

APPLICATION OF THE REPUBLIC OF COSTA RICA INSTITUTING PROCEEDINGS

To the Registrar

International Court of Justice

The undersigned being duly authorized by the Government of the Republic of Costa Rica.

Introduction

1. On behalf of the Government of the Republic of Costa Rica and pursuant to Article 36, paragraphs 1 and 2; Article 40 of the Statute of the Court and Article 38 of the Rules of Court, I have the honour to submit the present Application instituting proceedings against the Government of the Republic of Nicaragua. The case concerns the incursion into, occupation of and use by Nicaragua's Army of Costa Rican territory as well as breaches of Nicaragua's obligations towards Costa Rica under the following:

- (a) The Charter of the United Nations¹ and the Charter of the Organization of American States;²
- (b) the Treaty of Territorial Limits between Costa Rica and Nicaragua of 15 April 1858 (the Treaty of Limits), in particular Articles I, II, V and IX;³
- (c) the arbitral award issued by the President of the United States of America, Grover Cleveland, on 22 March 1888 (the Cleveland Award);⁴

¹ Charter of the United Nations, San Francisco, 26 June 1945.

² Charter of the Organization of American States, Bogotá, 13 April 1947, 119 UNTS 48.

³ Treaty of Territorial Limits between Costa Rica and Nicaragua, San José, 15 April 1858, also referred to as the Cañas-Jeréz Treaty. An English translation of the Treaty is found in the Costa Rican Memorial presented to President Cleveland in 1887: see *Argument on the Questions of the Validity of the Treaty of Limits between Costa Rica and Nicaragua and Other Supplementary Points Connected with it, submitted to the Arbitration of the President of the United States of America, filed on behalf of the Government of Costa Rica by Pedro Pérez Zeledón, its Envoy Extraordinary and Minister Plenipotentiary in the United States* (Translated into English by J.L. Rodríguez, Washington: Gibson Bros., Printers and Bookbinders, 1887). Source: U.S. National Archives, Record Group 76, Record of Boundary and Claims Commission and Arbitration, Costa Rica-Nicaragua Boundary Arbitration, NC-155, Entry 24. This translation and the original Spanish text are at **Attachment 1**.

- (d) the first and second arbitral awards rendered by Edward Porter Alexander dated respectively 30 September 1897 and 20 December 1897 (the first and second Alexander Awards);⁵
- (e) the 1971 Convention on Wetlands of International Importance especially as Waterfowl Habitat (the Ramsar Convention);⁶
- (f) the judgment of the Court of 13 July 2009 in the *Case Concerning the Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*; and
- (g) other applicable rules and principles of international law.

2. By sending contingents of its armed forces to Costa Rican territory and establishing military camps therein, Nicaragua is not only acting in outright breach of the established boundary regime between the two States, but also of the core founding principles of the United Nations, namely the principles of territorial integrity and the prohibition of the threat or use of force against any State in accordance with Article 2(4) of the Charter; also endorsed as between the parties in Articles 1, 19 and 29 of the Charter of the Organization of American States.⁷

The Court's Jurisdiction

3. The Court has jurisdiction over the present dispute by virtue of:

- (a) article XXXI of the American Treaty on Pacific Settlement, Bogotá, 30 April 1948 (the Pact of Bogotá) pursuant to Article 36(1) of the Statute of the Court;⁸

⁴ The Award was given in English: see Award of the Arbitrator, the President of the United States, upon the validity of the Treaty of Limits of 1858 between Nicaragua and Costa Rica, reprinted in *Papers relating to the Foreign Relations of the United States transmitted to Congress*, Part I, December 1888 (Washington D.C.: Government Printing Office, 1889): **Attachment 2**.

⁵ The Alexander Awards are reprinted in H. LaFontaine, *Pasicrisie Internationale 1794-1900: Histoire Documentaire des Arbitrages Internationaux* (1902, repr. 1997, Martinus Nijhoff, The Hague), pp. 529-533: **Attachments 3 and 4**.

⁶ Convention on Wetlands of International Importance especially as Waterfowl Habitat, Ramsar, 2 February 1971, 996 UNTS 246. Both Costa Rica and are parties to the Ramsar Convention.

⁷ Charter of the Organization of American States, Bogotá, 30 April 1948, 119 UNTS 3.

⁸ American Treaty on Pacific Settlement, Bogotá, 30 April 1948, 30 UNTS 84. Both Costa Rica and Nicaragua are parties to the Pact of Bogotá.

- (b) the operation of the declarations of acceptance made respectively by the Republic of Costa Rica dated 20 February 1973, and by the Republic of Nicaragua dated 24 September 1929 (as modified 23 October 2001), pursuant to Article 36(2) of the Statute of the Court.

Facts of the Present Dispute

4. The facts underlying the present dispute are as follows. Nicaragua has, in two separate incidents, occupied the territory of Costa Rica in connection with the construction of a canal across Costa Rican territory from the San Juan River to Laguna los Portillos (also known as Harbor Head Lagoon), and certain related works of dredging on the San Juan River. The first incursion occurred on or about 18 October 2010, at the same time as President Ortega of Nicaragua gave the order to commence dredging works. Nicaragua was reported felling trees and depositing sediment from the dredging works on Costa Rican territory. After a brief withdrawal, on or about 1 November 2010 a second contingent of Nicaraguan troops entered Costa Rican territory and established a camp. This second incursion has resulted in the continuing occupation by armed Nicaraguan military forces of an initial area of around three square kilometres of Costa Rican territory, located at the northeast Caribbean tip of Costa Rica, although evidence shows that Nicaraguan military forces have also ventured further inside Costa Rican territory, to the south of that area. Nicaragua has also seriously damaged that part of Costa Rican territory under its occupation.

5. The ongoing and planned dredging and the construction of the canal will seriously affect the flow of water to the Colorado River of Costa Rica, and will cause further damage to Costa Rican territory, including the wetlands and national wildlife protected areas located in the region.

6. Edén Pastora, head of the dredging operations, has confirmed in television interviews that the purpose of the planned canal is to “restore the Nicaraguan border river to its historic channel to the sea” and that the 1858 Treaty of Limits proves that the Isla Calero “is part of Nicaragua,

not Costa Rica.”⁹ In relation to the dredging operation, Pastora has stated that he intends to, “clean the river and rescue it.”¹⁰

7. Moreover, Nicaragua intends by the artificial canalization of the San Juan River in this way is to modify the natural watercourse which forms the boundary as set out in the first and second Alexander Awards. According to President Ortega:

“It is clear, here is Punta Castilla, where the first marker is located, where is it how do we call this? Ah yes, the first landmark, which is the one that serves as point of departure for the marking down of the boundary between Nicaragua and Costa Rica, here is the lagoon Harbour Head, which logically belongs to Nicaragua, here is the famous channel that goes to Harbour Head and that unites [with] the San Juan River. And the San Juan River should, in its normal course, retake this route and reach this lagoon, in an area where many years ago there was a great bay.”¹¹

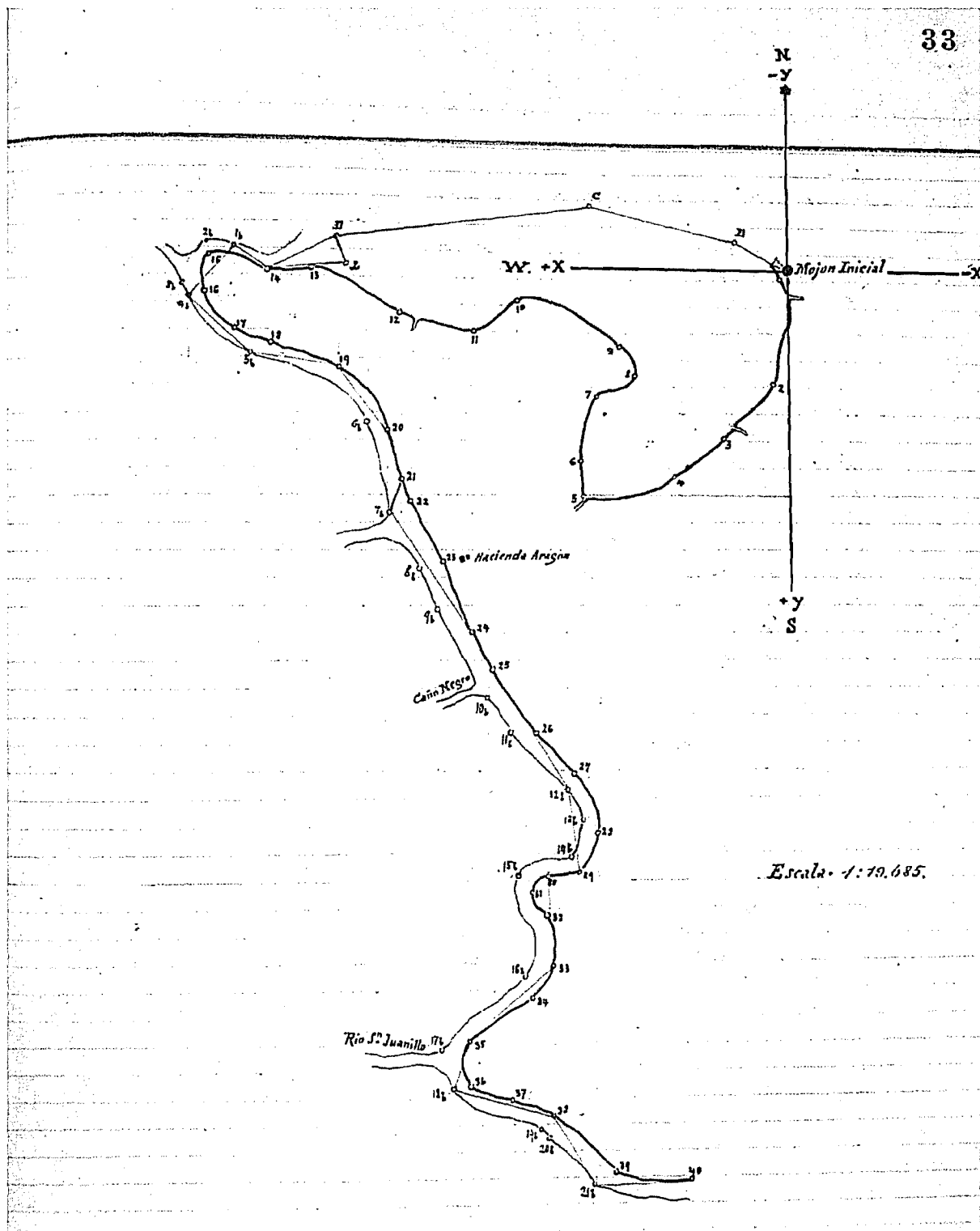
8. However, no such “great bay” has ever existed at or near this location. The “normal course” of the San Juan River was marked on the hand-drawn sketch map describing the boundary starting at Punta de Castilla and following the course of the San Juan River, (Alexander Minute N° X of 2 March 1898, Volume I, p. 33): see page 5. The delimitation recorded or depicted by Alexander is consistent with the contemporary maps submitted by Costa Rica and Nicaragua to the Court in the *Case Concerning Navigational and Related Rights*, and of other official maps of both countries.¹² All of these maps show the San Juan River boundary enclosing the entirety of the occupied territory within Costa Rica.

⁹ Report of interview with Edén Pastora on Nicaraguan television channel 100% Noticias, in Tim Rogers, ‘Nicaragua Denies Reports of Intrusion into Costa Rica’ *Tico Times*, 2 November 2010, available at: http://www.ticotimes.net/News/Daily-News/Nicaragua-Denies-Reports-of-Intrusion-into-Costa-Rica_Tuesday-November-02-2010/: **Attachment 9**.

¹⁰ Ibid.

¹¹ English translation by Costa Rica of a speech given by President Ortega on national Nicaraguan television on 13 November 2010. English translation and Spanish original: **Attachment 6**.

¹² See e.g. Nicaraguan Institute of Territorial Studies, Official Sheet Map of Nicaragua and National Geographic Institute of Costa Rica, Official Map of Costa Rica: **Attachment 11**.



Hand-drawn sketch map describing the boundary starting at Punta de Castilla and following the course of the San Juan River, Alexander Minute N° X of 2 March 1898. Volume I, p. 33

TICOS DESCONOCEN LAUDO

■ Según el Laudo Cleveland, la frontera de Nicaragua con Costa Rica inicia en Punta de Castilla, se extiende en la margen derecha de la Laguna de los Portillos o Harbour Head, y continúa sobre el primer caño hasta el río San Juan. Costa Rica reclama como propio un promontorio de sedimentos en la desembocadura del río San Juan, al que llama isla Calero.



Map of canal planned by Nicaragua.

Image provided by *La Prensa* (Nicaraguan news channel), available at:

<http://www.laprensa.com.ni/infografia/721>

The Costa Rica/Nicaragua Boundary

9. The 1858 Treaty of Limits between Costa Rica and Nicaragua, and the first and second Alexander Awards, defined and settled with a permanent and definite character the territorial boundary line between Costa Rica and Nicaragua (from Punta Castilla to the point three miles below Castillo Viejo). The validity of the 1858 Treaty of Limits was upheld by the Cleveland Award of 1888,¹³ which spelled out a number of Costa Rican rights, a task continued by the Court in 2009.¹⁴

10. The 1858 Treaty of Limits delimited the boundary between Costa Rica and Nicaragua from the Caribbean Sea to the Pacific Ocean. The part of the boundary between a point three English miles below Castillo Viejo and the Caribbean Sea was clearly fixed as following the right bank of the San Juan River:

“The dividing line between the two Republics, starting from the Northern Sea, shall begin at the end of Punta de Castilla, at the mouth of the San Juan de Nicaragua river, and shall run along the right bank of the said river up to a point of three English miles distant from Castillo Viejo.”¹⁵

11. The 1858 Treaty of Limits also shows that the drafters had made a clear distinction between the San Juan River and the Colorado. Article V, a transitional provision, stated that:

“As long as Nicaragua does not recover the full possession of all her rights in the port of San Juan del Norte, the use and possession of Punta de Castilla shall be common and equal both for Nicaragua and Costa Rica; and in the mean-time, and as long as this community lasts, the boundary shall be the whole course of the Colorado river. It is furthermore stipulated that, as long as the said port of San Juan del Norte remains a free port, Costa Rica shall not charge Nicaragua any custom duties at Punta de Castilla.”¹⁶

¹³ Cleveland Award, 458: **Attachment 2**. See also Case Concerning the Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment of 13 July 2009, p. 18 (para. 19).

¹⁴ Case Concerning the Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment of 13 July 2009, pp. 18-19 (paras 19-23) and pp. 51-52 (paras 153 and 155).

¹⁵ Treaty of Limits (Cañas-Jerez), 15 April 1858, English Translation, Article II: **Attachment 1**.

¹⁶ Ibid., Art. V.

This transitional provision was terminated shortly thereafter with the promulgation of the Regulations for the port and population of San Juan del Norte as approved in 1861,¹⁷ when Nicaragua recovered possession over the port and a condominium was established by Costa Rica and Nicaragua over the Bay of San Juan pursuant to Article IV of the 1858 Treaty of Limits.

12. The Cleveland Award expressly confirmed this position:

“5. 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 mouth of the San Juan de Nicaragua River, as they both existed on the 15th day of April 1858.

...

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.”¹⁸

13. Following the Cleveland Award, the 1896 Delimitation Convention (Pacheco-Matus)¹⁹ was concluded. Costa Rica and Nicaragua thereby agreed to name a Commission for the purpose of properly tracing and marking the boundary line between the two Republics. It was further agreed to request the President of the United States of America to appoint an Engineer who would undertake the function of umpire to decide, with binding effect, any disagreement between the Commissioners of Costa Rica and Nicaragua. The President of the United States appointed Mr. Edward Porter Alexander.

14. The Commission commenced its demarcation work in 1897. During the work of the Commission, Mr. Alexander rendered five Awards.²⁰ According to the first Award of 30 September 1897:

¹⁷ It was listed as part of Nicaragua by the US consul on 6 October 1862 in the *Commercial Relations of the United States with Foreign Countries* (United States Bureau of Foreign Commerce), Annual Report of 1862, p. 651.

¹⁸ Cleveland Award, 458: **Attachment 2**.

¹⁹ Costa Rica-Nicaragua Delimitation Convention (Pacheco-Matus), San Salvador, 27 March 1896, 182 CTS 359.

²⁰ The five Alexander Awards are reprinted in H. LaFontaine, *Pasicrisie Internationale 1794-1900: Histoire Documentaire des Arbitrages Internationaux* (1902, repr. 1997, Martinus Nijhoff, The Hague). Relevantly, the first and second Awards are at **Attachments 3 and 4**.

"I have accordingly made personal inspection of this ground, and declare the initial boundary to run as follows, to wit:

Its direction shall be due northeast and southwest, across the bank of sand, from the Caribbean Sea into the waters of Harbor Head Lagoon. It shall pass at its nearest point, 300 feet on the northwest side from the small hut now standing in that vicinity. On reaching the waters of Harbor Head Lagoon, the boundary line shall turn to the left, or southeastward, and shall follow the water's edge around the harbour until it reaches the river proper by the first channel met. Up this channel, and up the river proper, the line shall continue to ascend as directed in the treaty."²¹

The hand-drawn sketch map portrayed in the Alexander Minute (page 5, above) illustrates clearly this delimitation.²²

15. The second Alexander Award settled the tracing and marking of the boundary line starting at Punta Castilla, in the Caribbean Sea, until it reaches the point three English miles below Castillo Viejo, along the southern bank of the San Juan River. Relevantly, the Second Award provided as follows:

"“The Costa Rican Commission proposed that we proceed to the measurement of the line that ran from the starting point and continued along the shore of Harbor Head and thence along the shore around the harbour until it reaches the San Juan river proper by the first channel met and thence along the bank of the river to a point three miles below Castillo Viejo and that a map should be made of such line and that all of that should be set down in the daily record. The Nicaraguan Commission expressed the view that the measurement and mapping work on that portion of the line was pointless and worthless because, according to the Award by General E.P. Alexander, the [right] bank of the Harbor and of the river formed the boundary and that therefore the dividing line was subject to change and not permanent...To that end, the two Commissions have decided to hear the decision that the arbitrator would render within a week to their respective arguments submitted to him on the question.’

...

²¹ Ibid., p. 532.

²² Alexander Minute N° X of 2 March 1898. Volume I, p. 33.

Clearly, therefore, the consequence of any disagreement on the question of whether the measurement is more or less accurate must be that the view of the party favouring greater accuracy should prevail.

I therefore announce my award as follows: the Commissioners shall immediately proceed to measuring the line from the starting point to a point three miles below El Castillo Viejo, as proposed by Costa Rica.”²³

16. This depiction of the border line has consistently been respected and depicted, in all official maps of both countries, as constituting the international boundary line between Costa Rica and Nicaragua for the last 113 years.²⁴

17. As noted in Costa Rica’s Memorial in the *Case Concerning Navigational and Related Rights*,²⁵ the San Juan River divides some 19.3 kilometres from the sea, continuing on its northerly arm as the San Juan, in the ordinary course emptying into the Caribbean Sea at the Bay of San Juan del Norte. The Colorado River is the southern and larger stream: it runs entirely within Costa Rica, reaching the sea at Barra del Colorado. The broader area concerned in the present dispute is referred to as Isla Calero; a landmass comprising some 151 square kilometres in total, situated between the San Juan and Colorado rivers and the Caribbean Sea. Included in this area, there is a smaller area to the north called Isla Portillos, adjacent to Punta Castilla and bordered by the San Juan River and the Laguna los Portillos.²⁶ The entirety of Isla Calero (including Isla Portillos) is recognized to be wholly within the territory of Costa Rica.

18. The northern part of Isla Portillos is currently occupied by Nicaraguan forces.

19. Furthermore, Nicaragua has commenced the construction of a canal which would divide the northern part of Isla Portillos in two, and would join the San Juan River to the Laguna Los

²³ Ibid., pp. 532-533 as translated and reported in RIAA, Vol. XXVIII, pp. 223-225 (United Nations 2007). The original Spanish text reads at page 532: “según el Tratado y el Laudo General E.P. Alexander, el límite divisorio lo forma la margen derecha del Harbour y del río...”. The United Nations translation incorrectly reports this as “according to the Award by General E.P. Alexander, the left bank of the Harbor and of the river”.

²⁴ See for example the Sketch Map 2 of the Memorial of Costa Rica dated 29 August 2006 and Sketch Map 1 of the Counter-Memorial of Nicaragua dated 27 May 2007 in the *Case Concerning the Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*.

²⁵ *Case Concerning the Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Memorial of Costa Rica, 29 August 2006, p. 7 (para. 2.03).

²⁶ Referred to as “Harbor Head Lagoon” in the first and second Alexander Awards.

Portillos. This would have the effect of artificially cutting across Costa Rican territory and of placing what is clearly Costa Rican territory on the left bank of that canal.

20. Furthermore, Nicaragua has expressed its intention to dredge the San Juan River from the new canal to the point where the San Juan and Colorado rivers diverge. Nicaragua claims that the Colorado River...

“was a river that did not have the same volume of flow as it currently has, and with the passing of time, obstructions that took place at this point kept deviating the waters of the San Juan River to the Colorado river. Thus, the Colorado River is fed in about 90% by Nicaraguan waters, what are these Nicaraguan waters? The waters that come from the north of our country, to drain the Managua lake, the great lake of Granada and then drain through the San Juan River.”²⁷

21. Nicaragua takes the position that it is restoring the historic flow and channels of the San Juan River. This is entirely inconsistent with the clear delimitation of the San Juan River as the boundary in this sector between Nicaragua and Costa Rica set out in the 1858 Treaty of Limits, the Cleveland Award and the first and second Alexander Awards. According to those instruments, the Colorado River has always fallen exclusively within the territory of Costa Rica and formed no part of the border.

22. Nicaragua is now trying to take by force what the Treaties, Awards, and this Court, denied it – in breach of the United Nations Charter and of well-established principles of international law.

23. In addition to the clear definition of the border, the Cleveland Award also deals with the question of dredging, stating in the relevant part that:

“6. The Republic of Costa Rica cannot prevent the Republic of Nicaragua from executing at her own expense and within her own territory such works of improvement, *provided* such works of improvement do not result in the occupation or flooding or damage of Costa Rica territory, or in the destruction or serious impairment of the navigation of the

²⁷ English translation by Costa Rica of a speech given by President Ortega on national Nicaraguan television on 13 November 2010: **Attachment 6**.

said River or any of its branches at any point where Costa Rica is entitled to navigate the same.”²⁸

24. The Court referred to this passage in rejecting Nicaragua’s request for a declaration of its entitlement to dredge the San Juan River, stating,

“153. Nicaragua adds a further submission. It requests the Court ‘to make a formal declaration on the issues raised by Nicaragua in Section II of Chapter VII of her Counter-Memorial, [and] in Section I, Chapter VI of her Rejoinder’.

The declaration requested is the following:

‘...

(v) Nicaragua has the right to dredge the San Juan in order to return the flow of water to that obtaining in 1858 even if this affects the flow of water to other present day recipients of this flow such as the Colorado River.’

155. ...In any event it suffices for the Court to observe that the two questions thus raised were settled in the decision made in the Cleveland Award. It was determined in paragraphs 4 to 6 of the third clause of the Award that Costa Rica is not bound to share in the expenses necessary to improve navigation on the San Juan river and that Nicaragua may execute such works of improvement as it deems suitable, provided that such works do not seriously impair navigation on tributaries of the San Juan belonging to Costa Rica.

As Nicaragua has offered no explanation why the Award does not suffice to make clear the Parties’ rights and obligations in respect of these matters, its claim in this regard must be rejected.”²⁹

25. Nicaragua’s plan to build a canal in Costa Rica’s territory and to divert the San Juan through that canal, is causing and will continue to cause flooding and damage to Costa Rica’s territory, specifically the wetlands and other fragile ecosystems in the area.

²⁸ Cleveland Award, p. 458 (emphasis added): **Attachment 2.**

²⁹ *Case Concerning the Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment of 13 July 2009, pp. 51-52 (paras 153 and 155).

26. Last but not least, Nicaragua's continuing emplacement of military personnel in Costa Rican territory in spite of the OAS Resolution is an act of hostility contrary to the terms of Article IX of the 1858 Treaty of Limits, which states that:

“Under no circumstances, and even in case that 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, whether in the port of San Juan del Norte, or in the San Juan river, or the Lake of Nicaragua.”

Attempts at a Diplomatic Settlement of the Dispute

27. On 21 October 2010, after learning of the presence of Nicaraguan troops on Costa Rican territory, the Government of Costa Rica, through its Foreign Ministry, submitted a formal protest to the government of Nicaragua. Costa Rica requested that Nicaragua immediately cease any action or activity that would affect Costa Rican territory or sovereignty.

28. In response, on 26 October, Nicaragua rejected Costa Rica's protest letter and in fact accused Costa Rica of conducting an incursion onto Nicaraguan territory.

29. On 1 November 2010, Costa Rica's Foreign Minister responded to Nicaragua's allegations and reminded Nicaragua of its international obligations. After learning on the same day that Nicaragua's armed forces had invaded, for the second time, and established a base on Costa Rican territory, the Costa Rican Foreign Minister sent a second diplomatic note, protesting in the strongest terms those hostile acts by Nicaragua.

30. Nicaragua having made no further response, on 3 November 2010, in accordance with articles 21 and 62 of the Charter of the Organization of American States (OAS), a Special Session of the Permanent Council of the OAS was convened following an urgent request from Costa Rica. Between 5 November 2010 and 8 November 2010, the Secretary General of the OAS, José Miguel Insulza, visited both Nicaragua and Costa Rica in order to seek a diplomatic solution. He also flew above the Costa Rican territory occupied by the Nicaraguan military. Despite efforts to seek a diplomatic solution, whereby Nicaragua would withdraw its armed forces from the occupied territory to permit the issue to be discussed bilaterally, Nicaragua

rejected all calls for withdrawal and all means of negotiation. As a result, the Secretary General made four recommendations to the Permanent Council of the OAS:

- To “hold the Eighth Meeting of the Binational Commission in order to address as a matter of urgency aspects of the bilateral agenda as soon as possible and no later than the date originally agreed, with the assistance of the OAS”;
- To “immediately resume the talks on aspects concerning the demarcation of the boundary line done to date, in accordance with the treaties and decisions in force”;
- “In order to create a favourable climate for dialogue between the two nations, to avoid the presence of military or security forces in the area, where their existence might rouse tension”; and
- To “instruct the appropriate authorities to review and strengthen cooperation mechanisms between the two nations in order to prevent, control, and confront drug trafficking, organized crime, and arms trafficking in the border area”.³⁰

31. Notwithstanding the fact that the area in question is Costa Rican territory, and the fact that the delimitation of the boundary line was settled in a permanent and definite character by the first and second Alexander Awards, Costa Rica accepted all four recommendations made by the Secretary General without reservation. However Nicaragua refused to agree to any of the recommendations.

