



Reply of the Republic of Nicaragua to the questions put by Judges Simma, Bennouna and Greenwood at the end of hearing on provisional measures requested by Costa Rica in the case concerning *Certain Activities carried out by Nicaragua in the Border Area* (*Costa Rica v. Nicaragua*)

Judge SIMMA:

1. Before the hearing of 11 January 2011, did Nicaragua ever make, or attempt to make, Costa Rica aware of its claim according to which the course of the boundary does not follow that documented on all existing – including Nicaraguan – maps, but “reaches the river proper by the first channel met” – that is the First Alexander Award of 1897 – this clause being interpreted as referring to the “Caño Harbour Head”?

On 26 November 2010, Nicaragua published a white book that explains among other things the legal reasoning of Nicaragua’s claim to the area in dispute. This reasoning is totally in harmony with the statements made during the hearings. So at least from that date Costa Rica and the whole international community were aware of the basis of the claims of Nicaragua. We accompany the white book to our answer with the English translation¹.

This had been also spelled out during the very first session of the Organization of American States that dealt with this question on 3 November 2010.

Before the hearings and for many years Costa Rica was aware that the border had not been settled and that Nicaragua was interested in doing so. This subject was addressed at the meetings of the bilateral Commission dating back to 1994 and the last meeting in which this subject was raised was in October 2006. That is why all Nicaraguan maps had the legend that it had not been verified on the ground. In this respect Costa Rica presented a Nicaraguan map without this indication. This was done with the full knowledge that it was not a map for international borders but one referring to the

¹ See Annexes to this answer, Document 1.

administrative divisions inside Nicaragua which have been revised or checked by the territorial Institute (INETER). Thus the map produced by Costa Rica states that it refers to the “Political-Administrative division” of the “Department of Río San Juan”. In this regard, attached is the map filed by Costa Rica together with a similar map of a region inside central Nicaragua, and hence without international borders, that has the same legend².

The Agent recalled that the Counter Memorial of Nicaragua in the previous case, *Dispute regarding navigational and related rights (Costa Rica v. Nicaragua)*, had a footnote that reserved Nicaragua’s rights on all questions relating to the mouth of the River³, and that this was reiterated in the oral hearings in that case (2009), in which the Agent made a general reservation on all questions relating to the Bay of San Juan (located in the area at the mouth of the River⁴). The Agent restated during the 13 January 2011 oral hearings:

“Another very important reservation on questions relating to sovereignty at the mouth of the river was made at the oral hearings of that case. On that occasion, as Agent of Nicaragua, I stated:

“Other very important issues stemming from the 1858 Treaty are still in dispute between the Parties and involve, for example, the situations of the Bays of San Juan and Salinas. Since assertions have been made on these questions during the present hearings, Nicaragua leaves on record that it reserves its rights on all questions relating to these issues”⁵.

Furthermore, it is necessary to point out that not only Nicaragua characterized the exact location of the border as uncertain. In the map filed by Nicaragua and presented by Prof. McCaffrey at the hearing of 13 January 2011, and which is annexed with an enlargement at the mouth of the River, it can clearly be appreciated that that in 1971, date of the map, Costa Rica itself considered that the border followed a path quite similar to that of the first caño⁶. Other maps in the Judges’ folders of 13 January 2011 also show the disputed area as being located in Nicaragua⁷. And these are only examples, as Prof. McCaffrey noted. Not all maps are the same.

- 2. Considering the physical changes in the area of the delta of the San Juan River already known at the time of the Cleveland and Alexander awards, why has Nicaragua, within the last century or so, never made an attempt to negotiate a new course of the boundary, or at least to change its maps?**

² See Annexes Map 1 and 2.

³ NCM, Vol. I, p. 9, fn. 14.

⁴ *CR 2009/4*, p. 17, para. 35 (Argüello).

⁵ *CR 2011/4*, p. 35, para. 6 (Argüello).

⁶ See Annexes, Map 3.

⁷ See Annexes, Map 4, 5 and 6. And see also Annexes Maps 7-13.

