



INTERNATIONAL COURT OF JUSTICE

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Press Release

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Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) — Question of compensation

The Court fixes the amount of compensation due from Nicaragua to Costa Rica

THE HAGUE, 2 February 2018. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today delivered its Judgment in the case concerning Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) (compensation), in which it fixes the amount for the compensation due from Nicaragua to Costa Rica for material damage caused by Nicaragua's unlawful activities on Costa Rican territory.

I. INTRODUCTORY OBSERVATIONS

The Court observes at the outset that, pursuant to the findings set out in its Judgment of 16 December 2015, and in view of the lack of agreement between the Parties and of the request made by Costa Rica, it falls to the Court to determine the amount of compensation to be awarded to Costa Rica for material damage caused by Nicaragua's unlawful activities on Costa Rican territory. Costa Rica claims compensation for two categories of damage: (i) quantifiable environmental damage caused by Nicaragua's excavation of two channels (caños) on its territory in 2010 and 2013, and (ii) costs and expenses incurred as a result of Nicaragua's unlawful activities.

II. LEGAL PRINCIPLES APPLICABLE TO THE COMPENSATION DUE TO COSTA RICA

Before turning to the consideration of the issue of compensation due in the present case, the Court states some of the principles relevant to its determination. The Court observes that the obligation to make full reparation for the damage caused by a wrongful act has been recognized by the Court in a number of cases. It has also held that compensation may be an appropriate form of reparation, particularly in those cases where restitution is materially impossible or unduly burdensome.

III. COMPENSATION FOR ENVIRONMENTAL DAMAGE

1. The compensability of environmental damage

The Court has not previously adjudicated a claim for compensation for environmental damage. However, it is consistent with the principles of international law governing the consequences of internationally wrongful acts, including the principle of full reparation, to hold that compensation is due for damage caused to the environment. Such compensation may include indemnification for the impairment or loss of environmental goods and services and payment for the restoration of the damaged environment. Payment for restoration accounts for the fact that natural recovery may not always suffice to return an environment to the state in which it was before the damage occurred. In such instances, active restoration measures may be required in order to return the environment to its prior condition, in so far as that is possible.

2. Methodology for the valuation of environmental damage

The Court gives an overview of the methodology advanced by each Party for the valuation of environmental damage in the present case. In this regard, the methodology that Costa Rica considers most appropriate is the “ecosystem services approach”, according to which the value of an environment is comprised of goods and services that may or may not be traded on the market. For its part, Nicaragua advances a “replacement costs approach”. In conformity with this approach, Costa Rica is entitled to compensation of costs to replace lost environmental services. The Court notes that it will not choose between the two methods suggested by the Parties, adding that international law does not prescribe any specific method of valuation. Wherever certain elements of either method offer a reasonable basis for valuation of the damage caused to the protected wetland, the Court will nonetheless take them into account.

3. Determination of the extent of the damage caused to the environment and of the amount of compensation due

Before assigning a monetary value to the environmental damage caused by Nicaragua’s wrongful activities, the Court announces that it will determine the existence and extent of such damage, and whether there exists a direct and certain causal link between that damage and Nicaragua’s activities. It will then establish the compensation due.

The Court notes that Costa Rica claims compensation (i) for the impairment or loss of environmental goods and services as a result of Nicaragua’s activities, and (ii) for restoration costs, comprising the cost of replacement soil in the two caños and costs for the restoration of the wetland.

Concerning environmental goods and services that could have been impaired or lost as a result of Nicaragua’s wrongful actions, Costa Rica claims compensation in respect of six categories of them: standing timber; other raw materials (fibre and energy); gas regulation and air quality; natural hazards mitigation; soil formation and erosion control; and biodiversity, in terms of habitat and nursery.

