

INTERNATIONAL COURT OF JUSTICE

APPLICATION

INSTITUTING PROCEEDINGS

filed in the Registry of the Court

on 16 January 2017

DISPUTE CONCERNING THE PRECISE DEFINITION OF THE
BOUNDARY IN THE AREA OF LOS PORTILLOS/HARBOR
HEAD LAGOON AND THE ESTABLISHMENT OF A NEW
MILITARY CAMP BY NICARAGUA

(COSTA RICA v. NICARAGUA)

COUR INTERNATIONALE DE JUSTICE

REQUÊTE

INTRODUCTIVE D'INSTANCE

enregistrée au Greffe de la Cour

le 16 janvier 2017

**DIFFÉREND RELATIF À LA DEFINITION PRECISE DE LA
FRONTIERE DANS LA ZONE DE LA LAGUNE LOS
PORTILLOS / HARBOR HEAD ET À L'ETABLISSEMENT D'UN
NOUVEAU CAMPEMENT MILITAIRE PAR LE NICARAGUA**

(COSTA RICA c. NICARAGUA)

APPLICATION INSTITUTING PROCEEDINGS OF THE REPUBLIC OF COSTA RICA

**To the Registrar
International Court of Justice**

1. The undersigned, being duly authorized by the Republic of Costa Rica, have the honour to submit to the International Court of Justice this Application instituting proceedings on behalf of the Republic of Costa Rica against the Republic of Nicaragua in the following dispute.

I. Introduction

2. On behalf of the Government of the Republic of Costa Rica and pursuant to Article 36, paragraphs 1 and 2, and Article 40 of the Statute of the Court and Article 38 of the Rules of Court, I have the honour to submit for decision of the Court the present Application instituting proceedings against the Government of the Republic of Nicaragua.
3. The dispute between Costa Rica and Nicaragua concerns the precise location of the land boundary separating the Los Portillos/Harbor Head Lagoon sandbar from Isla Portillos. It also concerns the illegal establishment of a military camp by Nicaragua on the beach of Isla Portillos, a territory belonging to Costa Rica, as confirmed by the Court in its Judgment of 16 December 2015 in the case concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* (hereinafter “*Certain Activities case*”).¹
4. The present application does not include the question of sovereignty over the beach of the northern part of Isla Portillos between Los Portillos/Harbor Head Lagoon and the mouth of the San Juan River. This question was settled by the Court in favour of Costa Rica and the decision of the Court has the force of *res judicata*. The only question that remains disputed and open for a decision is the precise location of the

¹ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, joined with proceedings in the case concerning *Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, 16 December 2015, paras. 69-70 and 229(1).

land boundary separating the Los Portillos/Harbor Head Lagoon sandbar from Isla Portillos.

5. At the same time, Costa Rica also requests that the Court join the proceedings in the present case with the proceedings in the case concerning *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* (hereinafter “*Maritime Delimitation case*”), pursuant to Article 47 of the Rules of Court.

II. The Court’s jurisdiction

6. 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 declarations of acceptance made by Costa Rica, dated 20 February 1973, and by Nicaragua, dated 24 September 1929.
7. The Court also has jurisdiction over the present dispute in accordance with the provisions of Article 36, paragraph 1, of its Statute, by virtue of the operation of the American Treaty on Pacific Settlement of Disputes, Bogotá, 30 April 1948, Article XXXI (the *Pact of Bogotá*).² The parties have expressed their commitment to the Pact of Bogotá through the Pact of Amity, Washington, 21 February 1949, Article III.³

III. The facts of the dispute

8. In November 2010, Nicaragua invaded and occupied Costa Rican territory adjacent to the Caribbean Sea, in the northern area of Isla Portillos. Nicaragua subsequently claimed sovereignty over that area, which had previously been undisputed Costa Rican territory. The Court rejected Nicaragua’s claim of sovereignty over that area in its Judgment of 16 December 2015 in the *Certain Activities* case. The Court confirmed that Costa Rica has sovereignty over the “*disputed territory*”.⁴ The “*disputed territory*” was defined by the Court in its Order of 8 March 2011 on provisional measures as “*the northern part of Isla Portillos, that is to say, the area of*

² 30 *United Nations Treaty Series* 55. Both Costa Rica and Nicaragua are parties to the Pact of Bogotá.

³ 1465 *United Nations Treaty Series* 221.

⁴ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, 16 December 2015, paras. 69-70, and 229(1).

wetland of some 3 square kilometres between the right bank of the disputed caño, the right bank of the San Juan River up to its mouth at the Caribbean Sea and the Harbor Head Lagoon”.⁵

9. During that proceeding, Nicaragua established a military camp on the beach of Isla Portillos. Nicaragua’s conduct in doing so, as well as its construction of two new artificial caños on the disputed territory, led Costa Rica to seek and obtain a second Order on provisional measures, dated 22 November 2013. In that Order, the Court declared that the beach formed part of the “*disputed territory*” and ordered Nicaragua to remove the camp.⁶ In its Judgment on the merits of 16 December 2015, the Court recalled that the beach where the Nicaraguan encampment was established was situated in the “*disputed territory*”.⁷ The relevant paragraphs of the Court’s Judgment of 16 December 2015 provide as follows:

“69. Since it is uncontested that Nicaragua conducted certain activities in the disputed territory, it is necessary, in order to establish whether there was a breach of Costa Rica’s territorial sovereignty, to determine which State has sovereignty over that territory. The ‘disputed territory’ was defined by the Court in its Order of 8 March 2011 on provisional measures as ‘the northern part of Isla Portillos, that is to say, the area of wetland of some 3 square kilometres between the right bank of the disputed caño, the right bank of the San Juan River up to its mouth at the Caribbean Sea and the Harbor Head Lagoon’ (I.C.J. Reports 2011(I), p. 19, para. 55). The caño referred to is the one which was dredged by Nicaragua in 2010. Nicaragua did not contest this definition of the ‘disputed territory’, while Costa Rica expressly endorsed it in its final submissions (para. 2 (a)). The Court will maintain the definition of ‘disputed territory’ given in the 2011 Order. It recalls that its Order of 22 November 2013 indicating provisional measures specified that a Nicaraguan military encampment ‘located on the beach and close to the line of vegetation’ near one of the caños dredged in 2013 was ‘situated in the disputed territory as defined by the Court in its Order of 8 March 2011’ (I.C.J. Reports 2013, p. 365, para. 46).

