



American Model United Nations

International Court of Justice

IN THE INTERNATIONAL COURT OF JUSTICE

COSTA RICA,

APPLICANT

V.

NICARAGUA,

RESPONDENT

MEMORIAL OF THE REPUBLIC OF COSTA RICA

COMES NOW the Republic of Costa Rica and for their Memorial to the Court states the following:

STATEMENT OF JURISDICTION

The Court has jurisdiction over the present dispute in accordance with the provisions of Article 36, paragraph 2, of its Statute, by virtue of the operation of the following:

- I. The declaration of acceptance made respectively by the Republic of Costa Rica on February 20, 1973, and by the Republic of Nicaragua on September 24, 1929.
- II. The Tovar-Caldera agreement, signed by The Republic of Costa Rica and The Republic of Nicaragua on September 26, 2002. Under the Tovar-Caldera agreement the Republic of Costa Rica agreed to maintain a three year standstill period with the Republic of Nicaragua, The Republic of Costa Rica also agreed during the same period to not initiate any action “before the Court nor before any other authority on any matter or protest mentioned in treaties or agreements currently in force between both countries.” During the standstill period the dispute over the Republic of Costa Rica’s navigational rights on the San Juan

River remained unsolved.

- III. According to the provisions of Article 36, paragraph 1, of its statute, by virtue of the American Treaty of Pacific Settlement of Disputes, Article XXXI, Bogota, April 30, 1948, both parties have expressed their commitment to the Pact of Bogota through The pact of Amity Article III, February 21, 1949.

STATEMENT OF LAW

The Republic of Costa Rica claims as a matter of law the following:

- I. Article VI of the Treaty of Limits signed in 1858 between The Republic of Costa Rica and The Republic of Nicaragua, gave the Republic of Costa Rica certain important rights to the navigation of the San Juan River. These include the perpetual right of free navigation for commercial purposes of Costa Rican boats and their passengers, and the right for boats of the Republic of Costa Rica to touch at any part of the banks of the river where the navigation is common, without paying any dues except what is established by agreement between the two governments.
- II. These rights were confirmed and interpreted with binding effect by the Cleveland Award March 28, 1888. The Republic of Costa Rica has the right to navigate the river in accordance with the second article of the Cleveland Award. The Republic of Costa Rica also has the right to navigate the San Juan River for supply purposes, and exchange of personnel of the border posts along the right bank of the river with their official equipment, including necessary arms and ammunition, and for the purposes of protection, as established in the second article.

- III. The Pact of Amity between the Governments of the Republic of Costa Rica and The Republic of Nicaragua calls for the faithful observance of the treaties, conventions, and other inter-American instruments intended to ensure peace. It also calls for the governments to immediately abstain from any hostile act towards each other, and to deal with conflict according to the Convention on the Duties and Rights of States in the Event of Civil Strife, especially with respect to the control and respect of frontiers.
- IV. International law recognizes that the Republic of Costa Rica has the right not to have navigation on the river obstructed or impaired at any point where they are entitled to navigate.
- V. The judgment of the Central American Court of Justice of 1916 declared that the Republic of Nicaragua had violated, to the injury of the Republic of Costa Rica, rights granted by the Treaty of Limits, the Cleveland Award, and the Pact of Amity.

STATEMENT OF FACT

The Government of Nicaragua has imposed a number of restrictions on the navigation of Costa Rican boats and their passengers on the San Juan River. These restrictions are continuous and include:

- I. An imposition of charges on Costa Rican boats and their passengers.
- II. Obligations to stop at each Nicaraguan military post on the Nicaraguan bank of the River to report the names of the passengers and to obtain authorization to navigate.
- III. The probation imposed by Nicaraguan authorities on the Republic of Costa Rica to navigate the river in accordance with Article II of the Cleveland Award.

IV. Imposition of timetables for navigation on the river.

V. Limitations to free moorage along the banks of the river.

VI. Other limitations to free and expeditious transit on the river.

ARUGMENTS

I. Breaches of Contract

The Republic of Costa Rica has a common legal right to utilize the San Juan River in accordance with the existing treaties. Each Republic must be free to use the resource to advance its economy or welfare when no substantial alteration of the river occurs, and harm is not inflicted on any co-riparian states as outlined in the previously stated treaties. The Republic of Nicaragua has caused substantial injury to the Republic of Costa Rica's wellbeing by breaching treaties in force and previous Court rulings in their denial of the Republic of Costa Rica's navigational rights.

II. Previous rulings.

The judgment of the Central American Court of Justice in 1916 declared that the Republic of Nicaragua had violated, to the injury of the Republic of Costa Rica, rights granted by the Treaty of Limits, the Cleveland Award, and the Pact of Amity. In the 1936 case brought by the Netherlands regarding the diversion of the water from the Meuse River, the Court ruled in favor of the interpretation and application of existing relevant treaties. The Netherlands claimed a legal superiority of their rights over the Government of Belgium in their control over the Meuse River. The Court rejected the Netherlands's claims as the treaty lacked precise terms to permit this control. In concurrence with this opinion, Judge Hudson stated that the Court recognizes equity as a part of international river law. In the 1929 case relating to the territorial jurisdiction of the International Commission of the River Oder, the Court upheld the right of upstream States to free access to the sea, through the international river law concept that the community interest of

riparian States leads to common legal rights. In the advisory opinion of the Court over the River Danube, the treaties in force and the international principle of freedom of navigation were again upheld. In all of these cases international treaties were upheld to maintain peace, prohibiting attempts to unlawfully control water sources. The Republic of Costa Rica has a common legal right to utilize the San Juan River in accordance with the existing treaties. Each nation must be free to use the resource to advance its economy or welfare when no substantial alteration of the river occurs, and harm is not inflicted on any co-riparian states as outlined in the previously stated treaties. The Republic of Nicaragua has caused substantial injury to the Republic of Costa Rica's wellbeing by breaching treaties in force and previous Court rulings in their denial of the Republic of Costa Rica's navigational rights.

III. Previous Attempts at a Diplomatic Solution

The Republic of Costa Rica has consistently proposed to the Republic of Nicaragua diplomatic solutions and suggestions for arriving at peaceful resolutions including mediation through the Organization of American States as well as international arbitration. The Government of Nicaragua has rejected all of those alternatives. The Republic of Costa Rica hopes to prevent further conflict with The Republic of Nicaragua through the use of the International Court of Justice.

SUMMARY AND PRAYER FOR RELIEF

The Republic of Nicaragua has continually violated treaties in force, previous Court rulings, and general international law principles by denying the Republic of Costa Rica navigational rights of the San Juan River and threatening economic sanctions. The Republic of Nicaragua maintains sovereignty, as the Republic of Costa Rica is unable to navigate the San Juan River with war vessels or direct water flow without the consent of the Republic of Nicaragua, but is entitled to full use and enjoyment as laid out by existing treaties. The Republic

of Costa Rica prays that the Court will order a cessation of the restrictions placed upon the navigation of the San Juan River by the Republic of Nicaragua. The Republic of Costa Rica also seeks reparations for unlawful economic sanctions or punitive sanctions imposed by the Republic of Nicaragua, and damages incurred as a direct result of the denial of the Republic of Costa Rica's navigational rights.