The Court is of the view that Costa Rica has not demonstrated that the affected area, due to a change in its ecological character, has lost its ability to mitigate natural hazards or that such services have been impaired. As regards soil formation and erosion control, there is some evidence that the soil which was removed by Nicaragua was of a higher quality than that which has now refilled the two caños. However, Costa Rica has not established that this difference has affected erosion control and the evidence before the Court regarding the quality of the two types of soil is not sufficient to enable the Court to determine any loss which Costa Rica might have suffered.

Accordingly, Costa Rica's claim for the cost of replacing the soil removed by Nicaragua cannot be accepted.

Concerning the four other categories of environmental goods and services for which Costa Rica claims compensation (namely, trees, other raw materials, gas regulation and air quality services, and biodiversity), the evidence before the Court indicates that, in excavating the two caños, Nicaragua removed close to 300 trees and cleared 6.19 hectares of vegetation. These activities have significantly affected the ability of the two impacted sites to provide the above-mentioned environmental goods and services. It is therefore the view of the Court that impairment or loss of these four categories of environmental goods and services has occurred and is a direct consequence of Nicaragua's activities.

In light of several factors, such as the specific characteristics of the area affected as an internationally protected wetland and the capacity of the damaged area for natural regeneration, the Court considers that it is appropriate to adopt an overall assessment of the value of the impairment or loss of the above-mentioned four categories of environmental goods and services prior to recovery.

The Court also recalls that, in addition to the two valuations methods considered above, Nicaragua also provides an alternative valuation of damage. This valuation adopts Costa Rica's ecosystems services approach but makes significant adjustments to it. Nicaragua refers to this valuation as a "corrected analysis". The Court considers that Nicaragua's "corrected analysis" underestimates the value to be assigned to certain categories of goods and services. The Court nevertheless retains some of the elements of the "corrected analysis" but recalculates the total amount of compensation contained therein.

For the above reasons, the Court awards to Costa Rica the sum of US\$120,000 for the impairment or loss of the environmental goods and services of the impacted area and the sum of US\$2,708.39 for restoration measures in respect of the wetland.

IV. COMPENSATION CLAIMED BY COSTA RICA FOR COSTS AND EXPENSES

In addition to its claims of compensation for environmental damage, Costa Rica requests that the Court award it compensation for costs and expenses incurred as a result of Nicaragua's unlawful activities.

1. Costs and expenses incurred in relation to Nicaragua's unlawful activities in the northern part of Isla Portillos between October 2010 and April 2011

The Court turns to the assessment of the compensation due for costs and expenses incurred by Costa Rica as a consequence of Nicaragua's presence and unlawful activities in the northern part of Isla Portillos between October 2010 and April 2011. Upon examination of all the relevant evidence and documents, the Court considers that Costa Rica, with reference to two heads of expenses (namely (i) fuel and maintenance services for police aircraft used to reach and overfly the northern part of Isla Portillos, and (ii) the cost of obtaining a report from UNITAR/UNOSAT dated 4 January 2011), has provided adequate evidence demonstrating that some of the costs incurred have a sufficiently direct and certain causal nexus with the internationally wrongful conduct of Nicaragua.

As to the question of quantification in relation to the first head of expenses, the Court notes that Costa Rica has failed to demonstrate that all of the expenses were incurred as a result of the specific missions of the aircraft over the northern part of Isla Portillos. It therefore considers it

necessary to recalculate the compensable expenses. In relation to the second head, the Court finds that Costa Rica is entitled to full compensation for the costs of obtaining the report from UNITAR/UNOSAT.

The Court then examines those heads of expenses with reference to which it considers that Costa Rica has failed to meet its burden of proof, i.e. (i) salaries of Costa Rican personnel, (ii) ancillary expenses relating to their functions, and (iii) the purchase of satellite images. In relation to the first head of expenses, the Court considers that salaries of government officials dealing with a situation resulting from an internationally wrongful act are compensable only if they are temporary and extraordinary in nature. The Court finds that this, however, has not been established. In relation to ancillary expenses, the Court considers that no nexus has been established between these expenses and Costa Rica's monitoring of the unlawful activities of Nicaragua. Regarding the purchase of two satellite images, which Costa Rica claims were necessary in order to verify Nicaragua's unlawful activities, the Court notes that the invoices adduced did not provide any indication as to the area covered by the images and therefore finds that this claim cannot be upheld.