32. On 12 November 2010, the Permanent Council of the OAS issued a Resolution, passed by a vote of 22 votes to two (Nicaragua, Venezuela) with three abstentions, calling for the adoption of the Secretary General’s recommendations and in particular, calling for the withdrawal of Nicaraguan armed forces from the border region, by requesting the *avoidance of the presence of military or security forces in the area* where their existence might rouse tension, in order to create a favourable climate for dialogue between the two nations.³¹

³⁰ The Permanent Council of the OAS adopted the Secretary General’s four recommendations in a Resolution on 12 November 2010, available as a Press Release at:
http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-16#: **Attachment 7.**

³¹ Resolution of the Permanent Council of the OAS, 12 November 2010: **Attachment 7.**

33. Despite the very strong support for the recommendations, the Nicaraguan Ambassador to the OAS stated Nicaragua's intention not to comply with the Resolution: "We are going to challenge this resolution. We are going to question it, and we are going to document our position against this resolution, which was flawed from the outset and flawed in its conclusion".³² The next day, President Ortega made an even more vehement statement denouncing the OAS:

"In this meeting of the OAS the possibility of unconditional dialogue was really killed, *killed*, because they started to include conditioning elements and that kills unconditional dialogue. And we, I repeat, as of principle, are not withdrawing from an area of Nicaraguan territory on the border areas with the brother people of Costa Rica, with the brother people of Honduras, nor in maritime zones, we are not withdrawing our army forces or our police forces that fight against drug-trafficking. There is no withdrawing here. And that proposal from the OAS last night of 'approving', in inverted commas, what they are telling us is that we should leave free the territory to drug-trafficking, we do not accept this ... we have lost all faith in the OAS. It would even be convenient to start working on our withdrawal from the OAS. What is the OAS for? What are we doing in the OAS?"³³

34. Not having other diplomatic options as a result of Nicaragua's refusal to accept the recommendations adopted by the Council of the OAS, and being seriously affected by the violations and breaches perpetrated by Nicaragua, Costa Rica seeks appropriate relief from the Court, including by way of provisional measures.³⁴

Damage Caused by the Occupation

35. During the course of the occupation, the following damage to Costa Rican territory has been perpetrated by Nicaragua, in violation of its international obligations:

- (a) The installation of military camps in Costa Rican territory;

³² Statement of Denis Ronaldo Moncada, Nicaraguan Ambassador to the Organization of American States, as reported in 'Call for troop withdrawal in Nicaragua, Costa Rica dispute', *CNN International*, 13 November 2010, available at:

<http://edition.cnn.com/2010/WORLD/americas/11/12/nicaragua.costa.rica.dispute/>: **Attachment 8.**

³³ English translation by Costa Rica of a speech given by President Ortega on national Nicaraguan television on 13 November 2010: **Attachment 6.**

³⁴ A separate request for provisional measures is being filed simultaneously.

- (b) The handling and storage of fuels in Costa Rican territory, with potential damage to the wildlife of Costa Rica's wildlife protected areas;
- (c) The landing of Nicaraguan Army Helicopters without Costa Rican permission and in disregard of the fragile ecosystems in Costa Rica's wildlife protected areas;
- (d) The penetration by Nicaraguan armed vessels of Costa Rica's maritime territorial waters in the Caribbean Sea;

36. Furthermore, the following Nicaraguan acts are directly related to Nicaragua's incursion, and its canal building and dredging activities:

- (e) the prohibition imposed by the Nicaraguan authorities on Costa Rican nationals navigating the San Juan River in contravention of the 1858 Treaty of Limits and the Court's Judgment of 13 July 2009;
- (f) the use of the San Juan River to launch the incursion into Costa Rican territory and to commit acts of hostility against Costa Rica, in violation of article IX of the 1858 Treaty of Limits.

37. In particular, the following damage has been caused to Costa Rican territory by Nicaragua's dredging and the activities related to the construction of the canal:

- (g) the deposit of sediments from the San Juan River on Costa Rican territory;
- (h) the felling and destruction of primary forest in Costa Rican territory, specifically in a national wildlife protected area of rainforests and wetlands;
- (i) the digging and removal of soil in Costa Rican territory, with the purpose of building an artificial channel to divert the San Juan River;
- (j) the infliction of damage to wetlands in Costa Rican territory, as a result of digging and removal of soil in a national wildlife protected area;

38. The damage noted at sub-paragraphs (a) and (g)-(j) is in part evidenced by the photographs taken by Costa Rica during recent reconnaissance flights over the occupied territory and annexed to the present Application.³⁵

³⁵

Attachment 10.

39. Reserving the right to further particularize the various breaches of Costa Rica's rights, Nicaragua has committed the following violations of international law:

- (a) Nicaragua has invaded and is currently occupying territory of the Republic of Costa Rica, in breach of the 1858 Treaty of Limits, the first and second Alexander Awards, the Charter of the Organization of American States, and the Charter of the United Nations;
- (b) Nicaragua is damaging and destroying primary rainforests, wetlands and fragile ecosystems located on Costa Rican territory;
- (c) Nicaragua has started digging an artificial channel cutting across Costa Rican territory, in an attempt to divert the waters of the San Juan River from their natural watercourse;
- (d) Nicaragua has prohibited navigation on the San Juan River by Costa Rican nationals, in direct contravention of 1858 Treaty of Limits and the Judgment of the Court of 13 July 2009;³⁶
- (e) Nicaragua is dredging and further plans to dredge the San Juan River for the purpose of affecting the flow of water of the Colorado River of Costa Rica, and to potentially damage Costa Rican territory, including the Colorado River and Costa Rican wetlands, lagoons, rivers, herbaceous swamps and woodlands;
- (f) Nicaragua is dredging and further plans to dredge the San Juan River in such a way that would modify the natural watercourse agreed to form the boundary as set out in the first and second Alexander Awards.

40. Costa Rica seeks the immediate cessation of these breaches of Nicaragua's international obligations *vis-à-vis* Costa Rica and of general international law. Costa Rica also seeks reparation for damage caused to Costa Rica's territory.

Remedies requested by Costa Rica

41. For these reasons, and reserving the right to supplement, amplify or amend the present Application, Costa Rica requests the Court to adjudge and declare that Nicaragua is in breach of

³⁶ This is in addition to the promulgation by Nicaragua of Decree 79, in direct contravention of the Court's Judgement of 13 July 2009.

its international obligations as referred to in paragraph 1 of this Application as regards the incursion into and occupation of Costa Rican territory, the serious damage inflicted to its protected rainforests and wetlands, and the damage intended to the Colorado River, wetlands and protected ecosystems, as well as the dredging and canalization activities being carried out by Nicaragua on the San Juan River. In particular the Court is requested to adjudge and declare that, by its conduct, Nicaragua has breached:

- (a) the territory of the Republic of Costa Rica, as agreed and delimited by the 1858 Treaty of Limits, the Cleveland Award and the first and second Alexander Awards;
- (b) the fundamental principles of territorial integrity and the prohibition of use of force under the Charter of the United Nations and the Charter of the Organization of American States;
- (c) the obligation imposed upon Nicaragua by Article IX of the 1858 Treaty of Limits not to use the San Juan River to carry out hostile acts;
- (d) the obligation not to damage Costa Rican territory;
- (e) the obligation not to artificially channel the San Juan River away from its natural watercourse without the consent of Costa Rica;
- (f) the obligation not to prohibit the navigation on the San Juan River by Costa Rican nationals;
- (g) the obligation not to dredge the San Juan River if this causes damage to Costa Rican territory (including the Colorado River), in accordance with the 1888 Cleveland Award;
- (h) the obligations under the Ramsar Convention on Wetlands;
- (i) the obligation not to aggravate and extend the dispute by adopting measures against Costa Rica, including the expansion of the invaded and occupied Costa Rican territory or by adopting any further measure or carrying out any further actions that would infringe Costa Rica's territorial integrity under international law.

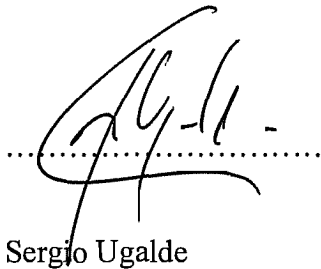
42. The Court is also requested to determine the reparation which must be made by Nicaragua, in particular in relation to any measures of the kind referred to in paragraph 41 above.

43. In accordance with the provisions of Article 31(2) of the Statute of the Court and Article 35 (1) of its Rules, the Government of the Republic of Costa Rica states its intention to designate a judge *ad hoc*.

44. The Minister of Foreign Affairs of Costa Rica has appointed as Agent for these proceedings Ambassador Edgar Ugalde, and as Co-Agents Ambassador Jorge Urbina and Mr Sergio Ugalde. It is requested that all communications of this case be notified to the Agent at the following address:

Embassy of the Republic of Costa Rica
Laan Copes van Cattenburch 46
2585GB, The Hague
The Netherlands.

Respectfully,

A handwritten signature in black ink, appearing to be 'S. Ugalde', is written over a horizontal dotted line. The signature is fluid and cursive.

Sergio Ugalde

Special Advisor to the Ministry of Foreign Affairs and Worship

Co-Agent of the Government of Costa Rica

18 November 2010

List of Attachments

1. Treaty of Territorial Limits between Costa Rica and Nicaragua, San José, 15 April 1858;
2. Arbitral award issued by the President of the United States of America, Grover Cleveland, 22 March 1888;
3. First Alexander Award, 30 September 1897;
4. Second Alexander Award, 20 December 1897;
5. Costa Rica-Nicaragua, Pact of Amity, Washington, 21 February 1949;
6. Spanish original transcript of speech given by President Ortega on 13 November 2010;
7. Copy of Resolution of the Organization of American States, 12 November 2010, available as a Press Release at:
http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-16;
8. Statement of Denis Ronaldo Moncada, Nicaraguan Ambassador to the Organization of American States, as reported in 'Call for troop withdrawal in Nicaragua, Costa Rica dispute', *CNN International*, 13 November 2010, available at:
<http://edition.cnn.com/2010/WORLD/americas/11/12/nicaragua.costarica.dispute>;
9. Copy of report of interview with Edén Pastora on Nicaraguan television channel 100% Noticias, in Tim Rogers, 'Nicaragua Denies Reports of Intrusion into Costa Rica', *Tico Times*, 2 November 2010, available at:
http://www.ticotimes.net/News/Daily-News/Nicaragua-Denies-Reports-of-Intrusion-into-Costa-Rica_Tuesday-November-02-2010/;
10. Selected photographs of the occupied area;
11. Nicaraguan Institute of Territorial Studies, Official Sheet Map of Nicaragua and Geographic National Institute of Costa Rica, Official Map of Costa Rica.

Attachment 1

Costa Rica-Nicaragua, Treaty of Limits (Cañas-Jérez), San José, 15 April 1858

(a) Original version in Spanish

Source: *Colección de las Leyes, Decretos y Ordenes expedidos por los Supremos Poderes Legislativo y Ejecutivo de Costa Rica en el año de 1858*, Tomo

XV, (San José: Imprenta de la Paz, 1871), 175 – 188

(b) English translation: Costa Rican version submitted to Cleveland

Source: P Pérez Zeledón,

Argument on the Question of the Validity of the Treaty of Limits between Costa Rica and Nicaragua (Washington, D.C., Gibson Bros, 1887), Document No. 1, 185

COLECCION

DE LAS

LEYES, DECRETOS Y ORDENES

EXPEDIDOS POR LOS SUPREMOS PODERES

LEGISLATIVO Y EJECUTIVO

DE COSTA-RICA,

EN EL AÑO DE 1858.

Ref

~~REPUBLICA DE COSTA RICA~~

Impreso por disposición del Supremo Poder Ejecutivo

de la República.

1871.

SAN-JOSÉ.

Imprenta de la Paz—Calle del Puente Ancho

“Visto con las diligencias correspondientes y constando: que D. Manuel Leiva natural de la República de Honduras, reúne las circunstancias que para naturalizarse en Costa-Rica prescribe la ley número 21 de 25 de Noviembre de 1852; y que con tal mira ha renunciado sus derechos nacionales; se le concede la carta de naturaleza en el país, y se le declara en el libre uso de los derechos que la Constitución y las leyes acuerdan a los costarricenses. Comuníquese por circular impresa para los fines que son consiguientes.”—L lo comunicó á U para su conocimiento y efectos.—Dios guarde a U.—
Calvo.

DECRETO VI

Convoca extraordinariamente al Congreso Nacional.

Nº 3.

“Juan Rafael Mora, Presidente de la República de Costa-Rica.

Con presencia de la autorizacion dada al Poder Ejecutivo por la fraccion 19ª artículo 77 de la Constitución, he venido en decretar y decreto:

Art. 1º Se convoca extraordinariamente al Excelentísimo Congreso Nacional para someter á su alto conocimiento y deliberacion asuntos de la mayor importancia al bien general de los pueblos.

Art. 2º La reunion de los Honorables Representantes se verificará en el Salon de Sesiones á las doce del dia de mañana 15 de los corrientes; y al in.

tento el Ministro del Interior dictará las providencias que corresponden.—Dado en el Palacio Nacional en San José, a los catorce días del mes de Abril de mil ochocientos cincuenta y ocho —Juan Rafael Mora.—El Ministro de Estado en el Despacho de Gobernación, Joaquín Bernardo Calvo.”

DECRETO VII.

Aprueba en todas sus partes el Tratado de límites territoriales celebrado con Nicaragua.

Nº 1º

“Juan Rafael Mora, Presidente de la República de Costa-Rica.—Por cuanto el Excelentísimo Congreso Constitucional ha decretado lo siguiente.

El Excelentísimo Congreso Constitucional de la República de Costa-Rica, considerando: que el Tratado de límites territoriales entre la República de Costa-Rica y la de Nicaragua, celebrado y firmado en la ciudad de San José por Ministros plenamente autorizados por los Gobiernos de las Repúblicas mencionadas, con la mediación del Salvador, obsequia los principios de recíproco interés, de paz y de justicia, y estrecha los vínculos que unen á dos Repúblicas limítrofes, poniendo un término definitivo á cuestiones pendientes entre ellas: ha venido en decretar y decreta:

Artículo único. Se aprueba en todas sus partes y artículos el Tratado de límites territoriales entre

Costa-Rica y Nicaragua, firmado en esta ciudad el quince de los corrientes por Plenipotenciarios autorizados al efecto.—Al Supremo Poder Ejecutivo.—Dado en el Salon de Sesiones, en San José, á los dieziseis dias del mes de Abril de mil ochocientos cincuenta y ocho.—Rafael G. Escalante, Presidente.—Juan Gonzalez, Secretatio.—Manuel Joaquin Gutierrez, Secretario.—Por tanto: EJECUTENSE.—Palacio Nacional, San José, Abril dieziseis de mil ochocientos cincuenta y ocho.—Juan Rafael Mora.—El Ministro de Estado en el Despacho de Relaciones Exteriores, Nazario Toledo.”

DECRETO VIII.

Destina a uno y otro lado de las riberas del rio Sarapiquí, una faja de tierra baldia para agradecer a los costaricenses pobres.

Nº 3.

“Rafael G. Escalante, Vice-Presidente en ejercicio del Supremo Poder Ejecutivo de la República de Costa-Rica.

Deseoso de favorecer a los costaricenses pobres concediéndoles de gracia un terreno capaz de mantener con sus productos á sus familias, y con la mira, al mismo tiempo de promover y facilitar la inmigracion de extranjeros en el pais, haciéndoles gracia de los terrenos mas feraces y mejor situados para el comercio, decreto:

Art. 1º Se destina en ambas riberas del rio de

Sarapiquí, y en toda su estension hasta su confluencia con el rio de San Juan, una faja de tierra baldía de 500 varas de ancho, dedicada esclusivamente á a gratiar a los costaricenses pobres, y a los habitantes laboriosos de cualquiera nacion que quieran poblar la y cultivarla con sujecion a las reglas establecidas en este decreto.

Art. 2º Se concede de gracia a cada poblador un cuadro de tierra de cinco manzanas ó 50.000 varas cuadradas, tomando de frente sobre el rio cien varas y 500 de fondo, cuidandose de dejar entre una y otra propiedad una calle de veinte varas de ancho, que facilite el acceso á los demas terrenos baldíos que quedan detras de los ya dichos.

Art. 3º Gozarán de la gracia los pobladores que hayan comenzado a hacer uso de ella, dentro del término de dos años contados desde esta fecha, y perderán su derecho a la propiedad del terreno los que dentro de cinco años contados también desde hoy no lo tengan cultivado.

Art. 4º El agraciado que haya llenado las condiciones del artículo anterior, á mas de la gracia antedicha, tendrá derecho a que se le dé un cuadro igual al que tenga cultivado á la espalda de este, para usarlo como le convenga.

Art. 5º Si el poblador, ademas de los cuadros que se le conceden por los artículos precedentes, quisiere emprender también en hacienda de cacao, y la plantare dentro de los cinco años que señala el art. 3º, tendrá derecho á la propiedad del terreno que tenga así cultivado, con tal que esté distante mil varas por lo menos, de la orilla del Sarapiquí.

DECRETO X.

Tratado de límites entre Nicaragua y Costa-Rica.

N° 4.

“Rafael G. Escalante, Vice-Presidente de la República de Costa-Rica en ejercicio del Supremo Poder Ejecutivo.

Habiéndose concluido y firmado en esta ciudad el quince de Abril del presente año, un Tratado de límites territoriales entre la República de Costa Rica y la Republica de Nicaragua por Plenipotenciarios autorizados al intento, el cual ha sido ratificado por ambas partes, y cuyo tenor con la ratificación que por la muestra se le ha dado es como sigue.

“Juan Rafael Mora Presidente de la República de Costa-Rica en la América Central.

Por cuanto entre la República de Costa-Rica y la República de Nicaragua se concluyó y firmó en esta ciudad el quince del mes de Abril del presente año de mil ochocientos cincuenta y ocho, por medio de Plenipotenciarios debida y suficientemente autorizados por ambas partes, un Tratado de límites territoriales entre Nicaragua y Costa-Rica, cuyo tenor palabra por palabra es como sigue:

“Máximo Jerez, Ministro Plenipotenciario del Gobierno de la República de Nicaragua, y José María Cañas, Ministro Plenipotenciario del Gobierno de la República de Costa-Rica: encargados por nuestros comitentes de celebrar un Tratado de límites entre ambas Repúblicas, que ponga término á las diferencias que han retardado la mejor y mas perfecta inteligencia y armonía que deben reinar entre ellas, pa-

ra su común seguridad y engrandecimiento: habiendo verificado el canje de nuestros respectivos poderes; bajo el examen que de ellos hizo el Honorable Sr. D. Pedro Rómulo Negrete, Ministro Plenipotenciario del Gobierno de la República del Salvador, en ejercicio de las nobles funciones de mediador fraternal en estas negociaciones, quien los encontró en buena y debida forma; de la misma manera que por nuestra parte fueron hallados bastantes los que exhibió el mismo Sr. Ministro: discutidos con el determinimiento necesario los puntos convenientes, con la asistencia y auxilio del Representante del Salvador, hemos convenido y celebrado el siguiente

TRATADO DE LIMITES ENTRE NICARAGUA Y COSTA RICA.

Art. 1.^o La República de Nicaragua y la República de Costa Rica, declaran en los términos mas expresos y solemnes que si por un momento llegaron á disponerse para combatir entre sí por diferencias de límites y por razones que cada una de las Altas Partes contratantes consideró legales y de honor, hoy despues de repetidas pruebas de buena inteligencia, de principios pacíficos y de verdadera fraternidad, quieren y se comprometen formalmente á procurar, que la paz, felizmente restablecida, se consolide cada dia mas y mas entre ambos Gobiernos y entre ambos pueblos, no solamente para el bien y provecho de Nicaragua y Costa Rica, sino para la ventura y prosperidad que en cierta manera redundan en beneficio de nuestras hermanas las demas Repúblicas de Centro-América.

La línea divisoria de las dos Repúblicas, partien-

do del mar del Norte, comenzará en la extremidad de Punta de Castilla, en la desembocadura del río de San Juan de Nicaragua, y continuará marcándose con la margen derecha del expresado río, hasta un punto distante del Castillo Viejo tres millas inglesas medidas desde las fortificaciones exteriores de dicho Castillo, hasta el indicado punto. De allí partirá una curva, cuyo centro serán dichas obras, y distará de el tres millas inglesas en toda su progresion terminando en un punto que deberá distar dos millas de la ribera del río aguas arriba del Castillo. De allí se continuará en direccion al río Sapoá, que desagua en el Lago de Nicaragua, siguiendo un curso que diste siempre dos millas de la margen derecha del río de San Juan con sus circunvoluciones hasta su origen en el Lago, y de la margen derecha del propio Lago, hasta el expresado río de Sapoá, en donde terminará esta línea paralela á dichas riberas. Del punto en que ella coincida con el río Sapoá, el que por lo dicho, debe distar dos millas del Lago, se tirará una recta astronómica hasta el punto céntrico de la Bahía de Salinas; en el mar del Sur, donde quedará terminada la demarcacion del territorio de las dos Repúblicas contratantes.

Art. 3º Se practicarán las medidas correspondientes á esta línea divisoria, en el todo ó en parte, por comisionados de los dos Gobiernos, poniéndose estos de acuerdo para señalar el tiempo en que haya de verificarse la operacion. Dichos comisionados tendrán la facultad de desviarse un tanto de la curva al rededor del Castillo, de la paralela á las márgenes del río y el Lago, ó de la recta astronómica;

entre Sapoá y Salinas, caso que en ello puedan acordarse para buscar mojones naturales.

Art. 4º La Bahía de San Juan del Norte, así como la de Salinas, serán comunes á ambas Repúblicas, y de consiguiente lo serán sus ventajas, y la obligación de concurrir á su defensa. También está obligado Costa-Rica por la parte que le corresponde en las márgenes del río de San Juan, que en los mismos términos que por tratados lo está Nicaragua, á concurrir á la guarda de él, del propio modo que concurrirán las dos Repúblicas á su defensa en caso de agresión exterior; y lo harán con toda la eficacia que estuviese á su alcance.

Art. 5º Mientras tanto que Nicaragua no recobre la plena posesión de todos sus derechos en el puerto de San Juan del Norte, la Punta de Castilla será de uso y posesión enteramente común igual para Nicaragua y Costa-Rica, marcándose para entre tanto durante esta comunidad, como límite de ella, todo el trayecto del río Colorado. Y además se estipula que mientras el indicado puerto de San Juan del Norte haya de existir con la calidad de franco, Costa-Rica no podrá cobrar á Nicaragua derechos de puerto en Punta de Castilla.

Art. 6º La República de Nicaragua tendrá exclusivamente el dominio y sumo imperio sobre las aguas del río de San Juan desde su salida del Lago, hasta su desembocadura en el Atlántico; pero la República de Costa-Rica tendrá en dichas aguas, los derechos perpetuos de libre navegación, desde la espresada desembocadura hasta tres millas inglesas

antes de llegar al Castillo Viejo, con objetos de comercio, ya sea con Nicaragua ó al interior de Costa Rica, por los rios de San Carlos ó Sarapiquí, ó cualquiera otra via procedente de la parte que en la ribera del San Juan se establece corresponder á esta República. Las embarcaciones de uno ú otro pais podrán indistintamente atracar en las riberas del rio en la parte en que la navegacion es comun, sin cobrarse ninguna clase de impuestos, á no ser que se establezcan de acuerdo entre ambos Gobiernos.

Art. 7º Queda convenido que la division territorial que se hace por este Tratado, en nada debe entenderse contrariando las obligaciones consignadas, ya sea en tratados políticos, ó en contratos de canalizacion ó de tránsito celebrados por parte de Nicaragua con anterioridad al conocimiento; y ántes bien se entenderá que Costa Rica asume aquellas obligaciones en la parte que corresponde á su territorio, sin que en manera alguna se contrarie el dominio eminente y derechos de soberania que tiene en el mismo.

Art. 8º Si los contratos de canalizacion ó de tránsito celebrados antes de tener el Gobierno de Nicaragua conocimiento de este convenio, llegasen á quedar insubsistentes por cualquiera causa, Nicaragua se compromete á no concluir otro sobre los expresados objetos, sin oir ántes la opinion del Gobierno de Costa Rica, acerca de los inconvenientes que el negocio pueda tener para los dos paises; con tal que esta opinion se emita dentro de treinta dias despues de recibida la consulta; caso que el de Nicaragua manifieste ser urgente la resolucion; y no dañándose en el negocio los derechos naturales de Costa Rica, este veto será consultivo.

—186—

Art. 9.º Por ningún motivo; ni en caso y estado de guerra en que por desgracia llegasen á encontrarse las Repúblicas de Nicaragua y Costa-Rica, les será permitido ejercer ningún acto de hospitalidad entre de ellas en el puerto de San Juan del Norte, ni en el río de este nombre y lago de Nicaragua.

Art. 10. Siendo lo estipulado en el artículo anterior esencialmente importante á la debida guarda del puerto y del río contra agresiones exteriores que afectarían los intereses generales del país, queda su estricto cumplimiento, bajo la especial garantía, que a nombre del Gobierno mediador está dispuesto á dar, y en efecto da su Ministro Plenipotenciario presente, en virtud de las facultades que al intento declara estarle conferidas por su Gobierno.

Art. 11. En testimonio de la buena y cordial inteligencia que queda establecida entre las Repúblicas de Nicaragua y Costa-Rica, renuncian á todo crédito activo que entre sí tengan por cualesquiera títulos hasta la asignatura del presente Tratado; é igualmente prescinden las Altas Partes contratantes, de toda reclamación, por indemnizaciones á que se considerasen con derecho.

Art. 12. Este Tratado será ratificado, y sus ratificaciones cambiadas, dentro de cuarenta días de la signatura, en Santiago de Managua.—En fé de lo cual firmamos el presente por triplicado, en union del Honorable Señor Ministro del Salvador, refrendándole los respectivos Secretarios en la ciudad de San José, capital de Costa-Rica, á los quince días del mes de Abril del año del Señor de mil ochocientos cincuenta y ocho.—(F.) Máximo Jerez.—(F.) José M.

Cañas.—(F.) Pedro Rómulo Negrete.—Por tanto, habiendo visto y examinado el preinserto Tratado, previa la aprobacion del Exmo. Congreso Nacional, y en virtud de la facultad que me concede la Constitucion, lo he aceptado, ratificado y confirmado, y por las presentes lo acepto, ratifico y confirmo, prometiendo observar y hacer observar fielmente todo lo que en él se contiene, sin permitir que se contravenga á él de manera alguna.—En fé de lo cual he hecho expedir las presentes, firmadas de mi mano, selladas con el gran sello de la República, y refrendadas por el Ministro de Estado en el Despacho de Relaciones Exteriores en la ciudad de San José á los dieziseis dias del mes de Abril de mil ochocientos cincuenta y ocho.—(L. S.)—Juan Rafael Mora.—El Ministro de Estado en el Despacho de Relaciones Exteriores, Nazario Toledo.”—Y por cuanto se han canjeado debidamente las respectivas ratificaciones en la ciudad de Rivas de Nicaragua el veintiseis del espresado mes de Abril del presente año de mil ochocientos cincuenta y ocho;—Por tanto:—Hágase público dicho Tratado de límites territoriales; y téngase por obligatorio para la República de Costa Rica, sus ciudadanos y habitantes, en todas sus partes, artículos y cláusulas; observándose y cumpliéndose fiel y exactamente en los términos que espresan nuestras letras de ratificacion.—Dado, firmado de mi mano, bajo el sello de la República, y refrendado por el Ministro de Estado en el Desdacho de Gobernacion, en el Palacio Nacional en San José, á los diez dias del mes de Mayo de mil ochocientos cincuenta y ocho.—(L. S.)—Rafael G. Escalante.—El Ministro

de Estado en el Despacho de Gobernacion, Joaquin Bernardo Calvo.”

