Order of the President of the Court after hearing the Parties.
- (2) The experts referred to in paragraph (1) above shall visit the site. They shall advise the Court regarding the state of the coast between the point suggested by Costa Rica and the point suggested by Nicaragua in their pleadings as the starting-point of the maritime boundary in the Caribbean Sea, and in particular answer the following questions:
 - (a) What are the geographical co-ordinates of the point at which the right bank of the San Juan River meets the sea at the low-water line?
 - (b) What are the geographical co-ordinates of the land point which most closely approximates to that identified by the first Alexander Award as the starting-point of the land boundary?
 - (c) Is there a bank of sand or any maritime feature between the points referred to in subparagraphs (a) and (b) above? If so, what are their physical characteristics? In particular, are these features, or some of them, permanently above water, even at high tide? Is Los Portillos/Harbor Head Lagoon separated from the sea?

(d) To what extent is it possible, or probable, that the area concerned will undergo major physical changes in the short and long term?

- (3) Before taking up his or her duties, each expert shall make the following declaration:

“I solemnly declare, upon my honour and conscience, that I will perform my duties as expert honourably and faithfully, impartially and conscientiously, and will refrain from divulging or using, outside the Court, any documents or information of a confidential character which may come to my knowledge in the course of the performance of my task.”

- (4) The Registrar shall be responsible for the secretarial arrangements of the experts. He may appoint officials of the Registry to perform these duties.
- (5) The Registrar shall place the pleadings and annexed documents in the case at the disposal of the experts, who shall treat them as confidential so long as they have not been made available to the public in accordance with Article 53, paragraph 2, of the Rules of Court.
- (6) The Parties shall furnish any necessary assistance to the expert mission.
- (7) The experts shall prepare a written report on their findings and file it with the Registry. That report shall be communicated to the Parties, which shall be given the opportunity of commenting upon it, pursuant to Article 67, paragraph 2, of the Rules of Court.
- (8) The experts shall be present, in so far as required, at the oral proceedings. They will answer questions from the Agents, Counsel and Advocates of the Parties, pursuant to Article 65 of the Rules of Court.
- (9) The Court reserves the right to put further questions to the experts if it thinks fit.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this thirty-first day of May two thousand and sixteen, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Costa Rica and the Government of the Republic of Nicaragua, respectively.

(Signed) Ronny ABRAHAM,
President.

(Signed) Philippe COUVREUR,
Registrar.