
COSTA RICA V. NICARAGUA: CASE ANALYSIS - 2015 ICJ REP. 665

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Bench & Quorum

The case was pleaded before Angel M. Bocanegra J., Daniel Gutiérrez J., M. Castro R J., Nicolás Oreamuno J., Saturnino Meda J. at the Central American Court of Justice, and later in the International Court of Justice.

Procedural History

The action was commenced and maintained by the Government of Republic of Costa Rica. The lawsuit was filed against the Republic of Nicaragua on the basis of a conclusion of a treaty between the latter and the Government of the United States of North America. To be more precise, the issue was with respect to the construction of an interoceanic canal where the court considered all proceedings involved and hence, came to a decision which has been reiterated towards the end of this analysis. Allegations of potential environmental harm to the adjoining areas and the violation of certain obligations were a few of the major contentions from the representative of Costa Rica Government. The representative of the government of Costa Rica, Licentiate don Luis Castro Ureña, on the 24th of March came up with the accusations against the Government of Nicaragua with several questions of facts and laws with supports of various kinds. The evidence that was put together was considered pertinent to the action being taken by the petitioner. The bench was not full on account of the absence of a member from Nicaragua and hence, was disqualified on the first step of the proceedings. The absence was found not fixable as the judge could not return on time from the vacation, hence, the members addressed itself to His Excellency the Minister of Foreign Relations of Nicaragua and requested for his attention towards the case. They requested the minister to make necessary depositions for the completion of the court by sending in a substitute judge for the case in hand. The absent judge also clarified that he will make his best attempts to get on the next steamer and should that not be possible, he will notify the minister of such a situation. The Central American Court of

Justice held that the court does not have the jurisdiction to make a decision on such a dispute and hence, the case went on to the International Court of Justice.

Facts

The application filed on the 18th of November 2010 in the ICJ which stated that the Republic of Nicaragua allegedly violated certain obligations that they had towards its neighbor Costa Rica. The application shed light on two separate incidents. The construction of canal from San Juan River to Laguna Los Portillos, also known as the Harbour Head Lagoon was the first issue. The second one was the dredging and construction in the river San Juan. The combined effect of both these parts will certainly bring in a lot of harm for the neighboring republic of Costa Rica, and hence, Republic of Nicaragua was brought in front of the court. The claim being made was that the construction and dredging work will cause serious harm to the Costa Rican territory and will also damage the wildlife and wetlands in their region. Hence, with such high degree of environmental damage associated to a project, the Costa Rican government must have duly been consulted by the Nicaraguan government to ensure a peaceful and a strategic way to mitigate the effect of such a construction in the area. Notwithstanding here, it was also contended that such a work will also effect the flow of water to the Colorado River which would further damage the Costa Rican Territory.

The case was admitted by the court and was therefore heard multiple times before being decided on the verdict. Along with this application, filed on the 10th of November, the Costa Rican government had also filed for the indication of provisional measures which was aimed at protecting the right to sovereignty, to territorial integrity and to non-interference with its rights over the San Juan River. They demanded a halt on ant of the construction activities going on in the river which was later granted on the 8th of March 2011. The court therefore asked all parties to refrain from maintaining any personnel or activities in the said area.

It was on the 18th of November 2010, Costa Rica filed an application to initiate legal action against Nicaragua for an alleged "incursion into, occupation of, and use of Costa Rican territory by Nicaragua's Army, as well as [alleged] breaches of Nicaragua's obligations to Costa Rica," namely the principle of territorial integrity and the prohibition of the threat or use of force. There were two separate actions.

Costa Rica claimed in its application that Nicaragua had occupied Costa Rican territory in two distinct occasions in connection with the construction of a canal from the San Juan River to Laguna los Portillos (also known as "Harbour Head Lagoon"), as well as dredging on the San Juan River.

