



INTERNATIONAL COURT OF JUSTICE

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Dispute regarding Navigational and Related Rights

(Costa Rica v. Nicaragua)

The Court rules on Costa Rica's right of free navigation and Nicaragua's power of regulation over the San Juan river

THE HAGUE, 13 July 2009. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today rendered its Judgment in the case concerning the Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua).

In its Judgment, which is final, binding and without appeal, the Court,

(1) As regards Costa Rica's navigational rights on the San Juan river under the 1858 Treaty, in that part where navigation is common,

- Finds unanimously that Costa Rica has the right of free navigation on the San Juan river for purposes of commerce;
- Finds unanimously that the right of navigation for purposes of commerce enjoyed by Costa Rica includes the transport of passengers;
- Finds unanimously that the right of navigation for purposes of commerce enjoyed by Costa Rica includes the transport of tourists;
- Finds by nine votes to five that persons travelling on the San Juan river on board Costa Rican vessels exercising Costa Rica's right of free navigation are not required to obtain Nicaraguan visas;
- Finds unanimously that persons travelling on the San Juan river on board Costa Rican vessels exercising Costa Rica's right of free navigation are not required to purchase Nicaraguan tourist cards;
- Finds by thirteen votes to one that the inhabitants of the Costa Rican bank of the San Juan river have the right to navigate on the river between the riparian communities for the purposes of the essential needs of everyday life which require expeditious transportation;
- Finds by twelve votes to two that Costa Rica has the right of navigation on the San Juan river with official vessels used solely, in specific situations, to provide essential services for the

inhabitants of the riparian areas where expeditious transportation is a condition for meeting the inhabitants' requirements;

- Finds unanimously that Costa Rica does not have the right of navigation on the San Juan river with vessels carrying out police functions;
- Finds unanimously that Costa Rica does not have the right of navigation on the San Juan river for the purposes of the exchange of personnel of the police border posts along the right bank of the river and of the re-supply of these posts, with official equipment, including service arms and ammunition;

(2) As regards Nicaragua's right to regulate navigation on the San Juan river, in that part where navigation is common,

- Finds unanimously that Nicaragua has the right to require Costa Rican vessels and their passengers to stop at the first and last Nicaraguan post on their route along the San Juan river;
- Finds unanimously that Nicaragua has the right to require persons travelling on the San Juan river to carry a passport or an identity document;
- Finds unanimously that Nicaragua has the right to issue departure clearance certificates to Costa Rican vessels exercising Costa Rica's right of free navigation but does not have the right to request the payment of a charge for the issuance of such certificates;
- Finds unanimously that Nicaragua has the right to impose timetables for navigation on vessels navigating on the San Juan river;
- Finds unanimously that Nicaragua has the right to require Costa Rican vessels fitted with masts or turrets to display the Nicaraguan flag;

(3) As regards subsistence fishing,

- Finds by thirteen votes to one that fishing by the inhabitants of the Costa Rican bank of the San Juan river for subsistence purposes from that bank is to be respected by Nicaragua as a customary right;

(4) As regards Nicaragua's compliance with its international obligations under the 1858 Treaty,

- Finds by nine votes to five that Nicaragua is not acting in accordance with its obligations under the 1858 Treaty when it requires persons travelling on the San Juan river on board Costa Rican vessels exercising Costa Rica's right of free navigation to obtain Nicaraguan visas;
- Finds unanimously that Nicaragua is not acting in accordance with its obligations under the 1858 Treaty when it requires persons travelling on the San Juan river on board Costa Rican vessels exercising Costa Rica's right of free navigation to purchase Nicaraguan tourist cards;
- Finds unanimously that Nicaragua is not acting in accordance with its obligations under the 1858 Treaty when it requires the operators of vessels exercising Costa Rica's right of free navigation to pay charges for departure clearance certificates;
- Rejects unanimously all other submissions presented by Costa Rica and Nicaragua.

Reasoning of the Court

The Court recalls that the dispute between Costa Rica and Nicaragua concerns the navigational and related rights of Costa Rica on the section of the San Juan river which runs from a point three English miles below Castillo Viejo to the mouth of the river at the Caribbean Sea. The Court points out that it is not contested that the section of the river thus defined belongs to Nicaragua, since the border lies on the Costa Rican bank, with Costa Rica possessing a right of free navigation. However, the Parties differ both as to the legal basis of that right and, above all, as to its precise extent.