DECRETO XI.

Hace aplicable la pena de prevaricacion de que habla el articulo 1385, parte 3ª del Código general a los funcionarios públicos que administran justicia.

Nº 5.

“Rafael G. Escalante, Vice-Presidente de la República de Costa Rica en ejercicio del Supremo Poder Ejecutivo.

Habiéndose suscitado dudas sobre la verdadera inteligencia de los artículos 1385 parte 3ª del Código general, 100 del decreto adicional nº 24 de 1º de Junio de 1842, y 2º de la declaratoria nº 24 de 3 de Octubre de 1850; siendo ademas las penas establecidas en aquellas leyes excesivamente severas en las presentes circunstancias, por haberse logrado ya que los Códigos de la Republica penetrasen en todas las relaciones de la vida social; y convencido el Gobierno de que una interpretacion rigurosa de tales disposiciones, impediria el desarrollo científico de la legislación patria, decreto:

Art. 1º La pena de prevaricación que ordena el artículo 1385 parte 3 del Código general, es aplicable solamente a los funcionarios públicos que administran justicia; es decir, a los Magistrados, Jueces y Alcaldes, y a los escribanos cuando los haya en la

ARGUMENT

ON THE QUESTION OF THE VALIDITY OF
THE TREATY OF LIMITS BETWEEN
COSTA RICA AND NICARAGUA

AND

OTHER SUPPLEMENTARY POINTS CONNECTED WITH IT,

SUBMITTED TO THE

Arbitration of the President of the United States of America,

FILED ON BEHALF OF THE GOVERNMENT OF COSTA RICA

BY

PEDRO PEREZ ZELEDON,

ITS ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY
IN THE UNITED STATES.

(TRANSLATED INTO ENGLISH BY J. I. RODRIGUEZ.)



WASHINGTON:

GIBSON BROS., PRINTERS AND BOOKBINDERS.

1887.

DOCUMENTS.

No. 1.

Treaty of Limits between Costa Rica and Nicaragua, concluded April 15th, 1858.

We, Máximo Jerez, Minister Plenipotentiary of the Government of the Republic of Nicaragua, and José Maria Cañas, Minister Plenipotentiary of the Government of the Republic of Costa Rica, having been entrusted by our respective Governments with the mission of adjusting a treaty of limits between the two Republics, which should put an end to all the differences which have obstructed the perfect understanding and harmony that must prevail among them for their safety and prosperity, and having exchanged our respective powers, which were examined by Hon. Señor Don Pedro R. Negrete, Minister Plenipotentiary of the Government of the Republic of Salvador, exercising the functions of fraternal mediator in these negotiations, who found them to be good and in due form, as we on our part also found good and in due form the powers exhibited by the said Minister, after having discussed with the necessary deliberation all the points in question, with the assistance of the representative of Salvador who was present, have agreed to and adjusted the following Treaty of Limits between Nicaragua and Costa Rica.

ARTICLE I.

The Republic of Nicaragua and the Republic of Costa Rica declare in the most solemn and express terms that if for one moment they were about to enter into a struggle for reason of limits and for others which each one of the high contract-

ing parties considered to be legal and a matter of honor, now after having given each other repeated proofs of good understanding, peaceful principles, and true fraternity, they are willing to bind themselves, as they formally do, to secure that the peace happily re-established should be each day more and more affirmed between the Government and the people of both nations, not only for the good and advantage of Nicaragua and Costa Rica, but for the happiness and prosperity which, to a certain extent, our sisters, the other Central American Republics, will derive from it.

ARTICLE II.

The dividing line between the two Republics, starting from the Northern Sea, shall begin at the end of Punta de Castilla, at the mouth of the San Juan de Nicaragua river, and shall run along the right bank of the said river up to a point three English miles distant from Castillo Viejo, said distance to be measured between the exterior works of said castle and the above-named point. From here, and taking the said works as centre, a curve shall be drawn along said works, keeping at the distance of three English miles from them, in its whole length, until reaching another point, which shall be at the distance of two miles from the bank of the river on the other side of the castle. From here the line shall continue in the direction of 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 all along its windings, up to reaching its origin in the lake; and from there along the right shore of the said lake until reaching the Sapoá river, where the line parallel to the bank and shore will terminate. From the point in which the said line shall coincide with the Sapoá river—a point which, according to the above description, must be two miles distant from the lake—an astronomic straight line shall be drawn to the central point of the Salinas Bay in the Southern Sea, where the line marking the boundary between the two contracting Republics shall end.

ARTICLE III.

Such surveys as may be required to locate this boundary, whether in whole or in part, shall be made by Commissioners appointed by the two Governments; and the two Governments shall agree also as to the time when the said survey shall be made. Said Commissioners shall have the power to somewhat deviate from the curve around the castle, from the line parallel to the banks of the river and the lake, or from the astronomic straight line between Sapoá and Salinas, if they find that natural land-marks can be substituted with advantage.

ARTICLE IV.

The Bay of San Juan del Norte, as well as the Salinas Bay, shall be common to both Republics, and, therefore, both the advantages of their use and the obligation to contribute to their defence shall also be common. Costa Rica shall be bound, as far as the portion of the banks of the San Juan river which correspond to it is concerned, to contribute to its custody in the same way as the two Republics shall contribute to the defence of the river in case of external aggression; and this they shall do with all the efficiency within their reach.

ARTICLE V.

As long as Nicaragua does not recover the full possession of all her rights in the port of San Juan del Norte, the use and possession of Punta de Castilla shall be common and equal both for Nicaragua and Costa Rica; and in the meantime, and as long as this community lasts, the boundary shall be the whole course of the Colorado river. It is furthermore stipulated that, as long as the said port of San Juan del Norte remains a *free* port, Costa Rica shall not charge Nicaragua any custom duties at Punta de Castilla.

ARTICLE VI.

The Republic of Nicaragua shall have exclusively the dominion and sovereign jurisdiction over the waters of the San Juan river from its origin in the Lake to its mouth in the Atlantic; but the Republic of Costa Rica shall have the perpetual right of free navigation on the said waters, between the said mouth and the point, three English miles distant from Castillo Viejo, said navigation being for the purposes of commerce either with Nicaragua or with the interior of Costa Rica, through the San Carlos river, the Sarapiquí, or any other way proceeding from the portion of the bank of the San Juan river, which is hereby declared to belong to Costa Rica. The vessels of both countries shall have the power to land indiscriminately on either side of the river, at the portion thereof where the navigation is common; and no charges of any kind, or duties, shall be collected unless when levied by mutual consent of both Governments.

ARTICLE VII.

It is agreed that the territorial division made by this treaty cannot be understood as impairing in any way the obligations contracted whether in public treaties or in contracts of canalization or public transit by the Government of Nicaragua previous to the conclusion of the present treaty; on the contrary, it is understood that Costa Rica assumes those obligations, as far as the portion which corresponds to its territory is concerned, without injury to the eminent domain and sovereign right which it has over the same.

ARTICLE VIII.

If the contracts of canalization or transit entered into by the Government of Nicaragua previous to its being informed of the conclusion of this treaty should happen to be invalidated for any reason whatever, Nicaragua binds herself not

to enter into any other arrangement for the aforesaid purposes without first hearing the opinion of the Government of Costa Rica as to the disadvantages which the transaction might occasion the two countries; provided that the said opinion is rendered within the period of 30 days after the receipt of the communication asking for it, if Nicaragua should have said that the decision was urgent; and, if the transaction does not injure the natural rights of Costa Rica, the vote asked for shall be only advisory.

ARTICLE IX.

Under no circumstances, and even in case that 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, whether in the port of San Juan del Norte, or in the San Juan river, or the Lake of Nicaragua.

ARTICLE X.

The stipulation of the foregoing article being essentially important for the proper custody of both the port and the river against foreign aggression, which would affect the general interests of the country, the strict performance thereof is left under the special guarantee which, in the name of the mediator Government, its Minister Plenipotentiary herein present is ready to give, and does hereby give, in use of the faculties vested in him for that purpose by his Government.

ARTICLE XI.

In testimony of the good and cordial understanding which is established between the Republics of Nicaragua and Costa Rica, they mutually give up all claims against each other, on whatever ground they may be founded, up to the date of the present treaty; and in the same way the two contracting par-

ties do hereby waive all claims for indemnification of damages which they might consider themselves entitled to present against each other.

ARTICLE XII.

This treaty shall be ratified, and the ratifications thereof shall be exchanged, at Santiago de Managua within forty days after it is signed.

In testimony whereof we have hereunto subscribed our names to the present instrument, executed in triplicate, together with the Hon. Minister of Salvador, and under the countersign of the respective secretaries of Legation, at the city of San José, in Costa Rica, on the 15th day of April, in the year of our Lord 1858.

MAXIMO JEREZ.

JOSÉ M. CAÑAS.

PEDRO RÓMULO NEGRETE.

MANUEL RIVAS,

Secretary of the Legation of Nicaragua.

SALVADOR GONZALEZ,

Secretary of the Legation of Costa Rica.

FLORENTINO SOUZA,

Secretary of the Legation of Salvador.

ADDITIONAL ACT.

The undersigned, Ministers of Nicaragua and Costa Rica, wishing to give public testimony of their high esteem and of their feelings of gratitude towards the Republic of Salvador, and the worthy representative of the same, Col. Don Pedro R. Negrete, have agreed that the treaty of territorial limits be accompanied with the following declaration, namely:

“Whereas, the Government of Salvador has given to the Governments of Costa Rica and Nicaragua the most authentic testimony of its noble feelings, and of its high appreciation of the value and necessity of cultivating fraternal sympathy

among these Republics, and has interested itself as efficiently as friendly in the equitable settlement of the differences which unhappily have existed between the high contracting parties, a settlement which has been secured by the two Legations, owing in great part to the estimable and efficient action of the Hon. Señor Negrete, Minister Plenipotentiary of the said Government, who proved to be the right person to accomplish the generous mediation for which he was appointed, and who has known perfectly well how to meet the intentions of his Government, and owing also to the important aid, to the learning and to the impartial suggestions of the same Minister during the discussion of the subject, we, the Representatives of Costa Rica and Nicaragua, in the name of our respective countries, do hereby fulfil the pleasant duty of declaring and recording here all the gratitude which we feel for the patriotism, high mindedness, fraternity, and benevolence characterizing the Government of Salvador.

In testimony whereof we have hereunto subscribed our names and signed this, in triplicate, in the presence of the Hon. Minister of Salvador, under the countersign of the respective Secretaries of Legation, in the city of San José, the capital of Costa Rica, on the 15th day of April, in the year of our Lord 1858.

MÁXIMO JEREZ.

JOSÉ M. CAÑAS.

MANUEL RIVAS,

Secretary of the Legation of Nicaragua.

SALVADOR GONZALEZ,

Secretary of the Legation of Costa Rica.

Attachment 2

Cleveland Award upon the validity of the
Treaty of Limits of 1858 between Costa Rica and Nicaragua,
Washington, 22 March 1888

Source: Papers relating to the Foreign Relations of the
United States transmitted to Congress, with the annual message of the President, Part I,
December 1888. (Washington, D.C.: Government Printing Office, 1889)

PAPERS
RELATING TO THE
FOREIGN RELATIONS
OF
THE UNITED STATES,
TRANSMITTED TO CONGRESS,
WITH THE ANNUAL MESSAGE OF THE PRESIDENT,

DECEMBER 3, 1888,

PRECEDED BY A

LIST OF PAPERS, WITH SYNOPSES OF THEIR CONTENTS, AND FOLLOWED
BY AN ALPHABETICAL INDEX OF SUBJECTS.

PART I.



WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1889.

COSTA RICA.

CORRESPONDENCE WITH THE LEGATION OF COSTA RICA AT WASHINGTON.

No. 312.

Mr. Rives to Señor Don Pedro Perez Zaledón.

DEPARTMENT OF STATE,
Washington, January 16, 1888.

SIR: I have the honor to inform you* that the President, having consented to act as arbitrator of the questions between Costa Rica and Nicaragua, presented under the convention of arbitration signed by the plenipotentiaries of these republics at Guatemala City on the 24th day of December, 1886, and having received within the periods named in the said convention the respective arguments of the parties to the arbitration, which have been duly communicated to the opposing parties as required by said convention, and further, the respective replies of each of the parties to the arguments of the other, has been pleased, under the power conferred upon him by the last paragraph of the fifth article of said convention by an act dated the 16th instant, a copy of which I have the honor to inclose herewith for your information, to delegate his powers as arbitrator aforesaid to me, to the end that the fullest examination of the point or points in dispute between the Governments of Costa Rica and Nicaragua shall be made to enable the arbitrator to reach a just and equitable conclusion in the premises and pronounce a final decision or award thereon.

Accept, etc.,

G. L. RIVES.

[Inclosure.]

Grover Cleveland, President of the United States.

Whereas, by a convention of arbitration between the Government of the Republics of Costa Rica and Nicaragua, signed at Guatemala City on the 24th day of December, 1886, the high contracting parties agreed to submit to arbitration the question pending between them in regard to the validity of the treaty of limits of 15th April, 1858, between the said Governments, together with such other points of doubtful interpretation as may require decision in the event of the said treaty of limits being found valid;

And whereas, under the terms of the said convention of arbitration, the contracting parties have solicited my acceptance of the office of arbitration to decide such question or questions, and the charge has been accepted by me;

And whereas, within the periods named in the said convention of arbitration, the parties to the arbitration have submitted to me their respective arguments, which have been duly communicated to the opposing parties as required by said convention; and, further, the respective replies of each of the parties to the argument of the other

* A similar note was addressed to the minister of Nicaragua.

have been laid before me in due time, so that all evidence and arguments necessary to a decision of the point or points in dispute are now before me as arbitrator thereof;

And whereas, by the final paragraph of the fifth article of the said convention of arbitration of December 24, 1886, it is provided that "the arbitrator may delegate his powers, provided that he does not fail to intervene directly in the pronouncement of the final decision":

Now, therefore, I, Grover Cleveland, President of the United States of America, in the capacity of arbitrator as aforesaid between the Governments of the Republics of Costa Rica and Nicaragua, and to the end that the fullest examination of the point or points in dispute between those Governments shall be made to enable me to reach a just and equitable conclusion in the premises and pronounce a final decision or award thereon, do by this present instrument delegate my powers to George L. Rives, Assistant Secretary of State, to the extent contemplated and permitted by the aforesaid convention of arbitration, hereby enjoining the said George L. Rives to use all due circumspection and diligence in examining the arguments and evidence submitted on both sides, and to make to me, as soon as may be, a report thereon for my consideration and upon which my decision of the matter in contention may rest.

Given under my hand and the seal of the United States this 16th day of January, in the year of our Lord one thousand eight hundred and eighty-eight, and of the independence of the United States the one hundred and twelfth.

[SEAL.]

By the President:

T. F. BAYARD,
Secretary of State.

GROVER CLEVELAND.

No. 313.

Mr. Bayard to Señor Don Pedro Perez Zeledón.

DEPARTMENT OF STATE,
Washington, March 22, 1888.

SIR: I have the honor to inform you* that I have received from the President, in triplicate, his award and decision in regard to the validity of the treaty of limits made between the republics of Costa Rica and Nicaragua on April 15, 1858, and the other questions submitted in connection therewith to the President's arbitration.

I am directed by the President to deliver one original of this award to the representative of the Government of Costa Rica and one original thereof to the representative of the Government of Nicaragua, in compliance with the terms of the treaty signed at Guatemala on the 24th of December, 1886. The third original will be retained in the custody of the Secretary of State of the United States.

I have the honor therefore to name the Department of State, at 12 o'clock noon of Saturday, the 24th instant, as the place and time to so deliver the President's award and decision.

I have, etc.,

T. F. BAYARD.

No. 314.

Award of the Arbitrator, the President of the United States, upon the validity of the Treaty of Limits of 1858 between Nicaragua and Costa Rica.

Grover Cleveland, President of the United States, to whom it shall concern, greeting:

The functions of arbitrator having been conferred upon the President of the United States by virtue of a treaty signed at the City of Guate-

* A similar note was addressed to the minister of Nicaragua.

COSTA RICA.

mala on the 24th day of December, one thousand eight hundred 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 their Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight, should be submitted to the arbitration of 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 navigation 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 interpretation which either of the parties might find in the treaty and should communicate to the other party within thirty days after the exchange of the ratifications of the said treaty of the 24th 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 15th 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 24th day of December, one thousand eight hundred and eighty-six;

And the arbitrator pursuant to the fifth clause of said last-named treaty having delegated his powers to the honorable George L. Rives, Assistant Secretary of State, who, after examining and considering the said allegations, documents and answers, has 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 15th day of April, one thousand eight hundred and fifty-eight, is valid.

Second. The Republic of Costa Rica under said treaty and the stipulations contained 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 vessels of the revenue service as may be related to and connected with her enjoyment of the "purposes of commerce" accorded to her in said article, or as may be necessary to the protection of said 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 mouth of the San Juan de Nicaragua River, as they both existed on the 15th day of April, 1858. The ownership of any accretion to said Punta de Castilla is to be governed by the laws applicable to that subject.

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 westernmost portion of the land about Punta Sacate.

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 can not prevent the Republic of Nicaragua from executing at her own expense and within her own territory such works of improvement, *provided* such works of improvement do not result in the occupation or flooding or damage of Costa Rica territory, or in the destruction or serious impairment of the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same. 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 right of the Republic of Costa Rica to the navigation of the river San Juan with men-of-war or revenue-cutters is determined and defined in the second article of this award.

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 or any of its branches at any point where Costa Rica is entitled to navigate the same.

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 15th 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 as the same existed in the year 1858; and perhaps other rights not here particularly specified. 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 injurious to Costa Rica; 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 or any of its branches at any point where Costa Rica is entitled to navigate the same.

11. The Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight, does not give to the Republic of Costa Rica the right to be a party to grants which Nicaragua may make for inter-

oceanic canals; though in cases where the construction of the canal will involve an injury to the natural rights of Costa Rica, her opinion or advice, as mentioned in Article VIII of the treaty, should be more than "advisory" or "consultative." It would seem in such cases that her consent is necessary, and that she may thereupon demand compensation for the concessions she is asked to make; but she is not entitled as a right to share in the profits that the Republic of Nicaragua may reserve for herself as a compensation for such favors and privileges as she, in her turn, may concede.

In testimony whereof, I have hereunto set my hand and have caused the seal of the United States to be hereunto affixed.

Done in triplicate at the city of Washington, on the twenty-second day of March, in the year one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and twelfth.

GROVER CLEVELAND.

By the President:

T. F. BAYARD,
Secretary of State.

Attachment 3

First Alexander Award
30 September 1897

Source: H. LaFontaine, *Pasicrisie Internationale 1794-1900:*
Histoire Documentaire des Arbitrages Internationaux
(1902, repr. 1997, Martinus Nijhoff, The Hague), 529-533

ART. ADDIZIONALE. La presente dichiarazione è, per quella parte che concerne l'ampliamento dei poteri dell'Arbitro, subordinata al grazioso consenso di Sua Eccellenza l'Inviato Straordinario e Ministro Plenipotenziario di Sua Maestà l'Imperatore di Germania presso del Governo della Repubblica degli Stati Uniti del Brasile.

Fatto e firmato in doppio originale esteso in lingue portoghese e italiana, nella città di Rio de Janeiro, il giorno diciannove del mese di Novembre mille ottocento noventa sei¹.

Les commissions arbitrales terminèrent leurs travaux vers la fin de 1897: celle de Porto Alegre statua sur 376 affaires, dont 57 furent écartées, 3 furent renvoyées au sur-arbitre et 316 donnèrent lieu à l'attribution d'une somme totale de Rs. 750: 404 \$ 620; celle de Florianopolis statua sur 63 affaires, dont 26 furent écartées, 2 furent renvoyées au sur-arbitre et 35 donnèrent lieu à l'attribution d'une somme totale de Rs. 4: 780 \$. Les 5 affaires renvoyées donnèrent lieu à des arrangements transactionnels en date du 18 juin 1898, pour un import total de Rs. 59: 882 \$ 500.

CXXVII. Costa-Rica, Nicaragua.

27 mars 1896.

Cette affaire n'est qu'une suite à celle du 24 décembre 1886. La convention intervenue invita le Président des Etats-Unis de l'Amérique du Nord à désigner un arbitre, Ce dernier rendit cinq sentences sous les dates des 30 septembre et 20 décembre 1897, 22 mars 1898, 26 juillet 1899 et 10 mars 1900.

Convencion entre las Republicas de Costa Rica y Nicaragua para el trazado y amojonamiento de la línea fronteriza, firmada en San Salvador, Marzo 27, 1896.

Habiendo sido aceptada la mediación del Gobierno de El Salvador por los Excelentísimos señores Presidentes de Costa Rica y Nicaragua para arreglar el trazo de la línea divisoria de las dos Repúblicas, han nombrado, respectivamente, Enviados Extraordinarios y Ministros Plenipotenciarios, á sus Excelencias los señores Licenciado don Leonidas Pacheco y don Manuel C. Matus, quienes, después de varias conferencias

Relatorio do Ministerio ..., 1897, p. 150.

tenidas en presencia del señor Ministro de Relaciones Exteriores, Doctor don Jacinto Castellanos, autorizado especialmente para representar al Gobierno de El Salvador, encontrándose en buena et debida forma sus plenos poderes, y con asistencia del Excelentísimo señor Presidente de la República, general don Rafael A. Gutiérrez, quien ha tenido la deferencia de concurrir, para dar mayor solemnidad al acto, han celebrado el siguiente Convenio.

ART. I. — Los Gobiernos Contratantes se obligan á nombrar cada uno una comisión compuesta de dos Ingenieros ó agrimensores, con el objeto de trazar y amojonar debidamente la línea divisoria entre las Repúblicas de Costa Rica y Nicaragua, según lo establece el Tratado de 15 de abril de 1858 y el Laudo arbitral del señor Presidente de los Estados Unidos de Norte América, Mr. Grover Cléveland.

ART. II. — Las Comisiones que por el artículo anterior se crean, serán integradas por un Ingeniero, cuyo nombramiento será solicitado por ambas Partes del señor Presidente de los Estados Unidos de América, y cuyas funciones se concentran á lo siguiente: cuando en la práctica de las operaciones estuvieren en desacuerdo las Comisiones de Costa Rica y Nicaragua, se someterá el punto ó puntos discutidos al juicio del Ingeniero del señor Presidente de los Estados Unidos de América. El Ingeniero tendrá amplias facultades para decidir cualquier clase de dificultades que surjan, y conforme á su fallo se ejecutarán ineluctiblemente las operaciones de que se trate.

ART. III. — Dentro de los tres meses siguientes al canje de la presente Convención, ya debidamente ratificada por los respectivos Congresos, los Representantes en Wáshington, de ambos Gobiernos Contratantes, procederán, de común acuerdo á solicitar del señor Presidente de los Estados Unidos de Norte América que acceda á nombrar el Ingeniero á que antes se hizo referencia y que verifique su elección. Si por falta de Representante en Wáshington de cualquiera de los dos Gobiernos ó por cualquiera otro motivo que sea, dejare de hacerse la solicitud conjuntamente en el plazo enunciado, una vez vencido éste, podrá cualquiera de los Representantes de Costa Rica ó Nicaragua en Wáshington, hacer por separado tal solicitud, la cual surtirá todos sus efectos, como si hubiese sido presentada por ambas Partes.

ART. IV. — Verificado el nombramiento del Ingeniero norteamericano, y dentro de los tres meses siguientes á la fecha de ese nombramiento, se procederá á la demarcación y amojonamiento de la línea fronteriza, lo cual deberá estar ter-

minado dentro de los veinte meses siguientes á la fecha de inauguración de los trabajos. Las Comisiones de las Partes Contratantes se reunirán en San Juan del Norte, dentro de los términos fijados al efecto, é iniciarán sus trabajos en el extremo de la línea divisoria que, según el Tratado y Laudo antes referidos, parte de la costa atlántica.

ART. V. — Las Partes Contratantes convienen en que si, por cualquier motivo, el día de iniciar los trabajos faltare en el lugar designado alguna de las Comisiones de las Repúblicas de Costa Rica ó Nicaragua, se dará principio á los trabajos por la Comisión de la otra República que se halle presente, con la concurrencia del señor Ingeniero del Gobierno norteamericano, y será válido y definitivo lo que en tal forma se haga, y sin lugar á reclamo por parte de la República que haya dejado de enviar sus Comisionados. Del mismo modo se procederá si se ausentaren algunos de los Comisionados, ó todos, de cualquiera de las Repúblicas Contratantes, una vez iniciadas las obras ó si rehuyeren la ejecución de ellas en la forma en que señalan el Laudo y Tratado aquí referidos ó con arreglo á la decisión del Ingeniero del señor Presidente de los Estados Unidos.

ART. VI. — Las Partes Contratantes convienen en que el plazo fijado para la conclusión del amojonamiento no es perentorio, y por tanto será válido lo que después de su vencimiento se hiciere, bien por haber sido aquel plazo insuficiente para la práctica de todas las operaciones, ó bien por haber convenido los Comisionados de Costa Rica y Nicaragua entre sí y de acuerdo con el Ingeniero norteamericano, en suspender temporalmente las obras y no bastar para concluir las el plazo que quede del fijado.

ART. VII. — Caso de suspensión temporal de los trabajos de amojonamiento, se tendrá lo hecho hasta entonces por definitivo y concluido, y por fijados materialmente los límites en la parte respectiva, aun cuando, por circunstancias inesperadas é insuperables, dicha suspensión continuase indefinidamente.

ART. VIII. — El libro de actas de las operaciones, que se llevará por triplicado y que firmarán y sellarán debitamente los Comisionados, será, sin necesidad de aprobación ni de ninguna otra formalidad por parte de las Repúblicas signatarias, el título de demarcación definitiva de sus límites.

ART. IX. — Las actas á que se refiere el artículo anterior se extenderán en la siguiente forma: se consignará todos los días, al concluir las obras, minuciosa y detalladamente todo lo hecho, expresándose el punto de partida de las

operaciones del día, la clase de mojones contruídos ó adoptados, la distancia á que queden unos de otros, el arrumbamiento de la línea que determina el común lindero, etc. Caso de que hubiere discusión entre las Comisiones de Costa Rica y Nicaragua respecto de algún punto, se consignará en el acta respectiva la cuestión ó cuestiones debatidas y la resolución del Ingeniero norteamericano. Las actas se llevarán por triplicado: la Comisión de Costa Rica conservará uno de los ejemplares, otro lo de Nicaragua, y el tercero el Ingeniero norteamericano, para depositarlo, una vez concluidas las operaciones, en el Departamento de Estado de Washington.

ART. X. — Los gastos que se ocasionen con motivo del envío y permanencia del señor Ingeniero norteamericano, así como los sueldos que le correspondan durante todo el tiempo que dure en el ejercicio de sus funciones, serán pagados, por mitades, por las dos Repúblicas signatarias.