Nicaragua considers that there was no need to negotiate a new course of the boundary since this is clearly spelled out in the Alexander Awards. On the other hand, Nicaragua did not consider it useful to change the maps without verifying them on the ground. That is why it insisted on this point in the meetings of the Bilateral Commission.

There had been no economic activity of any importance in this area that would create an interest or an urgency to determine the border on the ground. This only arose when the dredging project began. Survey is an expensive exercise for a country of very limited economic resources such as Nicaragua. Besides, Nicaragua felt itself in full possession of the area, in which it consistently exercised law enforcement and other activities that were noted during the hearings and will be more fully addressed during the merits phase of the case.

As was pointed out at the hearings on 13 January 2011⁸, a similar situation had been in place in the northern border with Honduras. It was not until Nicaragua began the claim for a maritime delimitation that it was discovered that the geographic coordinates that had determined the starting point in 1962 were in 2000 located not at the mouth of the river but 1.5 km inland. This location is also difficult to reach, but it had been the object of petroleum exploration contracts in the 1960's and yet no one had realized this change had occurred.

In the area of San Juan there is no comparable economic activity (only the expected tourism when the river becomes navigable); there have been no petroleum concessions like those in the vicinity of the Coco River at the Northern border with Honduras.

- 3. The dredging project concerning the San Juan River relates to a shared environment. In light of this, why was the Nicaraguan Environmental Impact Study prepared from 2006 onwards and the permit of the Environment Ministry of December 2008 for the San Juan dredging project to proceed, as well as the extension of the permit to the cleaning of the “caño”, never communicated to Costa Rica?**

The San Juan River is entirely within Nicaraguan territory. Costa Rica since the time of the Cleveland Award has tried to obtain the right of consultation and veto of any dredging or improvement program in the River. In Costa Rica's arguments submitted to President Cleveland, Costa Rica claimed such a right,

“[r]eferring now to interrogatory N° 6, I shall state positively that Costa Rica has the right to prevent Nicaragua from executing, at her own cost, the works to which she alludes, whenever undertaken without consideration of the rights belong to Costa Rica, whether as *cestuy que use* of the river, or as joint owner

⁸ CR 2011/4, p. 39, para. 25 (Argüello).

of the Bay, or exclusive sovereign of the right bank of the San Juan river, and of the whole of the Colorado river, or of the other lands and waters of her territory...Nicaragua cannot do any work either on the river or bay, whether for the improvement or for the preservation of the same, without first giving notice to Costa Rica and obtaining her consent”⁹.

The Award clearly denied this right in the following terms:

“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 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”¹⁰.

The question of the dredging and improvement is regulated by the Treaty of 1858 and especially by this Award of 1888, and not by general international law. One of the few things Nicaragua obtained of the claims decided by President Cleveland is this right. It had a high price and Nicaragua sees no reason to surrender it.

Besides, Costa Rica at the time (2006) was claiming navigational and other rights along the River that went beyond its Treaty rights. At the time, both Parties were in litigation before this Court on those questions. And after the Judgment of the Court of 13 July 2009, Costa Rica has opposed the regulatory powers of Nicaragua in the San Juan River recognized by the Court. It has questioned these powers even at the present stage of these proceedings¹¹.

Furthermore, Costa Rica authorized on 12 December 2006 the operation of a gold mine in the area known as Las Crucitas, located 3 kilometers away from the San Juan River. Nicaragua was not given a copy of the environmental impact study of this project by Costa Rica. The operation of this gold mine that involved the possibly catastrophic use of cyanide near the River bank and other environmental damage such as the extensive deforestation that was carried out, resulted in great opposition to the permit within Costa Rican society. The project was the object of several administrative and judicial appeals until finally the high administrative Court of Costa Rica on 14

⁹ *Argument on the question of 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 file on behalf of the Government of Costa Rica by Pedro Pérez Zeledón*, Washington, Gibson Bros., Printers and Bookbinders, 1887, p. 167.

¹⁰ *President Cleveland's Award*, Article 3, para. 6.

¹¹ *CR 2011/1*, p. 16, para.2 (Ugalde Alvarez).

