

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CERTAIN ACTIVITIES CARRIED OUT
BY NICARAGUA
IN THE BORDER AREA

(COSTA RICA *v.* NICARAGUA)

JOINDER OF PROCEEDINGS

ORDER OF 17 APRIL 2013

2013

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

CERTAINES ACTIVITÉS MENÉES
PAR LE NICARAGUA
DANS LA RÉGION FRONTALIÈRE

(COSTA RICA *c.* NICARAGUA)

JONCTION D'INSTANCES

ORDONNANCE DU 17 AVRIL 2013

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17 April 2013

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ORDER

Present: President TOMKA; Vice-President SEPÚLVEDA-AMOR; Judges OWADA, ABRAHAM, KEITH, BENNOUNA, SKOTNIKOV, CAÑADO TRINDADE, YUSUF, GREENWOOD, XUE, DONOGHUE, GAJA, SEBUTINDE, BHANDARI; Judges ad hoc GUILLAUME, DUGARD; Registrar COUVREUR.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Article 48 of the Statute of the Court and to Article 47 of the Rules of Court,

Makes the following Order:

Whereas:

1. By an Application filed in the Registry of the Court on 18 November 2010, the Government of the Republic of Costa Rica (hereinafter “Costa Rica”) instituted proceedings against the Government of the Republic of Nicaragua (hereinafter “Nicaragua”) in the case concerning

Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) (hereinafter referred to as the *Costa Rica v. Nicaragua* case) for “the incursion into, occupation of and use by Nicaragua’s army of Costa Rican territory”, contending, in particular, that Nicaragua had “in two separate incidents, occupied the territory of Costa Rica in connection with the construction of a canal across Costa Rican territory . . . and certain related works of dredging on the San Juan River”. Costa Rica alleged breaches by Nicaragua of its obligations towards Costa Rica under a number of treaty instruments and other applicable rules of international law, as well as under certain arbitral and judicial decisions. In this regard, Costa Rica refers to the Charter of the United Nations and the Charter of the Organization of American States; the Treaty of Territorial Limits between Costa Rica and Nicaragua of 15 April 1858 (hereinafter the “1858 Treaty of Limits”), namely, Articles I, II, V and IX; the arbitral award issued by the President of the United States of America, Grover Cleveland, on 22 March 1888 (hereinafter the “Cleveland Award”); the first and second arbitral awards rendered by Edward Porter Alexander dated respectively 30 September 1897 and 20 December 1897 (hereinafter the “Alexander Awards”); the 1971 Convention on Wetlands of International Importance (hereinafter the “Ramsar Convention”); and the Judgment of the Court of 13 July 2009 in the case concerning the *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*.

2. In its Application, Costa Rica invokes, as a basis for the jurisdiction of the Court, Article XXXI of the American Treaty on Pacific Settlement signed at Bogotá on 30 April 1948 (hereinafter the “Pact of Bogotá”). In addition, Costa Rica seeks to found the jurisdiction of the Court on the declaration it made on 20 February 1973 under Article 36, paragraph 2, of the Statute, as well as on the declaration which Nicaragua made on 24 September 1929 (and amended on 23 October 2001) under Article 36 of the Statute of the Permanent Court of International Justice and which is deemed, pursuant to Article 36, paragraph 5, of the Statute of the present Court, for the period which it still has to run, to be acceptance of the compulsory jurisdiction of this Court.

3. On 18 November 2010, having filed its Application, Costa Rica also submitted a Request for the indication of provisional measures, pursuant to Article 41 of the Statute of the Court and Articles 73 to 75 of the Rules of Court.

4. In accordance with Article 40, paragraph 2, of the Statute, the Registrar communicated a signed copy of the Application forthwith to the Government of Nicaragua; and, under paragraph 3 of that Article, all States entitled to appear before the Court were notified of the filing of the Application.

