

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES SUBMITTED BY THE REPUBLIC OF COSTA RICA

A. INTRODUCTION

1. I have the honour to refer to the Application submitted to the Court on 18 November 2010 by which proceedings were instituted on behalf of the Republic of Costa Rica (Costa Rica) against the Republic of Nicaragua (Nicaragua).

2. This Request is prompted by the ongoing occupation and construction of a canal on Costa Rican territory by Nicaragua and the related dredging activities affecting that territory and its ecology. Costa Rica respectfully files this Request for Provisional Measures in accordance with Article 41 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of the Court.

B. JURISDICTION OF THE COURT

3. As set forth in the Application, the Court has jurisdiction over the present dispute pursuant to Article XXXI of the American Treaty on Pacific Settlement of Disputes, Bogotá, 30 April 1948 (the Pact of Bogotá) and in accordance with the declarations of acceptance of the Court's compulsory jurisdiction pursuant to Article 36(2) of the Statute of the Court made respectively by the Republic of Costa Rica on 20 February 1973 and by Nicaragua on 24 September 1929 (as modified 23 October 2001).

C. THE FACTS RELEVANT TO THIS REQUEST

4. The Court is acquainted with the background of this dispute; and the specific facts are set out in Costa Rica's Application instituting proceedings of 18 November 2010.

5. For the purposes of the present Application for Provisional Measures, it should be recalled that Nicaraguan Army troops have entered and continue to illegally occupy Costa Rican territory, simultaneously and in connection with certain dredging activities on the San Juan River. As a consequence, Nicaragua is currently destroying an area of primary rainforests and fragile wetlands on Costa Rican territory (listed as such under the Ramsar Convention's List of

International Court of Justice in its Judgment of 13 July 2009¹¹ and in the first and second Alexander Awards,¹² dated 30 September 1897 and 20 December 1897 respectively.

12. By entering Costa Rican territory in two separate incidents, sending in contingents of its armed forces, going on to establish military camps and beginning the digging of a canal on that territory, 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.

(2) Costa Rica's right corresponding to Nicaragua's obligation not to dredge the San Juan if this affects or damages Costa Rica's lands, its environmentally protected areas and the integrity and flow of the Colorado River

13. The dredging of the River San Juan by Nicaragua was commenced pursuant to an order of President Ortega of 18 October 2010. The damaging effect of the dredging work breaches Costa Rica's sovereign rights pursuant to the 1858 Treaty of Limits, as authoritatively interpreted in the Cleveland Award and reaffirmed in 2009 by this Court. Costa Rica has a right, corresponding to Nicaragua's obligation not to undertake works of improvement, including from within its own territory that would "result in the occupation, flooding or damage of Costa Rica territory, or in the destruction or serious impairment of the navigation of the said River [San Juan River] or any of its branches".¹³ By commencing dredging in this way, Nicaragua is in breach,

¹⁰ 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) (Cleveland Award) (Attachment 2 to the Application of Costa Rica, 18 November 2010).

¹¹ Cleveland Award, p. 458.

¹² First and second Alexander Awards, 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 to the Application of Costa Rica, 18 November 2010).

¹³ Cleveland Award, para. 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 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

Wetlands of International Importance)¹ for the purpose of facilitating the construction of a canal through Costa Rican territory, intended to deviate the waters of the San Juan River from its natural historical course into Laguna los Portillos (the Harbor Head Lagoon).

6. Nicaraguan officials have indicated that the intention of Nicaragua is to deviate some 1,700 cubic meters per second (cumecs) of the water that currently is carried by the Costa Rican Colorado River.² Despite Costa Rica's regular protests and calls on Nicaragua not to dredge the San Juan River until it can be established that the dredging operation will not damage the Colorado River or other Costa Rican territory,³ Nicaragua has nonetheless continued with its dredging activities on the San Juan River and even announced on 8 November 2010 that it would deploy two additional dredges to the San Juan River. The National Port Company (EPN) is to provide one of the new dredges while the other is reportedly still under construction.⁴ All of these statements by Nicaragua demonstrate the likelihood of damage to Costa Rica's Colorado River, and to Costa Rica's lagoons, rivers, herbaceous swamps and woodlands. The dredging operation poses a threat to wildlife refuges in Laguna Maquenque, Barra del Colorado, Corredor Fronterizo and the Tortuguero National Park.