December 2010 rendered a judgment prohibiting the operation of the gold mine and ordering the institution of proceedings against the persons involved in authorizing the permit of the gold mine. This included the former President of Costa Rica (2006-2010). Mr. Oscar Arias. The Judgment in the pertinent part reads:

“Therefore, given their involvement in acts declared illegal and void, it is appropriate to communicate the resolution to the Public Prosecutor to determine if it is appropriate or not to pursue criminal charges against any of the following persons: Oscar Arias Sánchez, Roberto Dobles Mora, Sonia Espinoza Valverde, Eduardo Murillo Marchena, Jose Francisco Castro Muñoz Cavallini Cynthia Chinchilla, Sandra Arredondo Arias Li and Arnoldo Rudin. We must emphasize that the President and the relevant Minister has the duty laid down in Article 140 paragraph 3) of the Constitution, to ensure full compliance with the laws, as well, since the executive order number 34801 - MINAET is blatantly illegal and was signed by Oscar Arias Sanchez and Roberto Dobles Mora, this is what raises the possibility of criminal liability. Furthermore, Mr. Arias Sánchez and Dobles Mora are the ones who signed the resolution R-217-2008-MINAE through which the mining concession to Industrias Infinito, was granted, an act that has also been declared illegal and void in this judgment”¹².

This judicial case involving one of the most influential persons in Costa Rica might explain the reasons why Costa Rica has raised the border question with Nicaragua to such levels of intensity. The public hearings in that case began on 4 October 2010 and the Judgment was delivered on 24 November. The claims that Nicaragua had “invaded” Costa Rican territory were made on 21 October. As might have been intended, after being the most talked about event in Costa Rica’s media, the gold mine scandal has been superseded by the charges against Nicaragua.

Finally, it must be pointed out that Nicaragua’s studies referred to in the question were hardly a secret. The document was made available to the public from 9 to 16 August 2006 and at least four public hearings were held regarding the dredging project, in different Nicaraguan cities, and public notice was given of them¹³. It is difficult to imagine that Costa Rica, which follows such matters very closely, was not aware of these meetings, of the study, or of the project itself.

M. le juge BENNOUNA :

1. Est-ce que le Nicaragua entreprend actuellement des travaux sur le canal dit «First Caño», y compris ceux relatifs à la construction et à l’élargissement de ce

¹² <http://lamadourgentearchivo.blogspot.com/2011/01/crucitas-sentencia-completa-del.html>

¹³ See document deposited within the Registry, Doc. N° 13.

canal, l'abattage d'arbres, l'enlèvement de la végétation ou de la terre, et le déversement des sédiments?

Non. Le Nicaragua n'entreprend, à l'heure actuelle, pas de travaux sur le premier *caño*; il n'y mène aucune construction et ne l'élargit pas. Ceci a du reste été confirmé par l'Agent durant les audiences, lorsqu'il a déclaré que l'opération de nettoyage était terminée (« *over and finished* »)¹⁴.

L'abattage d'arbres et l'enlèvement de végétation dans certaines zones le long du *caño* ainsi que le dépôt de sédiments étaient liés au nettoyage du *caño*. Dès lors que celui-ci est terminé, la question ne se pose plus.

2. Est-ce que le Nicaragua maintient sur la portion du territoire dénommée l'île de Portillos des troupes armées ou d'autres agents, quels qu'ils soient?

Aucune troupe nicaraguayenne ne stationne actuellement dans la zone en question et le Nicaragua n'a pas l'intention d'y établir de poste militaire à l'avenir. Il y a eu une présence militaire dans cette zone durant la période de six semaines durant laquelle le *caño* a été nettoyé, mais ceci aux seules fins de la protection des ouvriers procédant à cette opération.

Le Nicaragua n'a pas l'intention de faire stationner des agents dans cette zone. La seule opération qui y soit menée actuellement est la replantation d'arbres. Le Ministère de l'environnement du Nicaragua (MARENA) enverra périodiquement des inspecteurs sur place afin de surveiller le processus de reboisement, ainsi que les changements qui pourraient se produire dans la région, y compris la lagune d'Harbor Head.

