



INTERNATIONAL COURT OF JUSTICE

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Press Release

Unofficial

No. 2010/38

19 November 2010

Costa Rica institutes proceedings against Nicaragua and requests the Court to indicate provisional measures

THE HAGUE, 19 November 2010. In the late afternoon of 18 November 2010, the Republic of Costa Rica instituted proceedings against the Republic of Nicaragua with regard to an alleged “incursion into, occupation of and use by Nicaragua’s Army of Costa Rican territory as well as breaches of Nicaragua’s obligations towards Costa Rica” under a number of international treaties and conventions.

In its Application, Costa Rica claims that

“[b]y sending contingents of its armed forces to Costa Rican territory and establishing military camps therein, Nicaragua is not only acting in outright breach of the established boundary regime between the two states, but also of the core founding principles of the United Nations, namely the principle of territorial integrity and the prohibition of the threat or use of force against any State in accordance with article 2 (4) of the Charter; also endorsed between the parties in Articles 1, 19 and 29 of the Charter of the Organization of American States.”

Costa Rica charges Nicaragua with having occupied, in two separate incidents, the territory of Costa Rica in connection with the construction of a canal across Costa Rican territory from the San Juan River to Laguna los Portillos (also known as Harbor Head Lagoon), and certain related works of dredging on the San Juan River.

Costa Rica states that the

“ongoing and planned dredging and the construction of the canal will seriously affect the flow of water to the Colorado River of Costa Rica, and will cause further damage to Costa Rican territory, including the wetlands and national wildlife protected areas located in the region.”

The Applicant claims that Nicaragua rejected all calls for withdrawal of its armed forces from the occupied territory and all means of negotiation. Costa Rica states further that Nicaragua intends not to comply with the Resolution of 12 November 2010 of the Permanent Council of the Organisation of American States calling, in particular, for the withdrawal of Nicaraguan armed forces from the border region, by requesting the avoidance of the presence of military or security forces in the area where their existence might rouse tension, in order to create a favourable climate for dialogue between the two nations.

Costa Rica accordingly

“requests the Court to adjudge and declare that Nicaragua is in breach of its international obligations . . . as regards the incursion into and occupation of Costa Rican territory, the serious damage inflicted to its protected rainforests and wetlands, and the damage intended to the Colorado River, wetlands and protected ecosystems, as well as the dredging and canalization activities being carried out by Nicaragua on the San Juan River. In particular the Court is requested to adjudge and declare that, by its conduct, Nicaragua has breached:

- (a) the territory of the Republic of Costa Rica, as agreed and delimited by the 1858 Treaty of Limits, the Cleveland Award and the first and second Alexander Awards;
- (b) the fundamental principles of territorial integrity and the prohibition of use of force under the Charter of the United Nations and the Charter of the Organization of American States;
- (c) the obligation imposed upon Nicaragua by Article IX of the 1858 Treaty of Limits not to use the San Juan River to carry out hostile acts;
- (d) the obligation not to damage Costa Rican territory;
- (e) the obligation not to artificially channel the San Juan River away from its natural watercourse without the consent of Costa Rica;
- (f) the obligation not to prohibit the navigation on the San Juan River by Costa Rican nationals;
- (g) the obligation not to dredge the San Juan River if this causes damage to Costa Rican territory (including the Colorado River), in accordance with the 1888 Cleveland Award;
- (h) the obligations under the Ramsar Convention on Wetlands;
- (i) the obligation not to aggravate and extend the dispute by adopting measures against Costa Rica, including the expansion of the invaded and occupied Costa Rican territory or by adopting any further measure or carrying out any further actions that would infringe Costa Rica’s territorial integrity under international law.”

The Court is also requested to determine the reparation which must be made by Nicaragua, in particular in relation to any measures of the kind referred in the paragraph above.

As the basis for the jurisdiction of the Court, the Applicant invokes Article 36, paragraph 1, of the Statute of the Court by virtue of the operation of Article XXXI of the American Treaty on Pacific Settlement of 30 April 1948 (“Pact of Bogotá”), as well as the declarations of acceptance made by Costa Rica on 20 February 1973 and by Nicaragua on 24 September 1929 (modified on 23 October 2001), pursuant to Article 36, paragraph 2, of the Statute of the Court.

Costa Rica, also on 18 November 2010, filed a Request for the indication of provisional measures. The Request recalls that the “object of provisional measures pursuant to Article 41 of the Court’s Statute is to preserve the respective rights of the parties pending the Court’s decision on the merits”. It specifies that

“Costa Rica’s rights which are subject of the dispute and of this request for provisional measures are its right to sovereignty, to territorial integrity and to non-interference with its rights over the San Juan River, its lands, its environmentally protected areas, as well as the integrity and flow of the Colorado River.”

Costa Rica also indicates in its Request that the protection of its rights is of real urgency. It points out that

“Nicaraguan armed forces continue to be present on Isla Portillos in breach of Costa Rica’s sovereign rights. Nicaragua is continuing to damage the territory of Costa Rica, posing a serious threat to its internationally protected wetlands and forests. It also continues dredging activities on the San Juan River, with the risk of further damaging Costa Rican territory, including the Colorado River”.

Costa Rica further contends that “[t]he ongoing presence of Nicaraguan armed forces on Costa Rica’s territory is contributing to a political situation of extreme hostility and tension”, and that “[t]he threat of armed conflict will overshadow the proceedings before the Court”. It adds that “Nicaragua cannot be permitted to continue to deviate the San Juan River through Costa Rica’s territory in this manner, so as to impose on Costa Rica and the Court a fait accompli”. Costa Rica concludes in its Request that

“[t]here is a real risk that without a grant of provisional measures, action prejudicial to the rights of Costa Rica will continue and may significantly alter the factual situation on the ground before the Court has the opportunity to render its final decision”.

Costa Rica accordingly

“requests the Court as a matter of urgency to order the following provisional measures so as to rectify the presently ongoing breach of Costa Rica’s territorial integrity and to prevent further irreparable harm to Costa Rica’s territory, pending its determination of this case on the merits:

- (1) the immediate and unconditional withdrawal of all Nicaraguan troops from the unlawfully invaded and occupied Costa Rican territories;
- (2) the immediate cessation of the construction of a canal across Costa Rican territory;
- (3) the immediate cessation of the felling of trees, removal of vegetation and soil from Costa Rican territory, including its wetlands and forests;
- (4) the immediate cessation of the dumping of sediment in Costa Rican territory;

- (5) the suspension of Nicaragua's ongoing dredging programme, aimed at the occupation, flooding and damage of Costa Rican territory, as well as at the serious damage to and impairment of the navigation of the Colorado River, giving full effect to the Cleveland Award and pending the determination of the merits of this dispute;
- (6) that Nicaragua shall refrain from any other action which might prejudice the rights of Costa Rica, or which may aggravate or extend the dispute before the Court".

The full text of the Application and Request will be available shortly on the Court's website (www.icj-cij.org).

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