7. Prompted by the gravity of the situation, on 12 November 2010, the Permanent Council of the OAS issued a Resolution, passed by a vote of 22 votes to two, 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.⁵

¹ The Ramsar List of Wetlands of International Importance, available at: http://www.ramsar.org/cda/en/ramsar-documents-list/main/ramsar/1-31-218_4000_0.

² Public statement of the Manager of the National Port Authority on 25 August 2009, protested in the Diplomatic Note sent by Bruno Stagno Ugarte, Minister of Foreign Affairs and Worship, Costa Rica to Samuel Santos López, Minister of Foreign Affairs, Nicaragua, 27 August 2009 (**Attachment PM1** to the present Request).

³ Ibid.

⁴ 'Nicaragua Sends Two More Dredges to the Río San Juan', *Tico Times*, 8 November 2010, available at: http://www.ticotimes.net/News/Daily-News/Nicaragua-Sends-Two-More-Dredges-to-the-Rio-San-Juan_Monday-November-08-2010 (**Attachment PM2**).

⁵ 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 (see **Attachment 7** to the Application of Costa Rica, 18 November 2010).

8. Nicaragua's immediate response to the Resolution of the Permanent Council of the OAS was to state their intention not to comply with the Resolution.⁶

9. Nicaragua has consistently refused all requests to remove its armed forces from the Costa Rican territory in Isla Portillos. It furthermore continues to increase the rate and volume of the dredging, and thus the damage caused to Costa Rican territory and the threat to internationally protected wetlands and primary forests. Nicaragua continues to construct the canal across Costa Rican territory, no doubt with the intent of imposing a *fait accompli* situation on Costa Rica. All efforts to resolve the dispute by diplomatic negotiations have failed.

D. THE RIGHTS COSTA RICA IS SEEKING TO PROTECT

10. The object of provisional measures pursuant to Article 41 of the Court's Statute is to preserve the respective rights of the parties pending the Court's decision on the merits (see e.g., *Armed Activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda, Provisional Measures, Order of 1 July 2000, I.C.J. Reports 2001*, p. 111, 127, para. 39). Costa Rica's rights which are subject of the dispute and of this request for provisional measures are its right to sovereignty, to territorial integrity and to non-interference with its rights over the San Juan River, its lands, its environmentally protected areas, as well as the integrity and flow of the Colorado River.

(1) Costa Rica's rights to sovereignty, territorial integrity and non-occupation

11. In the present case, the sovereign rights which are subject of the dispute are set out in the Charter of the United Nations⁷ and the Charter of the Organization of American States,⁸ in the Treaty of Territorial Limits between Costa Rica and Nicaragua of 15 April 1858 (the Treaty of Limits),⁹ as confirmed and interpreted in the Cleveland Award of 22 March 1888,¹⁰ and by the

⁶ 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/> and English translation of a speech given by President Ortega on national Nicaraguan television on 13 November 2010. See Application of Costa Rica, 18 November 2010, para. 33 and **Attachments 8**).

⁷ Charter of the United Nations, San Francisco, 26 June 1945.

⁸ Charter of the Organization of American States, Bogotá, 13 April 1948, 119 UNTS 48.

⁹ Treaty of Territorial Limits between Costa Rica and Nicaragua, San José, 15 April 1858, U.S. National Archives, Record Group 76, Record of Boundary and Claims Commission and Arbitration, Costa Rica-Nicaragua Boundary Arbitration, NC-155, Entry 24 (**Attachment 1** to the Application of Costa Rica, 18 November 2010).

in particular, of its obligation not to dredge the San Juan if that activity causes damage to Costa Rican territory or affects the flow of water, in particular of the Colorado River. The Court in 2009 affirmed this position when rejecting Nicaragua's request for a counter-declaration of its unqualified right to dredge the San Juan River.¹⁴

14. Furthermore, the felling of trees, the clearing of vegetation, the removal of soil, and in particular, the construction of an artificial canal accompanying Nicaragua's dredging activities in the territory of Costa Rica, including the illegal deposit of sediments on to Costa Rican territory, breaches Costa Rica's right not to have its territory "flooded or damaged in any other way"¹⁵ under the 1858 Treaty of Limits, as authoritatively affirmed and interpreted in the Cleveland

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."