La Ministre nicaraguayenne de l'environnement a rendu visite au Secrétariat de RAMSAR le 14 janvier 2011 pour renouveler l'invitation faite à celui-ci de se rendre au Nicaragua et d'obtenir le point de vue des autorités nicaraguayennes et de visiter la zone d'Harbor Head.

3. Est-ce que le Nicaragua s'engage à ne pas entreprendre de tels travaux, ni à envoyer ses troupes armées ou d'autres agents sur l'île de Portillos, jusqu'à ce que la Cour rende son jugement au fond ?

Le Nicaragua n'a nullement l'intention d'envoyer des troupes ou d'autres agents dans la région. L'opération de nettoyage est bel et bien terminée. Le *caño* n'est plus obstrué. Il est possible de patrouiller dans la zone sur les eaux du fleuve comme cela a toujours été le cas, afin de faire respecter la loi, de lutter contre le trafic de drogue et le crime organisé et pour la protection de l'environnement.

¹⁴ CR 2011/2, p. 16, para. 36 (Argüello) and CR 2011/4, p. 37, para. 18 (Argüello).

Pour être parfaitement clair, le Nicaragua tient à répéter qu'il n'a nulle intention d'installer de troupes ou de bases militaires dans la zone en dispute.

Judge GREENWOOD:

1. **First, at what date did Nicaragua first form the opinion that what it has described as the "First Caño" was the boundary between itself and Costa Rica in accordance with the First Alexander Award?**

Nicaragua has considered this question a settled matter since the time the Umpire-Engineer found that the border followed "the first channel met" until reaching the River proper. That is why Nicaragua has always patrolled the area with military and police authorities - patrolling of which Costa Rican authorities have been aware but have not objected - and that is why tourists (the few able to arrive when the River is navigable) are taken for visits along these wetlands and its several channels including the "first caño" in those areas where it was not clogged up.

This is a different matter from the question of the maps that could only be brought up to date if a proper survey was done. That is why all official maps of Nicaragua's international borders had the legend that they had not been verified on the ground. That is why Nicaragua, as indicated in the answer to Judge Simma's question, had been insisting in the meetings of the Bilateral Commission that the border be properly surveyed and mapped. That is why Nicaragua made general reservations on the situation at the mouth of the River every time this subject came up.

The problem with the caños is that some have clogged up not only by the forces of nature but also due to the hand of man. In the previous case before the Court, Costa Rica filed a substantial amount of documents. Among these was a report dated 16 March 1906 given by a Costa Rican official in charge of guard posts in the San Juan River, Mr. Jose Solórzano, which said:

"The Caño Pereira has not been blocked yet, as you ordered in your letter number 280 from December 12th, because the water level is so low that not even the smallest boat can enter. Here also I take the liberty of calling the Inspector's attention to the following facts: in 1890, when the General Inspector of the Treasury was Mr. V.J Golcher, said Caño was ordered to be closed down and to that effect, 30 or 40 big trees were thrown on it; four years later the Supreme Government ordered to open it again, and in June 1896 and 1897 [sic] the engineer Mr. Luis Matamoros, who was part of the Commission for Limits with Nicaragua, sent two saws to cut down those trees that blocked

the free navigation on said Caño, pointing out that since the guard post La Vela is at such good point for vigilance, it was a pity that Pereira remained almost not navigable, as it is a Caño that could be of great use for this area”¹⁵.

As can be appreciated in the narrative, it is very easy to clog up the caños. It is an activity at which Costa Rica in its own testimony has shown expertise.

2. Secondly, did it notify Costa Rica of that opinion? And if so, when and by what means?

As indicated in the answer to the previous question, Nicaragua considered that there was no special need of formal notification since Nicaragua has always accepted the Alexander Award and its determination that the first caño met was the border. So in fact, when Nicaragua began cleaning the caño it considered it was cleaning its own territory and naturally did not consider any notification was necessary. As evidence of the bona fides of this belief, Nicaragua’s *effectivités* in the area were placed before the Court in the hearings and were not seriously challenged by Costa Rica.