⁵ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Request for the Indication of Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011 (I), p. 19, para. 55.

⁶ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Provisional Measures, Order of 22 November 2013, I.C.J. Reports 2013, p. 365, para. 46.

⁷ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, 16 December 2015, para. 69.

*70. The above definition of the ‘disputed territory’ does not specifically refer to the stretch of coast abutting the Caribbean Sea which lies between the Harbor Head Lagoon, which lagoon both Parties agree is Nicaraguan, and the mouth of the San Juan River. In their oral arguments the Parties expressed different views on this issue. However, they did not address the question of the precise location of the mouth of the river nor did they provide detailed information concerning the coast. Neither Party requested the Court to define the boundary more precisely with regard to this coast. Accordingly, the Court will refrain from doing so.’*⁸

10. Sometime after the Order of the Court of 22 November 2013, Nicaragua placed a military encampment on the sandbar separating Los Portillos/Harbor Head Lagoon from the Caribbean Sea. Remarkably, Nicaragua has recently relocated this military camp to the beach of Isla Portillos, which is Costa Rican territory. Image 1 opposite shows:

- a. the location of the military camp established sometime in August/September 2013 on the beach of Isla Portillos, the removal of which was ordered by the Court in its Order of 22 November 2013 (shown as “A” in the image);⁹
- b. the location of the military camp established by Nicaragua sometime after the Order of the Court of 22 November 2013, on the sandbar separating Los Portillos/Harbor Head Lagoon from the Caribbean Sea (shown as “B” in the image); and
- c. the new current location of the Nicaraguan military camp on Costa Rica’s beach of Isla Portillos (shown as “C” in the image).

11. Image 2 opposite is a close-up of Image 1 showing locations “B” and “C” in closer detail.

⁸ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, 16 December 2015, para. 70.

⁹ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*; *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Provisional Measures, Order of 22 November 2013, I.C.J. Reports 2013, p. 369, para. 59(1)(C).

Image 1



Satellite Image, 3 October 2016 (reproduced as **Attachment 5**)

Image 2



Close-up of Satellite Image, 3 October 2016 (reproduced as **Attachment 6**)

12. Nicaragua does not deny these facts. On 14 November 2016, Costa Rica wrote to Nicaragua to protest the establishment of this camp on Costa Rican territory.¹⁰ In a response of 17 November 2016, Nicaragua not only refused to remove its camp, but it also made a new claim of sovereignty over “*the entire stretch of coast abutting the Caribbean Sea between Harbor Head and the river’s mouth*”.¹¹ That claim is radically inconsistent with the Court’s Judgment of 16 December 2015, where it was declared - and is now a matter of *res judicata* - that the “*disputed territory*” (which includes the beach between Harbor Head Lagoon and the mouth of the San Juan River) is Costa Rican territory.
13. In its response of 17 November 2016, Nicaragua also asserted that the questions raised by the Costa Rican note are not part of the *Maritime Delimitation* case.¹²
14. On 24 November 2016, Hurricane Otto seriously affected the area of Isla Portillos and damaged Costa Rica’s police and environmental installations in that area.¹³ Costa Rica understands that Nicaragua removed the military camp before Hurricane Otto landed.
15. However, following Hurricane Otto, Nicaragua re-established, and continues to maintain, a military camp on the beach of Isla Portillos, which is located some 100 meters into Costa Rican territory.
16. On 30 November 2016, Costa Rica wrote to Nicaragua, expressing its regret that Nicaragua had made a new claim to Costa Rican sovereign territory, and asking it to

¹⁰ Letter from Costa Rica to Nicaragua of 14 November 2016 (reference DM-AM-584-16), **Attachment 1**.

¹¹ Letter from Nicaragua to Costa Rica of 17 November 2016 (reference MRE/DMC/250/11/16), **Attachment 2**.

¹² Letter from Nicaragua to Costa Rica of 17 November 2016 (reference MRE/DMC/250/11/16), **Attachment 2**.

¹³ Letter from Costa Rica to the Court of 28 November 2016 (reference ECRPB-132-16), **Attachment 3**.

reconsider its position. Costa Rica reiterated its request for Nicaragua to remove its military camp from Costa Rican territory.¹⁴ Nicaragua has not responded.

17. The re-established military camp was observable to those participating in the site visit by the experts appointed by the Court in the *Maritime Delimitation* case on 5 to 9 December 2016.
18. Nicaragua's establishment and maintenance of the military camp on the beach of Isla Portillos constitutes a further violation of Costa Rica's sovereignty and territorial integrity, and a further violation of the Court's Judgment of 16 December 2015. Nicaragua has not withdrawn its claim of sovereignty made in its letter of 17 November 2016 over "*the entire stretch of coast abutting the Caribbean Sea between Harbor Head [Lagoon] and the [San Juan] river's mouth*".
19. Given the factual and legal positions adopted by Nicaragua, the futility of further negotiations is apparent.

IV. The grounds upon which Costa Rica bases its claim

20. The 1858 Treaty of Limits, the Cleveland Award, and the two Alexander Awards establish the course of the land boundary between Costa Rica and Nicaragua. In its Judgment of 16 December 2015 in the *Certain Activities* case, the Court described the land boundary between the two States as established by these instruments as follows:

"59. ... *The 1858 Treaty fixed the course of the boundary between Costa Rica and Nicaragua from the Pacific Ocean and the Caribbean Sea. ... According to Article II of the Treaty ... part of the boundary between the two States runs along the right (Costa Rican) bank of the San Juan River from a point three English miles below Castillo Viejo, a small town in Nicaragua, to 'the end of Punta Castilla, at the mouth of the San Juan' on the Caribbean coast. ...*

60. ... *The Cleveland Award of 1888 confirmed, in its paragraph 1, the validity of the 1858 Treaty and found, in its paragraph 3 (1), that the*

¹⁴ Letter from Costa Rica to Nicaragua of 30 November 2016 (reference DM-AM-628-16), **Attachment 4**.

boundary line between the two States on the Atlantic side 'begins at the extremity of Punta de Castilla at the mouth of the San Juan de Nicaragua River, as they both existed on the 15th day of April 1858'. ...