¹⁴ *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), where the Court stated that:

"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. As for the fifth point to be addressed in the requested "declaration", on the assumption that it is in the nature of a counter-claim, Costa Rica has cast doubt on its admissibility, arguing that it is not "directly connected" with the subject-matter of Costa Rica's claim, within the meaning of Article 80 of the Rules of Court. The same issue could arise in respect of the third point.

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."

¹⁵ Cleveland Award, p. 458 (para. 6), stating that,

"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 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."

Award, as well as having regard to contemporary standards of international environmental protection.¹⁶

E. URGENCY

15. The present application is of the real urgency. Nicaraguan armed forces continue to be present on Isla Portillos in breach of Costa Rica's sovereign rights. Nicaragua is continuing to damage the territory of Costa Rica, posing a serious threat to its internationally protected wetlands and forests. It also continues dredging activities on the San Juan River, with the risk of further damaging Costa Rican territory, including the Colorado River.

16. A provisional measure ordering the withdrawal of Nicaraguan forces from Costa Rican territory is in this case justified so as to prevent the aggravation and/or extension of the dispute. The ongoing presence of Nicaraguan armed forces on Costa Rica's territory is contributing to a political situation of extreme hostility and tension. The threat of armed conflict will overshadow the proceedings before the Court. It will be difficult to conduct proceedings before the Court in a secure and peaceful manner while parts of the country continue to be occupied by Nicaraguan troops.

17. The urgency of the present request is underscored by the continued damage being inflicted on Costa Rica's territory. Moreover, Nicaragua is attempting to unilaterally adjust, to its own benefit, a River the right bank of which forms a valid, lawful and agreed border. Nicaragua cannot be permitted to continue to deviate the San Juan River through Costa Rica's territory in this manner, so as to impose on Costa Rica and the Court a *fait accompli*.

18. Nicaragua has refused to withdraw its troops and to cease its damaging actions. There is a real risk that without a grant of provisional measures, action prejudicial to the rights of Costa Rica will continue and may significantly alter the factual situation on the ground before the Court has the opportunity to render its final decision on the questions for determination set out in the Application.¹⁷

¹⁶ See *Case Concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, I.C.J. Reports 1997, p. 7, p. 67 (para. 112). See also *Iron Rhine Arbitration (Belgium/Netherlands)*, Award, 24 May 2005, pp. 28-39 (paras 58-59).

¹⁷ Cf., *Passage through the Great Belt (Finland v. Denmark)*, Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991, p. 12, p. 17 (para. 23); *Certain Criminal Proceedings in France (Republic of the Congo v.*

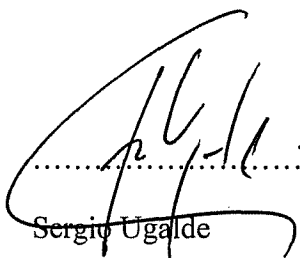
F. THE MEASURES REQUESTED

19. On the basis of the facts and law set forth above and in order to prevent irreparable prejudice to its sovereign rights under the Charter of the United Nations and the 1858 Treaty of Limits, as well as with regard to internationally recognized standards of environmental protection, Costa Rica respectfully requests the Court as a matter of urgency to order the following provisional measures so as to rectify the presently ongoing breach of Costa Rica's territorial integrity and to prevent further irreparable harm to Costa Rica's territory, pending its determination of this case on the merits:

- (1) the immediate and unconditional withdrawal of all Nicaraguan troops from the unlawfully invaded and occupied Costa Rican territories;**
- (2) the immediate cessation of the construction of a canal across Costa Rican territory;**
- (3) the immediate cessation of the felling of trees, removal of vegetation and soil from Costa Rican territory, including its wetlands and forests;**
- (4) the immediate cessation of the dumping of sediment in Costa Rican territory;**
- (5) the suspension of Nicaragua's ongoing dredging programme, aimed at the occupation, flooding and damage of Costa Rican territory, as well as at the serious damage to and impairment of the navigation of the Colorado River, giving full effect to the Cleveland Award and pending the determination of the merits of this dispute;**
- (6) that Nicaragua shall refrain from any other action which might prejudice the rights of Costa Rica, or which may aggravate or extend the dispute before the Court.**

20. Costa Rica reserves the right to amend the Request and the measures sought.

France), Provisional Measure, Order of 17 June 2003, I.C.J. Reports 2003, p. 102, p. 107 (para. 22); *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Provisional Measures, Order of 23 January 2007, I.C.J. Reports 2007, p.3, p. 11, (para. 32).