5. Pursuant to the instructions of the Court under Article 43 of the Rules of Court, the Registrar addressed to States parties to the Pact of Bogotá and to the Ramsar Convention the notifications provided for in

Article 63, paragraph 1, of the Statute. In accordance with the provisions of Article 69, paragraph 3, of the Rules of Court, the Registrar moreover addressed to the Organization of American States the notification provided for in Article 34, paragraph 3, of the Statute. The Organization of American States indicated that it did not intend to submit any observations in writing under Article 69, paragraph 3, of the Rules of Court.

6. Since the Court includes no judge of the nationality of the Parties upon the Bench, each of them, in exercise of the right conferred by Article 31, paragraph 3, of the Statute, chose a judge *ad hoc* in the case. Costa Rica chose Mr. John Dugard, and Nicaragua chose Mr. Gilbert Guillaume.

7. By an Order of 8 March 2011, the Court indicated certain provisional measures to both Parties.

8. By an Order of 5 April 2011 the Court fixed 5 December 2011 and 6 August 2012 as the respective time-limits for the filing of a Memorial by Costa Rica and a Counter-Memorial by Nicaragua. Costa Rica's Memorial was duly filed within the time-limit so prescribed.

9. On 22 December 2011, Nicaragua instituted proceedings against Costa Rica in the case concerning *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)* (hereinafter referred to as the *Nicaragua v. Costa Rica* case). In its Application, Nicaragua stated that the case relates to "violations of Nicaraguan sovereignty and major environmental damages on its territory", contending, in particular, that Costa Rica was carrying out major works along most of the border area between the two countries along the San Juan River, namely the construction of a road, with grave environmental consequences. Nicaragua also reserved the right to request that the proceedings in the *Nicaragua v. Costa Rica* case and the *Costa Rica v. Nicaragua* case be joined.

10. Nicaragua filed its Counter-Memorial in the present case on 6 August 2012, within the time-limit fixed for that purpose in the Court's Order of 5 April 2011. That pleading included four counter-claims. Nicaragua stated in the Counter-Memorial that,

"with the filing of its counter-claims . . . including its claim based on the harm caused to the San Juan de Nicaragua River caused by the construction of this road and particularly, on its navigability, a discussion of the joinder of the cases [became] more opportune".

11. At a meeting held by the President with representatives of the Parties on 19 September 2012, the Parties agreed not to request the Court's authorization to file a reply and a rejoinder in the present case. At the same meeting the Co-Agent of Costa Rica raised certain objections to the admissibility of the first three counter-claims contained in the Counter-Memorial of Nicaragua. These objections were confirmed in a letter from the Co-Agent of Costa Rica dated 19 September 2012.

12. By letters dated 28 September 2012, the Registrar informed the Parties that the Court had decided that the Government of Costa Rica should specify in writing, by 30 November 2012 at the latest, the legal grounds on which it relied in maintaining that the Respondent's first three counter-claims were inadmissible, and that the Government of Nicaragua should then present its own views on the question in writing, by 30 January 2013 at the latest.

13. The written observations of the Republic of Costa Rica were duly filed within the time-limit so prescribed. In these written observations, Costa Rica argued that Nicaragua was "effectively seeking the joinder of the two different cases" pending between both Parties before the Court and that such joinder would be neither timely nor equitable. In particular, Costa Rica contended that the present case concerned the exercise of territorial sovereignty and that, in the absence of the Court's ruling thereon, "Costa Rica [was] prevented from exercising sovereignty over part of its territory", while the *Nicaragua v. Costa Rica* case had a different subject-matter. Costa Rica underlined that, as each of the two cases has its own procedural timetable, the joinder of proceedings would lead to a delay in the resolution of the dispute over territorial sovereignty and would thus constitute a serious prejudice to Costa Rica. Finally, Costa Rica noted that the composition of the Court is different in the two cases.

14. In a letter dated 19 December 2012, accompanying its Memorial in the *Nicaragua v. Costa Rica* case, Nicaragua again asked the Court to consider the need to join the proceedings in the above-mentioned case and the present case, and requested the Court to decide on this matter in the interests of the administration of justice.

