



INTERNATIONAL COURT OF JUSTICE

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Press Release

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Construction of a Road in Costa Rica along the San Juan River **(Nicaragua v. Costa Rica)**

Certain Activities carried out by Nicaragua in the Border Area **(Costa Rica v. Nicaragua)**

The Court finds that the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power to indicate provisional measures

THE HAGUE, 13 December 2013. By an Order of 13 December 2013, the International Court of Justice (ICJ), the principal judicial organ of the United Nations, ruled on the Request for the indication of provisional measures submitted by Nicaragua on 11 October 2013 (see Press Release No. 2013/27) in the case concerning the Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), with which the case concerning Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) has been joined. By its Request, Nicaragua sought to protect certain rights which, in its view, are affected by the road construction works being carried out by Costa Rica near the border area between the two countries along the San Juan River.

In its Order made today, the Court finds, unanimously, “that the circumstances, as they now present themselves to [it], are not such as to require the exercise of its power . . . to indicate provisional measures”.

Reasoning of the Court

1. Prima facie jurisdiction (paras. 12-14)

The Court recalls that Nicaragua seeks to found the jurisdiction of the Court on Article XXXI of the American Treaty on Pacific Settlement signed at Bogotá on 30 April 1948 and on the declarations of acceptance of compulsory jurisdiction made by the two Parties.

The Court considers that these instruments appear, prima facie, to afford a basis on which it might have jurisdiction to rule on the merits of the case. Accordingly, the Court finds that it may entertain the Request for the indication of provisional measures submitted to it by Nicaragua.

2. The rights whose protection is sought and the measures requested (paras. 15-23)

The Court recalls that its power to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights claimed by the parties in a case, pending its decision on the merits thereof. It follows that it may exercise this power only if the rights asserted by the party requesting the indication of provisional measures appear at least plausible. Moreover, a link must exist between the rights which form the subject of the proceedings before the Court on the merits of the case and the provisional measures being sought.

Nicaragua asserts that the rights which it seeks to protect are its “rights of territorial sovereignty and integrity”, its “right to be free from transboundary harm” and its “right to receive a transboundary environmental impact assessment from Costa Rica”. The Court considers that these rights are plausible.

The Court then considers the issue whether the provisional measures requested are linked to the rights claimed and do not prejudice the merits of the case.

As regards the first provisional measure requested by Nicaragua, which is that Costa Rica provide it with an Environmental Impact Assessment Study, the Court is of the view that the indication of such a measure would amount to prejudging the Court’s decision on the merits of the case, since this request is exactly the same as one of Nicaragua’s claims submitted in its Memorial on the merits. With respect to the second provisional measure, which is that Costa Rica take a number of emergency measures in order to reduce or eliminate instances of erosion, landslides and sediment delivery into the San Juan River as a result of the construction of the road, the Court considers that a link exists between the measure sought and Nicaragua’s claimed right to be free from transboundary harm. Lastly, the Court considers that a link also exists between the third provisional measure sought, which is that Costa Rica not renew any construction activities with respect to the road while the Court is seised of the present case, and Nicaragua’s claimed rights.

3. Risk of irreparable prejudice and urgency (paras. 24-35)

The Court recalls that, pursuant to Article 41 of its Statute, it has the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of the judicial proceedings. This power will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court has given its final decision.

The Court considers that, on the basis of the evidence adduced, Nicaragua has not established in the current proceedings that the ongoing construction works have led to a substantial increase in the sediment load in the river. Neither has the Court been presented, at this stage, with evidence as to any long-term effect on the river by aggradations of the river channel allegedly caused by additional sediment from the construction on the road. Finally, with respect to the alleged effect on the ecosystem including individual species in the river’s wetlands, the Court finds that Nicaragua has not explained how the road works could endanger such species, and that it has not identified with precision which species are likely to be affected.

The Court finds that Nicaragua has therefore not shown that there is any real and imminent risk of irreparable prejudice to the rights it invokes.

4. Conclusion (para. 36)

The Court concludes from the foregoing that the Request for the indication of provisional measures by Nicaragua cannot be upheld.

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Composition of the Court

The Court was composed as follows: President Tomka; Vice-President Sepúlveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde, Bhandari; Judges ad hoc Guillaume, Dugard; Registrar Couvreur.

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Full text of the Order and history of the proceedings

The full text of the Order is available on the Court's website in the documentation for each case, under the heading "Contentious cases".

It is recalled that the proceedings in the Nicaragua v. Costa Rica case and in the Costa Rica v. Nicaragua case were joined by the Court on 17 April 2013 "in conformity with the principle of the sound administration of justice and with the need for judicial economy". The history of those proceedings can be found in paragraphs 1 to 11 of the Order of 13 December 2013.

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The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the "World Court", it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court, established by treaty, which does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an independent judicial body composed of Lebanese and international

judges, which is not a United Nations tribunal and does not form part of the Lebanese judicial system), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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