73. ... *In [General Alexander's] first Award he stated that the boundary line:*

'must follow the ... branch ... called the Lower San Juan, through its harbor and into the sea.

The natural terminus of that line is the right-hand headland of the harbor mouth' (RIAA, Vol. XXVIII, p. 217.) ...

He then defined the initial part of the boundary starting from the Caribbean Sea in the following terms:

'The exact spot which was the extremity of the headland of Punta de Castillo [on] April 15, 1858, has long been swept over by the Caribbean Sea, and there is too little concurrence in the shore outline of the old maps to permit any certainty of statement of distance or exact direction to it from the present headland. It was somewhere to the northeastward, and probably between 600 and 1,600 feet distant, but it can not now be certainly located. Under these circumstances it best fulfills the demands of the treaty and of President Cleveland's award to adopt what it practically the headland of to-day, or the northwestern extremity of what seems to be the solid land, on the east side of Harbor Head Lagoon.

I have accordingly made personal inspection of this ground, and declare that initial line of the boundary to run as follows, to wit:

Its direction shall be due northeast and southwest, across the bank of sand, from the Caribbean Sea into the waters of Harbor Head Lagoon. It shall pass, at its nearest point, 300 feet on the northwest side from the small hut standing in that vicinity. On reaching the waters of

Harbor Head Lagoon the boundary line shall turn to the left, or southeastward, and shall follow the water's edge around the harbor until it reaches the river proper by the first channel met. Up this channel, and up the river proper, the line shall continue to ascend as directed in the treaty.' (Ibid., p. 220.) ...

74. *The second Alexander Award envisaged the possibility that the banks of the San Juan River would 'not gradually expand or contract but that there [would] be wholesale changes in its channels'. The Arbitrator observed that:*

'Today's boundary line must necessarily be affected in future by all these gradual or sudden changes. But the impact in each case can only be determined by the circumstances of the case itself, on a case-by-case basis in accordance with such principles of international law as may be applicable.

The proposed measurement and demarcation of the boundary line will not have any effect on the application of those principles.' (RIAA, Vol. XXVIII, p. 224)."

21. In its Judgment of 16 December 2015 in the *Certain Activities* case, the Court found that Costa Rica has sovereignty over the “*disputed territory*”, as defined by the Court in paragraphs 69-70 of its Judgment. The “*disputed territory*” includes the beach of Isla Portillos. Costa Rican sovereignty over the beach of Isla Portillos is therefore a matter of *res judicata*. Any Nicaraguan territory existing seaward of Isla Portillos disappeared some time ago. Today, the only Nicaraguan territory in the area of Isla Portillos is an enclave comprising the Los Portillos/Harbor Head Lagoon and the sandbar separating Los Portillos/Harbor Head Lagoon from the Caribbean Sea, insofar as this sandbar remains above water at all times and thus this enclave is capable of constituting territory appertaining to a State. Paragraph 70 of the Court's December 2015 Judgment in the *Certain Activities* case indicated that the Court refrained from defining the land boundary more precisely with regard to this coast because the parties did not request it to do so. The present application requests the

Court to define precisely the land boundary separating Costa Rica's coastal territory from Nicaragua's coastal territory as it exists today, as indicated above.

V. Decision requested

22. Accordingly, the Court is asked:

- a. To determine the precise location of the land boundary separating both ends of the Los Portillos/Harbor Head Lagoon sandbar from Isla Portillos, and in doing so to determine that the only Nicaraguan territory existing today in the area of Isla Portillos is limited to the enclave consisting of Los Portillos/Harbor Head Lagoon and the sandbar separating the Lagoon from the Caribbean Sea, insofar as this sandbar remains above water at all times and thus this enclave is capable of constituting territory appertaining to a State. Consequently, that the land boundary runs today from the northeastern corner of the Lagoon by the shortest line to the Caribbean Sea and from the northwestern corner of the Lagoon by the shortest line to the Caribbean Sea.
- b. to adjudge and declare that, by establishing and maintaining a new military camp on the beach of Isla Portillos, Nicaragua has violated the sovereignty and territorial integrity of Costa Rica, and is in breach of the Judgment of the Court of 16 December 2015 in the *Certain Activities* case. Consequently, Costa Rica further requests the Court to declare that Nicaragua must withdraw its military camp situated in Costa Rican territory and fully comply with the Court's 2015 Judgment. Costa Rica reserves its rights to seek any further remedies with respect to any damage that Nicaragua has or may cause to its territory.

VI. Application for joinder

23. Under Article 47 of the Rules of Court, "[t]he Court may at any time direct that the proceedings in two or more cases be joined". As the Court has noted, it has a broad margin of discretion.¹⁵

¹⁵ *Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica)*, Joinder of Proceedings, Order of 17 April 2013, para. 12.

24. The close relationship between this case and the case concerning *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* will be readily apparent. It is manifest that the two cases should be joined. The two cases concern the same parties. They both concern the same geographic area where the two countries meet the Caribbean Sea. Moreover, the question of the present proceeding is closely related to the dispute in the *Maritime Delimitation* case, in that the two parties express different views as to the starting point of the maritime boundary in the Caribbean Sea. As the Court has stated several times, “*land dominates the sea*”.¹⁶ In order to proceed to the delimitation of maritime areas of the Parties in the Caribbean Sea, the prior settlement of this dispute is necessary.
25. Further, given that the issue that is the subject of the present proceeding is a confined one, the facts are not contested, and the written phase can be very short, Costa Rica considers that joinder of the two cases would not result in any undue delay in the Court rendering a Judgment.
26. Costa Rica further considers that, given the inter-relationship between the issues at play in the two cases, joinder is consistent with the principle of the sound administration of justice and with the need for judicial economy.¹⁷ Moreover, joinder will save both time and costs of two separate hearings.