2. Costs and expenses incurred in monitoring the northern part of Isla Portillos following the withdrawal of Nicaragua's military personnel and in implementing the Court's 2011 and 2013 Orders on provisional measures

With regard to compensation for monitoring activities claimed to have been carried out in implementation of the Court's 2011 and 2013 Orders, the Court considers that Costa Rica has, with reference to three heads of expenses, provided adequate evidence demonstrating that some of these expenses have a sufficiently direct and certain causal nexus with the internationally wrongful conduct of Nicaragua identified by the Court in its 2015 Judgment.

First, the Court finds partially compensable Costa Rica's claims for expenses incurred as a result of a two-day inspection of the northern part of Isla Portillos on 5 and 6 April 2011 with the Ramsar Secretariat. In this context, Costa Rica claims costs (i) for fuel and maintenance services on the police aircraft used, and (ii) for the salaries of air surveillance service personnel. Regarding the aircraft-related costs, the Court finds compensable those expenses which are supported by appropriate documentation. The Court however does not uphold Costa Rica's claim for salaries of air surveillance service personnel, for the reasons given above. Secondly, on the basis of criteria as to the geographical area covered by each image, the Court finds partially compensable Costa Rica's claim for the purchase, in the period running from September 2011 to October 2015, of satellite images to monitor and verify the impact of Nicaragua's unlawful activities. Thirdly, the Court finds partially compensable Costa Rica's claim for the cost of obtaining a report from UNITAR/UNOSAT, dated 8 November 2011. The Court considers that the amount of compensation should be limited to one third of the total cost of the report to reflect the fact that only one of the three sections is of relevance.

Other heads of expenses claimed by Costa Rica, such as expenses relating to two new police stations, to a biological station at Laguna Los Portillos, as well as ancillary costs, are rejected in their totality on the basis that the Court finds no sufficiently direct causal link between these expenses and the unlawful activities of Nicaragua. For the reasons already given, the Court does not uphold the claim for salaries of personnel involved in monitoring activities.

3. Costs and expenses incurred in preventing irreparable prejudice to the environment (the construction of a dyke and assessment of its effectiveness)

According to Costa Rica, it incurred a third category of expenses when implementing the Court's 2013 Order on provisional measures, in relation to works carried out to prevent irreparable prejudice to the environment. Costa Rica states that, after consultation with the Secretariat of the Ramsar Convention, it constructed a dyke across the 2013 caño from 31 March to 6 April 2015. In this regard, Costa Rica advances three heads of expenses: (i) overflight costs prior to the construction of the dyke; (ii) costs connected with the actual construction of the dyke; and (iii) overflight costs subsequent to the construction of the dyke.

The Court is of the view that the first head of damage is not compensable because Costa Rica has not proven that the 2014 helicopter mission was directly connected with the intended construction of the dyke. With regard to the costs incurred for the construction of the dyke, the Court is satisfied that the evidence adduced fully supports Costa Rica's claim with respect to the hiring of a helicopter for the purpose of those works. With reference to the purchase of construction materials, the Court considers that this cost is, in principle, fully compensable, but finds it necessary to make an adjustment in view of some mistakenly calculated items in the breakdown of invoices produced by Costa Rica. The Court finds fully compensable the monitoring overflights made once the dyke was completed.

4. Conclusion

The Court concludes that Costa Rica is entitled to total compensation in the amount of US\$236,032.16 for costs and expenses incurred as a direct consequence of Nicaragua's unlawful activities in the northern part of Isla Portillos.