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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

- PM1.** Diplomatic Note sent by Bruno Stagno Ugarte, Minister of Foreign Affairs and Worship, Costa Rica to Samuel Santos López, Minister of Foreign Affairs, Nicaragua, 27 August 2009 (Original Spanish text and English translation)
- PM2.** 'Nicaragua Sends Two More Dredges to the Río San Juan', *Tico Times*, 8 November 2010, available at: http://www.ticotimes.net/News/Daily-News/Nicaragua-Sends-Two-More-Dredges-to-the-Rio-San-Juan_Monday-November-08-2010

Attachment PM1

Diplomatic Note sent by Bruno Stagno Ugarte
Minister of Foreign Affairs and Worship, Costa Rica
to
Samuel Santos López
Minister of Foreign Affairs, Nicaragua

27 August 2009

El Ministro de Relaciones Exteriores y Culto

San José, 27 de agosto de 2009
DM-637-09

Excelentísimo señor
Samuel Santos López
Ministro de Relaciones Exteriores
República de Nicaragua

Excelencia,

Me es grato saludar a Vuestra Excelencia en ocasión de referirme al anuncio realizado por autoridades nicaragüenses sobre el dragado del Río San Juan.

Como Costa Rica ha expresado con anterioridad, reconocemos que Nicaragua puede realizar mejoras en el cauce del río San Juan a fin de mantener la navegación sobre éste fluida; siempre y cuando ello no dañe el territorio de Costa Rica.

Sin embargo, han causado preocupación declaraciones atribuidas al Gerente de la Empresa Portuaria Nacional, señor Virgilio Silva, en el diario La Prensa de Nicaragua del día 25 de Agosto de 2009, según las cuales Nicaragua pretende desviar 1,700 metros cúbicos por segundo del caudal que actualmente tiene el río Colorado costarricense. Idénticas declaraciones a la Agencia AP se le atribuyen a Edén Pastora, responsable del proyecto de dragado, quien además indicó públicamente que ese caudal del río San Juan "se perdió luego de que Costa Rica desvió el caudal hacia el río Colorado de su propiedad entre 1945 y 1950".

Como Vuestra Excelencia sabe, además del hecho de que históricamente no es cierto que Costa Rica haya desviado hacia el río Colorado el caudal del río San Juan o que se hayan realizado labores de dragado en dicho río, la realización de obras en el río San Juan no puede dañar el territorio costarricense, incluyendo la reducción del nivel de las aguas de sus ríos. Esto está claramente establecido en el artículo 3, inciso 6 del Laudo Cleveland de 1888, cuyos términos fueron ratificados por la Corte Internacional de Justicia en su reciente sentencia de 13 de julio de 2009. Dicho inciso 6, en su original en inglés, establece:

"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*..." (el subrayado no es del original).

Es evidente que las declaraciones públicas de los mencionados funcionarios, que indican que Nicaragua pretende desviar 1,700 metros por segundo del caudal que actualmente tiene el río Colorado, constituyen prueba incuestionable de que se le quiere causar un daño irreparable al territorio de Costa Rica. Independientemente de cuántos metros por segundo se intenten desviar, cualquier desvío de aguas que haga la República de Nicaragua en perjuicio del nivel actual que tiene el río Colorado es violatorio tanto de lo dispuesto por el Laudo Cleveland de 1888, como del Derecho Internacional en general.