VII. Reservation of rights

27. Costa Rica reserves its rights to supplement or amend the present Application.

VIII. Designation of ad hoc judge

28. Costa Rica designates as Judge *ad hoc* Professor Bruno Simma.
29. The Minister of Foreign Affairs of Costa Rica has appointed as Agent for these proceedings Mr. Edgar Ugalde Alvarez, and as Co-Agent Mr. Sergio Ugalde Godínez

¹⁶ See, e.g., *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 89, para. 77; and *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, p. 674, para. 140.

¹⁷ See *Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica)*, Joinder of Proceedings, Order of 17 April 2013, para. 18.

(Ambassador of Costa Rica to the Kingdom of the Netherlands). Please send all communications concerning this case to the following address:

Embassy of the Republic of Costa Rica
Laan Copes van Cattenburch 46
2585 GB, The Hague
The Netherlands
E-mail: sugalde@rree.go.cr

Yours Sincerely,

Amb. Sergio Ugalde
Co-Agent

Certification

The undersigned, Co-Agent of the Republic of Costa Rica, certifies that the documents hereunder listed as attachments to this Application, are true and accurate copies and conform to the original of documents and that the translations into English made by Costa Rica are accurate translations.

Amb. Sergio Ugalde
Co-Agent
16 January 2017

List of Attachments

Attachment 1. Letter from Costa Rica to Nicaragua of 14 November 2016 (reference DM-AM-584-16) (Spanish original, English translation)

Attachment 2. Letter from Nicaragua to Costa Rica of 17 November 2016 (reference MRE/DMC/250/11/16) (Spanish original, English translation)

Attachment 3. Letter from Costa Rica to the Court of 28 November 2016 (reference ECRPB-132-16) (English original)

Attachment 4. Letter from Costa Rica to Nicaragua of 30 November 2016 (reference DM-AM-628-16) (Spanish original, English translation)

Attachment 5. Satellite Image, 3 October 2016 (indicating locations of Nicaraguan camp)

Attachment 6. Satellite Image (close-up), 3 October 2016 (showing relocation of Nicaraguan camp in 2016)

ATTACHMENTS

Attachment 1

Letter from Costa Rica to Nicaragua of 14 November 2016 (reference DM-AM-584-16)
(Spanish original, English translation)

El Ministro de Relaciones Exteriores y Culto

San José, 14 de noviembre del 2016
DM-AM-584-16 *IKK*

Su Excelencia,

Me dirijo a usted con ocasión de referirme a los casos “Ciertas Actividades de Nicaragua en la Zona Fronteriza (Costa Rica c. Nicaragua)” y “Delimitación Marítima en el Mar Caribe y el Océano Pacífico (Costa Rica c. Nicaragua)”.

Costa Rica recientemente ha tomado conocimiento del traslado del campamento militar nicaragüense desde su ubicación previa en la playa que separa la Laguna Los Portillos del Mar Caribe, hasta una nueva ubicación en la playa de Isla Portillos hacia el noroeste de la Laguna Los Portillos, situada en territorio costarricense tal como fue determinado por la Corte Internacional de Justicia en su sentencia del 16 de diciembre de 2015 para el caso “Ciertas Actividades”.

Costa Rica anexa a esta nota las siguientes imágenes:

1. Anexo 1, imagen satelital del 5 de julio de 2016 que muestra la ubicación anterior del campamento militar nicaragüense, señalado en un círculo rojo;
2. Anexo 2, una fotografía aérea del 8 de marzo de 2016 que muestra la ubicación anterior del campamento militar nicaragüense;
3. Anexo 3, imagen satelital del 14 de septiembre de 2016 que muestra la ubicación nueva del campamento militar nicaragüense, señalado en un círculo rojo;

**Excelentísimo Señor
Samuel Santos López
Ministro de Relaciones Exteriores
República de Nicaragua**

El Ministro de Relaciones Exteriores y Culto

14 de noviembre del 2016

-2-

DM-AM-584-16

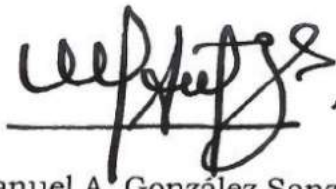
4. Anexo 4, una fotografía del 7 de noviembre de 2016 que muestra la ubicación nueva del campamento militar nicaragüense; y
5. Anexo 5, una superposición de las imágenes satelitales del 8 de marzo y 14 de setiembre de 2016 que muestra mediante una línea roja el cambio en la ubicación del campamento militar nicaragüense.

Costa Rica recuerda que en el párrafo 229 (1) de la sentencia del 16 de diciembre de 2015, la Corte determinó que Costa Rica tiene soberanía sobre el “territorio en disputa” definido por la Corte en el párrafo 69 de la misma sentencia como incluyendo “la parte norte de Isla Portillos, es decir, el área de humedal de unos 3 kilómetros cuadrados entre la margen derecha del caño en disputa, la margen derecha del río San Juan hasta su desembocadura en el Mar Caribe y la Laguna de Harbor Head”, incluyendo “la playa”.

Por lo anterior, Costa Rica presenta su más enérgica protesta por esta reciente violación de su soberanía e integridad territorial por parte de Nicaragua. Las acciones de Nicaragua adicionalmente violan la sentencia de la Corte del 16 de diciembre de 2015 en el caso “Ciertas Actividades”, que se mantiene aún activo, cuya compensación por parte de Nicaragua está aún pendiente.

Costa Rica le solicita a Nicaragua que retire su campamento militar del territorio costarricense indicado, y que se abstenga de realizar cualquier acción que pueda agravar la disputa que es objeto del caso sobre “Delimitación Marítima” actualmente en curso ante la Corte o que pueda hacer el procedimiento más difícil de resolver.

Aprovecho la oportunidad para reiterarle las muestras de mi mayor consideración.