1. The extent of Costa Rica's right of free navigation on the San Juan river

(a) The meaning and scope of the expression "libre navegación . . . con objetos de comercio"

The Court considers that the 1858 Treaty of Limits between Costa Rica and Nicaragua completely defines the rules applicable to the section of the San Juan river that is in dispute in respect of navigation. It observes that Article VI of the Treaty in particular grants Costa Rica, on the section of the river which follows the border between the two States, a perpetual right of free navigation "con objetos de comercio". It notes that the Parties are in deep disagreement as to the meaning of that phrase.

The Court has first to determine whether the phrase "con objetos de" means "for the purposes of" — as Costa Rica contends — or "with articles of" — as Nicaragua contends. The Court is of the view that the interpretation advocated by Nicaragua cannot be upheld. The main reason for this is that ascribing the meaning "with goods" or "with articles" to the phrase "con objetos" results in rendering meaningless the entire sentence in which the phrase appears. The Court is of the view, by contrast, that Costa Rica's interpretation of the words "con objetos" allows the entire sentence to be given coherent meaning. It finds that the expression "con objetos de comercio" means "for the purposes of commerce".

The Court then has to determine the meaning to be ascribed to the word "commerce" in the context of Article VI of the Treaty, so that the exact extent of the right of free navigation can be defined. The Court notes, first, that the term "comercio" is a generic term, referring to a class of activity. Second, it points out that the Treaty was entered into for an unlimited duration; from the outset it was intended to create a legal régime characterized by its perpetuity. The Court infers from this that the term "comercio" must be understood to have the meaning it bears on each occasion on which the Treaty is to be applied, and not necessarily its original meaning. The Court accordingly finds that the right of free navigation applies to the transport of persons as well as the transport of goods, as the activity of transporting persons can be commercial in nature nowadays, if a price (other than a token price) is paid to the carrier by the passengers or on their behalf.

(b) The activities covered by Costa Rica's right of free navigation

Two types of private navigation are covered by the right of free navigation pursuant to Article VI of the 1858 Treaty: the navigation of vessels carrying goods intended for commercial transactions and that of vessels carrying passengers who pay a price other than a token price (or for whom a price is paid) in exchange for the service thus provided.

The navigation of vessels belonging to the inhabitants of villages on the Costa Rican bank of the river in order to meet the basic requirements of everyday life, such as taking children to school or in order to give or receive medical treatment, is also protected by the right of free navigation, not by Article VI, but by other provisions of the 1858 Treaty.

The navigation of official vessels, vessels which are the property of the Republic of Costa Rica, is not covered by the right of free navigation pursuant to Article VI of the 1858 Treaty unless it is undertaken for the “purposes of commerce”. The Court is of the opinion that, as a general rule, the navigation of Costa Rican vessels for the purposes of public order activities and public services with no object of financial gain, in particular police vessels, lies outside the scope of Article VI of the 1858 Treaty. Nonetheless, the Court considers that the navigation of Costa Rican official vessels used solely for the purpose of providing the population living on the river bank with what it needs in order to meet the necessities of daily life is covered by the right of navigation such as it can be inferred from the provisions of the 1858 Treaty as a whole.

2. Nicaragua’s power of regulation of navigation

(a) General observations

The Court notes that Nicaragua has the power to regulate navigation on the section of the San Juan river on which Costa Rica enjoys a right of free navigation. In its view that power is not unlimited. Indeed, a regulation is to have the following characteristics: it must only subject the activity to certain rules without rendering impossible or substantially impeding the exercise of the right of free navigation; it must be consistent with the terms of the Treaty; it must have a legitimate purpose; it must not be discriminatory; and it must not be unreasonable. Moreover, the Court is of the opinion that Nicaragua is under an obligation to notify Costa Rica of the regulations which it makes regarding the navigational régime on the San Juan river. That obligation does not however extend to notice or consultation prior to the adoption by Nicaragua of such regulations.