ART. XI. — Las Partes Contratantes se comprometen á recabar las ratificaciones de esta Convención de sus respectivos Congresos, dentro de seis meses, á contar de esta fecha, aunque para ello deba hacerse convocatoria extraordinaria de aquellos Altos Cuerpos, y el canje subsiguiente se verificará dentro del mes siguiente á la fecha de la última de las ratificaciones indicadas, en San José de Costa Rica ó en Managua.

ART. XII. — El trascurso de los términos de que antes se ha hablado, sin la ejecución de los actos para los cuales han sido estipulados, no produce la caducidad de la presente Convención, y se tratará de llenar la omisión por parte de la República á que corresponda verificarlo, dentro del más breve término posible.

En fe de lo cual firman y sellan por duplicado la presente Convención, en la ciudad de San Salvador, á los veintisiete días del mes de marzo de mil ochocientos noventa y seis¹.

First award rendered, to San Juan del Norte, by the umpire, M. E. P. Alexander, on September 30, 1897, in the boundary question, between Costa Rica and Nicaragua.

San Juan del Norte, Nicaragua,
September 30, 1897.

In pursuance of the duties assigned me by my commission as engineer-arbitrator to your two bodies, with the power to decide finally any points of difference, that may arise in tracing and marking out the boundary line between the two republics, I have given careful study and

¹ Memoria de Relaciones exteriores (Costa Rica), 1897, p. 28.

consideration to all arguments, counter arguments, maps, and documents submitted to me in the matter of the proper location of the initial point of the said boundary line upon the Caribbean coast.

The conclusion at which I have arrived and the award I am about to make do not accord with the views of either commission. So, in deference to the very excellent and earnest arguments so faithfully and loyally urged by each commission for its respective side, I will indicate briefly my line of thought and the considerations which have seemed to me to be paramount in determining the question; and of these considerations the principal and the controlling one is that we are to interpret and give effect to the Treaty of April 15, 1858, in the way in which it was mutually understood at the time by its makers.

Each commission has presented an elaborate and well argued contention that the language of that treaty is consistent with its claims for a location of the initial point of the boundary line at a place which would give to its country great advantages. The points are over six miles apart, and are indicated on the map accompanying this award.

The Costa Rican claim is located on the left-hand shore or west headland of the harbor; the Nicaraguan, on east headland of the mouth of the Taura branch.

Without attempting to reply in detail to every argument advanced by either side in support of his respective claim, all will be met and sufficiently answered by showing that those who made the treaty mutually understood and had in view another point, to wit, the eastern headland at the mouth of the harbor.

It is the meaning of the men who framed the treaty which we are to seek, rather than some possible meaning which can be forced upon isolated words of sentences. And this meaning of the men seems to me abundantly plain and obvious.

This treaty was not made hastily or carelessly. Each State had been wrought up by years of fruitless negotiations to a state of readiness for war in defense of what it considered its rights, as is set forth in article 1. In fact, war had actually been declared by Nicaragua on November 25, 1857, when, through the mediation of the Republic of Salvador, a final effort to avert it was made, another convention was held, and this treaty resulted. Now, we may arrive at the mutual understanding finally reached by its framers by first seeking in the treaty as a whole for the general idea or scheme of compromise upon which they were able to agree. Next, we

must see that this general idea of the treaty as a whole harmonizes fully with any description of the line given in detail, and the proper names of all the localities used, or not used, in connection therewith, for the non use of some names may be as significant as the use of others. Now, from the general consideration of the treaty as a whole, the scheme of compromise stands out clear and simple.

Costa Rica was to have as a boundary line the right or southeast bank of the river, considered as an outlet for commerce, from a point 3 miles below Castillo to the sea.

Nicaragua was to have her prized *sumo imperio* of all the waters of this same outlet for commerce, also unbroken to the sea.

It is to be noted that this division implied also, of course, the ownership by Nicaragua of all islands in the river and of the left or north-west bank and headland.

This division brings the boundary line (supposed it to be traced downward along the right bank from the point near Castillo) across both the Colorado and the Taura branches.

It can not follow either of them, for neither is an outlet for commerce, as neither has a harbor at its mouth.

It must follow the remaining branch, the one called the Lower San Juan, through its harbor and into the sea.

The natural terminus of that line is the right-hand headland of the harbor mouth.

Next let us note the language of description used in the treaty telling whence the line is to start and how it is to run, leaving out for the moment the proper name applied to the initial point. It is to start «at the mouth of the river San Juan de Nicaragua, and shall continue following the right bank of the said river to a point three English miles from Castillo Viejo».

This language is evidently carefully considered and precise, and there is but one starting point possible for such a line, and that is at the right headland of the bay.

Lastly, we come to the proper name applied to the starting point, «the extremity of Punta de Castillo». This name Punta de Castillo does not appear upon a single one of all the original maps of the bay of San Juan which have been presented by either side, and which seem to include all that were ever published before the treaty or since. This is a significant fact, and its meaning is obvious. Punta de Castillo must have been, and must have remained, a point of importance, political or commercial, otherwise it could not possibly have so utterly escaped mention upon the maps. This agrees entirely with the characteristics of the mainland and the

headland on the right of the bay. It remains until to-day obscure and unoccupied, except by the hut of a fisherman. But the identification of the locality is still further put beyond all question by the incidental mention, in another article of the treaty itself, of the name Punta de Castillo.

In Article V Costa Rica agrees temporarily to permit Nicaragua to use Costa Rica's side of the harbor without payment of port dues, and the name Punta de Castillo is plainly applied to it. Thus we have, concurring, the general idea of compromise in the treaty as a whole, the literal description of the line in detail, and the verification of the name applied to the initial point by its incidental mention in another portion of the treaty; and by the concurrent testimony of every map maker of every nation, both before the treaty and since, in excluding this name from all other portions of the harbor. This might seem to be sufficient argument upon the subject, but it will present the whole situation in a still clearer light to give a brief explanation of the local geography and of one special peculiarity of this Bay of San Juan.

The great feature in the local geography of this bay, since our earliest accounts of it, has been the existence of an island in its outlet, called on some early maps the island of San Juan. It was an island of such importance as to have been mentioned in 1820 by two distinguished authors, quoted in the Costa Rican reply to Nicaragua's argument (page 12), and it is an island to-day, and so appears in the map accompanying this award.

The peculiarity of this bay, to be noted, is that the river brings down very little water during the annual dry season. When that happens, particularly of late years, sand bars, dry at all ordinary tides, but submerged more or less and broken over by the waves at all high ones, are formed, frequently reaching the adjacent headlands, so that a man might cross dry-shod.

Now, the whole claim of Costa Rica is based upon the assumption that on April 15, 1858, the date of the treaty, a connection existed between the island and the eastern headland, and that this converted the island into mainland, and carried the initial point of the boundary over to the western extremity of the island. To this claim there are at least two replies, either one seeming to me conclusive.

First, the exact state of the bar on that day can not be definitely proven, which would seem to be necessary before drawing important conclusions.

However, as the date was near the end of the dry season, it is most probable that there was such a connection between the island and

the eastern Costa Rican shore as has been described. But even if that be true, it would be unreasonable to suppose that such temporary connection could operate to change permanently the geographical character and political ownership of the island. The same principle, if allowed, would give to Costa Rica every island in the river to which sand bars from her shore had made out during that dry season. But throughout the treaty the river is treated and regarded as an outlet of commerce. This implies that it is to be considered as in average condition of water, in which condition alone it is navigable.

But the overwhelming consideration in the matter is that by the use of the name of Punta de Castillo for the starting point, instead of the name Punta Arenas, the makers of the treaty intended to designate the mainland on the east of the harbor. This has already been discussed, but no direct reply was made to the argument of Costa Rica quoting three authors as applying the name Punta de Castillo to the western, extremity of the before-mentioned island, the point invariably called Punta Arenas by all the naval and other officers, surveyors, and engineers who ever mapped it.

These authors are L. Montufar, a Guatemalan, in 1887; J. D. Gamez, a Nicaraguan, in 1889, and E. G. Squier, an American, date not given exactly, but subsequent to the treaty. Even of these, the last two merely used, once each, the name Punta de Castillo as an alternate for Punta Arenas. Against this array of authority we have, first, an innumerable number of other writers clearly far more entitled to confidence; second, the original makers of all the maps, as before pointed out, and third, the framers of the treaty itself, by their use of Punta de Castillo in Article V.

It must be borne in mind that for some years before the making of this treaty Punta Arenas had been by far the most important and conspicuous point in the bay. On it were located the wharves, workshops, offices, etc., of Vanderbilt's great transit company, conducting the through line from New-York to San Francisco during the gold excitement of the early fifties. Here the ocean and river steamers met and exchanged passengers and cargo. This was the point sought to be controlled by Walker and the filibusters.

The village of San Juan cut no figure at all in comparison, and it would doubtless be easy to produce, by hundreds, references to this point as Punta Arenas by naval and diplomatic officers of all prominent nations, by prominent residents and officials, and by engineers and surveyors

constantly investigating the canal problem, and all having a personal knowledge of the locality.

In view of all these circumstances, the jealousy with which each party to the treaty defined what it gave up and what it kept, the prominence and importance of the locality, the concurrence of all the original maps in the name, and its universal notoriety, I find it impossible to conceive that Nicaragua had conceded this extensive and important territory to Costa Rica, and that the latter's representative had failed to have the name Punta Arenas appear anywhere in the treaty. And for reasons so similar that it is unnecessary to repeat them, it is also impossible to conceive that Costa Rica should have accepted the Taura as her boundary and that Nicaragua's representative should have entirely failed to have the name Taura appear anywhere in the treaty.

Having then designated generally the mainland east of Harbor Head as the location of the initial point of the boundary line, it now becomes necessary to specify it more minutely, in order that the said line may be exactly located and permanently marked. The exact location of the initial point is given in President Cleveland's award as the extremity of Punta de Castillo, at the mouth of the San Juan de Nicaragua River, as they both existed on the 15th day of April 1858.

A careful study of all available maps and comparisons between those made before the treaty and those of recent date made by boards of engineers and officers of the canal company, and one of to-day made by ourselves to accompany this award, makes very clear one fact: The exact spot which was the extremity of the headland of Punta de Castillo April 15, 1858, has long been swept over by the Caribbean Sea, and there is too little concurrence in the shore outline of the old maps to permit any certainty of statement of distance or exact direction to it from the present headland. It was somewhere to the northeastward, and probably between 600 and 1600 feet distant, but it can not now be certainly located. Under these circumstances it best fulfills the demands of the treaty and of President Cleveland's award to adopt what is practically the headland of to-day, or the northwestern extremity of what seems to be the solid land, on the east side of Harbor Head Lagoon.

I have accordingly made personal inspection of this ground, and declare the initial line of the boundary to run as follows, to wit:

Its direction shall be due northeast and southwest, across the bank of sand, from the Caribbean Sea into the waters of Harbor Head Lagoon. It shall pass at its nearest point, 300 feet on the northwest side from the small hut now standing in that vicinity. On reaching the waters of Harbor

Head Lagoon the boundary line shall turn to the left, or southeastward, and shall follow the water's edge around the harbor until it reaches the river proper by the first channel met. Up this channel, and up the river proper, the line shall continue to ascend as directed in the treaty¹

Segundo Laudo sobre límites entre las Repúblicas de Nicaragua y Costa Rica, firmado en San Juan del Norte, Diciembre 20 de 1897.

En cumplimiento otra vez de mis deberes como Ingeniero Arbitro entre los dos Honorables Cuerpos de Ustedes, he sido llamado para decidir la cuestión sometida á mí en el acta del 7 del presente mes, como se manifiesta en el siguiente párrafo del libro de sesiones, á saber: «Propuso la Comisión Costaricense que se proceda á medir la línea que continuó desde el punto inicial y sigue por la margen de Harbour Head, y después por la del caño mas próximo hasta encontrar el río propio de San Juan, siguiendo la de éste hasta el punto que diste tres millas abajo del Castillo Viejo; que se levante el plano de dicha línea y que se incorpore todo en las actas día por día en las sesiones. La de Nicaragua manifestó que el trabajo de la medida y levantamiento del plano en esa parte de la línea no tiene valor ni objeto útil porque, según el Tratado y el Laudo del General E. P. Alexander, el límite divisorio lo forma la margen derecho del Harbour y del río, y que siendo así, es variable y no línea fija; y por tanto el plano y los datos que se obtengan no corresponderán nunca á la verdadera línea divisorio. En tal estado determinan ambas Comisiones ó la decisión del señor Arbitro sobre este punto, á cuyo fin le presentarán sus respectivos fundamentos dentro del término de ocho días.»

Han sido recibidos y debidamente considerados los referidos argumentos de cada parte. Debe de hacerse notar para una clara inteligencia de la cuestión propuesta que en la parte baja de su curso el río San Juan corre al través de un delta llano y arenoso, y que son evidentemente posibles no solamente acrecimientos ó disminuciones graduales en sus márgenes, sino cambios enteros de sus caños. Estos cambios pueden ser más o menos rápidos y repentinos por causas no siempre aparentes y aún sin la concurrencia de factores especiales tales como terremotos ó grandes tempestades. Son abundantes los ejemplos de caños anteriores ahora abandonados, y de márgenes que estan cambiando hoy día por graduales acrecimientos ó disminuciones.

¹ *Monthly Bulletin of the Bureau of the American Republics*, 1897, vol. V, p. 909.

La línea divisoria de hoy debe ser necesariamente afectada en lo futuro más ó menos, por todos estos cambios graduales ó repentinos. Pero el efecto en cada caso puede ser determinado solamente por las circunstancias del mismo caso, como él acontezca, según los principios de las leyes internacionales que puedan ser aplicables.

La medida y demarcación propuesta de la línea divisoria no producirá ningún efecto sobre la aplicación de estos principios.

El hecho de que ella haya sido medida y demarcada no aumentará ni disminuirá cualquiera estabilidad legal que ella pudiera tener como si no hubiera sido medida ni demarcada.

El solo efecto que se obtiene de la medida y demarcación es que el carácter y extensión de los cambios futuros pueden ser más fácil y definitivamente determinados.

No se puede negar que hay una cierta ventaja contingente en esta futura capacidad de encontrar siempre la línea primitiva. Pero bien puede existir una diferencia de opinión sobre cuanto tiempo y gastos actuales deben invertirse para obtener esa ventaja contingente. Esta es la diferencia que existe ahora entre las dos Comisiones.

Costa Rica desea tener esa facilidad futura. Nicaragua considera que el beneficio contingente no vale el gasto actual.

Para decidir cual de estas opiniones debe prevalecer, me debo atener á la letra y al espíritu del Tratado de 1858, si hay en cualquiera de ellos lo que es aplicable á la cuestión. Yo encuentro ambas cosas en el artículo 3º.

El artículo 2º describe toda la línea divisoria desde el mar Caribe hasta el Pacífico, y el artículo 3º sigue así: «Se practicarán las medidas correspondientes á esta línea divisoria en el todo ó en parte por Comisionados de los Gobiernos, poniéndose éstos de acuerdo para señalar el tiempo en que haya de verificarse la operación. Dichos Comisionados tendrán la facultad de desviarse un tanto de la curva del rededor del Castillo, de la paralela á las márgenes del río y y el lago, ó de la recta astronómica ente Sapoá y Salinas, caso que en ello puedan acordarse para buscar mojones naturales.»

Todo este artículo está dedicado á prescribir la exactitud con que los Comisionados deberán ejecutar la obra. El permite apartarse de algunos detalles, porque dice que la línea puede ser medida en todo ó en parte, y permite apartarse de la exactitud si por eso es posible encontrar mojones naturales. Pero la condición expresamente estipulada en el último caso y claramente comprendida también por el primero, es que ambas Comisiones estén de acuerdo.

De otro modo la línea debe medirse en el todo, y con todo la exactitud prácticamente realizable como está descrita en el artículo 2º.

Claramente, pues, la consecuencia de cualquiera desavenencia sobre la cuestión de más ó menos exactitud en la medida, ha de ser que prevalezca la opinión de la parte que desea hacerla más perfecta.

Yo, por consiguiente anuncio como mi Laudo en ésta materia que las dos Comisiones procederán enseguida á la medida de la línea desde el punto inicial hasta el punto tres millas abajo del Castillo Viejo, como se propuso por Costa Rica¹.

Tercero Laudo sobre limites entre las Republicas de Nicaragua y Costa Rica, firmado en San Juan del Norte, 22 de Marzo de 1898.

Al manifestar las razones que obraron en mí para emitir mi Laudo N° 2, me referí brevemente al hecho de que, según los preceptos bien conocidos del Derecho Internacional, la exacta localización de la línea divisoria, que ahora define esta Comisión sobre la margen derecha del río San Juan, puede ser alterada en lo futuro por los cambios posibles en las márgenes ó en los canales del río.

Me suplica ahora el Comisionado nicaragüense que en la actualidad funciona en su cargo, que complete este Laudo con una declaración más exacta del carácter legal y permanente, ó estabilidad de este línea como ahora se está definiendo y midiendo día á día.

Se me pride que prácticamente declare que esta línea mantendrá su carácter como la exacta línea divisoria solamente mientras las aguas del río mantengan su nivel actual, y que la línea divisoria en cualquier día futuro será determinada por la altura del agua en ese día.

El argumento emitido para sostener esta proposición, es como sigue:

«No creo necesario hacer aquí una disertación minuciosa acerca de la significación del *cauce ó lecho* de un río; que es toda la zona del territorio por donde corre el agua en mayor ó menor volumen; pero si recordare la doctrina de los Expositores del Derecho de Gentes, la cual está reasumida por don Carlos Calvo en su obra '*Le Droit International théorique et pratique*' Lib. 40; § 295, Pag. 385, con estas palabras: — '*Las fronteras marcadas por las corrientes de aguas estan sujetas á variar cuando el lecho de ella recibe cambios...*'»

«Y hago presente que coinciden con esta doctrina los Códigos modernos al disponer que el

¹ Memoria [de Relaciones Exteriores], Nicaragua, 1899, p. 228.

Attachment 4

(a) Second Alexander Award 20 December 1897

Source: H. LaFontaine, *Pasicrisie Internationale 1794-1900:
Histoire Documentaire des Arbitrages Internationaux*
(1902, repr. 1997, Martinus Nijhoff, The Hague), 529-533

(b) English Translation of Second Alexander Award

Source: RIAA, Vol. XXVIII, pp. 223-225 (United Nations 2007)

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

**Second award under the Convention between Costa Rica and Nicaragua of 8
April 1896 for the demarcation of the boundary between the two Republics**

20 December 1897

VOLUME XXVIII pp. 223-225

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SECOND AWARD OF THE ENGINEER-UMPIRE, UNDER THE
CONVENTION BETWEEN COSTA RICA AND NICARAGUA OF 8
APRIL 1896 FOR THE DEMARCATION OF THE BOUNDARY
BETWEEN THE TWO REPUBLICS, DECISION OF 20 DECEMBER
1897*

DEUXIÈME SENTENCE ARBITRALE RENDUE PAR LE SURARBITRE
INGÉNIEUR, EN VERTU DE LA CONVENTION ENTRE LE COSTA
RICA ET LE NICARAGUA DU 8 AVRIL 1896 POUR LA
DÉMARCATIION DE LA FRONTIÈRE ENTRE LES DEUX
RÉPUBLIQUES, DÉCISION DU 20 DÉCEMBRE 1897**

Interpretation of treaty of delimitation – during demarcation process, accuracy of the measurement of the border-line is not as important as the finding natural landmarks, provided there is agreement between the two Parties – in case of disagreement, the view of the party favouring greater accuracy must prevail.

International boundary – natural changes of the banks of a river serving as an international boundary – determination of future changes made easier thanks to measurement and demarcation.

Interprétation d'un traité de délimitation – durant la procédure de démarcation, l'exactitude du métrage de la ligne frontière est moins importante que l'établissement de repères naturels, sous réserve de l'accord des deux Parties – en cas de désaccord, la position de la Partie en faveur de la plus grande exactitude doit prévaloir.

Frontière internationale – altérations naturelles des rives d'un fleuve servant de frontière internationale – détermination des modifications futures facilitée par le métrage et la démarcation.

* * * * *

**Second award rendered, to San Juan del Norte, on
December 20, 1897, in the boundary question between
Nicaragua and Costa Rica.*****

In pursuance once again of the duties assigned me by my commission as engineer-arbitrator to your two bodies, I have been called upon to decide on the matter submitted to me in the record dated the 7th of this month, as per the following paragraph of that record: "The Costa Rican Commission proposed

* Reprinted from H. La Fontaine, *Pasicrisie Internationale: Histoire Documentaire des Arbitrages Internationaux (1794-1900)*, Imprimerie Stampelli & CIE, Berne, 1902, p.532.

** Reproduit de H. La Fontaine, *Pasicrisie Internationale: Histoire Documentaire des Arbitrages Internationaux (1794-1900)*, Imprimerie Stampelli & CIE, Berne, 1902, p.532.

*** Original Spanish version, translated by the Secretariat of the United Nations.

that we proceed to the measurement of the line that ran from the starting point and continued along the shore of Harbor Head and thence along the shore around the harbor until it reaches the San Juan river proper by the first channel met and thence along the bank of the river to a point three miles below Castillo Viejo and that a map should be made of such line and that all of that should be set down in the daily record. The Nicaraguan Commission expressed the view that the measurement and mapping work on that portion of the line was pointless and worthless because, according to the Award by General E. P. Alexander, the left bank of the Harbor and of the river formed the boundary and that therefore the dividing line was subject to change and not permanent. Therefore, the map and any data obtained shall never correspond to the actual dividing line. To that end, the two Commissions have decided to hear the decision that the arbitrator would render within a week to their respective arguments submitted to him on that question."

The above-mentioned arguments of each party have been received and duly considered. It should be noted, for a clearer understanding of the question at hand, that the San Juan river runs through a flat and sandy delta in the lower portion of its course and that it is obviously possible that its banks will not only gradually expand or contract but that there will be wholesale changes in its channels. Such changes may occur fairly rapidly and suddenly and may not always be the result of unusual factors such as earthquakes or major storms. Examples abound of previous channels now abandoned and banks that are now changing as a result of gradual expansions or contractions.

Today's boundary line must necessarily be affected in future by all these gradual or sudden changes. But the impact in each case can only be determined by the circumstances of the case itself, on a case-by-case basis in accordance with such principles of international law as may be applicable.

The proposed measurement and demarcation of the boundary line will not have any effect on the application of those principles.

The fact that the line has been measured and demarcated will neither increase nor decrease any legal standing that it might have had it not been measured or demarcated.

The only effect obtained from measurement and demarcation is that the nature and extent of future changes may be easier to determine.

There is no denying the fact that there is a certain contingent advantage to being always able to locate the original line in future. But there may well be a difference of opinion as to how much time and expense needs to be spent in order to obtain such a contingent advantage. That is the difference now between the two Commissions.

Costa Rica wants to have that future capacity. Nicaragua feels that the contingent benefit is not worth the current expenditure.

In order to decide which one of these views should hold sway, I have to abide by the spirit and letter of the 1858 Treaty and to determine whether there is anything in either point of view that is applicable to the question. I find both things in article 3.

Article 2 describes the entire dividing line from the Caribbean Sea to the Pacific and article 3 continues thus: "measurements corresponding to this dividing line shall be taken in whole or in part by the Government commissioners, who shall agree on the time required for such measurements to be made. The commissioners shall be empowered to diverge slightly from the curve around El Castillo, from the line parallel to the banks of the river and lake, or from the straight astronomical line between Sapoá and Salinas, provided that they can agree upon this, in order to adopt natural landmarks."

The entire article is devoted to prescribing how the Commissioners should perform their task. It allows them to dispense with a few details because it says that the whole or part of the line may be measured and implies that accuracy is not as important as finding natural landmarks. But the condition expressly stipulated in the latter case and clearly understood also in the former is that the two Commissions must agree.

Otherwise, the line in its entirety must be measured, following all the practical steps described in article 2.

Clearly, therefore, the consequence of any disagreement on the question of whether the measurement is more or less accurate must be that the view of the party favouring greater accuracy should prevail.

I therefore announce my award as follows: the Commissioners shall immediately proceed to measuring the line from the starting point to a point three miles below El Castillo Viejo, as proposed by Costa Rica.

Attachment 5

Costa Rica-Nicaragua, Pact of Amity, Washington, 21 February 1949

No. 24843

**NICARAGUA
and
COSTA RICA**

**Pact of Amity (with annex). Signed at Washington on
21 February 1949**

Authentic text: Spanish.

Registered by Nicaragua on 1 July 1987.

**NICARAGUA
et
COSTA RICA**

**Pacte d'amitié (avec annexe). Signé à Washington le 21 fé-
vrier 1949**

Texte authentique : espagnol.

Enregistré par le Nicaragua le 1^{er} juillet 1987.

[TRANSLATION — TRADUCTION]

PACT¹ OF AMITY BETWEEN THE GOVERNMENTS OF THE REPUBLICS OF COSTA RICA AND NICARAGUA

The Governments of the Republics of Costa Rica and Nicaragua, having taken the measures necessary to carry out, faithfully and in full, each and every one of the provisions contained in the Resolution of the Provisional Organ of Consultation approved on December 24, 1948, the text of which is annexed to the present Pact of Amity, and is fully accepted by the signatory Governments, reiterating their firm resolve to continue taking all measures necessary, without restriction, to observe fully and faithfully each and all of the provisions and recommendations contained in the said Resolution; desiring to put an end to the situation that has arisen between the two States, and at the same time solemnly to reaffirm their desire to maintain the closest friendship and to strengthen the fraternal bonds which have historically characterized their relations; and wishing to avail themselves of the offer made to them by the Council of the Organization of American States, acting as a Provisional Organ of Consultation, of its good offices in attaining this objective, have agreed to enter into the present Pact of Amity in the presence of the Chairman and other Members of the Council. To this end, His Excellency the President of the Government of Costa Rica, Don José Figueres, and His Excellency the President of Nicaragua, Dr. Víctor M. Román y Reyes, have designated the following Plenipotentiaries:

For the Republic of Costa Rica: His Excellency Ambassador Mario A. Esquivel,
Representative of Costa Rica on the Council of the Organization of American States;

For the Republic of Nicaragua: His Excellency Ambassador Dr. Guillermo Sevilla Sacasa,
Representative of Nicaragua on the Council of the Organization of American States;

who having exhibited their respective full powers, found in good and due form, agree to sign the present Pact.

I

The Governments of Costa Rica and Nicaragua both affirm that the events brought before the Council of the Organization of American States, acting as a Provisional Organ of Consultation, should not break the fraternal friendship of the two peoples, manifested in their common history and based on the solidarity which binds together the nations of the Hemisphere.

II

The Governments of Costa Rica and Nicaragua agree to prevent the repetition in the future of events of this nature, through the constant application by both Governments of effective measures for the safeguarding of the principles of non-intervention and continental solidarity, as well as for the faithful observance of the treaties, conventions and other inter-American instruments intended to ensure peace and good neighbourliness.