Manuel A. González Sanz
Ministro



Anexo 1

Imagen Satelital, 5 de julio de 2016



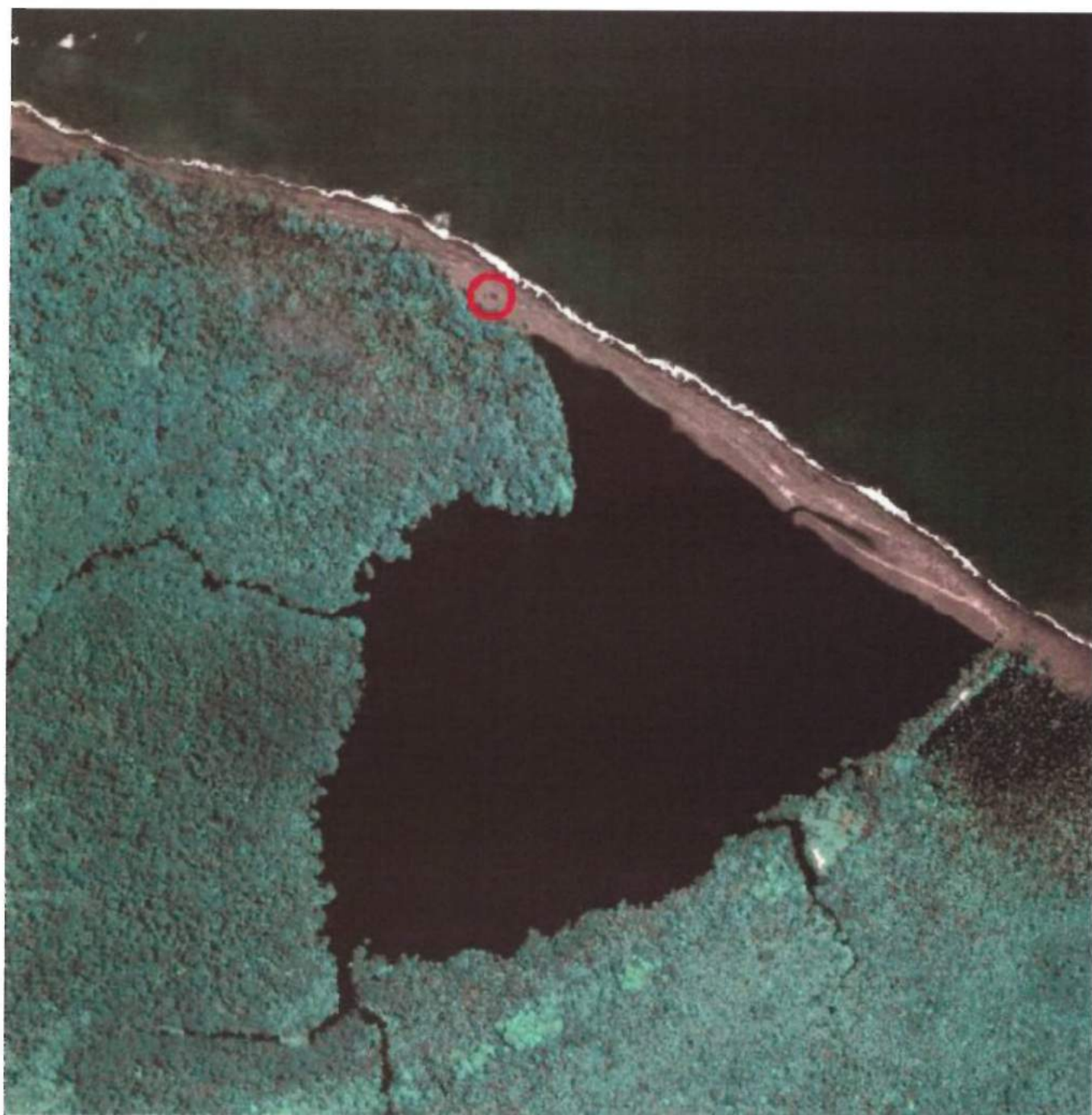
Anexo 2

Fotografía aérea, 8 de marzo de 2016



Anexo 3

Imagen Satelital, 14 de setiembre de 2016



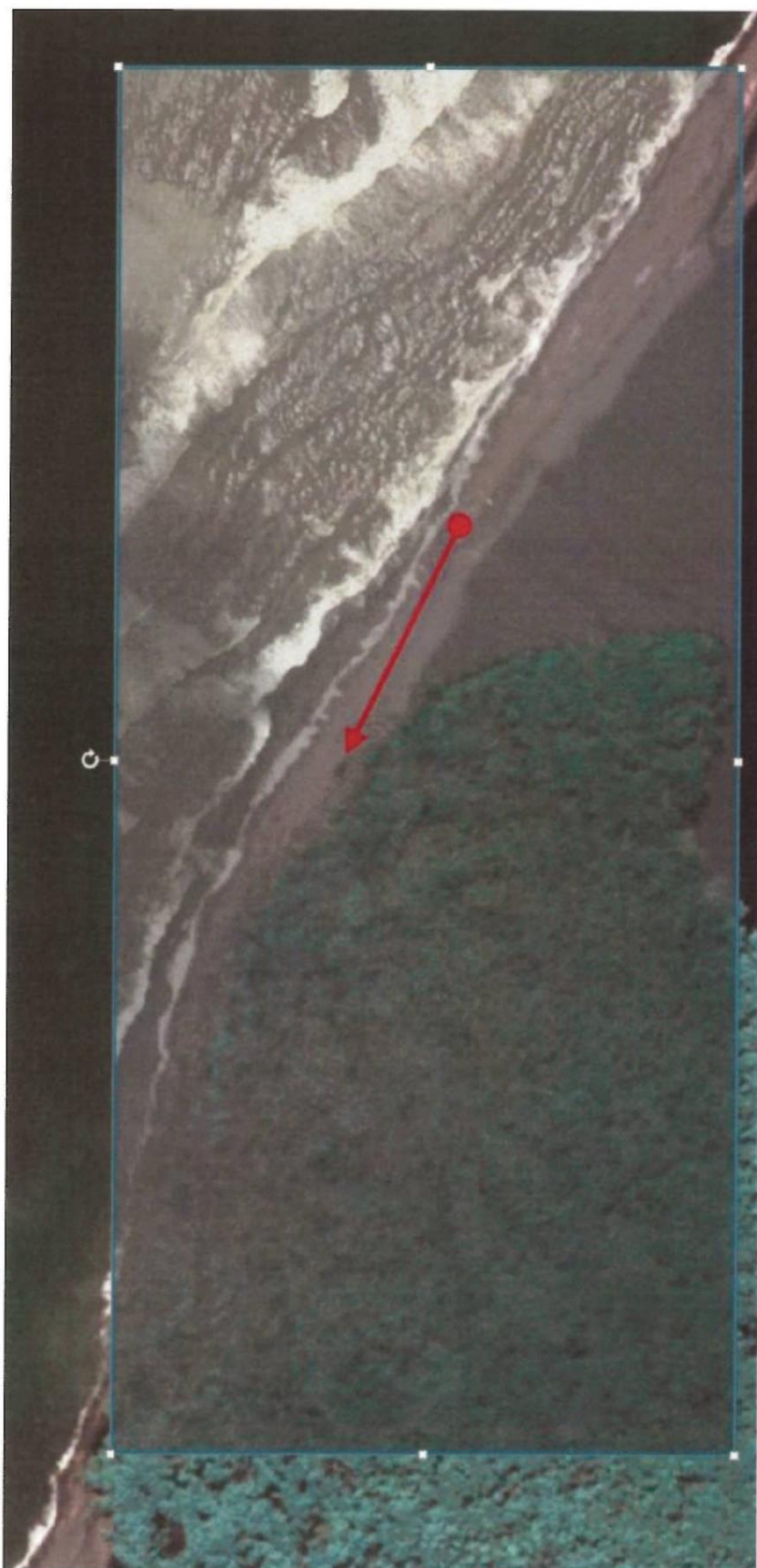
Anexo 4

Fotografía aérea, 7 de noviembre de 2016



Anexo 5

Superposición, Imágenes satelitales 5 de julio y 14 de setiembre de 2016



The Minister of Foreign Affairs and Worship

San José, 14 November 2016

DM-AM-584-16

Excellency,

I address you regarding the cases concerning “Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)” and “Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)”.

Costa Rica has recently become aware of the new positioning of a Nicaraguan military camp from its previous location on the beach separating Los Portillos Lagoon from the Caribbean Sea, to a new location on the beach of Isla Portillos to the northeast of Los Portillos Lagoon, situated on Costa Rican territory as determined by the Court in its Judgment of 16 December 2015 in the *Certain Activities* case.

Costa Rica annexes the following images to this note:

1. Annex 1, a satellite image of 5 July 2016 which shows the previous location of the Nicaraguan military camp, circled in red;
2. Annex 2, an aerial photograph of 8 March 2016 which shows the previous location of the Nicaraguan military camp;
3. Annex 3, a satellite image of 14 September 2016 which shows the new location of the Nicaraguan military camp, circled in red;
