



INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands

Tel.: +31 (0)70 302 2323 Fax: +31 (0)70 364 9928

Website: www.icj-cij.org

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 joins the proceedings in the two cases

THE HAGUE, 23 April 2013. By two separate Orders dated 17 April 2013, the International Court of Justice (ICJ), the principal judicial organ of the United Nations, has joined the proceedings in the case concerning Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and in the case concerning the Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).

In its two Orders, the Court emphasized that it considered it appropriate to join the proceedings in the cases, “in conformity with the principle of the sound administration of justice and with the need for judicial economy”.

The subsequent procedure was reserved for further decision.

The Court has joined proceedings on two occasions in the past (the cases concerning South West Africa (Ethiopia v. South Africa; Liberia v. South Africa) and the cases concerning the North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)), even though its Rules at that time made no express provision for that possibility. The joinder resulted, in particular, in the holding of a single set of hearings in the cases concerned, and in the delivery of a single Judgment.

Reasoning of the Court

In its reasoning, which is the same in both Orders, the Court notes first that, under Article 47 of its Rules, “[t]he Court may at any time direct that the proceedings in two or more cases be joined” and that this provision leaves the Court “a broad margin of discretion”.

The Court observes in turn:

- (1) that the two cases concerned involve the same Parties and relate to the area where the common border between them runs along the right bank of the San Juan River;
- (2) that both cases are based on facts relating to works being carried out in, along, or in close proximity to the San Juan River, namely the dredging of the river by Nicaragua and the construction of a road along its right bank by Costa Rica;
- (3) that both sets of proceedings are about the effect of the aforementioned works on the local environment and on the free navigation on, and access to, the San Juan River, and that, in this regard, both Parties refer to the risk of sedimentation of the San Juan River;
- (4) that in both cases the Parties make reference, in addition, to the harmful environmental effect of the works in and along the San Juan River on the fragile fluvial ecosystem (including protected nature preserves in and along the river); and, finally,
- (5) that in both cases the Parties refer to violations of the 1858 Treaty of Limits, the Cleveland Award, the Alexander Awards and the Ramsar Convention.

The Court is of the opinion that a decision to join the proceedings will allow the Court to address simultaneously the totality of the various interrelated and contested issues raised by the Parties, including any questions of fact or law that are common to the disputes presented. In the view of the Court, hearing and deciding the two cases together will have significant advantages. Finally, the Court states that it does not expect any undue delay in rendering its Judgment in the two cases.

History of the two proceedings

It is recalled that the first proceedings, accompanied by a Request for the indication of provisional measures, were instituted by Costa Rica against Nicaragua on 18 November 2010, for “the incursion into, occupation of and use by Nicaragua’s army of Costa Rican territory”. Costa Rica alleged in particular that Nicaragua had, “in two separate incidents, occupied the territory of Costa Rica in connection with the construction of a canal across Costa Rican territory . . . and certain related works of dredging on the San Juan River”. The Applicant also accused Nicaragua of breaching its obligations towards Costa Rica under a number of treaty instruments and other applicable rules of international law, as well as under certain arbitral and judicial decisions.

On 8 March 2011, the Court indicated certain provisional measures to both Parties.

The second proceedings were instituted by Nicaragua against Costa Rica on 22 December 2011. In its Application, Nicaragua stated that the case related to “violations of Nicaraguan sovereignty and major environmental damages on its territory”. The Applicant contended in particular that Costa Rica was carrying out major works in most of the border area between the two countries along the San Juan River, namely the construction of a road, with grave environmental consequences. Nicaragua also reserved the right to request that the two proceedings be joined.

On 6 August 2012, Nicaragua filed four counter-claims in the first case (Costa Rica v. Nicaragua). Costa Rica raised certain objections to the admissibility of the first three counter-claims. In particular it argued that, by its actions, Nicaragua was “effectively seeking the joinder of the two different cases” and that such joinder would be neither timely nor equitable.

In a letter dated 19 December 2012 accompanying its Memorial in the second case (Nicaragua v. Costa Rica), Nicaragua formally asked the Court to consider the need to join the proceedings, requesting it to decide on this matter in the interests of the sound administration of justice. By a letter dated 7 February 2013, Costa Rica reiterated its position that such joinder would be neither timely nor equitable, contending in particular that there was no close connection between the two cases such as might justify a joinder.

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Composition of the Court

In the first case, (Costa Rica v. Nicaragua), the Court was composed as follows: President Tomka; Vice-President Sepúlveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde, Bhandari; Judges ad hoc Guillaume, Dugard; Registrar Couvreur.

In the second case, (Nicaragua v. Costa Rica), the Court was composed as follows: President Tomka; Vice-President Sepúlveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde, Bhandari; Judges ad hoc Guillaume, Simma; Registrar Couvreur.

Judge Cançado Trindade appends a separate opinion to the two Orders. A summary of that opinion is annexed to this press release.

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The texts of the two Orders will be available shortly on the Court's website (www.icj-cij.org) in the documentation for each case, under the heading "Contentious cases".

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).

Information Department:

Mr. Andrey Poskakukhin, First Secretary of the Court, Head of Department (+31 (0)70 302 2336)

Mr. Boris Heim, Information Officer (+31 (0)70 302 2337)

Ms Joanne Moore, Associate Information Officer (+31 (0)70 302 2394)

Ms Genoveva Madurga, Administrative Assistant (+31 (0)70 302 2396)

Separate opinion of Judge Cançado Trindade

In his Separate Opinion (in 7 parts) in the Court's Orders of joinders in the cases concerning Certain Activities Carried out by Nicaragua in the Border Area and concerning the Construction of a Road in Costa Rica along the San Juan River, Judge Cançado Trindade examines the foundations of the matter, addressing at first the issue of "implied" and "inherent powers", and providing some precisions in respect of the exercise of the international judicial function. Secondly, he dwells upon the issue of the Kompetenz Kompetenz / la compétence de la compétence, inherent to the exercise of the international judicial function. Thirdly, he reviews the sound administration of justice, and focuses attention on joinders effected by the Hague Court (PCIJ and ICJ) avant la lettre. Fourthly, Judge Cançado Trindade considers what he perceives as the idea of justice guiding the sound administration of justice (la bonne administration de la justice). And fifthly, he examines the sound administration of justice (la bonne administration de la justice) and the procedural equality of the parties. His final considerations stress the relevance of general principles of law in the handling of international procedural issues.