III

The Governments of Costa Rica and Nicaragua recognize the existing obligation of each of them, under the Inter-American Treaty of Reciprocal Assistance of Rio de

¹ Came into force on 15 July 1949 by the exchange of the instruments of ratification, which took place at Washington, in accordance with paragraph VII.

Janeiro¹ and under Article 20 of the Charter of the Organization of American States,² to submit disputes that may arise between them to the methods for the peaceful settlement of international conflicts.

In order to carry out this high purpose, both Governments agree to apply the American Treaty on Pacific Settlement, known as the Pact of Bogotá³ recognizing that Treaty as having full validity as to disputes between them even before it is formally ratified and enters in consequence into effect between all the American Republics.

IV

The Governments of Costa Rica and Nicaragua likewise undertake to reach an agreement as to the best manner of putting into practice the provisions of the Convention concerning the Duties and Rights of States in the Event of Civil Strife,⁴ in cases contemplated by that Convention, so that it may be applied immediately whenever a situation of this kind arises, in the manner provided for in the said agreement, especially with respect to measures for the control and supervision of frontiers, as well as with respect to any other measure intended to prevent the organization or existence of any revolutionary movement against the Government of either of the two Parties in the territory of the other.

V

The Governments of Costa Rica and Nicaragua acknowledge and applaud the action of the Council of the Organization of American States, constituted as a Provisional Organ of Consultation, which has culminated in the present Pact reaffirming the fraternal relations between Costa Rica and Nicaragua.

VI

The Pan American Union shall transmit authentic certified copies of the original of the present Pact to the Signatory Governments, to the other Governments of the States members of the Organization, and to the Secretary-General of the United Nations.

VII

The present Pact shall be ratified and shall enter into force when the ratifications are deposited with the Pan American Union, which shall communicate each deposit to the other Signatory State. Such notification shall be considered as an exchange of ratifications.

IN WITNESS WHEREOF, the Plenipotentiaries above mentioned sign and seal the present Pact at the Pan American Union, in the presence of the Chairman and other Members of the Council of the Organization of American States, in the City of Washington, D.C., this 21st day of February, 1949.

For Costa Rica:

MARIO A. ESQUIVEL

For Nicaragua:

GUILLERMO SEVILLA SACASA

¹ United Nations, *Treaty Series*, vol. 21, p. 77.

² *Ibid.*, vol. 119, p. 3.

³ *Ibid.*, vol. 30, p. 55.

⁴ League of Nations, *Treaty Series*, vol. CXXXIV, p. 45.

ANNEX

RESOLUTION OF THE COUNCIL OF THE ORGANIZATION OF AMERICAN STATES ACTING AS A PROVISIONAL ORGAN OF CONSULTATION APPROVED AT THE MEETING OF DECEMBER 24, 1948

The Council of the Organization of American States, acting as a Provisional Organ of Consultation, after studying the detailed report of the Committee that was in Costa Rica and Nicaragua for the purpose of investigating the facts and antecedents of the situation created between those sister Republics,

Resolves:

I. To request the Governments of Costa Rica and Nicaragua, in compliance with the Inter-American Treaty of Reciprocal Assistance, to give full assurances to the Provisional Organ of Consultation that they will immediately abstain from any hostile act toward each other.

II. To make known, with due respect to the Government of Nicaragua, that, in the light of data gathered by the Committee of Information especially appointed for the purpose, that Government could and should have taken adequate measures at the proper time for the purpose of preventing: (a) the development, in Nicaraguan territory, of activities intended to overthrow the present regime in Costa Rica, and (b) the departure from Nicaraguan territory of revolutionary elements who crossed the frontier and today are prisoners or are still fighting against the Government of Costa Rica.

III. To make known, with due respect to the Government of Costa Rica, that it can and should take adequate measures to rid its territory of groups of nationals or foreigners, organized on a military basis with the deliberate purpose of conspiring against the security of Nicaragua and other sister Republics, and of preparing to fight against their Governments.

IV. To request very respectfully that both Governments, by every available means, faithfully observe the principles and rules of non-intervention and solidarity contained in the various inter-American instruments signed by them.

V. To continue in consultation until positive assurances have been received from the Governments of Costa Rica and Nicaragua, that, as they are assuredly disposed to do, they will adhere strictly to the lofty principles and rules that constitute the juridical basis of American international life.

VI. To recommend that all American Governments actively co-operate toward the best observance of the principles which inspire this Resolution.

VII. To inform all States Members of the Organization of the steps taken in this case.

Attachment 6

Spanish original transcript of speech given by President Ortega on 13 November 2010

Comparecencia del Presidente-Comandante Daniel defendiendo el Derecho Soberano del pueblo de Nicaragua sobre el Río San Juan de Nicaragua

13 de noviembre de 2010 | 19:25:36 |

Palabras de Rosario

Queridos hermanos, queridas hermanas, queridas familias nicaragüenses, estamos desde esta Casa de la Presidencia para transmitir la Comparecencia del Presidente de la República en relación a la lucha por nuestra Soberanía, por nuestros Derechos Soberanos sobre el Río San Juan, Patrimonio Natural de Nicaragua y orgullo de todo nuestro pueblo, Orgullo Nacional.

Acompañan al Presidente, Su Eminencia, el Cardenal de la Reconciliación, la Paz y la Unidad por el Bien Común, Miguel Obando y Bravo; el Jefe del Ejército de Nicaragua y el Estado Mayor del Ejército de Nicaragua; la Jefatura Nacional de la Policía y su Estado Mayor; la Cancillería, su Canciller, compañero Samuel Santos, el Vice Canciller, compañero Valdrack Jaentschke; la Ministra del Ambiente, compañera Juanita Argeñal, el Director del Instituto Nicaragüense de Estudios Territoriales, compañero Alejandro Rodríguez; el Jefe de Asuntos Jurídicos de la Cancillería, Doctor César Vega. Compañeros Dirigentes de Organizaciones Ambientalistas, Movimientos Sociales y Miembros Destacados de Juventud Sandinista 19 de Julio.

Para iniciar esta Comparecencia por nuestros Derechos Soberanos, vamos a escuchar el mensaje de Su Eminencia, el Pastor de los nicaragüenses, de la Unidad por el Bien Común, Miguel Obando y Bravo.

Mensaje de Su Eminencia, Cardenal Miguel Obando y Bravo, Comandante Daniel Ortega Saavedra, Presidente de Nicaragua, señora Rosario Murillo, Coordinadora de Comunicación Social y Ciudadanía; un saludo respetuoso a todas las autoridades; hermanos todos en Cristo Nuestro Señor.

La Patria tiene derecho a que nuestra alma, nuestro talento, nuestra razón, le consagren sus mejores y más nobles facultades; no hemos nacido para nosotros, sino para nuestro país, decía Platón.

Felicitamos al señor Presidente, a la Primera Dama y a la Asamblea Nacional, al Ejército, a la Policía, al pueblo de Nicaragua, que se han unido para tratar de resolver el problema por cauces civilizados. Los nicaragüenses hemos demostrado que somos personas amantes de la Paz, el comportamiento de la persona es plenamente humano cuando nace del Amor, manifiesta el Amor y está ordenado al Amor.

Esta verdad vale también en el ámbito social; es necesario que los cristianos sean testigos profundamente convencidos y que sepan mostrar con sus vidas, que el Amor es la única fuerza que puede conducir a la perfección personal y social y mover la Historia hacia el Bien.

Los antiguos romanos decían: “si quieres la Paz, prepárate para la guerra.” Pero nosotros, que

somos un pueblo amante de la Paz, seguiremos agotando todos los medios que están a nuestro alcance para evitar, en cuanto sea posible, el derramamiento de sangre.

Debemos orar, pidiendo luces al Divino Espíritu, para que ilumine nuestras mentes y le dé a nuestro vecinos también luz, para que podamos obtener una Paz que esté basada en el Amor, la Justicia, la Verdad y la Libertad:

Dios Todopoderoso y Eterno, que con amor inefable nos has creado, derrama Tu Santo Espíritu sobre nuestras autoridades, a fin de que tomando decisiones sabias y ponderadas, resguarden la integridad de nuestra Patria y por intersección de La Purísima Concepción, Patrona de Nicaragua, alcancemos la Concordia y la Paz, por Jesucristo, Nuestro Señor, amén.

Palabras de Daniel

Buenas noches, hermanos nicaragüenses, familias nicaragüenses, estamos en este fin de semana del mes de noviembre, acercándonos a las festividades de Las Purísimas, de las Navidades y del Año Nuevo. En medio del trabajo diario de todas las familias nicaragüenses, de la juventud estudiosa, de los campesinos, de los diferentes sectores de la sociedad nicaragüense, hoy nos hemos convocado para abordar este tema que ha venido a alterar las relaciones entre dos pueblos hermanos, Costa Rica y Nicaragua.... ¡somos dos pueblos hermanos!

Es importante destacar la forma en que todos los nicaragüenses en general, hemos cerrado filas; la visita de la Asamblea Nacional a la zona donde ejerce su Soberanía el pueblo nicaragüense, el Estado nicaragüense; el Río San Juan de Nicaragua, nombre oficial ahora del Río, luego de las Resoluciones tomadas por la Asamblea Nacional de Nicaragua.

No hemos visto aquí manifestaciones en contra del pueblo costarricense, ni en contra de las autoridades que representan aquí al pueblo de Costa Rica; incluso, en estos días fueron auxiliados en las costas del Mar Caribe, cuatro pescadores costarricenses que estaban ya bastante adentro del mar territorial de Nicaragua, bastante el Norte. Eso nos preocupó, lógicamente, a las autoridades, porque bien podían ser pescadores perdidos o bien podrían ser las famosas operaciones de narcotráfico.

Se les dio la protección, se les dio la atención, pero también, lógicamente, se les hicieron las preguntas correspondientes; y el día de hoy fueron entregados a las autoridades costarricenses, al Consulado, que fueron los que estuvieron haciendo las gestiones correspondientes y se encargaron de dar los datos de los pescadores. Pero se han dado manifestaciones, en el hermano pueblo costarricense, no del pueblo, sino de algunos sectores, que tratan de poner la situación más grave de lo que realmente es.

Anoche, la Embajada de Nicaragua en Costa Rica fue objeto de un atentado, le lanzaron cócteles molotov desde un vehículo que fue identificado; está de testigo el vigilante de la Policía costarricense que estaba en el sitio; inmediatamente llamaron a otras unidades de la Policía. Pero son manifestaciones de violencia que no se han presentado, ni se van a presentar en Nicaragua. Igualmente, la detención de unos camiones que venían de Panamá y trataron de detenerlos, pensando que eran camiones del Ejército; unos camiones procedentes de Alemania, venían por

Panamá hacia Nicaragua. Esto fue una acción ya de las autoridades costarricenses, y cuando se encontraron que no eran camiones que viniesen para el Ejército, sino que son de las operaciones comerciales normales que existen en nuestro país, entonces, lógicamente, los liberaron. Pero son señales que nos preocupan y tenemos que denunciar el atentado de que ha sido víctima la Misión de la Embajada de Nicaragua en Costa Rica. Gracias a Dios que el coctel no penetró al interior, si hubiese penetrado al interior de la Misión ¡se incendia! con todas las consecuencias que esto trae.

De ahí la trascendencia del mensaje de Su Eminencia... tenemos que enfrentar estos problemas con firmeza, con respeto, con un espíritu constructivo, pero sin alentar a la confrontación, sin alentar a la xenofobia, sin alertar al racismo, que son elementos que se están moviendo en la hermana República de Costa Rica. Hay grupos, fuerzas interesadas en que esta situación, en lugar de resolverse a través del diálogo incondicional, más bien, se complique aún más. Tengo aquí, en mis manos, un mapa de la zona famosa del diferendo. Esta es una toma satelital, imagen de radar, dice, 1960; aquí tenemos esta otra imagen del 24 de febrero del 2010... este es el foco del conflicto, fíjense bien. De esto, han abundado en argumentaciones, en fundamentaciones, en la presentación que le hicimos aquí a la Delegación de la OEA; en la presentación que le hizo el Jefe del Ejército, el General Avilés, a la Asamblea Nacional en San Carlos, Río San Juan; en la exposición que hizo el Asesor Presidencial y científico nicaragüense, Jaime Incer, en la Sesión de anoche, en la reunión que se realizaba allá en la OEA. Ahí está claro, aquí está Punta Castilla donde está el primer mojón, o como le llamamos, el primer hito, que es el que sirve de punto de partida para luego ir trazando lo que es la frontera entre Nicaragua y Costa Rica; aquí está la laguna de Harbor Head, aquí se encuentra la laguna que pertenece lógicamente a Nicaragua. Aquí está el famoso caño que va a Harbor Head, o sea, aquí va el Río San Juan y el Río San Juan debería, en un cauce normal, retomar esta ruta y llegar a esta laguna, en una zona donde hace muchos años existió una gran bahía.

Esa bahía, con el paso del tiempo, ahí se conjugaron factores de todo tipo y, sobre todo, el desarrollo de Costa Rica en esta zona. O sea, Costa Rica decidió sacrificar el bosque, la Reserva. Decidió sacrificarla ¿para qué? Para desarrollar proyectos, programas ganaderos, proyectos agrícolas, es decir, llevar ahí lo que es la modernidad, pero a costa de lo que era una Reserva, donde prácticamente, aquí era todo un corredor, la Reserva desde Costa Rica y luego a caer a la Reserva en Nicaragua, en Indio-Maíz.

Ahí desapareció la Reserva... aquí, quedó la Reserva y ahí está la lucha por mantenerla, porque no es una vez que esta Reserva Indio-Maíz ha sido invadida por gente manipulada por narcotraficantes de madera; tanto han manipulado a campesinos nicaragüenses como a campesinos costarricenses y los han metido en la Reserva. Y ahí ha tenido que llegar el Ejército, la Policía, con MARENA, para decirles: vean, por favor, salgan de este sitio, que este es un sitio sagrado que tenemos que respetar; es vida para nuestro país y es vida para la Región y es vida para el Planeta.

Tenemos las dos tomas de 1960 y del 2010, esta es reciente, aquí está la laguna; y como se ve, el Río San Juan, es un río que en época de verano pierde caudal, no logra todavía llegar a su desembocadura histórica de acuerdo a los mismos Tratados, Laudos, Resoluciones, etc., que establecen en los años 1858. No logramos todavía recuperar, y es lo que estamos haciendo con

la limpieza del río, utilizando la draga Soberanía; la limpieza del río, limpieza de los caños, para poder lograr que el río recupere su caudal. Eso pasa necesariamente, por dragar también la zona donde Nicaragua alimenta en un 90% al Río Colorado.

Y voy a pasar a otro mapa... fíjense bien, este es el Río Colorado, que era un río que, en su caudal, no tenía el volumen que tiene actual-mente; y con el paso del tiempo, obstrucciones que se dieron en este punto, entonces, se fue desviando el agua del Río San Juan hacia el Río Colorado. De tal manera que el Río Colorado, es alimentado en un 90% por aguas nicaragüenses.

¿Cuáles son estas aguas nicaragüenses? Las que vienen desde el norte del país a desaguar al Lago de Managua, a desaguar al Gran Lago de Granada y luego, eso va a desaguar por el Río San Juan. En aquellos tiempos, cuando la Ruta del Tránsito, el caudal era suficiente como para que se pudiese contar también con una inmensa bahía, y que ahí, al desembocar el río, se pudiese dar una navegación normal de todo tiempo.

Pero en la medida que las aguas se fueron des-viando hacia el Río Colorado, se fue afectando el caudal del Río San Juan; se fue arralando el caudal del Río San Juan. Fíjense, el Río San Juan hasta el Río Colorado, viene con una gran fuerza, pero ahí, ya en ese punto... empieza a perder fuerza, empieza a perder caudal, ¿por qué? porque el grueso de las aguas de Nicaragua van a alimentar al Río Colorado.

Como les decía, esto significa que nosotros tenemos un Río San Juan que, en tiempo de lluvias es navegable, sin lograr recuperar su trazo histórico; en tiempo de verano, no es navegable y, hay kilómetros de kilómetros que quedan en pura arena; lugares donde lo que quedan son pequeños charcos. Esto lo saben los que han visitado el río ¡que se puede caminar incluso por el lecho del río, por kilómetros! porque sencillamente, el agua lo que está haciendo es alimentando al Río Colorado.

Ahora, nosotros ¿qué es lo que estamos haciendo? Estamos simplemente trabajando en la limpieza del río, ¿para qué? Para recuperar nuestro caudal, y como les decía, eso lleva necesariamente a limpiar esta zona que va al Río Colorado. De tal manera que al limpiar esta zona que va al Río Colorado, va a haber una merma del flujo de agua del río hacia el Río Colorado; o sea, va a haber una merma de agua del Lago de Nicaragua a través del Río San Juan, hacia el Río Colorado. Lo que no significa que se vaya a secar el Río Colorado, pero, va a permitir que el Río San Juan recupere su caudal, y que de manera permanente, en todo tiempo, tengamos una ruta navegable. Eso es todo lo que estamos nosotros defendiendo. Lo que mandan los Tratados, lo que mandan los Laudos, lo que mandan las Resoluciones de la Corte Internacional de Justicia, ¡eso es lo que estamos defendiendo! Recuperar el caudal del Río a nivel del año 1858, que queda claramente establecido en todos los Laudos, en todas las Resoluciones que se han tomado sobre esta materia.

Mientras tanto, también, acatando una Resolución de la Corte, reconocemos el derecho que tiene el hermano pueblo de Costa Rica, a utilizar el río en una zona que ya está claramente definida, que es de la zona del Castillo, 3 millas al sur... de ahí en adelante, pueden entrar las lanchas de Costa Rica, los barcos de Costa Rica y, transitar sin ningún problema, hasta la desembocadura ¡si existiera! Si tuviéramos una desembocadura nosotros, ellos se beneficiarían porque podrían salir tranquilamente con sus barcos hasta la desembocadura.

Y por este tráfico, que es comercial, que es turístico, no se le aplican las normas que se aplican cuando se trata de ir a transitar un río a un país que tiene normas de tránsito, normas establecidas correspondientes, de migración; en este sentido, son nada más pasos elementales, ya definidos, que ellos tienen que llenar, pero pueden transitar el río ¡y lo transitan! Y yo invito a los hermanos costarricenses a que sigan transitándolo, nosotros no estamos cerrando el tránsito de Costa Rica hacia el río.

Incluso, como se está celebrando, a partir del día de hoy allá en San Carlos, Río San Juan, la fiesta acuática en San Juan de Nicaragua, entonces, hemos dejado las puertas abiertas, para que lleguen, sin ningún problema, los hermanos costarricenses, que ahí se juntan con los hermanos nicaragüenses y disfrutan de los recursos de la Naturaleza.

Vamos a ver ahora... ¿cuál es Isla Calero? Porque aquí se ha levantado una campaña de que Nicaragua ha ocupado militarmente Isla Calero. Esa es la campaña lanzada por las autoridades costarricenses. ¿Cuál es Isla Calero? Es este territorio... aquí viene el Río Colorado, fíjense, y aquí viene el Río San Juan; entonces, como este territorio se encuentra entre el Río Colorado y el Río San Juan, ellos le llamaron Isla Calero. En este territorio que es Isla Calero, son cerca de 180 kilómetros cuadrados, en ese territorio, les puedo asegurar, hermanos nicaragüenses y hermanos costarricenses ¡no hay un solo soldado nicaragüense! Ni ha entrado un solo soldado ni policía nicaragüense a ese territorio, no ha entrado en un ningún momento.

Luego, está la zona que llaman Isla Portillo, igual; y luego está esta zona donde tenemos la Laguna y el caño que se está trabajando, y aquí, ya estamos en territorio nicaragüense. En territorio costarricense, ni hemos ocupado Isla Calero, ¡eso no es cierto! Ni les hemos ocupado lo que ellos llaman Isla Portillo... ahí no hay ni soldados, ni policías en esos sitios.

Donde Nicaragua está ejerciendo su Soberanía, es en esta zona, en la que estamos desarrollando la operación de limpieza del Río para recuperar nuestro caudal; recuperando el caudal nos vamos a beneficiar ambos, porque ambos recorreremos este Río. Pero tenemos la siguiente situación... Costa Rica tiene la ventaja que puede recorrer el Río San Juan, sin ningún tipo de obligaciones para un visitante extranjero, lo pueden recorrer en todo ese tramo de 140 kilómetros; en época de invierno pueden recorrer los 140 kilómetros, porque el Río agarra agua, tiene agua; pero en época de verano ya no pueden.

Y ¿qué es lo que hacen ellos? hacer sus recorridos, su tours turísticos, van por el Río San Juan, y luego bajan por el Río Colorado, porque el Río Colorado sí tiene agua permanentemente, ¡porque se la está dando Nicaragua...! el 90% del agua se la está entregando Nicaragua. Yo estaba conversando telefónicamente con el compañero Carlos Argüello, nuestro Representante para defender a Nicaragua en la Corte Internacional de Justicia de La Haya; intercambiando con él, llegamos a una conclusión, que es la siguiente y que nosotros la vamos a trabajar, ya les explico luego cómo.

Como Nicaragua tiene un problema, porque no recuperamos todavía el caudal del Río, ni su salida, ¿cuál es la posición de Nicaragua? Mientras seguimos desarrollando la limpieza, el dragado, limpiando el caño, para que se pueda cumplir con todo lo que mandan los Laudos, y se

pueda ya establecer una salida a través de la Isla Harbor... Eso nos amplía un espacio que va a beneficiar a Costa Rica y Nicaragua, porque ellos tienen derecho a salir por ahí también, en cuanto a comercio y turismo.

En tanto nosotros trabajamos y culminamos esas obras, que Costa Rica admita, acepte, que Nicaragua reciba el mismo tratamiento para transitar por el Río Colorado... ¡son aguas que vienen de Nicaragua! Pero además, partiendo de un principio que está establecido en el Derecho Internacional y, es el principio del paso, que eso está en todas partes del mundo. Hay ríos en Europa, que son de paso común, lo utilizan todos los países europeos; hay ríos en África, igual; ríos en América Latina, igual.

Digamos, que lo que nosotros estamos planteando, es simplemente buscar un punto de equilibrio, de justicia; así como ellos se benefician del Río San Juan, que también nosotros podamos optar con las mismas condiciones que ellos tienen para navegar por el Río San Juan; igual nosotros, por razones comerciales, razones turísticas, no se nos ocurre plantear, como ellos estaban planteando, meter gente armada, ¡no, eso jamás! sino turísticas, comerciales, pero con las mismas prerrogativas, con las mismas facilidades, con los mismos privilegios que tiene Costa Rica para navegar por el Río San Juan.

Cuando Nicaragua ya haya culminado la labor de limpieza con las dragas, y recuperado el flujo y el paso del Río hacia la Laguna Harbor, y que tengamos ya de manera permanente ese paso, un Río navegable en tiempos de verano y de invierno; entonces, en ese momento, yo no diría que deberíamos de renunciar a ese derecho, sino que creo que habría que mantenerlo también, porque ellos se van a beneficiar de obras que le cuestan a Nicaragua, porque así lo dicen los Laudos... tiene que hacerlo Nicaragua; esfuerzo que le cuesta a Nicaragua.

Y quiero saludar en estos momentos, a los hermanos que se encuentran, en territorio nicaragüense, trabajando en la limpieza del Río con la draga; a los hermanos que están trabajando en la limpieza del caño. Que lo están haciendo en condiciones realmente difíciles, duras, porque están trabajando sobre pantanos ¡y ahí están trabajando a pico y pala! Es decir, están trabajando para recuperar la Soberanía plena de nuestro Río y su navegación, derramando sudor, aguantando piquetes de zancudos, aguantando la lluvia, la humedad, ya sabemos ahí los niveles de humedad que hay en esa zona inhóspita. Recordemos que son zonas donde fácilmente se puede enfermar una persona por mucha fortaleza que tenga.

En estos momentos, tenemos ya un contingente de patriotas nicaragüenses, cuyas armas son las palas y los picos ¡esas son sus armas! Y la fortaleza, los puños que sostienen esas armas, que son los picos y las palas, están en la conciencia de esos hermanos, en el corazón, en el espíritu de esos hermanos, de estar haciendo una obra para beneficio de Nicaragua ¡y para beneficio de Costa Rica! Eso es lo más increíble... que Costa Rica se oponga a una obra que los va a beneficiar, porque ellos ya tienen derecho a transitar.

Nosotros, hasta hoy vamos a plantear formalmente, en todo un planteamiento que al final voy a explicar, el tema de la navegación de Nicaragua por el Río Colorado, en iguales condiciones a las que Costa Rica navega por el Río San Juan.

Anoche, fuimos todos testigos de un fracaso de la OEA. No es el primero, esa es una Institución que cada día pierde la mínima credibilidad, si es que queda alguna credibilidad en ella. Fuimos testigos de la forma en que se manipuló la Sesión, hubo una manipulación, una conspiración, eso ya estaba a la vista. Manipulación que llegó incluso, a tratar de sorprender con votaciones rápidas, donde no se tomó en cuenta los porcentajes que establece esa votación calificada, o se burló esto. Porque el Consejo Permanente de la OEA tiene un total de 35 miembros, de estos 35 miembros estuvieron presentes en los debates, en la discusión, y en la votación misma, 28 países, o sea, no estuvieron presentes 7 países. Y de acuerdo con lo que establece la OEA en sus mecanismos, que fueron ahí leídos en varias ocasiones, porque como que nadie estaba claro, ni la misma Mesa Directiva.

Decía: “El Consejo Permanente en el ejercicio de estas funciones, Artículo 89, adoptará sus decisiones por el voto afirmativo de los dos tercios de sus miembros, excluidas las partes; salvo aquellas decisiones, cuya aprobación por simple mayoría autoriza el reglamento.” No se cumplió con esto último, y se impuso una votación donde no fueron excluidas ni Costa Rica ni Nicaragua. ¿Por qué? porque ellos están claros que si Costa Rica y Nicaragua no votaban, no alcanzaban los 21 votos, se quedaban en 20 votos, el voto 21 lo da Costa Rica.

Pero además, de acuerdo a lo que establecen las normas y procedimientos, se necesita de los dos tercios de los Miembros del Consejo Permanente para la aprobación de una Resolución... eso significaba que se necesitaban 22 votos para aprobar esta Resolución, 22 votos para la aprobación y no 21, como mentirosamente lo establecieron ahí... ¡mintieron, manipularon!

Peor aún, también incluyeron a Costa Rica y Nicaragua para poder contar con el voto 21, porque ellos dijeron que eran 21, cuando no era así, eran 22. Pero como ellos partían de la mentira, de la falsedad que eran 21, entonces incluyeron a Costa Rica, porque sabían que con ese voto llegaban a los 21... ¡eso ya estaba trabajado! El plan estaba trabajado, un plan, lógicamente político, para tratar de imponer condiciones. ¡Condiciones que no pueden ser impuestas!

Fue notorio cómo, la iniciativa en todos estos debates, aparte lógicamente del Representante de Costa Rica, él está ahí para defender a Costa Rica a como sea y lo hizo a su manera; se destacó el liderazgo de Colombia... ¡ya sabemos qué significa Colombia! Colombia es una política expansionista que ha querido apoderarse del Mar Caribe; mantiene ocupadas por la fuerza de las armas, a San Andrés, Providencia, los Cayos Roncador, Quitasueños, Serranías. Mantiene por las fuerzas de las armas, en contra de la Resolución de la Corte de La Haya, su patrullaje en zonas donde no deberían de estar esos barcos de guerra colombianos.