15. By a letter dated 15 January 2013, the Registrar, on the instructions of the President, asked the Government of Costa Rica to inform the Court, by 18 February 2013, of its views on Nicaragua's position regarding the proposed joinder of the proceedings in the *Nicaragua v. Costa Rica* case and the *Costa Rica v. Nicaragua* case.

16. The written observations of the Republic of Nicaragua containing its views on the admissibility of the first three counter-claims made in its Counter-Memorial in the present case were duly filed on 30 January 2013, within the time-limit prescribed in the Registrar's letter dated 28 September 2012. Nicaragua stated that the *Nicaragua v. Costa Rica* case and the present case "involve the same Parties and are tightly connected both in law and in fact" and that there was "therefore no reason why they could not be joined". It requested the Court to "decide the joinder of the proceedings" in the two cases in accordance with Article 47 of the Rules of Court.

17. By a letter dated 7 February 2013, Costa Rica, with regard to the question of the proposed joinder, stated that the proceedings in the two cases should not be joined for the reasons previously indicated in its written observations on the admissibility of Nicaragua's Counter-Claims, filed in the *Costa Rica v. Nicaragua* case on 30 November 2012. In the

same letter, Costa Rica reiterated its position that it would be neither timely nor equitable to join the proceedings in the two cases. Costa Rica contended that there was no close connection between the two cases such as might justify a joinder. In particular, according to Costa Rica, the *Costa Rica v. Nicaragua* case concerns an area which is geographically distant from the road the construction of which is the subject of the *Nicaragua v. Costa Rica* case. Costa Rica argued that “[i]t [was] not sufficient that both cases [were] related — although in very different respects — to the San Juan River, which is more than 205 km in length”.

* * *

18. Under Article 47 of its Rules, “[t]he Court may at any time direct that the proceedings in two or more cases be joined”. That provision leaves the Court a broad margin of discretion. Where the Court, or its predecessor, has exercised its power to join proceedings, it has done so in circumstances where joinder was consonant not only with the principle of the sound administration of justice but also with the need for judicial economy (see, e.g., *Legal Status of the South-Eastern Territory of Greenland, Order of 2 August 1932, P.C.I.J., Series A/B, No. 48*, p. 268; *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Order of 26 April 1968, I.C.J. Reports 1968*, p. 9). Any decision to that effect will have to be taken in the light of the specific circumstances of each case.

19. The two cases here concerned involve the same Parties and relate to the area where the common border between them runs along the right bank of the San Juan River.

20. Both cases are based on facts relating to works being carried out in, along, or in close proximity to the San Juan River, namely the dredging of the river by Nicaragua and the construction of a road along its right bank by Costa Rica. Both sets of proceedings are about the effect of the aforementioned works on the local environment and on the free navigation on, and access to, the San Juan River. In this regard, both Parties refer to the risk of sedimentation of the San Juan River.

21. In the present case and in the *Nicaragua v. Costa Rica* case, the Parties make reference, in addition, to the harmful environmental effect of the works in and along the San Juan River on the fragile fluvial ecosystem (including protected nature preserves in and along the river).

22. In both cases, the Parties refer to violations of the 1858 Treaty of Limits, the Cleveland Award, the Alexander Awards and the Ramsar Convention.

23. A decision to join the proceedings will allow the Court to address simultaneously the totality of the various interrelated and contested issues

raised by the Parties, including any questions of fact or law that are common to the disputes presented. In the view of the Court, hearing and deciding the two cases together will have significant advantages. The Court does not expect any undue delay in rendering its Judgment in the two cases.

24. In view of the above, the Court, in conformity with the principle of the sound administration of justice and with the need for judicial economy, considers it appropriate to join the proceedings in the present case and in the *Nicaragua v. Costa Rica* case.

* * *

25. For these reasons,

THE COURT,

Unanimously,

Decides to join the proceedings in the present case with those in the case concerning *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*;

Reserves the subsequent procedure for further decision.

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

(Signed) Peter TOMKA,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge CANÇADO TRINDADE appends a separate opinion to the Order.

(Initialled) P.T.
(Initialled) Ph.C.