De manera adicional al anuncio del desvío de las aguas del río Colorado, a la República de Costa Rica le preocupa el impacto ambiental que las obras de dragado del río San Juan puedan tener en las lagunas, ríos, pantanos herbáceos, bosques inundados, bosques en pequeñas colinas y en general sobre los numerosos humedales costarricenses que se encuentran en la zona. Tal es el caso de los refugios de vida silvestre Laguna Maquenque, Barra del Colorado y Corredor Fronterizo y del Parque Nacional Tortuguero. Me permito recordar a Vuestra Excelencia que por su diversidad biológica, este ecosistema ha recibido la mención de humedal de importancia internacional a través de la Convención RAMSAR, declaración que se oficializó el 20 de marzo de 1996 y es conocido como el Humedal Ramsar Caribe noreste, el cual además es parte del Corredor Mesoamericano (SICA-CCAD), al formar en conjunto con la Reserva Biológica Indio Malz en Nicaragua un corredor biológico binacional. Asimismo, el daño también podría alcanzar a la bahía de San Juan del Norte, co-propiedad del Estado costarricense según lo dispuesto por el artículo 4 del Tratado de Límites de 1858.

Por consiguiente, el perjuicio que se generaría como resultado de un trabajo de dragado en el río San Juan es grave y nefasto. Fue precisamente por esta misma preocupación que Costa Rica solicitó a Nicaragua, el 26 de enero de 2006, la información técnica respectiva sobre los trabajos de dragado en el río San Juan. Más de tres años después, Nicaragua no ha remitido esa información.

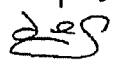
En estas circunstancias, Costa Rica le hace ver al Gobierno de Nicaragua que antes de la realización de cualquier obra de dragado, deben realizarse estudios de impacto ambiental que determinen que las obras no dañarán los humedales, ríos y zonas boscosas de Costa Rica, ni la bahía de San Juan del Norte. Tales estudios también deben determinar que no habrá afectación sobre el caudal actual del río Colorado, o sobre cualquier otro río costarricense.

Por lo tanto, en primer lugar Costa Rica exige que la República de Nicaragua detenga inmediatamente cualquier y todo proyecto de dragado del río San Juan que pudiera tener el efecto de causar daño al territorio de Costa Rica y a la bahía de San Juan del Norte. Asimismo, se le solicita a la República de Nicaragua que le proporcione al Gobierno de Costa Rica los estudios técnicos que demuestren que los trabajos de dragado que la República de Nicaragua procura realizar en el río San Juan no dañarán territorio costarricense, incluyendo la bahía de San Juan del Norte, ni afectarán el nivel de aguas de los ríos nacionales que se alimentan del río San Juan, en especial del río Colorado.

Ruego aceptar, Excelencia, las seguridades de mi mayor consideración y estima.


Bruno Stagno Ugarte
Ministro de Relaciones Exteriores y Culto



Recibido
Sep. 2, 2009 12:30 PM
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Ministry of Foreign Affairs and Worship

San José, 27 August 2009
DM-637-9

His Excellency
Samuel Santos López
Minister of Foreign Affairs
Republic of Nicaragua

Excellency,

I am pleased to salute Your Excellency on the occasion of addressing you in relation to the announcement made by Nicaraguan authorities about the dredging of the San Juan River.

As Costa Rica has expressed in the past, we recognize that Nicaragua can execute works of improvement to the course of the San Juan River for the purpose of maintaining fluent navigation in the River, in so far as this does not cause damage to the Costa Rican territory.

Nevertheless, declarations attributed to the Manager of the National Port Authority, Mr Virgilio Silva, in the newspaper La Prensa de Nicaragua on 25 August 2009, according to which Nicaragua intends to divert 1,700 cubic metres per second of the flow that the Costa Rican Colorado River currently has, have been cause for concern. Identical declarations to the AP Agency have been attributed to Edén Pastora, responsible for the dredging project, who also publicly maintained that the flow of the San Juan River 'was lost after Costa Rica diverted the flow towards the Colorado River, of its property, between 1945 and 1950'.

As Your Excellency knows, in addition to the fact that historically it is untrue that Costa Rica has diverted the flow of the San Juan River towards the Colorado River or that dredging works have been performed in said River, the performance of works in the San Juan River cannot damage Costa Rican territory, including the reduction of the flow of water in its rivers. This is clearly established in article 3, paragraph 6 of the Cleveland Award of 1888, whose terms were ratified by the International Court of Justice in its recent judgment of 13 July 2009. Said paragraph 6, in its English original version, establishes:

'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' (emphasis added)

It is evident that the public declarations of the mentioned functionaries, who indicate that Nicaragua intends to divert 1,700 metres per second from the flow that the Colorado River currently has, constitute unquestionable proof of the intention to cause irreparable damage to the territory of Costa Rica. Independently of how many metres per second it is intended to divert, any diversion of waters made by the Republic of Nicaragua to the detriment of the current level of the Colorado River is therefore in breach of what is established both in the 1888 Cleveland Award and international law in general.