V. COSTA RICA'S CLAIM FOR PRE-JUDGMENT AND POST-JUDGMENT INTEREST

In addition to its claims of compensation for damage suffered, Costa Rica requests the Court to award both pre-judgment and post-judgment interest.

The Court considers that Costa Rica is not entitled to pre-judgment interest on the amount of compensation for environmental damage, because, in determining the overall valuation of environmental damage, the Court has taken full account of the impairment or loss of environmental goods and services in the period prior to recovery. However, the Court does award Costa Rica pre-judgment interest on the costs and expenses found compensable, accruing, as requested by Costa Rica, from 16 December 2015, the date on which the Judgment on the merits was delivered, until 2 February 2018, the date of delivery of the present Judgment. The annual interest rate is fixed at 4 per cent. The amount of interest is US\$20,150.04.

With regard to Costa Rica's claim for post-judgment interest, although it has every reason to expect timely payment by Nicaragua, the Court decides that, in the event of any delay in payment, post-judgment interest shall accrue on the total amount of compensation. This interest shall be paid at an annual rate of 6 per cent.

VI. TOTAL SUM AWARDED

The total amount of compensation awarded to Costa Rica is US\$378,890.59 to be paid by Nicaragua by 2 April 2018. This amount includes the principal sum of US\$358,740.55 and pre-judgment interest on the compensable costs and expenses in the amount of US\$20,150.04. Should payment be delayed, post-judgment interest on the total amount will accrue as from 3 April 2018.

VII. OPERATIVE CLAUSE

In its Judgment, which is final and without appeal, the Court

(1) Fixes the following amounts for the compensation due from the Republic of Nicaragua to the Republic of Costa Rica for environmental damage caused by the Republic of Nicaragua's unlawful activities on Costa Rican territory:

(a) By fifteen votes to one,

US\$120,000 for the impairment or loss of environmental goods and services;

(b) By fifteen votes to one,

US\$2,708.39 for the restoration costs claimed by the Republic of Costa Rica in respect of the internationally protected wetland;

(2) Unanimously,

Fixes the amount of compensation due from the Republic of Nicaragua to the Republic of Costa Rica for costs and expenses incurred by Costa Rica as a direct consequence of the Republic of Nicaragua's unlawful activities on Costa Rican territory at US\$236,032.16;

(3) Unanimously,

Decides that, for the period from 16 December 2015 to 2 February 2018, the Republic of Nicaragua shall pay interest at an annual rate of 4 per cent on the amount of compensation due to the Republic of Costa Rica under point 2 above, in the sum of US\$20,150.04;

(4) Unanimously,

Decides that the total amount due under points 1, 2 and 3 above shall be paid by 2 April 2018 and that, in case it has not been paid by that date, interest on the total amount due from the Republic of Nicaragua to the Republic of Costa Rica will accrue as from 3 April 2018 at an annual rate of 6 per cent.

Composition of the Court

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

Judges CANÇADO TRINDADE, DONOGHUE and BHANDARI append separate opinions to the Judgment of the Court; Judge GEVORGIAN appends a declaration to the Judgment of the Court; Judge ad hoc GUILLAUME appends a declaration to the Judgment of the Court; Judge ad hoc DUGARD appends a dissenting opinion to the Judgment of the Court.

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A summary of the Judgment appears in the document “Summary No. 2018/1”. This press release, the summary of the Judgment and its full text can be found on the Court’s website (www.icj-cij.org), under the heading “Cases”.

Note: The Court’s press releases do not constitute official documents.

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 Court (ICC, the only permanent international criminal court, which was established by treaty and does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an international judicial body with an independent legal personality, established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), the Mechanism for International Criminal Tribunals (MICT, mandated to take over residual functions from the International Criminal Tribunal for the former Yugoslavia and from the International Criminal Tribunal for Rwanda), the Kosovo Specialist Chambers and Specialist Prosecutor’s Office (an ad hoc judicial institution which has its seat in The Hague), 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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