4. Annex 4, a photograph of 7 November 2016 which shows the new location of the Nicaraguan camp;
5. Annex 5, a superimposition of two satellite images of 8 March [sic][5 July] and 14 September 2016, on which a red line shows the change of location of the Nicaraguan military camp.

His Excellency

Samuel Santos López

Minister of Foreign Affairs

Republic of Nicaragua

Costa Rica recalls that in its Judgment of 16 December 2015, at paragraph 229(1), the Court found that Costa Rica has sovereignty over the “*disputed territory*” defined by the Court at paragraph 69 of the same Judgment as comprising “*the northern part of Isla Portillos, that is to say, the area of wetland of some 3 square kilometres between the right bank of the disputed caño, the right bank of the San Juan River up to its mouth at the Caribbean Sea and the Harbor Head Lagoon*”, including “*the beach*”.

In light of the above, Costa Rica vigorously protests this most recent Nicaraguan violation of its sovereignty and territorial integrity. Nicaragua’s actions further constitute a violation of the Court’s Judgment of 16 December 2015 in the *Certain Activities* case, which remains an active case whilst compensation from Nicaragua is pending.

Costa Rica requests Nicaragua to remove its military camp from the Costa Rican territory in question, and to abstain from taking any action that may aggravate the dispute that is the subject of the *Maritime Delimitation* proceedings pending before the Court, or which may make those proceedings more difficult to resolve.