Ya perdieron una primera batalla en la Corte, precisamente, en el Fallo que dictó la Corte en el año 2008, a favor de Nicaragua, y donde le dice a Colombia... no, las fronteras marítimas no son donde vos estás diciendo que son, no son ahí. Y está pendiente el Fallo de la Corte, donde la Corte va a decir dónde están esas fronteras marítimas y donde, lógicamente, todo indica que Nicaragua va a ganar esta Sentencia, en beneficio de lo que le pertenece, su Mar territorial. El escenario ha sido claro... una conspiración encabezada por Colombia, a la cual se suma Costa Rica, se suma Honduras, y corren a la Corte, a decir que ellos tienen que entrar también ahora como partes que pueden ser afectadas en la sentencia que la Corte va a dictar, en un diferendo

que está entre Nicaragua y Colombia exclusivamente. ¿Qué tiene que hacer ahí Costa Rica? ¿Qué tiene que hacer Honduras? ¡Ah, pero aparecen ahí, Honduras y Costa Rica!

Esto no era más que parte de un plan que venía caminando y que lo hacen explotar, lo más triste es que lo hacen explotar, a partir de las denuncias de unos narcotraficantes, ¡fíjense! O sea, las autoridades costarricenses, se hicieron eco de las denuncias de narcotraficantes que, huyendo de las autoridades nicaragüenses, se fueron a refugiar a San José, y allá dijeron que el Ejército de Nicaragua había ocupado territorio costarricense... ¡Los narcotraficantes dirigiendo la política exterior costarricense! ¿Desde cuándo? Esto nos tiene que preocupar... ¿Y esa desesperación porque retiremos el Ejército de la zona? Un Ejército que no está en ninguna confrontación más que con el narcotráfico... ¿quiénes serían los beneficiados con esa propuesta, con esa exigencia que hace Costa Rica, de que el Ejército deje de operar en territorio nicaragüense combatiendo el narcotráfico? ¿Quiénes son los beneficiados? Los narcotraficantes.

Y sabemos que los narcotraficantes tienen grandes tentáculos, tentáculos que entran en las Instituciones de Estado, tentáculos que mueven recursos multi-billonarios y que tienen en crisis actualmente, una crisis extrema, a hermanos países latinoamericanos como México. ¡México tomado por el narcotráfico! México está en una guerra donde el narcotráfico se ha tomado hasta instituciones militares mexicanas, destacamentos enteros de soldados del Ejército mexicano, de Fuerzas especiales del Ejército mexicano, se han pasado a ser destacamento de los narcotraficantes. Armamento de guerra por todos lados, muertes, asesinatos, daños por todos lados en México.

México hoy es un país ocupado por el narcotráfico, y México debería de preocuparse porque el narcotráfico no se extienda hacia Nicaragua; porque ya se extendió sobre Guatemala, que es otro país ocupado por el narcotráfico. Narcotraficantes asesinando Diputados salvadoreños, en territorio guatemalteco, Diputados al Parlamento Centroamericano. ¡Fíjense bien! como que el narcotráfico se estuviera moviendo detrás de estos Estados, detrás de México, de Guatemala, Colombia, para buscar cómo influir ¿para qué? Para influir en una operación contra los esfuerzos en Nicaragua, que se detenga la operación contra el narcotráfico.

No hablaron del tema del narcotráfico anoche. Ellos, los mexicanos que están totalmente contaminados por el narcotráfico, no hablaron; no hablaron los colombianos del problema del narcotráfico; no hablaron los guatemaltecos, sino lo que hicieron fue, sencillamente, hacer causa común con una posición política, donde se están invadiendo también espacios que son de orden estrictamente jurídico, limítrofe, que no tienen por qué ser abordados, decididos o condicionados por la OEA, ¡no tiene que hacer nada en este sentido la OEA!

Entonces, da la impresión que el narcotráfico se ha vuelto tan poderoso que agarra al Representante de Panamá, y éste se lanza también... ¡no quieren que Nicaragua esté combatiendo el narcotráfico! Esa es la conclusión que yo saco de esas intervenciones. Como que les dieron la línea... hay que trabajar ahí fuerte para que Nicaragua no siga combatiendo el narcotráfico. ¿Qué intereses están detrás de esas posiciones políticas? Desde Colombia, desde Panamá, desde Costa Rica, desde Guatemala, desde México, que son países que están totalmente contaminados por el narcotráfico. Y algunos de ellos, totalmente desestabilizados, se han vuelto ya ingobernables, como el caso de Guatemala y el caso de México.

Ahí, simplemente, lo que se planteó fue una batalla entre países defensores del narcotráfico y Nicaragua, que está combatiendo el narco-tráfico, porque en este sitio, donde Costa Rica alega que hemos invadido... primero, es territorio nicaragüense ¡y estamos luchando contra el narcotráfico! Ahí no ha habido ningún enfrentamiento entre costarricenses y nicaragüenses; no ha habido una sola bala entre nicaragüenses y costarricenses.

Porque algunos hablaban, ponían ejemplo de otros países latinoamericanos donde ha habido balas... ¡si ha habido balas hubiera muertos! Pero aquí no ha habido balas ni muertos, porque sencillamente, la presencia del Ejército en esa zona nicaragüense, está, ha estado y estará, para combatir el narcotráfico. Parece que ya la influencia del narcotráfico, realmente va avanzando, sigue avanzando.

Pero bueno, nosotros queremos destacar la posición del ALBA en ese debate y a la hora de la famosa votación manipulada, distorsionada... destacar al hermano pueblo venezolano; estaba hablando, precisamente, en estos momentos por teléfono con el Presidente Hugo Chávez, nos llamó. Y él se encuentra realmente, no sorprendido, porque ¿quién se va a sorprender? Ya sabemos lo que es la OEA, pero sí, indignado; nosotros estamos también indignados por lo que aconteció.

Porque en la OEA se tenía que haber buscado el consenso, ese ha sido el principio. La votación lo que lleva es a confrontaciones y a que se fracture y termine desapareciendo la tal OEA, que ya tenía que haber desaparecido hace rato, es la verdad. Nosotros nos mantenemos ahí como por inercia en la OEA, ¡ya tenía que haber desaparecido hace rato! Pero están rompiendo con el principio del consenso, que lo defendió con mucha firmeza el Representante de Venezuela. Yo diría que el Representante de Venezuela, con el Representante de Nicaragua, mantuvieron una posición firme hasta el último segundo, dando la batalla por el consenso y el diálogo sin condiciones, ¡esa era la posición!

Reconocemos la posición de Bolivia, que tuvo una buena intervención; y dijo el representante boliviano: nosotros, ante esta situación, preferimos no participar de esa votación. Es decir, no se abstuvieron, sino que simplemente se borraron, o sea, Bolivia dijo: no estoy; Guyana se abstuvo, una actitud digna; Ecuador se abstuvo, una posición digna; Dominica se abstuvo y, como era de esperarse, Venezuela y Nicaragua, dando la batalla por América Latina, dando la batalla por nuestros pueblos.

¡Y dando la batalla, sobre todo, contra el narcotráfico...! porque yo considero, que esto ya se ha convertido en una batalla entre los intereses del narcotráfico, que son transnacionales y los intereses de nuestros pueblos y de las instituciones que estamos luchando, porque Nicaragua, en estos momentos, es el punto de contención. Ya el narcotráfico se tomó Guatemala, avanza sobre El Salvador, avanza sobre Honduras y el punto de contención es Nicaragua. Y debería de agradecer Costa Rica, que Nicaragua es el punto de contención, para que Costa Rica no sea totalmente tomada por el narcotráfico en la forma en que ha sido tomada Guatemala, México, lo que no significa que el narcotráfico no esté en Costa Rica como lo está en Panamá.

Esta reunión de la OEA, realmente mató la posibilidad de un diálogo incondicional, ¡la mató!

porque se metieron a establecer elementos de condicionamiento, y eso mata un diálogo incondicional. Y nosotros, repito, por principios, no nos estamos retirando de ningún sitio del territorio nicaragüense en zonas fronterizas con el hermano pueblo de Costa Rica y con el hermano pueblo de Honduras, o en zonas marítimas... nosotros no estamos retirando a nuestras fuerzas, ni al Ejército, ni a la Policía en el combate contra el narcotráfico. Ahí no hay retirada que valga. Y esa propuesta de la OEA anoche... “aprobada” entre comillas, lo que nos está diciendo es que le dejemos el terreno libre al narcotráfico. Fíjense bien... ¡que le dejemos libre el terreno al narcotráfico! Nosotros no aceptamos esto.

Pero bueno, quiero concluir, porque el Presidente Hugo Chávez, querido compañero Comandante, me dijo que iba a estar pendiente de esta intervención. Él es amante del deporte, y aquí somos amantes del deporte y hay una gran expectativa hoy, querido hermano Presidente Comandante Hugo Chávez, porque hay una pelea entre un gran peleador mexicano, Margarito, y un gran peleador filipino, Pacquiao, la van a transmitir, pero tenemos tiempo todavía. No voy a abundar en repetir tantos argumentos que han sido presentados, pero creo que hay que seguir trabajando, que nuestro pueblo, que nuestros jóvenes estén al tanto, que dominen este tema, porque es dolorosa la forma en que Nicaragua ha perdido miles de kilómetros cuadrados. Los perdimos en Mocarón con Honduras, los perdimos con Costa Rica en el Guanacaste y Nicoya; nos quisieron arrebatar todavía el Río San Juan, lo que llevó a la Corte fallar en el 2009, ¡que es de Nicaragua el Río San Juan! Siguen los colombianos queriendo arrebatar nos nuestros mares, nuestras plataformas marítimas; siguen conspirando los intereses hondureños y costarricenses con los colombianos, para buscar cómo alcanzar esos objetivos expansionistas. Y nosotros, lógicamente, no podemos dejar de continuar en esta batalla.

Quiero comentar que el día de ayer por la tarde, cuando empezaban los debates, no había sitio en nuestro país, aún en medio de la jornada de trabajo... donde hubiesen televisores, se estaban transmitiendo los debates; incluso en los centros comerciales, los televisores que están en venta, en oferta, transmitiendo los debates; y los ciudadanos de todos los estratos económicos, sociales, de toda la diversidad de pensamiento político, todos, siguiendo los debates... ¡con un profundo sentido de dignidad y de orgullo de ser nicaragüense! Y que estamos defendiendo una causa justa, porque lo que estamos defendiendo es que no nos sigan destrozando, bastante daño se le ha hecho a Nicaragua en cuanto a su territorio.

Yo veo la imagen de Nicaragua, como que quieren repetir la historia del hermano nicaragüense allá en Costa Rica, a vista y paciencia de periodistas costarricenses, camarógrafos, celadores, lo que hicieron fue disfrutar las tomas de cómo unos perros muy fieros, destrozaban a ese hermano nicaragüense, ¡cómo que así quisieran destroz a la Patria! pero la Patria ya no puede ser destrozada y... ¡ya basta, basta! No podemos permitir que se le siga cercenando territorio a Nicaragua.

Quiero expresar que, haciendo un resumen de lo que serían nuestras conclusiones, en la línea de trabajo que estamos desarrollando... uno, aquí tengo la carta que envió el compañero Denis Moncada Colindres al señor Joaquín Alexander Maza Martelli, Presidente del Consejo Permanente de la OEA, donde le dice que Nicaragua retira la solicitud de convocatoria de la Reunión de Consulta de Ministros de la OEA. Ustedes recordarán que eso fue parte del debate, y era la oportunidad de empujar el consenso, si no podían encontrar el consenso los

Embajadores, en la práctica de la OEA ha sido seguir, hasta encontrar el consenso, entonces se convocan a los Cancilleres y que sean ellos los que encuentren el consenso.

Nosotros, en ese momento, todavía estábamos apostando a que el consenso se podía lograr, pero cuando ya se nos somete a una votación mani-pulada, amañada, mentirosa, entonces, sencillamente, no vemos sentido alguno para convocar a la Reunión de los Cancilleres; sencillamente, hemos perdido toda credibilidad en la OEA. Incluso, hasta sería conveniente ir considerando, ir trabajando un retiro de la OEA... ¿qué hacemos en la OEA?

A Cuba la expulsaron de la OEA en un acto de barbarie, y luego, en un hecho histórico, reivindicaron el derecho de Cuba. Esas injustas sanciones impuestas contra Cuba fueron levantadas. ¿De qué sirvió el papel de la OEA cuando el golpe en Honduras? ¿Acaso pudo la OEA frenar el golpe? No. Lo que hizo la OEA fue ir a promover diálogo con el golpista. Y, a estas alturas, hay una cantidad de países que han ido abriendo relaciones con Honduras y tienen relaciones normales con este país. Entonces, yo me pregunto ¿qué sentido tiene estar en la OEA? Tenemos que considerar seriamente nuestro retiro de la OEA, y trabajar para que se conforme ese nuevo frente de Naciones Latinoamericanas y Caribeñas, el Proyecto de Mancomunidad de Naciones Latinoamericanas y Caribeñas, que es lo que aprobamos en febrero de este año en México, Cancún, y habrá una reunión el próximo año en Caracas, Venezuela, en el mes de julio para sentar las bases. La reunión en México fue histórica, porque ahí, todas las naciones latinoamericanas y caribeñas, sin exclusión, ahí estaba Cuba, acordamos integrar esta fuerza de Gobiernos, de Estados Latinoamericanos y Caribeños.

Venezuela va a ser la sede de la próxima reunión, donde se van a sentar las bases y ahí tendremos los latinoamericanos, por primera vez en nuestra historia, el instrumento que no hemos podido tener; entonces se va a hacer realidad el Supremo Sueño de Bolívar, del cual hablara Sandino en aquel famoso Manifiesto desde las montañas de Nicaragua, cuando se enfrentaba a la intervención yanqui.

Entonces, no nos interesa la Reunión de Cancilleres; si la convoca Costa Rica, cosa de ellos si la quieren convocar; nosotros ya no tenemos ningún interés en Reunión de Cancilleres, ni interés en participar... ¿qué sentido tendría participar en esa reunión de Cancilleres? Ninguno. Si la convocan, que lo hagan, nosotros no vamos a estar ahí, no vamos a participar en esa Reunión de Cancilleres.

Nicaragua, va a proceder, de eso estuve hablando con el compañero, el Doctor Carlos Argüello, vamos a proceder, ya ir haciendo el trabajo, el afinamiento, irnos preparando todos nosotros para formar el equipo. Ya le dije a Carlos que él vaya avanzando con algunas ideas, y en los próximos días nos reunimos aquí en Managua, para trabajar la estrategia de cara a la Corte Internacional de Justicia de La Haya, que es el lugar donde se deben debatir estos temas.

Es decir, nosotros, como parte ofendida, porque estamos siendo parte ofendida por Costa Rica, vamos a recurrir a la Corte y denunciar a Costa Rica, por querer ocupar territorio nicaragüense, ¡porque eso es lo que quiere Costa Rica! adueñarse de territorio nicaragüense. Y que también se proceda al amojonamiento, densificación de las fronteras terrestres y a la delimitación de las fronteras marítimas. Buscar una solución integral, porque si hoy resolvemos esto y no

resolvemos el todo, en cualquier momento nos resulta otro conflicto; y no queremos estar en conflicto con pueblos hermanos, con naciones hermanas, que al final de cuenta, los pueblos se ven involucrados, manipulados en estos conflictos.

Vamos a plantear ahí, y se lo planteamos ya a Costa Rica, públicamente se lo planteamos... si a Costa Rica no le parece, vamos a llevarlo a la Corte, que Nicaragua pueda utilizar, a lo inmediato, el Río Colorado para transitarlo, en las mismas condiciones en que Costa Rica transita el Río San Juan. Estos son los puntos fundamentales que nosotros vamos a trabajar, partiendo de que ya este tema se murió en la OEA, donde ya no tenemos nada que hacer; la OEA, por lo menos en este tema... “requiescat in pace”, como diría Su Eminencia.

Y, hacer un llamado al pueblo costarricense a que no se dejen llevar por la confrontación. Vean la diferencia aquí en Nicaragua, aquí se está viendo todo esto con madurez, con seriedad, con responsabilidad. Dicen que ellos tienen un altísimo grado de cultura, se precian de ser los más cultos de América Latina y El Caribe, pues el pueblo nicaragüense está demostrando más cultura, más responsabilidad en darle seguimiento a todos estos temas; los trabajadores, las mujeres, la juventud, los diferentes sectores económicos y sociales de este país, las diferentes fuerzas políticas.

Yo quiero dejar bien claro aquí, que este es un tema que nos une, y que con este tema que nos une, yo no estoy ignorando ni trato de evadir, ni me interesa tapar los temas que no nos unen a los nicaragüenses, donde están temas de orden político, institucional... ahí tenemos diferencias, ¡ahí están! Y esas diferencias, a final de cuentas, las va a dirimir, las va a decidir el pueblo nicaragüense, de manera pacífica, el próximo año en el mes de noviembre, depositando su voto... ¡ahí está la solución!

Hermanos nicaragüenses, a seguir trabajando en todos los campos, en el campo económico, en el campo social; en el campo político, cada quien con sus ideas, con sus planteamientos. Hay quienes van a hacer marchas en estos días, ¡magnífico, que hagan sus marchas! que vayan a protestar contra el Gobierno, ¡que protesten, no hay ningún problema! Protesten todo lo que quieran... pero, en este tema: ¡unidos, todos unidos! que es lo más importante, y ahí estamos siendo consecuentes con nuestro ser nicaragüense.

Muchas gracias, queridos hermanos, queridas hermanas, queridas familias nicaragüenses, buenas noches, y que Dios nos de paciencia y sabiduría para salir adelante en esta situación. Gracias.

[TRANSLATION BY COSTA RICA]

Appearance by President Commander Daniel defending the Sovereign Right of the
Nicaraguan People over the San Juan River

13 November 2010 | 19:25:36|

Rosario's words

Dear brothers, dear sisters, dear Nicaraguan families, we are in this House of the Presidency to broadcast the appearance of the President of the Republic in relation to the fight for our Sovereignty, for our Sovereign Rights over the San Juan River, the Natural Heritage of Nicaragua and the pride of all our people, National Pride.

Joining the President, His Eminence, the Cardinal for Reconciliation, Peace and Unity for the Common Good, Miguel Obando y Bravo; the Head of the Nicaraguan Army and the Joint Chiefs of the Nicaraguan Army; the Police Leadership and his Senior Staff; the Foreign Ministry, its Minister, fellow Samuel Santos, the Vice-Minister, fellow Waldrack Jaentschke; the Minister for the Environment, fellow Juanita Argeñal, the Director of the Nicaraguan Institute for Territorial Studies, fellow Alejandro Rodríguez; the Chief of Legal Affairs of the Foreign Ministry, Doctor César Vega. Fellow Leaders of Environmental Organizations, Social Movements and Distinguished Members of Juventud Sandinista 19 de Julio.

To begin this appearance on behalf of our Sovereign Rights, we will listen to the message of His Eminence, the Minister of the Nicaraguans, of Unity for the Common Good, Miguel Obando y Bravo.

Message of His Eminence, Cardinal Miguel Obando y Bravo:

Commander Daniel Ortega Saavedra, President of Nicaragua, Madam Rosario Murillo, Coordinator of Social Communication and Citizens; a respectful greeting to all the authorities; all brothers in Christ our Lord.

The Motherland has right to our soul, to our talent, to our reason, [we] shall consecrate [our] best and most noble faculties; we were not born for ourselves, but for our country, Plato said.

Let's congratulate the President, the First Lady and the National Assembly, the Army, the Police, the people of Nicaragua, who have united to try to solve the problem through civilized ways. Nicaraguans have shown that we are people who love Peace, the behaviour of an individual is fully human when it is born out of Love, expresses Love and is aimed at Love.

This truth is also valid in the social sphere; it is necessary that Christians be profoundly convinced witnesses and that they be able to show with their lives, that Love is the only force that can lead to personal and social perfection and move History towards the Good.

As the Ancient Romans said: 'If you want peace, be prepared for war'. But us, who

are Peace-loving people, will continue to exhaust all the means at our disposal to avoid, as much as possible, the spilling of blood.

We must pray, begging for light to the Divine Spirit, so that he illuminates our minds and gives light to our neighbours as well, so that we can achieve a Peace based in Love, Justice, Truth and Liberty.

All-powerful and eternal God, who created us with overwhelming love, shed your Holy Spirit over our authorities, so that in making considered and wise decisions, they safeguard the integrity of our Motherland and through the intersection of 'la Purísima Concepción', Patron of Nicaragua, we may reach Harmony and Peace, for Jesus Christ, our Lord, Amen.

Daniel's [Ortega] words

Good evening, Nicaraguan brothers, Nicaraguan families, we are in this weekend of the month of November, approaching the festivities of 'las Purísimas', Christmas and the New Year. In the middle of the daily work of all Nicaraguan families, of the studious youth, the farmers and all the sectors of the Nicaraguan society, today we have been summoned to discuss this topic that has come to alter the relations between two brother nations, Costa Rica and Nicaragua...

We are two brother nations!

It is important to note the way in which Nicaraguans in general have 'closed rank' during the visit of the National Assembly to the area where the Nicaraguan people, the Nicaraguan State, exercise their Sovereignty; the River of San Juan of Nicaragua, now the official name of the River, after the Resolutions adopted by the National Assembly of Nicaragua.

We have not seen here demonstrations against the Costa Rican people, or against the authorities that here represent the Costa Rican people. Even in the last few days, in the coast of the Caribbean Sea four Costa Rican fishermen were helped, who were very well inside Nicaraguan territorial sea, quite up north. This logically worried us, the authorities, because they could well be lost fishermen or they could have been the famous drug-trafficking operations.

Protection and attention were afforded to them, but also, logically, they were asked the corresponding questions; and today they were surrendered to the Costa Rican authorities, to the Consulate, with whom we had been fulfilling the corresponding arrangements and who were responsible for giving us the corresponding details. But there have been demonstrations, by the Costa Rican brother people, not by all of the people but only by some groups, who are trying to make the situation more serious than it really is.

Yesterday, the Nicaraguan embassy in Costa Rica was the object of an attack, Molotov cocktails were launched at it from a vehicle that has been identified; a member of the Costa Rican police who was in that place is a witness; immediately other police units were called. But these are manifestations of violence that have not occurred, nor will occur in Nicaragua. Equally, the detention of some trucks coming

from Panama and they tried to stop them, thinking they were army trucks; trucks originating in Germany that were traveling to Nicaragua from Panama. This was an action by the Costa Rican authorities, and when they found out that they were not trucks for the army, but that they were of the normal commercial operations that exist in our State, then, logically, they were let go. But these are signs that worry us and we must denounce the attack of which the Nicaraguan embassy in Costa Rica was a victim. Thanks God the 'cocktail' did not penetrate the Mission, if it had penetrated to its interior it would have taken fire! with all the consequences that this entails.

We see the importance of the message of His Eminence... We must face these problems with strength, respect, with a constructive spirit, but without fostering confrontation, without fostering xenophobia, without fostering racism, which are elements that have been incited there in our sister Republic of Costa Rica. There are groups, forces interested in this situation being complicated further, instead of being solved through unconditional dialogue. I have here, in my hands, a map of the famous disputed zone. This is a satellite shot, a radar image, it says 1960; here we have this other image of 24 February 2010... This is the focus of the conflict, look closely. This has been the object of abundant arguments, justifications, in the presentation that we made here for the OAS delegation; in the presentation made by the Head of the Army, General Avilés, to the National Assembly in San Carlos, San Juan River; in the presentation that the presidential consultant and Nicaraguan scientist Jaime Incer made before the OAS in last night's session. It is clear, here is Punta Castilla, where the first marker is located, where is it how do we call this? Ah yes, the first landmark, which is the one that serves as point of departure for the marking down of the boundary between Nicaragua and Costa Rica, here is the lagoon Harbour Head, which logically belongs to Nicaragua, here is the famous channel that goes to Harbour Head and that unites [with] the San Juan River. And the San Juan River should, in its normal course, retake this route and reach this lagoon, in an area where many years ago there was a great bay.

In that bay, with the passage of time, many factors of different types were combined, and especially, the development of Costa Rica in this area. That is, Costa Rica decided to sacrifice the forest, the reserve. It decided to sacrifice it, for what? To develop projects, stockbreeding programs, farming projects, namely to take modernity there, but at the cost of what used to be a Reserve, where practically, all here was a corridor, the Reserve from Costa Rica and then reaching the Reserve in Nicaragua, in Indio-Maiz.

There the Reserve disappeared... Here, the Reserve remained and from there the fight to maintain it, because it is not once that this Reserve of Indio Maiz has been invaded by individuals manipulated by wood traffickers, so much they have manipulated both Nicaraguan and Costa Rican farmers that they have been taken to the Reserve. And the army, the Police, with MARENA have had to go there to tell them: see, please leave this site, this is a sacred site that we must respect; it is life for our country, it is life to the region and it is life for the Planet.

So we have the two shots of 1960 and 2010, this one is recent, here is the lagoon; and as you can see, the San Juan River, is a river that in summer loses its volume of flow, it cannot yet reach its historical mouth in conformity with the same Treaties, Awards, Resolutions, etc, which established in the years 1858. We cannot yet recover, and that

is what we are doing with the cleanup of the river, using the dredger 'Sovereignty'; the cleanup of the river, the cleanup of the channels, to be able to allow the river to regain its volume of flow. This happens necessarily, due to the dredging of the area where Nicaragua feeds in about 90% the Colorado River. And I am going to now go onto another map... Look carefully this is the Colorado River, which was a river that did not have the same volume of flow as it currently has, and with the passing of time, obstructions that took place at this point kept deviating the waters of the San Juan River to the Colorado river. Thus, the Colorado River is fed in about 90% by Nicaraguan waters, what are these Nicaraguan waters? The waters that come from the north of our country, to drain the Managua lake, the great lake of Granada and then drain through the San Juan River. In those times, as the Transit Route, the flow was sufficient to be able to also count on an immense bay, and that here, where the river flowed, normal navigation could be had at all times. But insofar as the waters were diverted towards the Colorado River, the volume of flow of the San Juan River was affected, the flow of the San Juan River lost intensity. Note that the San Juan River until [it becomes] the Colorado River flows with great strength, but there, in this point... it begins to lose strength, to lose volume of flow, why? Because the bulk of the waters of Nicaragua go to feed the Colorado River.

As I was saying, this means that we have a San Juan River that during the rainy season is navigable, without being able to recover its historical line; during the summer season it is not navigable, and there are kilometers and kilometers that are no more than sand; places in which all that remains are small puddles. People who have visited the river know this, it is possible to walk in the river bed for kilometers and kilometers! Because simply what its water is doing is feeding the Colorado River.