Additionally to the announcement of the diversion of the waters of the Colorado River, the Republic of Costa Rica is preoccupied by the environmental impact that the dredging works in the San Juan River may cause to the lagoons, rivers, herbaceous swamps, woodlands, woods in small hills and in general on the multiple Costa Rican wetlands in the area. This is the case of the wildlife refuges Laguna Maquenque, Barra del Colorado and Corredor Fronterizo and the Tortuguero National Park. I take the liberty to remind Your Excellency that in view of its biological diversity, this ecosystem has been nominated as a wetland of

international importance through the Ramsar Convention, a declaration that became official on 20 March 1996 and is known as the Ramsar North-East Caribbean Wetland, which is in addition a part of the Mesoamerican Corridor (SICA-CCAD), forming with the Biological Reserve Indio Maiz in Nicaragua a bi-national biological corridor. Also, the damage could reach the Bay of San Juan del Norte, jointly owned by the Costa Rican State pursuant to article 4 of the Treaty of Limits of 1858.

Consequently, the damage that would occur as a result of dredging works in the San Juan River is grave and devastating. It was precisely because of this concern that Costa Rica requested Nicaragua, on 26 January 2006, the respective technical information about the dredging works in the San Juan River. Three years on, Nicaragua has not yet sent that information.

In these circumstances, Costa Rica points out to the Government of Nicaragua that before the performance of any dredging work, environmental impact assessments must be carried out to determine that the works will not damage the wetlands, rivers and woodlands of Costa Rica, nor the Bay of San Juan del Norte. These assessments must also determine that there will be no impact on the current flow of the Colorado River, or of any other Costa Rican river.

Thus, in the first place, Costa Rica requires that the Republic of Nicaragua immediately stop any and every dredging project in the San Juan River that could have the effect of causing damage to the territory of Costa Rica and the Bay of San Juan del Norte. Similarly, we request the Republic of Nicaragua to provide the Government of Costa Rica the technical assessments demonstrating that the dredging works that the Republic of Nicaragua intends to carry out in the San Juan River do not damage Costa Rican territory, including the Bay of San Juan del Norte, nor will they affect the level of the national rivers that are fed by the San Juan River, especially, the Colorado River.

I beg you to accept, Your Excellency, the assurance of my highest consideration and esteem.

Bruno Stagno Ugarte
Minister of Foreign Affairs and Worship

Attachment PM2

'Nicaragua Sends Two More Dredges to the Río San Juan'
Tico Times, 8 November 2010

Available at:
http://www.ticotimes.net/News/Daily-News/Nicaragua-Sends-Two-More-Dredges-to-the-Rio-San-Juan_Monday-November-08-2010



Nicaragua Sends Two More Dredges to the Río San Juan

Posted: Monday, November 08, 2010 - By EFE

Edén Pastora announced Monday that the Nicaraguan government will deploy two additional dredges to the Río San Juan, which forms the eastern portion of the Nicaragua - Costa Rica border.

The Nicaraguan government will put two more dredges to work on the Río San Juan despite an open dispute with Costa Rica, according to Edén Pastora, the Sandinista ex-guerrilla and overseer of the project.

Pastora, also known as Comandante Cero, declared over national Nicaraguan radio that the dredging of the Río San Juan has experienced "setbacks because of recent problems," referring to Costa Rican claims that Nicaraguan troops have invaded territory that Costa Rica has claimed as its own.

Costa Rican authorities have demanded that the dredging project be halted because of its alleged negative effect on an area supposedly belonging to Costa Rica.

The Sandinista ex-guerrilla, who didn't provide a date for resumption of the dredging, noted that the project will have a duration of two years and that when the work is finished, large ships will be able to navigate the Río San Juan.

The National Port Company (EPN) would provide one of the new dredgers and the other is currently being built in the town of El Viejo, he explained.