Accept, Sir, the assurances of my highest consideration,

Manuel A. González Sanz
Minister

Annex 1

Satellite Image, 5 July 2016



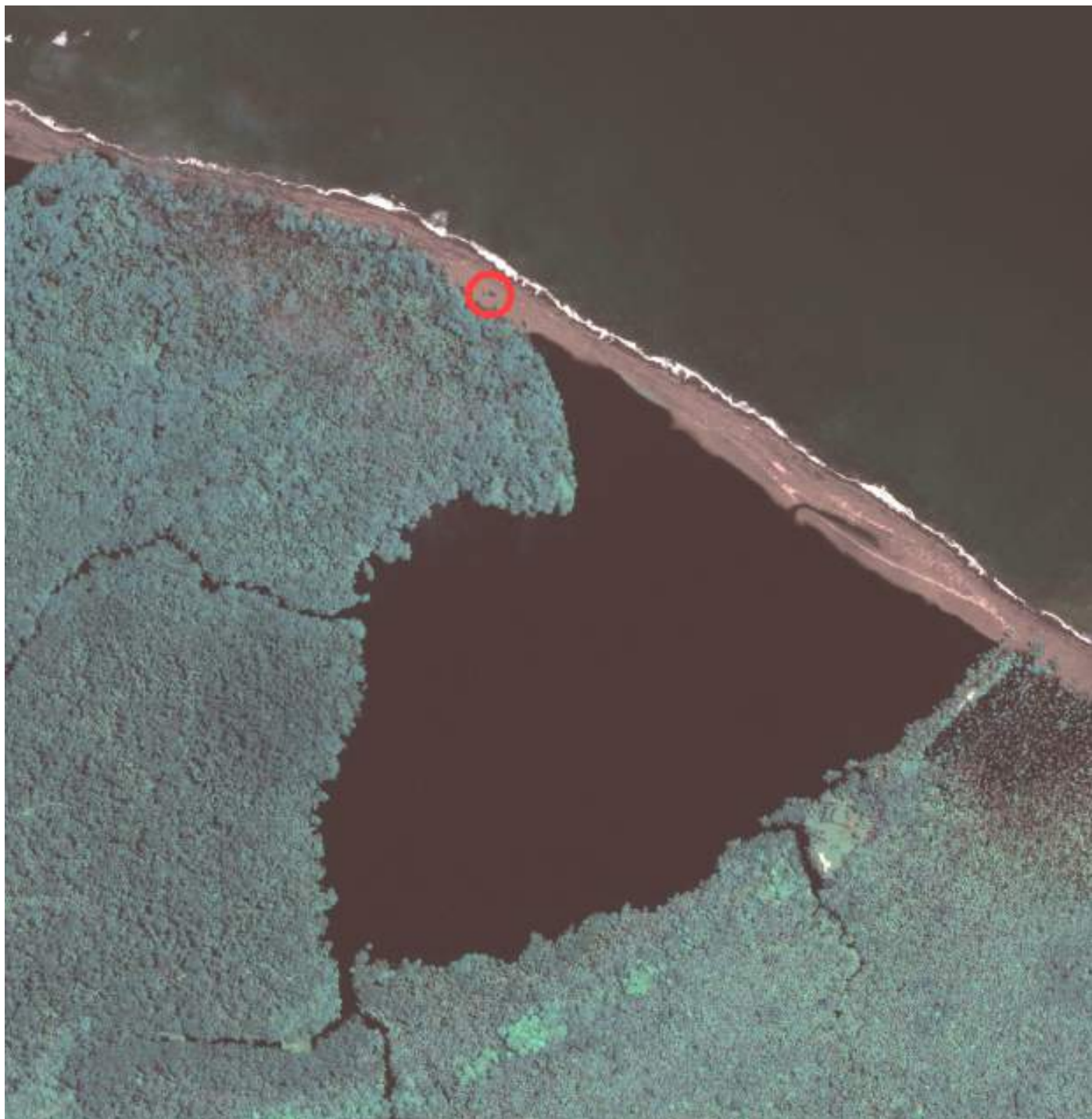
Annex 2

Aerial photograph, 8 March 2016



Annex 3

Satellite image, 14 September 2016



Annex 4

Aerial photograph, 7 November 2016



Annex 5

Superimposition of satellite images 5 July and 14 September 2016



Attachment 2

Letter from Nicaragua to Costa Rica of 17 November 2016 (reference
MRE/DMC/250/11/16) (Spanish original, English translation)



MINISTERIO
DE
RELACIONES EXTERIORES

Managua, Nicaragua

Managua, 17 de Noviembre de 2016.
MRE/DMC/250/11/16

Señor
Manuel A. González Sanz
Ministro de Relaciones Exteriores y Culto
República de Costa Rica

Señor Ministro,

Me dirijo a Usted en ocasión de hacer referencia a su nota DM-AM-584-16 en la que manifiesta su protesta por la presencia de un campamento militar nicaragüense ubicado, según afirma su nota, en territorio costarricense y solicita el retiro del mismo de dicho territorio que, según continúa afirmando su nota, fue presuntamente adjudicado a su país como resultado de la sentencia emitida por la Corte Internacional de Justicia el 16 de Diciembre de 2015.

Me permito señalar que Costa Rica conoce de primera mano que Nicaragua siempre ha ejercido soberanía sobre la barra de arena que separa la laguna de Harbour Head del Mar Caribe, y tanto la Corte Internacional de Justicia como Costa Rica han estado en conocimiento pleno de la presencia de un campamento militar nicaragüense en dicha barra desde hace muchos años, independientemente de la ubicación exacta del mismo.

Al respecto tengo a bien recordarle que contrario a lo que su nota alega, Costa Rica ha reconocido la soberanía de Nicaragua sobre esa barra frente a la laguna en numerosas ocasiones, más recientemente durante las Audiencias Orales celebradas en Abril de 2015. En esa ocasión, Costa Rica recalcó que la "barra de arena que separa el mar de la Laguna de Harbour Head [...] solamente puede ser considerada como territorio apropiable a un estado mientras el mismo permanezca sobre el agua durante la pleamar, y si esto es así, entonces *pertenece a Nicaragua*". Y así fue confirmado por la sentencia del 16 de Diciembre de 2015.


En concordancia, esta nueva pretensión de Costa Rica es infundada y se contradice con todo lo actuado y expresado oficialmente por su país.

Por otra parte, como es de su conocimiento y consta en los mapas oficiales de Nicaragua y de Costa Rica desde hace muchos años, ambos países siempre han considerado como parte del territorio nicaragüense, no solo la barra de arena frente a la Laguna de Harbour Head, sino también el *total del estrecho de costa colindante con el Mar Caribe que se encuentra entre la Laguna de Harbour Head y la boca del río*.

Nicaragua no puede evitar notar la particularidad del momento en que Costa Rica ha decidido realizar este nuevo reclamo, especialmente teniendo en cuenta la próxima visita *in situ* de los expertos nombrados por la Corte Internacional de Justicia dentro del contexto del caso "Delimitación Marítima en el Mar Caribe y el Océano Pacífico"; caso que no abarca este tema y cuya etapa de alegatos escritos ha sido finalizada.

Así las cosas, el Gobierno de Reconciliación y Unidad Nacional rechaza la protesta gratuita y las nuevas pretensiones de Costa Rica, así como cualquier sentido legal que pretenda darse a las mismas.

Aprovecho la ocasión para reiterarle las muestras de mi consideración y estima.


Cro. Denis Moncada Colindres
Ministro Asesor del Presidente de la República
para Políticas y Asuntos Internacionales



CC: Archivo

MINISTRY
OF
FOREIGN AFFAIRS
Managua, Nicaragua

Managua, 17 November 2016.
MRE/DMC/250/11/16

Mr. Manuel A. González Sanz
Minister of Foreign Affairs and Worship
Republic of Costa Rica

Dear Minister:

I address you in reference to your note DM-AM-584-16, in which you express your protest regarding the presence of a Nicaraguan military camp which, according to your note, is located on Costa Rican territory and request its removal from said territory which, as further indicated in your note, was allegedly awarded to your country as a result of the judgment issued by the International Court of Justice on 16 December 2015.