The dredging and construction of that canal, according to Costa Rica, would have a significant impact on the flow of water into the Colorado River, as well as create considerable harm to Costa Rican territory, including wetlands and national wildlife protected areas in the vicinity. *Certain Activities Carried Out by Nicaragua in the Border Area* (Costa Rica v. Nicaragua) (hereafter the "Costa Rica v. Nicaragua case") was put in the Court's General List. Costa Rica later filed a Request for Indication of Provisional Measures on November 18, 2010, in order to protect its "right to sovereignty, territorial integrity, and non-interference with its rights over the San Juan River, its lands, and its environmentally protected areas, as well as the integrity and flow of the Colorado River." Costa Rica requested, among other things, the immediate departure of all Nicaraguan forces from the disputed region, the halting of canal construction, and the suspension of Colorado River dredging in its Request.

Later, in the year 2011, on the 22nd of December, the Nicaraguan government instituted a lawsuit against the Costa Rican government for interfering with the sovereignty of the Nicaraguan state and for major environmental damages through the construction alongside the borders being shared with the Nicaraguan territory. They claimed that the construction being carried out has huge environmental impacts and hence much be reconsidered before being granted the permission. It was later contended by the Nicaraguan government that both these cases must be combined together and hence, the *Costa Rica v. Nicaragua* and *Nicaragua v. Costa Rica* were combined with hearings being provided together. This was allowed by the court on the 17th of April 2013. The case was entered in the General List of the Court under the title *Construction of a Road in Costa Rica along the San Juan River* (*Nicaragua v. Costa Rica*) (hereinafter the "Nicaragua v. Costa Rica case"). Nicaragua filed a Counter-Memorial in the *Costa Rica v. Nicaragua* case on August 6, 2012, with four counter-claims.

Nicaragua petitioned the Court to join the proceedings in the *Costa Rica v. Nicaragua* and *Nicaragua v. Costa Rica* cases in a letter dated December 19, 2012, sent on the filing of Nicaragua's Memorial in the *Nicaragua v. Costa Rica* case. The Court ruled on April 18, 2013, that the subject matter of Nicaragua's first counterclaim in the *Costa Rica v. Nicaragua* case (a

claim relating to damage that could result from Costa Rica's construction of the aforementioned road) was identical in substance to Nicaragua's main claim in the Nicaragua v. Costa Rica case and that, as a result of the joinder of the proceedings, there was no need for it to adjudicate on the admissibility of the first counterclaim.

It was also contended by the government of republic of Costa Rica that the Environmental impact assessment was not conducted by the Nicaraguan government before starting the work with respect to dredging the river the and wetlands. One thing that was ultimately clarified was that the Nicaraguan government was directed to not continue any of its activities on the disputed lands or water bodies. They were also directed to fill the trench on the beach north of the eastern Caño. The court found that other than for a cause mentioned in this order, any other personnel shall be removed by the Nicaraguan government with immediate effect.

Another important fact in this case was the transboundary movement of debris and other material as a result of the construction in the Costa Rican territory. The Nicaraguan government claimed that the construction on the side of Costa Rica has been bringing in a lot of environmental concerns for the Costa Rican territory and hence, required immediate rectification.

Issues

- 1. Whether the Costa Rican government will be entitled for any compensation from the Nicaraguan government for the obstruction in the water source, river San Juan and for non-consultation, and hence, violation of the obligation to consult the neighboring country before acting on any such constructions-**

This case was the first in the world to be speaking about cross border environmental damages compensation and hence was a very important case, which was referred by various organizations at various different instances. The court also put forth a relevant method that could be devised to reach to an amicable amount of compensation that could be used in either cases. It was the International Union for Conservation of Nature that pointed out that the case was an affirmation to the fact that the environmental damage included the ecosystem services.

- 2. Whether Nicaragua violated Costa Rica's territorial sovereignty.**

Nicaragua's act was the primary reason for the institution of the case in hand. The fact that their act posed a serious threat for the Costa Rican government gave a reason for the case to come up in the court of law and be held valid in the International court of Justice.