The Hague, 18 January 2011



Carlos José ARGUELLO GÓMEZ
Agent of the Republic of Nicaragua

¹⁵ *Dispute concerning Navigational and related rights (Costa Rica v. Nicaragua)*, Memorial of Costa Rica, 26 August 2006, Vol. 6, Annexes 193 to 245, p. 878.



**EMBASSY OF NICARAGUA
THE HAGUE**

18 January 2011

Sir,

With reference to the proceedings instituted by the Republic of Costa Rica against the Republic of Nicaragua on 18 November 2010, in the case concerning Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua). I have the honour to present 25 copies of the documents and maps attached to the answers of the questions put by Judges Simma, Bennouna and Greenwood at the end of the hearing held on Thursday, 13 January.

The undersigned Agent certifies that:

- The 17 copies filed in the original language, are true copies of the original texts.

The numbers referred in maps 4, 5, 7, 8, 9, 10, 11, 12 and 13 are the code numbers of each map under the CD-ROM of the book entitled "Nicaragua; an Historical Atlas" filed by the Co-Agent of Costa Rica on 10 January 2011.

Accept, Sir, the assurances of my highest consideration.


Carlos J. ARGÜELLO GÓMEZ
Agent
Republic of Nicaragua

**His Excellency
Mr. Philippe Couvreur
Registrar
International Court of Justice
Peace Palace
The Hague**



**EMBASSY OF NICARAGUA
THE HAGUE**

CERTIFICATION

The undersigned Agent of the Republic of Nicaragua certifies that the documents contained in this file, and hereunder listed, are true and accurate copies of the original of the documents, which are attached to the answers of the questions put by Judges Simma, Bennouna and Greenwood at the end of the hearing held on Thursday, 13 January. The documents contained in this file are the following:

LIST OF DOCUMENT AND MAPS

DOCUMENTS

NUMBER	DOCUMENT
Document 1.	The Truth that Costa Rica hides about the River San Juan de Nicaragua.

MAPS

NUMBER	MAP
Map 1	Map of the Department of Chontales Nicaraguan Institute of Territorial Studies, November 2001
Map 2	Map of the Department of Río San Juan by Nicaraguan Institute of Territorial Studies, April 2003
Map 3	Map of Costa Rica, prepared by the Geographic Institute of Costa Rica in 1971
Map 4	Map of Nicaragua by L. Robelin, 191? (Nº 23)
Map 5	Republic of Nicaragua by A. Demersseman, 1923 (Nº 84)



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- Map 6 U.S. Engineer Office, Nicaraguan Canal Survey, 1929-1931 (N° 35)
- Map 7 Map of Nicaragua, Ministry of Development, Department of Mapping, 196? (N° 86)
- Map 8 Nicaragua by Richard Mayer, 1920 (N° 24)
- Map 9 Map of the Republic of Nicaragua and part of the Republic of Honduras and Costa Rica by Clifford D. Ham, 1924 (N° 62)
- Map 10 Map of Nicaragua, Ministry of Development, Department of Mapping, 1965 (N° 29)
- Map 11 Map of Nicaragua, Ministry of Development, Department of Mapping, 1966 (N° 56)
- Map 12 Map of the Republic of Nicaragua by Texaco, 1978 (N° 73)
- Map 13 República de Nicaragua by Central Intelligence Agency, 1979 (N° 30)

Carlos J. ARGÜELLO GÓMEZ
Agent of the Republic of
Nicaragua



EMBASSY OF NICARAGUA
THE HAGUE

CERTIFICATION

The undersigned Agent of the Republic of Nicaragua certifies that the document hereunder listed is true and accurate translation into English of the original language text of the documents, which are attached to the answers of the questions, put by Judges Simma, Bennouna and Greenwood at the end of the hearing held on Thursday, 13 January. The document contained in this file is the following:

LIST OF DOCUMENTS TRANSLATED INTO ENGLISH

DOCUMENT

NUMBER	DOCUMENT
Document 1.	The Truth that Costa Rica hides about the River San Juan de Nicaragua.

Carlos J. ARGÜELLO GÓMEZ
Agent of the Republic of
Nicaragua