Now what are we doing? We are simply working for the cleanup of the River, what for? To restore our volume of flow, and as I was saying, this leads necessarily to cleaning this area that goes towards the Colorado River. In such a way that in cleaning this area that goes to the Colorado River, there will be a decrease of the flow of waters of the River to the Colorado River; that is, there will be a decrease of the waters of the Lake of Nicaragua through the San Juan River into the Colorado River. Which does not mean that the Colorado River will dry out, but it will allow the San Juan River to regain its volume of flow and that, in a permanent manner and at all times, we may have a navigable route. This is all that we are defending. What the Treaties order, what the Awards order, what the resolutions of the International Court of Justice order, this is what we are defending! To recover the flow of the river to the level it had in 1858, which is clearly established in all the Awards, in all the Resolutions that have been taken on this subject.

In the meantime, also in accordance with a resolution of the Court, we recognize the right of our brother people of Costa Rica, to use the river in an area that is already clearly established, which is the area of the Castle, three miles down... From there onwards Costa Rican motorboats and boats can enter and navigate without any problems, to the mouth, if it [only] existed! If we had a river mouth, they would benefit because they could easily exit with their boats through the river mouth.

And to this traffic, which is commercial, which is touristic, are not applied those rules that are applied when it comes to the navigation in a river in a country that has transit rules, [and] corresponding established rules, of migration; in this sense, they are only

elementary steps, already defined, that they have to comply with, but they can navigate the river, and they do navigate it! I invite our Costa Rican brothers to continue to navigate it, we are not closing transit of Costa Rica towards the River.

Further, as they are celebrating, starting today in San Carlos, San Juan River, the aquatic holiday of San Juan of Nicaragua, then we have left the doors open, so that with no problem Costa Rican brothers go to the celebrations and together with their Nicaraguan brothers enjoy the resources of nature.

Let's see now... Which is Isla Calero? Because here has started a campaign that Nicaragua has militarily taken Isla Calero. That is the campaign that the Costa Rican authorities have launched. Which one is Isla Calero? It is this territory... Here comes the Colorado River, look and here comes the San Juan River; then, as this territory is found between the Colorado River and the San Juan River, they called it Isla Calero. In this territory that is Isla Calero, it's close to 180 square kilometers, in this territory, I can assure you Nicaraguan brothers, Costa Rican brothers, there is not one single Nicaraguan soldier! Nor has any Nicaraguan soldier or policeman entered this territory, they have not entered at any time.

Then there is the area they called Isla Portillos, as well; and then there is this area where we have the Lagoon and the channel where we are working on, and here, we are already in Nicaraguan territory. In Costa Rican territory, we have neither occupied Isla Calero, that is not true! Nor occupied what they call Isla Portillos ... there are no soldiers or police there.

Where Nicaragua is exercising its Sovereignty is in this area, in which we are developing the operation for the cleanup of the River to recover our volume of flow, by recovering our volume of flow both will benefit, since we both navigate this River. But we have the following situation... Costa Rica has the advantage that it can navigate the San Juan River without any [of the] obligations of foreign visitors, they can navigate in all this 140 kilometer stretch; in winter times they can navigate the 140 kilometers, because the River takes water, it has water; but during the summer they can no longer do so.

And what is it that they do? They do their routes, touristic tours; they go through the San Juan River and then descend through the Colorado River, because the Colorado River does permanently have water, because Nicaragua is giving water to it! 90% of the water is given to it by Nicaragua. I was speaking on the phone with my fellow Carlos Argüello, our agent to defend Nicaragua before the International Court of Justice in The Hague; in conversation with him, we reached a conclusion, which is the following and that we are going to work on, I will later explain how.

Since Nicaragua has a problem, because it has not yet recovered the volume of flow of the River, nor its exit, what is the position of Nicaragua? While we continue with the cleanup, the dredging, cleaning the channel, so that we can fulfill everything that the awards order us to do and we can establish an exit through Harbour [Head] Island... This would open a space that would benefit Costa Rica and Nicaragua, because they have a right to exit through there as well, for both commerce and tourism.

While we work and finish these works, Costa Rica should allow, accept, that Nicaragua receive the same treatment to navigate through the Colorado River... these are waters that come from Nicaragua! But also starting from a principle that is established in international law, which is the principle of passage, the passage that is in all parts of the world. There are rivers in Europe, which are of common passage, all European States use them; similarly, there are rivers in Africa; and also rivers in Latin America.

Let's say that what we are looking for is simply to search for a point of balance, of justice; just like they benefit from the San Juan River, we should also count on the same conditions that they have to navigate through the San Juan River; us too, for commercial reasons, touristic reasons, we do not suggest, like they were doing, to enter with armed people, no, that never! But tourism, commercial [reasons], with the same prerogatives, with the same facilities, with the same privileges that Costa Rica has to navigate the San Juan River.

When Nicaragua will have finished the cleaning works with the dredges and will have recovered the River's flow and the passage from the river to the Harbour [Head] Lagoon, and we will have recovered this passage permanently, both in summer and in winter; then, at that moment, I would not say that we should renounce that right, rather I think that we should also maintain it, because they will benefit from works that are a cost for Nicaragua, because that is what the Awards say... Nicaragua has to do it; an effort that represents a cost for Nicaragua.

I would like to salute, in this moment, the brothers that are out there in Nicaraguan territory working on the cleanup of the river with the dredge; to the brothers who are working in the cleanup of the channel. Who are doing it in very difficult, harsh conditions, for they are working in swamps and they are working with pickaxe and shovels! That is to say, they are working to recover the full Sovereignty of our River and its navigation, shedding sweat, enduring mosquito bites, enduring the rain, enduring the humidity, we know how humid that inhospitable area is. Let's remember that they are in areas where a person, no matter its great strength, can easily get sick.

At this moment we have a contingent of Nicaraguan patriots, whose weapons are pickaxes and shovels, those are their weapons! And the strength, the fists that support those weapons, that the pickaxe and the shovel are in the conscience of those brothers, in the hearts and in the spirit of those brothers, who are working for the benefit of Nicaragua, and for the benefit of Costa Rica! And this is what is most incredible... that Costa Rica opposes works that will benefit them, since they already have a right to transit.

Until today we will formally propose, with a proposal that I will explain at the end, the navigation by Nicaragua on the Colorado River on the same conditions of Costa Rican navigation on the San Juan River.

Last night we were all witness to a failure of the OAS. It is not the first one, that is an institution which every day loses its minimal credibility, if it has any credibility left. We were witness to the manner in which the session was manipulated, there was a manipulation, a conspiracy, that was already in plain view. Manipulation that even

tried to surprise with fast voting [procedures], where the percentages required by qualified majority [voting] were not taken into account, or where this was circumvented. Because the Permanent Council of the OAS has a total of 35 members, of these 35 members 28 States were present in the debates, in the discussion and in the voting, that is 7 States were not present. And according with what the OAS establishes in its mechanisms, that were read there on several opportunities, because it appeared that nobody knew [them] clearly, not even the Directive Body.

It said: 'The Permanent Council in exercise of its functions by article 89, will adopt its decisions by the affirmative vote of two thirds of its members, excluding the parties, except for those decisions that can be approved by a simple majority as authorized by its rules'. This last part was not complied with and a voting procedure was imposed where neither Costa Rica nor Nicaragua were excluded. Why? Because they were clear that if Costa Rica and Nicaragua did not vote, they would not have reached the 21 votes needed, they would have had only 20 votes, and vote number 21 was provided by Costa Rica.

But further in accordance with what is established in the rules and procedures, it is required that two thirds of the members of the Permanent Council [vote] for the approval of the resolution... Which meant that 22 votes were necessary to approve this Resolution. 22 votes to approve it and not 21, as they falsely said there. They lied, they manipulated!

Even worse, they also included Costa Rica and Nicaragua so as to be able to count on vote 21, because they said that they were 21, when that was not so, they were 22. But since they were proceeding from the basis of the lie, of the falsehood that they were 21, then they included Costa Rica, because they knew that with that vote they would have obtained 21. That had been decided beforehand! The plan had been arranged, logically a political plan, to try to impose conditions, conditions that cannot be imposed!

It was well-known how the initiative in all these discussions, logically setting aside the Costa Rican delegate - he is there to defend Costa Rica at all cost and did it in his way - the leadership of Colombia was emphasized... We all know what Colombia means! Colombia is an expansionist policy that has tried to take possession of the Caribbean Sea; it maintains occupied [territory] by armed force [in] San Andres, Providencia and of the Keys of Roncador, Quitasueños, Serranías. It maintains by the force of arms, against a resolution of the Court in The Hague, its patrolling in areas where those Colombian warships should not be.

They have already lost the first battle in the Court, precisely, in the decision that the Court adopted in the year 2008 in favour of Nicaragua, and where it tells Colombia... no, the maritime boundaries are not where you claim them to be, they are not there. And the decision of the Court is pending, in which the Court will determine where the maritime boundary is located and where, logically, all indicates that Nicaragua is going to win this decision, to the benefit of what belongs to it, its territorial sea. The stage has been set... A conspiracy led by Colombia, to which Costa Rica added itself, to which Honduras added itself and they all ran to the Court to say that they have to intervene as parties that can be affected by the judgment that the Court will adopt in a dispute that is exclusively between Nicaragua and Colombia. What has Costa Rica to

do there? What has Honduras to do there? Ah, but Costa Rica and Honduras appeared there!

This was only a part of a plan that had been arranged and that they brought to the surface, the saddest thing is that they brought it to the surface following reports made by drug-traffickers. Notice this! That is, the Costa Rican authorities echoed the claims [made] by drug-traffickers who, escaping Nicaraguan authorities, took refuge in San Jose and there they said that the Nicaraguan army had occupied Costa Rican territory... The drug-traffickers are leading Costa Rican foreign policy! Since when? This must worry us... And this desperation to have us withdraw our army from the area? An army that is only in confrontation with drug-trafficking... Who will benefit from this request, with the proposal that Costa Rica makes that the army should stop to operate in Nicaraguan territory to combat drug-trafficking? Who benefits? Drug-traffickers.

And we know that drug-traffickers have long tentacles, tentacles that enter the State's Institutions, tentacles that move multibillion resources and tentacles that have currently brought into crisis, an extreme crisis, brother Latin American States like Mexico. Mexico has been taken over by drug-trafficking! Mexico is in a war where drug-trafficking has even taken Mexican military institutions, entire detachments of soldiers of the Mexican Army, of the special forces of the Mexican Army, have come to be detachments of the drug-traffickers. War weapons are everywhere, deaths, homicides, damage everywhere in Mexico.

Mexico is a State occupied by drug-trafficking, and Mexico should be worried that drug-trafficking does not extend towards Nicaragua; because it has already extended over Guatemala, which is another country occupied by drug-trafficking. Drug-traffickers killing members of the Salvadorian parliament in Guatemalan territory, members of the Central-American Parliament. Notice this! Like drug-trafficking was moving behind these States, behind Mexico, behind Guatemala, Colombia, to try to influence, and for what? To have influence in an operation against the efforts of Nicaragua, to stop the operation against drug-trafficking.

They did not speak about drug-trafficking last night. They, the Mexicans that are completely contaminated by drug-trafficking, did not speak; the Colombians did not speak about the problem of drug-trafficking; the Guatemalans did not speak, what they did was, simply, to make a common cause with a political position, where areas that are strictly legal are also being invaded, bordering [*sic*], that should not be addressed, decided and conditioned by the OAS, the OAS has nothing to do in this sense!

Then one gets the impression that drug-trafficking has become so powerful, that it takes the representative of Panama and he too throws himself... They don't want Nicaragua to fight drug-trafficking! That is the conclusion that I take from their interventions. It appears as if they were given the line... We must work hard there to prevent Nicaragua to continue fighting drug-trafficking. What are the interests behind these political positions? From Colombia, from Panama, from Costa Rica, from Guatemala, from Mexico, which are States that are completely contaminated by drug-trafficking. And some of them are completely destabilized, have already become impossible to govern, as is the case of Guatemala and of Mexico.

What happened there was simply a battle between States who defend drug-trafficking and Nicaragua, who is fighting drug-trafficking because in that area that Costa Rica claims that we have invaded... First, it is Nicaraguan territory and we are fighting against drug-trafficking! There have been no confrontations between Costa Ricans and Nicaraguans. There has not been a single bullet shot between Nicaraguans and Costa Ricans.

Because some were speaking, giving the example of other Latin American States where there have been bullets... if there had been bullets, there would have been deaths! But here, there have not been bullets or dead people, simply because the presence of the army in this Nicaraguan area is, has been, and will continue to be to fight drug-trafficking. It already appears that the influence of drug-trafficking, is really advancing, it continues to advance.

But anyway, we want to emphasize the position of ALBA in that debate and during the famous manipulated and distorted voting... We want to emphasize the brother people of Venezuela; I was precisely speaking now on the phone with President Hugo Chávez, he called us. And he is really not surprised, because who would be surprised? We already know what the OAS is, but he is outraged; as are we, about what happened.

Because at the OAS a consensus should have been sought, that has been the principle. Voting merely leads to confrontations and to the fracture and eventual disappearance of the so-called OAS, which should have disappeared a while ago, is the truth. We continue to be there out of habit, but it should have disappeared a while ago! But they are breaking the principle of consensus, that was defended with much strength by the Venezuelan representative. I would say that the representative of Venezuela, with the representative of Nicaragua, maintained a firm position until the last second, fighting the battle for consensus and for dialogue without conditions, that was the position!

We also recognize the position of Bolivia, who had a good intervention; and the Bolivian representative said: in this situation we prefer not to participate in that vote. That is they did not simply abstain they erased themselves, namely, Bolivia said: I am not here; Guyana abstained, a dignified attitude; Ecuador abstained, a dignified position; Dominica abstained and, as was to be expected, Venezuela and Nicaragua, fighting for Latin America, fighting for our people.

And, especially, fighting against drug-trafficking...! Because I consider that this has turned into a battle between the interests of drug-traffickers, which are transnational, and the interests of our people and of the institutions that are in the fight, because Nicaragua in this moment is the point of restraint. Drug-trafficking has already taken Guatemala, it advances over El Salvador, it advances over Honduras and the point of restraint is Nicaragua. Costa Rica should be thankful that Nicaragua is the point of restraint, so that Costa Rica is not completely taken over by drug-trafficking in the same way as Guatemala, Mexico have been taken, which does not mean that drug-traffickers are not present in Costa Rica, as they are in Panama.

In this meeting of the OAS the possibility of unconditional dialogue was really killed, *killed*, because they started to include conditioning elements and that kills

unconditional dialogue. And we, I repeat, as of principle, are not withdrawing from an area of Nicaraguan territory on the border areas with the brother people of Costa Rica, with the brother people of Honduras, nor in maritime zones, we are not withdrawing our army forces or our police forces that fight against drug-trafficking. There is no withdrawing here. And that proposal from the OAS last night of 'approving', in inverted commas, what they are telling us is that we should leave free the territory to drug-trafficking, we do not accept this.

But now I want to conclude, because President Hugo Chávez, dear fellow Commander, he said he would pay attention to this intervention. He is a sports lover and here we are sports lovers and there is great expectation today, dear brother President Commander Hugo Chávez, because today there is a fight here between a great Mexican boxer, Margarito, and a great Philipino boxer, Pacquiao, and they will broadcast it. But we still have time. I will not attempt to repeat so many arguments that have already been presented, but I think we must continue to work, that our people, or youth should be aware and master this subject, because the way in which Nicaragua has lost many square kilometers is painful. We lost it in Mocoacán to Honduras, we lost Guanaste and Nicoya to Costa Rica; they wanted to take the San Juan River from us, which led the Court to a judgment in 2009 saying that the San Juan River belongs to Nicaragua! Colombians continue to want to take from us our seas and our maritime platforms; the Honduran, Costa Rican and Colombian interests continue to conspire to attain their expansionist objectives. And, logically, we cannot discontinue this battle.

I want to say that yesterday afternoon, when the discussions were about to begin, there was no place in our country, even in the middle of a working day... Where there were televisions, the debate was being broadcast; even commercial centres, the televisions for sale, on offer, were broadcasting the debates; and the citizens of all economic layers, of all social layers, of all political views, all, following the debate... With a deep sense of dignity and pride for being Nicaraguan! And we are defending a just cause, because what we are defending is to prevent them from continuing to destroy us, enough damage has been caused to Nicaragua in relation to its territory.

I see the image of Nicaragua, as though they want to repeat the story of the Nicaraguan brother there in Costa Rica, who in the sight [of] and [with the] tolerance of the camera-man, wardens, what they did was to enjoy the photos of how very ferocious dogs destroyed that Nicaraguan brother, as if they wanted to destroy the motherland! But the motherland cannot be destroyed anymore... Enough, we cannot allow that the territory of Nicaragua be cut off!

I want to express that, summarizing what would be our conclusions, and what the course of action that we are developing is... first, I have here the letter that the fellow Deniss Moncada Colindres sent to Joaquín Alexander Maza Martelli, President of the Permanent Council of the OAS, where he says that Nicaragua withdraws its request for the calling of the OAS Foreign Ministers' meeting. You will remember that this was part of the debate and it was the opportunity to urge consensus, if the ambassadors could not find consensus, the practice of the OAS had been to continue until consensus was reached, and then to coax the Ministers to be the ones to find consensus.

At that moment we were still betting that consensus could be achieved, but when we are subjected to manipulated, fixed, false voting, then, simply, we see no sense in calling a meeting of Foreign Ministers; simply, we have lost all faith in the OAS. It would even be convenient to start working on our withdrawal from the OAS. What is the OAS for? What are we doing in the OAS?

Cuba was expelled from the OAS in a barbarous act, and then, in an historical event, the right of Cuba was vindicated. Those unjust sanctions imposed against Cuba were lifted. What was the role of the OAS during the coup in Honduras? Could by any chance the OAS stop the coup? No. What the OAS did was to promote dialogue with the coup [government]. And, at this point, there are a great number of States which have been opening relations with Honduras and have normal relations with this country. So I ask myself, what is the point of being in the OAS? We must seriously consider our withdrawal from the OAS, work so that the new front of Latin American and Caribbean nations is formed, the project of the Community of Latin American and Caribbean Nations, which is the project we approved last year in Mexico, Cancun, and there will be a meeting next year in Caracas, Venezuela, in the month of July, to lay the bases for this. The meeting in Mexico was a historic meeting, because there all the Caribbean nations, without exception, Cuba was there, agreed to integrate this force of Governments, of Latin American and Caribbean States.

Venezuela will be the seat of the next meeting, where the foundations will be laid and there, for the first time in our history, we the Latin Americans will have an instrument that we have not been able to have; then the Supreme Dream of Bolívar will come true, [the dream] of which Sandino spoke about in that famous manifesto from the mountains of Nicaragua, when he was confronting the Yankee intervention.

So we are not interested in the meeting of Foreign Ministers; if Costa Rica calls for it, it is their business if they want to call for it; we no longer have any interest in the meeting of Foreign Ministers, nor any interest in participating... What would be the point of taking part in that meeting of Foreign Ministers? None. If they call for it, then [so] be it, we will not be there, we will not take part in the meeting of Foreign Ministers.

Nicaragua will proceed, I have been speaking with fellow Carlos Argüello, we will proceed [with] doing the work and the refinement, preparing everything to form the team. I have already told Carlos to advance some ideas and to meet in the next few days here in Managua to work on the strategy in front of the International Court of Justice in The Hague, which is the place where these subjects should be discussed.

That is, we as the harmed party [of the case], because we are being harmed by Costa Rica, will have recourse to the Court and denounce Costa Rica for wanting to occupy Nicaraguan territory, because this is what Costa Rica wants! To take possession of Nicaraguan territory. And also to proceed with the demarcation, densification of the terrestrial boundary and the delimitation of the maritime boundaries. To find an integral solution, because if we solve this today and do not solve the whole [dispute], at any point we could have another conflict; and we do not want to be in conflict with brother people, with sister Nations, since, at the end of the day, [it is the] people [that] are involved and manipulated in these conflicts.

We will propose there, and have already proposed to Costa Rica, we publicly propose... If they do not agree, we can take the case to the Court, that Nicaragua may immediately use the Colorado River to navigate on the same conditions as Costa Rica navigates on the San Juan River. These are the fundamental points that we will work on, from the starting point that this subject died in the OAS, where we no longer have anything to do; the OAS, at least with respect to this topic... 'Requiescat in pace', as His Eminence would say.

And make a call to the Costa Rican people not to be carried away by the confrontation. See the difference, here in Nicaragua, here we are confronting this with maturity, seriousness and responsibility. They say that they have a very high level of culture, they pride themselves on being the most cultured of Latin America and the Caribbean, well the Nicaraguan people are showing more culture and responsibility in addressing these matters; workers, women, youth, different economic and social sectors of the country, the different political forces.

I want to leave this matter very clear here, that this is a matter that unites us and that with this matter that unites us I am not ignoring or trying to evade, nor am I interested in covering the matters that do not unite us Nicaraguans, topics of a political and institutional order... There we have differences, there they are! And those differences, in the end, will be resolved, will be decided by the Nicaraguan people in a peaceful manner, next year in the month of November, depositing their vote... That is the solution!

Nicaraguan brothers, let's continue to work in all fields, in the economic field, in the social field; in the political field, each contributing their ideas, their proposals. There are people who will organize marches in the next few days, wonderful, organize your march! Go protest against the Government, protest, there is no problem! Protest all you want... But in this matter: united, all united! Which is the most important thing, and there we are being consistent with our being Nicaraguans.

Many thanks, dear brothers, dear sisters, dear Nicaraguan families, good night and may God give us the patience and wisdom to resolve this situation. Thank you.

Attachment 7

Copy of Resolution of the Organization of American States

12 November 2010

Available as a Press Release at:

http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-16



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Press Release

OAS Permanent Council Resolution on the Situation in the Border Area Between Costa Rica and Nicaragua

November 13, 2010

(Adopted at the meeting held on November 12, 2010)

THE PERMANENT COUNCIL OF THE ORGANIZATION OF AMERICAN STATES,

RECALLING the steadfast commitment of Costa Rica and Nicaragua to peace in the region;

RECOGNIZING the need to generate confidence-building measures conducive to bilateral negotiations to overcome differences; and

HAVING SEEN AND ANALYZED the Report by the Secretary General on the course and outcome of his visit to Costa Rica and Nicaragua regarding the situation in the border area between both countries (CP/doc.4521/10) ; and

HAVING HEARD the statements by the representatives of Costa Rica and Nicaragua and recognizing their willingness to engage in dialogue,

RESOLVES:

1. To welcome and endorse the recommendations by the Secretary General entitled "Report by the Secretary General of the OAS on his visit to Costa Rica and Nicaragua" (CP/doc.4521/10) presented on November 9, 2010, with the objective that the Governments of Costa Rica and Nicaragua adopt the recommendations proposed in that report, namely:

- Hold the Eighth Meeting of the Binational Commission in order to address as a matter of urgency aspects of the bilateral agenda as soon as possible and no later than the date originally agreed, with the assistance of the OAS.
- Immediately resume the talks on aspects concerning the demarcation of the boundary line done to date, in accordance with the treaties and decisions in force.
- In order to create a favorable climate for dialogue between the two nations, avoid the presence of military or security forces in the area, where their existence might rouse tension.
- Instruct the appropriate authorities to review and strengthen cooperation mechanisms between the two nations in order to prevent, control, and confront drug trafficking, organized crime, and arms trafficking in the border area.

2. To invite the parties to initiate simultaneously and without delay the processes referred to in the foregoing paragraph.

3. To request the Secretary General to continue exercising his good offices to facilitate the dialogue between the parties and to keep the Permanent Council informed in this regard.

Reference: E-16

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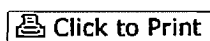
Attachment 8

Statement of Denis Ronaldo Moncada,
Nicaraguan Ambassador to the Organization of American States
'Call for troop withdrawal in Nicaragua, Costa Rica dispute'
CNN International, 13 November 2010

Available at:
<http://edition.cnn.com/2010/WORLD/americas/11/12/nicaragua.costarica.dispute>



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Call for troop withdrawal in Nicaragua, Costa Rica dispute

By the CNN Wire Staff

STORY HIGHLIGHTS

- **NEW:** A Nicaraguan ambassador says his country will challenge the resolution
- **NEW:** Costa Rica's foreign ministry says the vote is a "triumph of peace and law"
- The Organization of American States says both countries should resume talks
- Officials are unable to come to consensus, but the resolution passes with 22 votes

RELATED TOPICS

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Washington (CNN) -- The permanent council of the Organization of American States has approved a resolution asking troops to withdraw from the disputed border area between Costa Rica and Nicaragua.

In a resolution issued early Saturday, the council said both nations should "avoid deployments of the armed forces or security forces in the area where their presence could generate tensions."

Tensions between Nicaragua and Costa Rica have flared over Calero Island, a parcel of land on the Atlantic coast. Managua claims the area is Nicaraguan and denies its troops are in Costa Rican territory. Costa Rica claims it has been invaded.

The resolution supported a report by OAS Secretary-General Jose Miguel Insulza that said both sides should resume binational talks and not escalate the military and police presence near the disputed area.

The council's Washington meeting was contentious, however, beginning Friday afternoon and lasting until early Saturday as diplomats tried to reach consensus. Ultimately, the resolution passed with 22 votes, the organization said in a statement. Three countries abstained and two voted against it.

Denis Ronaldo Moncada, Nicaragua's ambassador to the Organization of American States, said early Saturday that officials from his country would challenge the resolution.

"In the end, an agreement was reached that is really without any value," he said.

"We are going to challenge this resolution. We are going to question it, and we are going to document our position against this resolution, which was flawed from the outset and flawed in its conclusion," he said.

Costa Rican officials claimed the vote was a "triumph of peace and law."

"Now, more than ever, the Nicaraguan authorities must know to listen to the clamor of all of the hemisphere in favor of peace and peaceful relations between neighboring nations, and withdraw their armed forces from Costa Rican territory," Costa Rica's foreign ministry said in a statement.

Costa Rica claims that in addition to the Nicaraguan troops, a dredging project in the river is dumping sediment on its side of the border, and that a Costa Rican flag in the area was replaced with a Nicaraguan flag.

Nicaragua has accused Costa Rica of breaking diplomatic relations between the countries.

Wednesday, Costa Rican President Laura Chinchilla said her country would take its border dispute with Nicaragua to the

United Nations and the International Court of Justice if a resolution is not found.

Chinchilla has said her country accepted the recommendations made by Insulza, but that before there are binational talks, the Nicaraguan troops must move back into undisputed Nicaraguan territory.

If the Nicaraguan troops pull back from the disputed area, Chinchilla said she gives assurances that Costa Rican police will not move in.

In response, Nicaraguan Vice President Jaime Morales Carazo acknowledged that Costa Rica may have no standing army, but said that means little, given that members of the Costa Rican police are better armed than Nicaragua's soldiers.

In an earlier interview with CNN en Espanol, he called on Costa Rica and Nicaragua "to resolve this as brothers" and "for a ceasefire in the verbal war," but added that Nicaragua is not the aggressor.

"We cannot invade our own floor of our own house," he said. "Neither can we accept from anyone conditions or ultimatums."

CNN en Espanol's lone Molinares contributed to this report.