3. Whether the Central American Court of Justice is competent to hear the case in hand.

The competency was one of the major questions in this case. This was brought forward through Article 1 of the Convention of Washington. It was found that it can only be clothed with the character of an arbitral tribunal with the jurisdiction over the controversies or questions arising between the signatory parties inasmuch as it is the chancelleries are able to reach to an amicable solution to the problem. In such a case as we have in hand, the signatories are not able to reach to a conclusion and hence, it is necessary for a body, competent enough to make a stance and decide on behalf of either ones of them. It was also noticed that the Foreign Relations department of Costa Rica had at no time shown the Nicaraguan government any indications, directly or indirectly, a thought that could reveal his government's opposition. In other words, a displeasure in the actions of the Nicaraguan government was not displayed against the conclusion of the Bryan- Chamorro Treaty¹.

These were the reasons that made the complaint in front of the Central American Court of Justice futile and hence not maintainable, and also outside the scope of the same to try and decide. A decision by the same will also be in violation of the Convention of Washington, 1907²; and hence, the Nicaraguan government was certain that the court will uphold the same and will abstain from going against any of the provisions mentioned therein.

Laws Applied

Cañas-Jerez Treaty, Article 6- The Republic of Nicaragua shall have exclusive dominion and the highest sovereignty over the waters of the San Juan River from their issue out of the lake to their discharge into the Atlantic; but the Republic of Costa Rica shall have in those waters

¹ Bryan-Chamorro Treaty, U.S.-Nicaragua, May 6, 1914, 39 Stat. 1701.

² Convention of Washington, U.S.-Great Britain, Jan. 11, 1907, 36 Stat. 2448.

perpetual rights of free navigation from the said mouth of the river up to a point three English miles below Castillo Viejo, for purposes of commerce, whether with Nicaragua or with the interior of Costa Rica, over the San Carlos or Sarapiquí.

Cañas-Jerez Treaty, Article 8- If the contracts for canalization or transit entered into before the Nicaraguan Government had knowledge of this convention should for any cause cease to be in force, Nicaragua agrees not to conclude any others relating to the objects above stated without first hearing the opinion of the Costa Rican Government respecting the disadvantages that may result to the two countries, provided that opinion be given within thirty days after the request therefor shall have been received, in case that [p221] the Nicaraguan Government should indicate that a decision is urgent; and in the event that the enterprise should cause no injury to the natural rights of Costa Rica, that opinion shall be advisory.

Arguments

According to a telegram dated the 26th of April, the Nicaraguan chancellor had transmitted a copy of its reply to the court to dispatch another Costa Rican Chancellery as a replacement to fill the bench. Costa Rica in the past also asked the Central American Court of Justice to proclaim Nicaragua's legal inability to enter into conventions similar to the one signed on August 5, 1914, between the latter Republic and the United States of America, in that reply. It was in the beginning of April 1913, the government learned through the private sources that the legislative assembly of Nicaragua had given an approval for a treaty between them and the government of United States of America for opening an interoceanic canal through the Nicaraguan Territory.

It was argued that His Excellency, the Nicaraguan Minister of Foreign relations, through the note of June 12 replied to the protest of the Costa Rican Minister as he informed him of the fact that the Government of Nicaragua exercised the right of incontestable sovereignty. This was noticed when they entered into the convention with the United States on the 8th of February 1913. The news of acceptance of this treaty was later spread throughout the world through newspapers, one among them was the La-Republica. The Costa Rica as a state also gave a close look to the Bryan Chamorro Treaty by the United States as soon as it came into the congressional records, and moved progressively as they found the notoriously contradicting clauses being mentioned in it. Costa Rica also protested against the ratification of the said convention in the fear of the belief that the said convention may in one way or the other, impair

Costa Rica of some of the rights that it has as a sovereign nation. It therefore was asserted that nothing mentioned in the convention must effect the rights of a state that may affect one in any manner.