(b) The legality of the specific Nicaraguan measures challenged by Costa Rica

- (i) Requirement to stop and identification: the Court is of the opinion that Nicaragua, as sovereign, has the right to know the identity of those entering its territory and also to know that they have left. The power to require the production of a passport or identity document of some kind is a legitimate part of the exercise of such a power. Nicaragua also has related responsibilities in respect of law enforcement and environmental protection. To that extent, the Nicaraguan requirement that vessels stop on entering the river and leaving it and that they be subject to search is lawful. The Court cannot, however, see any legal justification for a general requirement that vessels continuing along the San Juan river, for example from the San Carlos river to the Colorado river, stop at any intermediate point.
- (ii) Departure clearance certificates: the Court considers that the requirement on vessels navigating on the river to obtain departure clearance certificates, for legitimate reasons of navigational safety, environmental protection and criminal law enforcement, does not appear to have imposed any significant impediment on the exercise of Costa Rica’s freedom of navigation.
- (iii) Visas and tourist cards: the Court recalls that the power of a State to issue or refuse a visa entails discretion. However in the present case Nicaragua may not impose a visa requirement on those persons who may benefit from Costa Rica’s right of free navigation. In these circumstances, the Court finds that the imposition of a visa requirement is a breach of the right pursuant to Article VI of the Treaty. The Court adds that Nicaragua is entitled to refuse entry to the river to a particular person for reasons of law enforcement and environmental protection. In such circumstances, it is not a breach of the right of free navigation. As for the requirement by Nicaragua that tourist cards be obtained, the Court observes that this does not appear to be intended to facilitate Nicaragua’s control over

entry into the San Juan river. It notes that in the course of the proceedings Nicaragua referred to no legitimate purpose as justification for imposing this requirement. The Court consequently finds that the requirement that passengers wishing to travel on Costa Rican vessels which are exercising Costa Rica's freedom of navigation on the river must first purchase tourist cards is inconsistent with that right to freedom of navigation.

- (iv) Charges: as for the claim by Costa Rica concerning the payment of charges for the issuance of departure clearance certificates, the Court finds that, while Nicaragua has the right to inspect vessels on the San Juan river for safety, environmental and law enforcement reasons, those measures do not include the provision of any service to boat operators. The Court considers that, in respect of Costa Rican vessels exercising freedom of navigation on the river, the payment must thus be seen as unlawful.
- (v) Timetabling: the Court recalls that the exercise of a power to regulate may legitimately include placing limits on the activity in question. The limited evidence before the Court does not demonstrate any extensive use of the river for night time navigation. The Court thus infers that the interference with Costa Rica's freedom to navigate caused by the prohibition of night time navigation imposed by Nicaragua is limited and therefore does not amount to an unlawful impediment to that freedom, particularly when the purposes of the regulation are considered.
- (vi) Flags: the Court considers that Nicaragua, which has sovereignty over the San Juan river, may, in the exercise of its sovereign powers, require Costa Rican vessels fitted with masts or turrets navigating on the river to fly its flag. This requirement cannot in any respect be considered an impediment to the exercise of the freedom of navigation of Costa Rican vessels under the 1858 Treaty.
- (vii) Conclusion: the Court concludes that it follows from the above that Nicaragua has exercised its powers of regulation regarding the matters discussed under points (i), (ii), (v) and (vi) above in conformity with the 1858 Treaty; but that it is not acting in conformity with the obligations under the 1858 Treaty when it implements measures requiring visas and tourist cards and the payment of charges in respect of vessels, boat operators and their passengers exercising the freedom of navigation.

3. Subsistence fishing

For the Court, the failure of Nicaragua to deny the existence of a right arising from the practice of subsistence fishing, which had continued undisturbed and unquestioned over a very long period, is particularly significant. The Court accordingly concludes that Costa Rica has a customary right which Nicaragua is obliged to respect with regard to the inhabitants of the Costa Rican bank of the San Juan river who engage in fishing for subsistence purposes from that bank.

4. The claims made by the Parties in their final submissions

The Court declares in particular that it will uphold the Parties' claims in the operative part of the Judgment to the extent that they correspond to the preceding reasoning and will dismiss the others.

Composition of the Court

The Court was composed as follows: President Owada; Judges Shi, Koroma, Al-Khasawneh, Buergenthal, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood; Judge ad hoc Guillaume; Registrar Couvreur.

Judges Sepúlveda-Amor and Skotnikov append separate opinions to the Judgment of the Court; Judge ad hoc Guillaume appends a declaration to the Judgment of the Court.

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A summary of the Judgment appears in the document “Summary No. 2009/4”. In addition, this press release, the summary and the full text of the Judgment can be found on the Court’s website (www.icj-cij.org) under “Cases”.

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