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From Nicaragua And Costa Rica To The Hague

by LADB Staff

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Costa Rica and Nicaragua have failed to resolve a dispute regarding the use of the Rio San Juan. A three-year period the countries had given themselves to negotiate their differences after a Sept. 26, 2002, flare-up has expired, and relations between them have become tense as the presidents of both find it necessary to push their positions to the limit for political reasons. Costa Rica's President Abel Pacheco and Nicaragua's President Enrique Bolanos are fighting low approval ratings, and neither can be seen to be giving in to the other.

At the very least, a long court battle is in the offing. Indications are that the situation is gaining momentum to the detriment of both sides. Pacheco ordered the dispute regarding navigation rights to be taken to the International Court of Justice (ICJ) at The Hague on Sept. 29, three days after the expiration of the hiatus.

Bolanos reacted immediately by signing a decree ordering an increase in the Nicaraguan military presence in the area to prevent "foreign forces" from navigating the river. He ordered the military to prevent transit along the river by Costa Rican police "under any circumstance." The decree stated that Costa Rica had "resumed an intense campaign with the illegal aim of carrying out armed navigation on Nicaragua's Rio San Juan." The Nicaraguan Asamblea Nacional (AN) followed up with the introduction of a bill authorizing a 35% import tax on Costa Rican goods and services.

In its suit, Costa Rica will seek to regain navigation rights on the river. Those rights were established by treaty in 1858, the Canas-Jerez Treaty (see NotiCen, 2002-06-20). The current dispute began in 1998, when then President of Nicaragua Arnoldo Aleman [1997-2002] banned Costa Rican police from navigating the waterway while armed with their regulation firearms. The San Juan forms part of the border between the countries and is legally Nicaraguan territory. Costa Rica is not seeking a redefinition of the border but only restoration of its treaty rights.

The day after Costa Rica filed suit in The Hague, Nicaragua recalled Ambassador to Costa Rica Francisco Fiallos Navarro for consultation for an indefinite time. Nicaraguan Foreign Minister Norman Caldera called Costa Rica's legal move a "flagrant violation of the national sovereignty." He said that Costa Rica's intention to navigate with "military purposes does not have any legal basis and jeopardizes peace." Caldera stands on political precedent about the legal basis. The Canas-Jerez Treaty grants Costa Rica the right of free navigation for commercial purposes. Aleman asserted in 1998 that the movement of armed police was not a commercial activity (see NotiCen, 1998-08-13).

Nationalism unites old foes

Nationalism has been inflamed on both sides. Former President Daniel Ortega (1979-1990) of the opposition Frente Sandinista para la Liberacion Nacional (FSLN) has spoken out on the same side of the issue as Bolanos. The two politicians have been locked in mortal combat almost from

the beginning of Bolanos' term. Ortega's position gives Bolanos support but also makes it nearly impossible for him to make any accommodation to ease the situation, lest Ortega, who is his party's candidate for president in 2006, use any easing as a sign of presidential weakness. Bolanos is also in the position of defending an initiative of his enemy Aleman (see NotiCen, 2003-01-02).

The president has been in a deadlock with the AN and with his own party, the Partido Liberal Constitucionalista (PLC), for having gone after Aleman for corruption. Aleman, now a convicted felon, still leads a controlling faction of the PLC, a faction that has made common cause with the FSLN against the Bolanos presidency. Ortega has taken advantage of events to up the ante. He has proposed that the government file a countersuit rescinding Costa Rica's rights under Canas-Jerez. "There is no longer any reason to grant it free commercial navigation, let alone military traffic," Ortega said. "Nicaragua granted free navigation in the 19th century because there were no alternative routes."

Militarily, meanwhile, Nicaraguan army commander Gen. Omar Hallelevens set out on a tour of the river to determine whether to increase the six border posts and add to the five or six fast boats based at San Carlos and San Juan de Nicaragua. Vigilance at the existing posts has already been increased. Perhaps sensing that the situation had the potential to spin out of control, Bolanos later visited the border region and promised no violence in pursuit of Nicaraguan sovereignty despite the reinforcements. Coincident with his visit, however, the Army paraded tanks and troop transports in Managua, a display interpreted in the media as prompted by the dispute. Pacheco, too, has political problems related to low polling numbers, and he appears no more able than Bolanos to alter his course.

On Oct. 4, Pacheco said he had received a phone call from Bolanos asking him not to take the matter to the ICJ, but he refused. The media stoked the fires in Costa Rica by broadcasting film of the Nicaraguan troop buildup on the river, but Costa Rican Foreign Minister Marco Vinicio Vargas said the country would not be provoked. "Those gentlemen on the Nicaraguan side of the river are going to get tremendously bored," he told Costa Ricans. Perhaps to avoid boredom, Nicaraguan troops were ordered to demand that Costa Rican boats on the San Juan fly the flag of Nicaragua.

"Our government has made this decision to reaffirm Nicaraguan sovereignty over the Rio San Juan," said vice minister of foreign relations Javier Williams. He said that every vessel that navigates the river must be "under permit and control of the authorities of Nicaragua," even though, "at no time has Costa Rica disputed Nicaraguan sovereignty over the river. They recognize that Nicaragua has full and total sovereignty over the San Juan."

The Nicaraguan Army commander in the area, Col. Ricardo Sanchez, clarified that while "effectively, the owners of the boats are being asked to fly the flag of Nicaragua," none has been prohibited from entering Nicaraguan waters. The diminished probability of war does not preclude anyone getting hurt, however.

Costa Ricans living on their northern border have complained that their government has abandoned them in the dispute, with the result that they now have to carry passports and pay the equivalent of US\$20 for visas to travel the river either as shippers or as passengers. "We feel that the government

has left us alone," said boatman Geovanni Navarro, a Puerto Viejo de Sarapiquí, Costa Rica, resident, of the new requirement. "If the government does not intercede for us, we will have no choice but to obey Nicaraguan demands, because otherwise we will be left without a source of income. Without a passport and a US\$20 visa extended by the Nicaraguans, Costa Ricans will not be able to navigate the Rio San Juan." Navarro said the Nicaraguan authorities had begun verbally to notify boat owners, shippers, and locals of the new rules a week prior.

Costa Ricans using the river must enter Nicaraguan territory even to get from one Costa Rican town to another along the border. Other boat owners in Puerto Viejo have agreed the new rules will increase their costs, which they will pass on to customers and passengers.

Not to be outdone, the Costa Rican legislature passed a bill reforming the migratory law that would fine any Costa Rican who employs, houses, or otherwise succors an undocumented immigrant. Foreign Minister Caldera has taken umbrage. "Nicaragua will defend with all its powers" the rights of Nicaraguan migrants, he said. "Being a migrant is not a crime, they have rights, and they cannot be treated like criminals." He acknowledged that Costa Rica has every right to punish its own citizens, but added, "We, too, have a migration law." Where this will end is uncertain, but there is much to be lost if the reprisals gain momentum.

Nicaragua is Costa Rica's third-largest market, and Costa Rica has been doing well in exports. The country's across-the-board earnings have increased 10.1% in the first nine months of 2005, but exports to Central America have increased 11.2% to a total of US\$736 million. A trade war with its neighbor could jeopardize this growth, especially if the 35% tax is imposed on shipments through Nicaragua to the rest of the isthmus.

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