One important aspect in this case was the Cañas-Jerez Treaty³, which was entered in between Costa Rica and Nicaragua on 15th of April of 1858. There are a few parts of this treaty that will stand valid for the case in hand. Article 6, and 8 stand important for the case in hand and did make a lot of impact on the decision which was taken by the court in the verdict. The presence of exclusive dominion and the fact that the government accepted not to move forward with the continuance of an action until the same is heard by the court are two of the binding regulations upon the Nicaragua and Costa Rica. Both of them came in through the Cañas-Jerez Treaty⁴.

Judgement

The first decision that was made by the court was that the court will be competent in deciding the case in hand, that is, the complaint brought in by the Government of Costa Rica against the Government of Nicaragua.

It was held by the court that the Government of Nicaragua has violated the provisions mentioned in the Cañas-Jerez Treaty of limits of the 15th of April, 1858, the Cleveland Award of 22nd March 1888 and also by the Central American Treaty of Peace and Amity of the 20th December 1907. The court therefore held in favor of the Costa Rican government and therefore, decreed in favor of the Costa Rican government in the case in hand.

The court also held that the prayer in the complaint, asking that the Bryan-Chamorro Treaty be declared null and void, cannot be upheld in this court. The court therefore, clarified the power it had in taking up the case and bringing out a needful action to compensate the Costa Rican government.⁵

The Court granted Costa Rica US\$120,000 for the impairment or loss of environmental goods and services in the affected area, as well as US\$2,708.39 for wetland restoration measures, based on its estimate of the damage caused to environmental goods and services. In addition to

³ Article 6, Cañas-Jerez Treaty, Costa Rica-Nicaragua, 15 April 1858, 11 Bevens 572

⁴ Article 8, Cañas-Jerez Treaty, Costa Rica-Nicaragua, 15 April 1858, 11 Bevens 572

⁵ General Treaty of Peace and Amity, Article IX, signed by Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, 7 February 1923.

the environmental damages, the Court awarded Costa Rica US\$236,032.16 in total compensation for costs and expenses incurred as a direct result of Nicaragua's illegal activities in the northern part of Isla Portillos, as well as US\$20,150.04 in prejudgment interest on those costs and expenses.

The Court determined that the entire amount of compensation due to Costa Rica was US\$378,890.59, which Nicaragua must pay by April 2, 2018. Nicaragua informed the Court's Registry in a letter dated March 22, 2018 that it has remitted the complete sum of compensation awarded to it to Costa Rica on March 8, 2018.

Critical Analysis

The case was the first environmental compensation decision and therefore, had a huge impact on the laws of environment worldwide. The significance of the case lies in the manner in which environmental laws were blended with the international laws. A blend of laws in both these regimes helped stipulate the relationship that the nations have with environment and the sensitivity of the actions being taken, that violate another nation's basic rights and sovereignty. The fact that an environmental breach could strip a nation off of its sovereignty was unique to this case and was therefore necessarily redressed by the court in this case. As a matter of fact, a case which was first initiated in 1913 in the Central American Court of Justice made it all the way to the international court of justice due to the environmental causes and the effect it has been having on the nations involved.

The 3km area of wetlands in the northern part of Isla Portillas was the area of dispute in the said case. The Court then developed its own approach of valuing environmental harm "from the perspective of the ecosystem as a whole," which is an overall assessment of the impairment or loss of environmental products or services rather than a separate valuation for each category. The destruction of trees, which the Court considered to be the most damaging to the environment, wetlands, and the area's ability for natural regeneration, was included in the Court's "overall evaluation" methodology. The Court did emphasize, however, that assigning a single period of recovery time for the many environmental goods and services was not practicable. However, one thing that was unrealistic in this case was the fact that the total amount adjudicated to Costa Rica of US\$378,890.59 was around 5% of Costa Rica's original claim.

Bibliography

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