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Attachment 9

Report of interview with Edén Pastora on Nicaraguan television channel 100% Noticias

Tim Rogers

‘Nicaragua Denies Reports of Intrusion into Costa Rica’

Tico Times, 2 November 2010

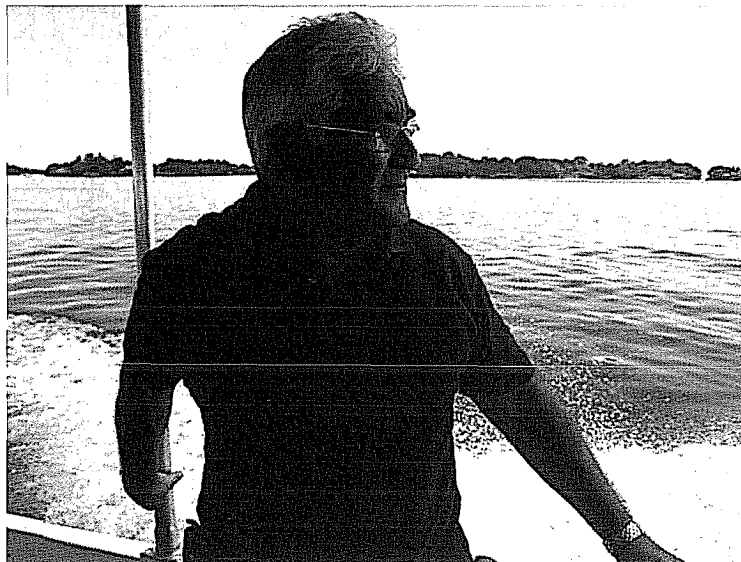
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http://www.ticotimes.net/News/Daily-News/Nicaragua-Denies-Reports-of-Intrusion-into-Costa-Rica_Tuesday-November-02-2010/

Nicaragua Denies Reports of Intrusion into Costa Rica

Posted: Tuesday, November 02, 2010 - By Tim Rogers

Nicaragua's Edén Pastora says Isla Calero, claimed by Costa Rica, is actually part of Nicaragua. Said Pastora: "I have the responsibility to the people of Nicaragua, to the government, and to the party to clean the river and rescue it."



Tim Rogers

Edén Pastora insists no Nicaraguans have set foot inside Costa Rican territory during the river-dredging mission.

MANAGUA – Former Sandinista guerrilla leader Edén Pastora is categorically denying that the Nicaraguan Army or any other member of his 80-man river-dredging team has entered Costa Rican territory, as Costa Rican officials claim.

Pastora, who is heading the Nicaraguan government's efforts to dredge the Río San Juan and restore the Nicaraguan border river to its historic channel to the sea, insists that Costa Rican officials are wrong about where the border lies. In fact, Pastora said in comments to a local Nicaraguan television channel Tuesday afternoon, the Nicaraguan government maps are incorrect in their delineation of the border.

The real border, Pastora insisted, is spelled out in the Cañas-Jerez Treaty of 1858, which he insists proves that the so-called Isla Calero is part of Nicaragua, not Costa Rica. Therefore, Pastora said, it's not Nicaraguan troops who have invaded Costa Rica, but rather Costa Rican police officers who crossed into Nicaraguan territory.

"The maps are not going to tell me where the borders are, the treaties are," Pastora told TV channel 100% Noticias.

Pastora, a flamboyant former rebel leader who turned on the Sandinista government in the 1980s and led a counterrevolutionary war from Costa Rica, reconciled with Sandinista leader Daniel Ortega in 2008, after running against him unsuccessfully for president two years earlier. As part of that reconciliation, Pastora was put in charge of the government's effort to dredge the San Juan River and return it to its historic route, as specified in the treaties signed 152 years ago.

"We (Nicaraguans) are proud because we are the owners of the Río San Juan, which in part is true but it's also a lie because the last 28 kilometers of the river go through Costa Rica," Pastora told The Nica Times in a 2008 interview. "The Costa Ricans feel like they are the owners of the front door. And the owners of the front door of a house are the owners of the house. So they are the owners of our Río San Juan."

Pastora added, "So I have the responsibility to the people of Nicaragua, to the government, and to the party to clean the river and rescue it."

Still, Pastora insists that in "rescuing the river" he has not set foot inside Costa Rican territory, nor has he dumped any dredged sediment on Costa Rican soil, as the Tico officials and media contest.

"We haven't put one drop of sand in Costa Rica," Pastora said yesterday.

He insisted that the Nicaraguan military troops stationed along the border are there as part of the war on drugs, and have nothing to do with the dredging project.

Indeed, months before the dredging controversy started, Nicaraguan Navy Admiral Róger González told The Nica Times that the border area around Costa Rica's Barra de Colorado has become a new staging area for narcotraffickers to divide and load drugs into smaller crafts.

Pastora said in response to Costa Rica's appeal to the Organization of American States (OAS) that the dredging project has shifted directions and is now going up river towards Lake Nicaragua, rather than down river in the contested border area. However, he insisted, the project will continue as soon as the issue is sorted out.

"This will continue undeterred," he told 100% Noticias.

The Tico Times attempted to interview Pastora Tuesday afternoon, but the usually approachable and chatty former revolutionary said he first had to get authorization from the Nicaraguan Foreign Ministry before giving comments to the foreign press.

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Attachment 10

Selected photographs of the occupied area

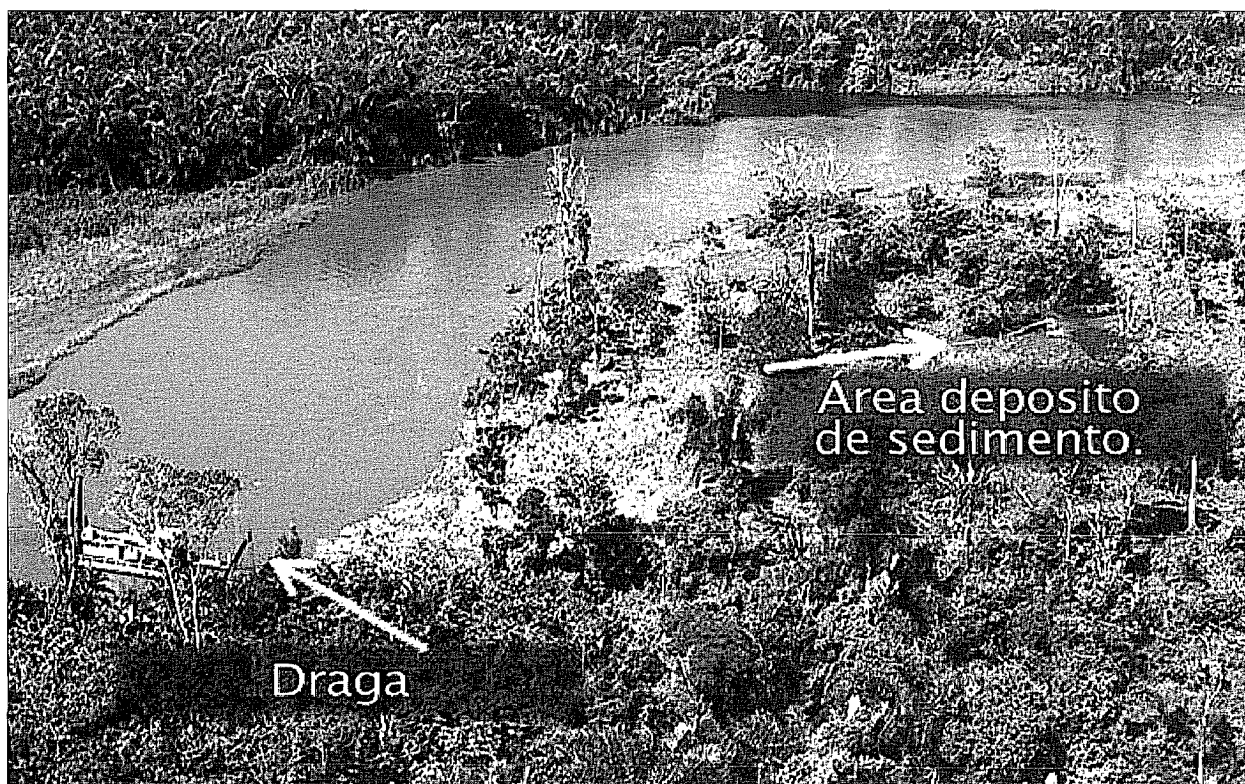
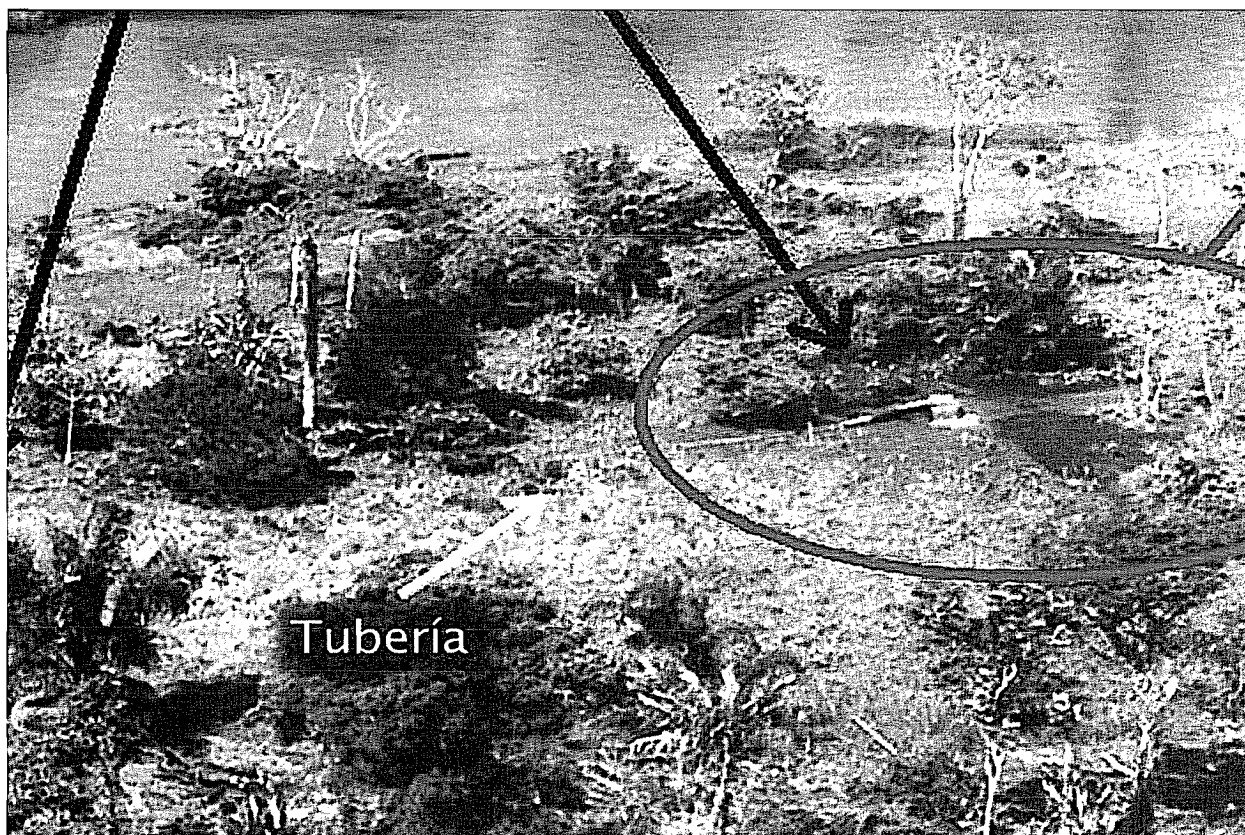


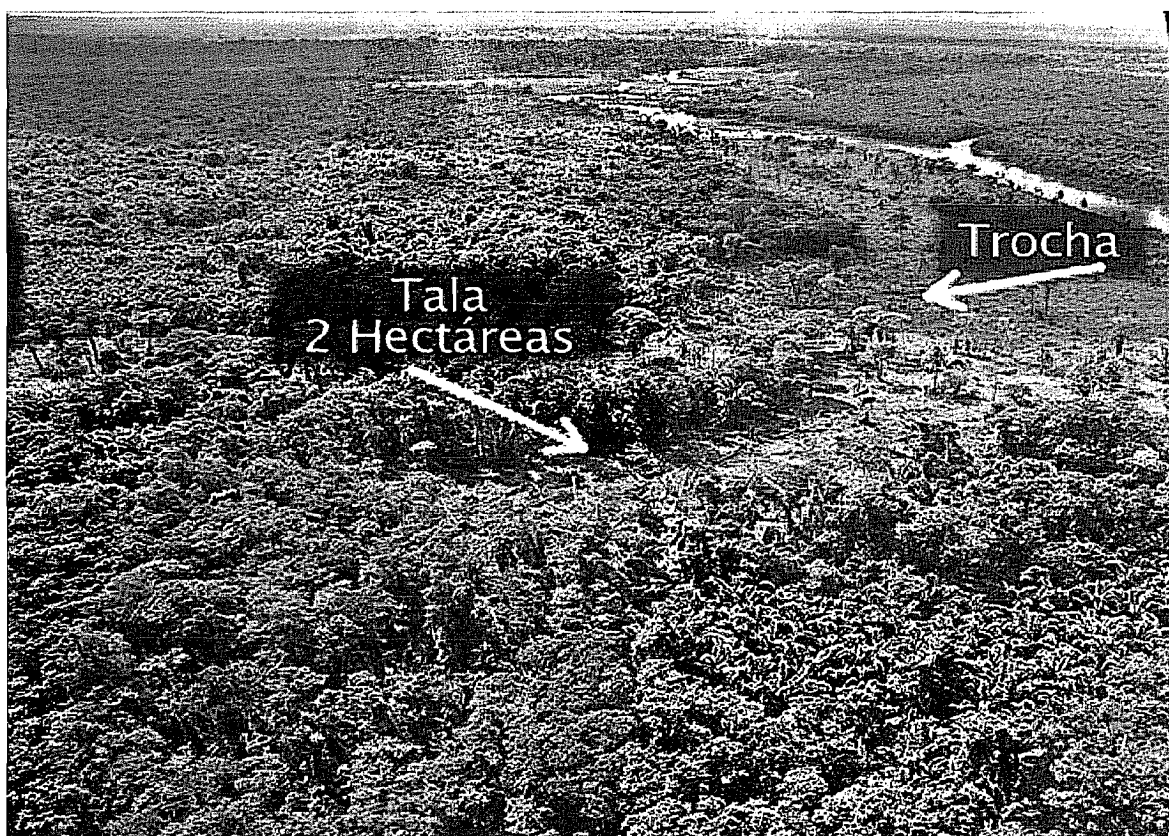
Image of the dredge (draga) '*Soberanía*' ('Sovereignty') and the area where the dredge is depositing sediment on Costa Rican territory (área desposito de sediment)



Close-up view showing the pipe (tubería) from dredge and deposits of sediment on Costa Rican territory



The broader area encompassing a view of the área deposito de sedimento); the preliminary works on the canal trench (trocha) and the logging of 2 hectares of Costa Rican territory (tala 2 hectáreas)

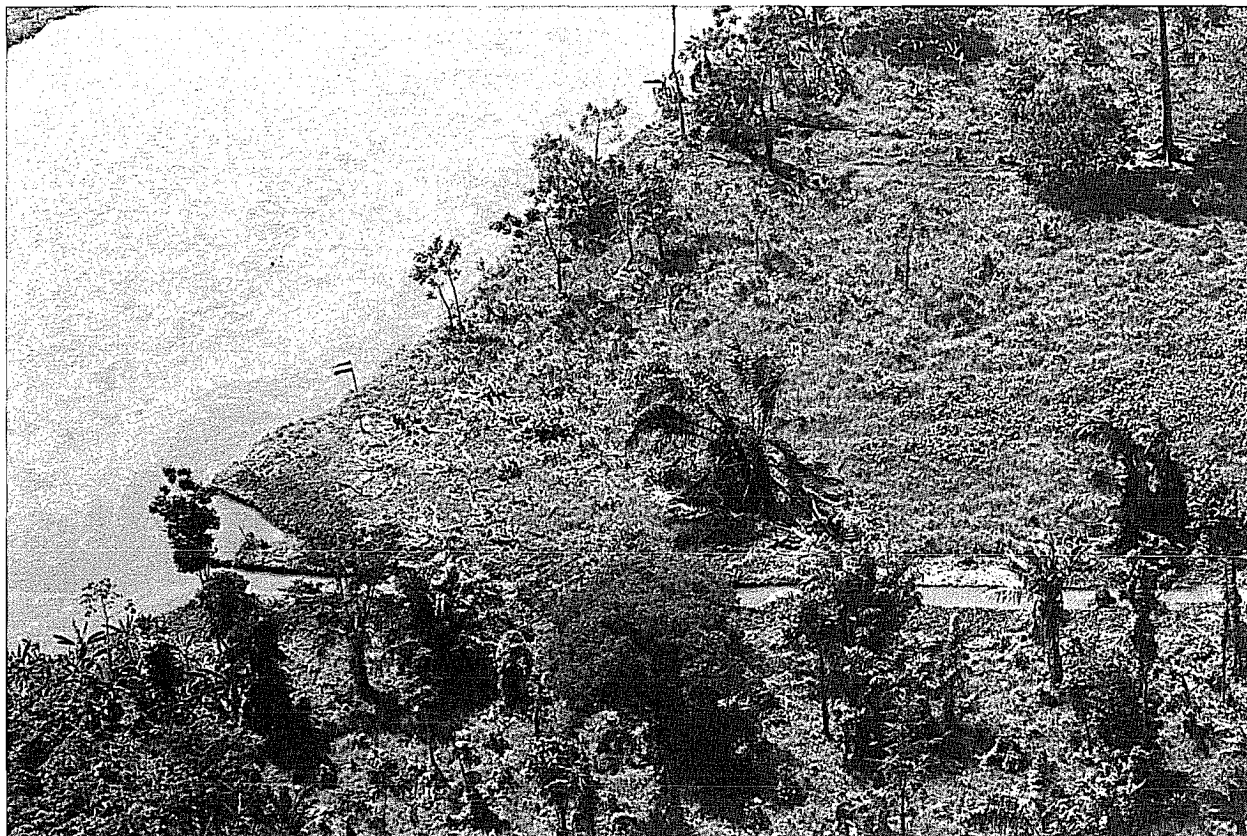




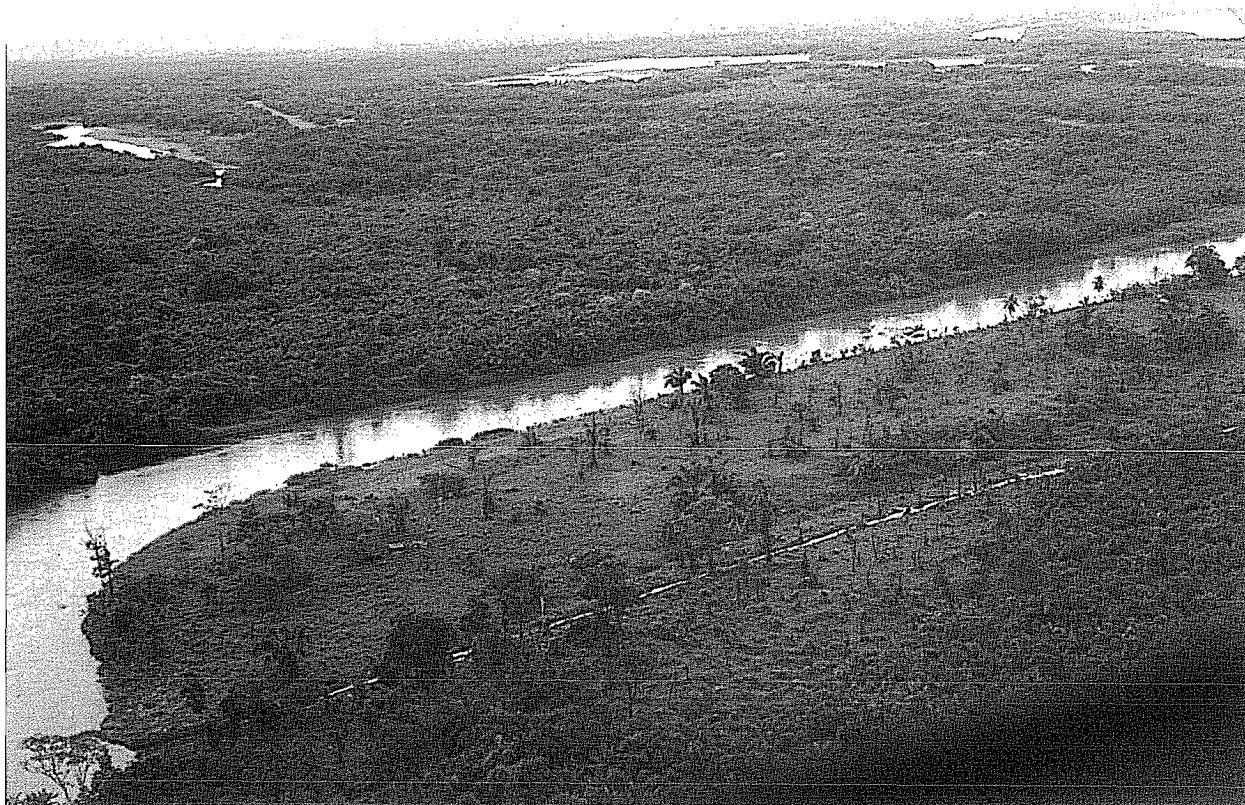
The Dredge 'Soberanía' with Nicaraguan military forces onboard



The area of deforestation (área talada) leading to Laguna los Portillos on the northeast tip of Isla Portillos



Three images showing the construction of the canal. The Nicaraguan flag is visible on the bank of the canal.



Construction of the canal



San Juan River on the left, Laguna los Portillos to the right; affected areas on left and right hand side



Panoramic view of the deforestation



Attachment 11

(a) Nicaraguan Institute of Territorial Studies, Official Sheet Map of Nicaragua

(b) Geographic National Institute of Costa Rica, Official Map of Costa Rica

(c) Comparison of Official Maps



1. 2000年10月1日起，凡在我国境内销售货物的单位和个人，均应按销售额的一定比例缴纳增值税。

MANAGUA Last of the set!

LEON Carpenter and painter also, appears in *Barrio* & *Paradise*. Also in *12-12-55*, *San Antonio*

EL VIEJO *La Balsa* (in *12-12-55*) & *12-12-55* appearance

RAMA *Colaboro* with members of *12-12-55* network at

F O R M E T

SCHWITZ In *12-12-55* & *12-12-55* network

TRINIDAD In *12-12-55* & *12-12-55* network

12-12-55 & *12-12-55* network

12-12-55 & *12-12-55* network

1 2 3 4 5 6 7 8 9 10 11 12

Jose Antonio Seen with *12-12-55* network

In the *12-12-55* & *12-12-55* network, but not in *12-12-55*

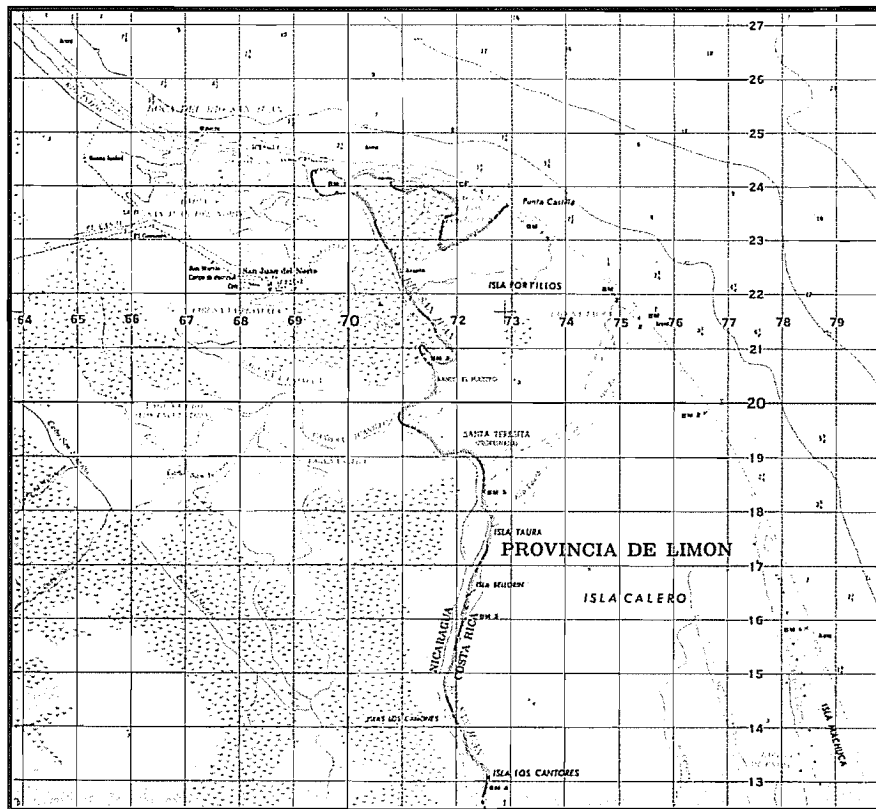
1 2 3 4 5 6 7 8 9 10 11 12

Don't forget

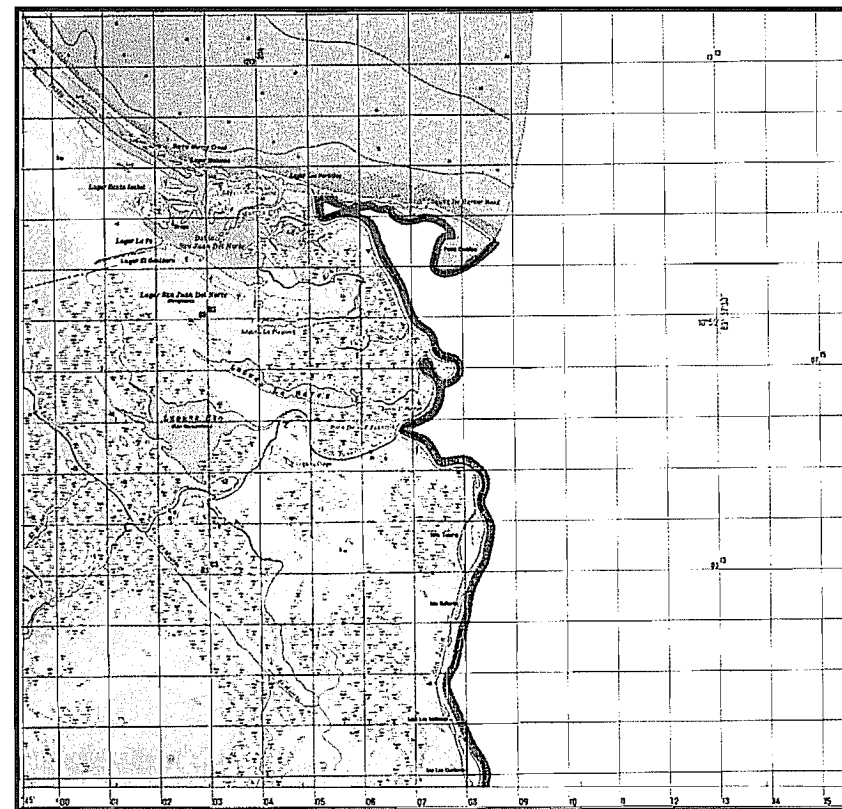
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Comparison of official maps showing boundary line



COSTA RICA



NICARAGUA