Allow me to point out that Costa Rica knows first-hand that Nicaragua has always exercised sovereignty over the sandbar that separates Harbor Head Lagoon from the Caribbean Sea, and both the International Court of Justice and Costa Rica have had knowledge of the presence of a Nicaraguan military camp on that sandbar for a number of years, regardless of its exact location.

In this regard I must remind you that, contrary to what is alleged in your note, Costa Rica has recognized Nicaragua's sovereignty over that sandbar in front of the lagoon on numerous occasions, most recently during the Oral Hearings held in April 2015. At that time, Costa Rica noted that "the sandbar which separates the sea from Harbor Head Lagoon [...] can only be considered as land capable of appertaining to a State in so far as it remains permanently above water at high tide and, if it does, it appertains to Nicaragua." This was confirmed by the Judgment of 16 December 2015.

Consequently, this new claim by Costa Rica is unfounded and contradicts all actions and official statements made by your country.

On the other hand, as you are aware of, and as recorded in the official maps of Nicaragua and Costa Rica for a number of years now, both countries have always considered as part of Nicaraguan territory not only the sandbar in front of Harbor Head Lagoon but also the *entire stretch of coast abutting the Caribbean Sea which lies between Harbor Head Lagoon and the mouth of the river.*

Nicaragua cannot help but notice the particular moment in which Costa Rica has decided to make this new claim, especially taking into account the next on-site visit of the experts appointed by the International Court of Justice within the context of the case “*Maritime Delimitation in the Caribbean Sea and the Pacific Ocean*,” a case which does not address this topic and for which the stage for submission of written pleadings has ended.

Thus, the Government of Reconciliation and National Unity of Nicaragua rejects Costa Rica’s gratuitous protest and new claims, as well as any legal sense intended for them.

I take this opportunity to reiterate the assurances of my consideration and appreciation.

Denis Moncada Colindres
Minister Advisor to the President of the Republic
on International Policies and Affairs

CC: File

Attachment 3

Letter from Costa Rica to the Court of 28 November 2016 (reference ECRPB-135-16)
(English original)



*Embassy of Costa Rica
Kingdom of the Netherlands*

28 November 2016
Ref. ECRPB-135-16

Excellency,

I have the honour to refer to the case concerning *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean* (Costa Rica v. Nicaragua).

On Thursday, 24 November 2016, Costa Rica suffered damage in the northwest region of the country as a result of hurricane Otto. Emergency services and first response personnel are presently assisting the victims. Thousands have been affected, and a number of lives have been lost.

Hurricane Otto first entered Nicaraguan territory just north of Isla Portillos, before continuing onto Costa Rican territory. The Costa Rican support installations on Isla Portillos were seriously damaged or destroyed as a result.

Costa Rica respectfully requests the Court to consider re-scheduling the impending visit of the experts to the region in light of these events. Costa Rica proposes that the visit of the experts takes place in early January 2017.

In the event that the experts' mission were to proceed as presently scheduled, Costa Rica may not be able to make all the logistical arrangements as planned, and Costa Rica respectfully asks for the Court's understanding in this respect.

Accept, Sir, the assurances of my highest consideration.


Amb. Sergio Ugalde
Co-Agent
Republic of Costa Rica



His Excellency
Mr. Philippe Cuvreur
Registrar
International Court of Justice
Peace Palace 2517 KJ
The Hague

28/11/2016

Attachment 4

Letter from Costa Rica to Nicaragua of 30 November 2016 (reference DM-AM-628-16)
(Spanish original, English translation)

El Ministro de Relaciones Exteriores y Culto

San José, 30 de noviembre del 2016
DM-AM-628-16 *R*


Su Excelencia:

Me dirijo a usted con ocasión de referirme a la nota de Nicaragua MRE/DMC/250/11/16 de fecha 17 de noviembre de 2016, en relación con el campamento militar establecido y mantenido en la playa de Isla Portillos, al oeste de la Laguna Los Portillos, que responde a la nota de Costa Rica DM-AM-584-16 del 14 de noviembre de 2016.

Costa Rica lamenta que Nicaragua haga ahora un nuevo reclamo sobre territorio soberano costarricense, tal como fue determinado por la Corte Internacional de Justicia en su sentencia del 16 de diciembre de 2015. Costa Rica rechaza en su totalidad los argumentos invocados por Nicaragua en la nota referida. La actitud de Nicaragua constituye un rechazo y una violación de lo establecido en dicha sentencia.

Si Nicaragua persistiese en mantener su reclamo y ocupación de territorio costarricense, Costa Rica se reserva todos sus derechos en cuanto a las opciones jurídicas que le sean disponibles.

Aprovecho la oportunidad para reiterarle las muestras de mi mayor consideración.


Mario Alexander Montero Campos
Ministro, a.i.



**Excelentísimo Señor
Samuel Santos López
Ministro de Relaciones Exteriores
República de Nicaragua**

The Minister of Foreign Affairs and Worship

San José, 14 November 2016
DM-AM-628-16

Excellency,

I refer to Nicaragua's note MRE/DMC/250/11/16 of 17 November 2016 concerning the military camp placed and maintained on the beach of Isla Portillos west of Harbor Head Lagoon, responding to *Costa Rica's note DM-AM-584-16 dated 14 November 2016*.

Costa Rica regrets that Nicaragua has now made a new claim to Costa Rican sovereign territory, as determined by the International Court of Justice in its judgment of 16 December 2015. Costa Rica rejects in their entirety the arguments invoked by Nicaragua in its note. Nicaragua's attitude constitutes a rejection and a breach of said judgment.

Should Nicaragua persist in its claim to and occupation of Costa Rican territory, Costa Rica reserves all its rights in terms of the legal avenues available to it.

Accept, Sir, the assurances of my highest consideration.

Mario Alexander Montero Campos
Acting Minister

**His Excellency
Samuel Santos López
Minister of Foreign Affairs
Republic of Nicaragua**

Attachment 5

Satellite Image, 3 October 2016 (indicating locations of Nicaraguan camp)



Attachment 6

Satellite Image, 3 October 2016 (showing relocation of Nicaraguan camp)

