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Costa Rica-Nicaragua Border Dispute

by LADB Staff

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Disagreement about just where the border between Costa Rica and Nicaragua lies has percolated to the top of the respective countries' international agendas again, and this time there is more at stake than the nationalities of a few landowners. The reignition of plans for a new interoceanic waterway that would dwarf the Panama Canal could make Nicaragua the richest country in the region, and Costa Rica could find itself shut out of the boon. A canal of this type has been central to Nicaragua's emergence dreams for more than a century, surviving the actual bisection of the isthmus at Panama.

In February 2004, Nicaraguans got ready for a new look at the project with the introduction of a law (*Ley de Concesion del Canal Interoceanico de Nicaragua*) whose purpose was to establish a commission to carefully consider who would build the enormous project, who could finance a project of this magnitude, and how to protect the country's sovereignty against a deal that could otherwise cede control of a "canal zone" to foreigners.

One of the protagonists of the legislative initiative, Deputy David Castillo, told reporters that a related concern is to avoid contracting with third parties "carpetbaggers" he called them, who would peddle the project to others to safeguard profits that would be better kept nationally. But all that presupposes the canal would lie entirely within Nicaragua, a supposition supported by a recent redefinition of the borders that has Costa Ricans livid.

In July, officials of the Costa Rican Instituto Geografico Nacional (IGN) and the Instituto Nicaraguense de Estudios Territoriales (INETER) put up new boundary markers at Upala, Costa Rica, effectively giving 300 sq km of Costa Rican territory to Nicaragua, pushing the border further south and widening the buffer between the border and the Rio San Juan, a likely route for a canal into Lake Nicaragua. The change incidentally would leave about 35 families with the prospect of changing nationalities and losing land given them by the Costa Rican Instituto de Desarrollo Agrario (IDA). These affected parties were the first to raise objections to the boundary shift, and they have filed complaints with the Costa Rican public defender (*Defensoria de los Habitantes*).

Rafael Gamboa, a veterinarian who has filed a breach-of-constitution charge against the boundary decision, explained some of the complications of the case. He said that in 1994 the Costa Rican government put together a commission to determine the correct boundary. According to the commission, the placement of one of the markers, Mojon XIII, is correct.

But Gamboa, along with professor Freddy Pacheco of the Universidad Nacional (UNA), charge the marker is wrongly located according to the *Tratado Canas Jerez*, an agreement signed in 1858 and still internationally recognized as the governing document for the boundary. This treaty set the Rio San Juan as the demarcation line between the countries, but it did so with some stipulations. One was that Costa Rica would have the right to navigation on the river and the northern stretch of the

river became common property of the two states. Another stipulation was that Nicaragua could not negotiate an interoceanic canal without consulting Costa Rica.

But, in 1896, the two nations signed a convention providing for a commission to trace and mark the boundary in accordance with the Tratado Canas Jerez. They appointed an arbitrator, US engineer Edward Alexander, to settle disputes. The convention became known as the Alexander Commission.

In 1897, boundary markers were set, but one of Alexander's decisions resulted in the placement of Mojon XIII in a different place than that described in the treaty, with the result that each country had a different official map of the border. The arbitrary placement was the result, say historic documents, of the "cost and danger" of putting the marker where it ought to have been placed. Amazingly, neither country disputed the anomaly until 1994, when Costa Rican President Rafael Angel Calderon created the joint commission to reset the markers. The outcome has been Costa Rica's loss of land, Gamboa's lawsuit, and a suit initiated by Costa Rican Deputy Elvia Navarro of the Partido Accion Ciudadana (PAC).

Nicaraguan officials said they were taken unawares by the contention on the other side. Hector Membrillo of the Nicaraguan Embassy in Costa Rica told a reporter, "I'm surprised, because I didn't know of any problem....It's not more than 15 days since the Foreign Ministries of both countries agreed to continue with the demarcations. I don't know of the existence of questions or claims, because, until now, everything has developed in an atmosphere of total accord between the governments."

Japan as investor?

In its search for a single-source provider one that could survey, engineer, finance, and build a canal Japan figures high on any list Nicaragua might draw up. Japan could well be the only name on that list. In 1989, Japan began a project now known as the Proyecto del Gran Canal en America Central. In addition to the projected benefits of the colossal undertaking, Japan also needs, for its own commerce, a larger canal, one that can accommodate ships that are up to five times the maximum size that can fit through the Panama Canal. It is no coincidence, therefore, that Japan also figures in the current border dispute. If a canal is to be built using the Rio San Juan as an entrance into Lake Nicaragua the most likely route it cannot be done without Costa Rican territory being seriously affected unless the border is moved.

A study done by Nicaragua in 2000 envisions the canal as being approximately one kilometer wide. Recently, a Japanese company, Pacific Internacional Niagai Engineering, was implicated in a corruption case that resulted in the firing of an IGN official, Victor Guerrero, and an investigation into the alleged illegal transactions of another IGN official. There have been no indictments as yet, nor has the irregular transfer of about US\$231,000 under Guerrero's control been tied directly to the boundary placement, but the same actors appear in both stories.

Project still a long way off

At this stage, the building of the Gran Proyecto is still no more certain than are the new borders. The government still has not authorized a specific development study. Such a study would cost in the neighborhood of US\$50 million, a small fraction of the estimated US\$20 billion-US\$25 billion the canal would cost. This amount is 20 to 25 times the entire annual budget of the country. The study would determine the route, form, size, and other technical aspects of the project. The choices are limited by the specification that the project be considerably larger than the Panama Canal to meet current demand, but its viability is in question because of Panama's plans to enlarge its facility (see NotiCen 2001-11-08).

Whether the Nicaragua project is viable is another question the study would have to answer. Even the US\$50 million cost of the study is a hurdle for Nicaragua. One possibility is to open the study to bidding by foreign investors who would finance the study in the form of loans to be paid as part of the financing of the canal. That would get the job done without significant government outlays.

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