

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CONSTRUCTION OF A ROAD IN COSTA RICA
ALONG THE SAN JUAN RIVER

(NICARAGUA *v.* COSTA RICA)

JOINER OF PROCEEDINGS

ORDER OF 17 APRIL 2013

2013

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

CONSTRUCTION D'UNE ROUTE AU COSTA RICA
LE LONG DU FLEUVE SAN JUAN

(NICARAGUA *c.* COSTA RICA)

JONCTION D'INSTANCES

ORDONNANCE DU 17 AVRIL 2013

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17 April 2013

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JOINDER OF PROCEEDINGS

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, SIMMA; 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 22 December 2011, the Government of the Republic of Nicaragua (hereinafter “Nicaragua”) instituted proceedings against the Government of the Republic of Costa Rica (hereinafter “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) for “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.

2. In its Application, Nicaragua reserved the right to request the joinder of the proceedings in the present case and the proceedings in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* instituted by Costa Rica against Nicaragua by an Application dated 18 November 2010 (hereinafter referred to as the *Costa Rica v. Nicaragua* case).

3. In its Application in the *Costa Rica v. Nicaragua* case, Costa Rica stated that the case related to “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)*.

4. In its Application in the present case, Nicaragua 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, Nicaragua seeks to found the jurisdiction of the Court on the declaration it 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, as well as on the declaration which Costa Rica made on 20 February 1973 under Article 36, paragraph 2, of the Statute.

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

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. Nicaragua chose Mr. Gilbert Guillaume and Costa Rica chose Mr. Bruno Simma.

7. By an Order of 23 January 2012, taking account of the agreement of the Parties, the Court fixed 19 December 2012 and 19 December 2013 as the respective time-limits for the filing of a Memorial by Nicaragua and a Counter-Memorial by Costa Rica. Nicaragua's Memorial was filed within the time-limit so prescribed. In a letter dated 19 December 2012, accompanying its Memorial, Nicaragua asked the Court to consider the need to join the proceedings in the present case and the *Costa Rica v. Nicaragua* case, and requested the Court to decide on this matter in the interests of the administration of justice.

8. 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.

9. 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. It is recalled that in those 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 it would be neither timely nor equitable to join the proceedings in the two cases. In particular, Costa Rica contended that the *Costa Rica v. Nicaragua* 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 present 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.

10. It is further recalled that in its written observations on the admissibility of its counter-claims, which were filed in the context of the *Costa Rica v. Nicaragua* case on 30 January 2013, Nicaragua stated that the *Costa Rica v. Nicaragua* 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". Nicaragua therefore again requested the Court to "decide the joinder of the proceedings" in the two cases in accordance with Article 47 of the Rules of Court.

11. In the above-mentioned letter dated 7 February 2013, 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 present 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”.

* * *

12. 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.

13. 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.

14. 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.

15. In the present case and in the *Costa Rica v. Nicaragua* 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).

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

17. 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.

18. 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 *Costa Rica v. Nicaragua* case.

19. The Court adds that the time-limit fixed in its Order of 23 January 2012 for the filing of the Counter-Memorial of Costa Rica in the present case, namely 19 December 2013, remains unaffected by its decision in the current Order.

* * *

20. For these reasons,

THE COURT,

By sixteen votes to one,

Decides to join the proceedings in the present case with those in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde, Bhandari; *Judge ad hoc* Guillaume;

AGAINST: *Judge ad hoc* Simma;

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 Nicaragua and the Government of the Republic of Costa Rica, 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.