

NEXUS OF RIVALRY: NICARAGUA'S GRAND CANAL AND INTER-AMERICAN RELATIONS

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ABSTRACT

The Hong Kong Nicaragua Development Company's plan to build an interoceanic canal through Nicaragua represents the most recent of twenty-three such proposals over the course of the last two centuries. While CEO Wang Jing's declining fortune may prevent the construction of a canal, Nicaragua's eroded relations with Costa Rica and Colombia, a renewed relationship with Russian, and recent steps towards re-militarization have impacted and will continue to impact the region. These changes, in turn, reflect an inversion of earlier plans to build a canal. While the international stage of the 19th and early 20th centuries permitted various foreign actors to define the political and economic development of Nicaragua, recent events reflect a changing situation in which Nicaragua has redefined relations with its most immediate neighbors and with key global powers.

Keywords: Nicaragua; Wang Jing; Hong Kong Nicaragua Development Company; interoceanic canal; International Court of Justice

RESUMEN

El plan de la empresa Hong Kong Nicaragua Canal Development para construir un canal interoceánico a través de Nicaragua representa el más reciente de veintitrés tales propuestas de los dos últimos siglos. Mientras que la fortuna en deterioro del CEO Wang Jing puede impedir la construcción de un canal, las relaciones erosionadas de Nicaragua con Costa Rica y Colombia, una relación renovada con Rusia, y los últimos pasos hacia la remilitarización han afectado y continuarán afectando la región. Estos cambios, a su vez, reflejan una inversión de los planes anteriores para construir un canal. Si bien la escena internacional de los siglos 19 y 20 permite diferentes actores extranjeros para definir el desarrollo político y económico de Nicaragua, los acontecimientos recientes reflejan una situación cambiante en el que Nicaragua ha redefinido las relaciones con sus vecinos más inmediatos y con las potencias mundiales clave.

Palabras clave: Nicaragua; Wang Jing; Hong Kong Nicaragua Development Company; canal interoceánico; Corte Internacional de Justicia

RÉSUMÉ

Le projet de construction d'un canal transocéanique de la Hong Kong Nicaragua Canal Development n'est que la vingt-troisième entreprise de ce genre à avoir vu le jour au cours des deux derniers siècles. Pourtant, la fortune sur le déclin du chef d'entreprise Wang Jing pourrait bien empêcher la construction d'un canal, au même titre que la détérioration des relations qu'entretient le Nicaragua avec le Costa Rica et la Colombie, ainsi que la relation qu'il a renouée avec la Russie et ses récentes initiatives visant à la remilitarisation du pays qui ont eu et vont continuer à avoir un impact sur la région. Ces changements, à leur tour, laissent présager un renversement des projets antérieurs de construction d'un canal. Tandis que la scène internationale du dix-neuvième siècle et du début du vingtième siècle ont permis à divers acteurs étrangers de définir le développement politique et économique du Nicaragua, les récents événements reflètent une situation qui évolue et dans laquelle le pays redéfinit ses relations avec ses voisins les plus proches ainsi qu'avec des puissances mondiales majeures.

Mots-clés : Nicaragua ; Wang Jim ; Hong Kong Nicaragua Development Company ; canal transocéanique ; Cour internationale de Justice

1. Introduction

In June 2013, Nicaragua's National Assembly approved a canal proposal made by China's Hong Kong Nicaragua Development Group (HKND). Taking a hasty step forward in a centuries-long dream of a transoceanic canal through Nicaragua, the National Assembly acted without a feasibility study and with less than a week to consider the merits of the proposal (Zuckerman 2013). Given that HKND's concession is the most recent of nearly two dozen proposals to build a transoceanic canal across Nicaragua, why should this venture receive much scrutiny? (Johnson 2014).

HKND's proposal for a transoceanic canal proved to be only one strand of a larger skein that has deeper ramifications for the hemisphere and the larger world. As this most recent canal proposal has made only extremely limited progress, events in Nicaragua signaled larger trends with intensified foreign investment in Latin America by Chinese companies, renewed Russian interest in the Americas, and the potential for changes in the place of the United States in Inter-American relations for the twenty-first century. Even as these changes were indicative of Nicaragua's attempt to redefine relations with its most immediate neighbors and with key global powers, the concessions granted to HKND also led to conditions which threatened Daniel Ortega's continued hold on power.

2. HKND's Proposal

By a margin of 61 votes to 28, Nicaragua's National Assembly approved HKND's proposal in June 2013 as Ley 840. The plan called for a construction period of approximately ten years at a cost of approximately \$40 billion, a sum nearly 3.5 times greater than Nicaragua's GDP of \$11.28 billion in 2013 (Johnson 2014; Central Intelligence Agency 2013). HKND will hold its canal concession for 50 years, with the option to extend its rights by an additional 50 years (BBC News 2014; Moore 2013). In addition, HKND maintains a controlling interest of 51% in the canal and as well as the right to construct ports, a railway,



Figure One: Brito River near the Pacific Ocean. Any transoceanic canal across Nicaragua will require extensive dredging and widening of the Brito River, reinforcing the concerns of those who had called attention to the potential for wide scale environmental damage. At the time this photo was taken, there were no indications that such work had begun. Photo taken by the author, July 2015.

free-trade zones, and other infrastructure relating to the canal (Johnson 2013). These investment plans far outweigh historical trends for Foreign Direct Investment in Nicaragua. In 2006, for example, Nicaragua received a total of \$282.3 million in FDI. That figure had grown to \$967.9 million in 2011 but had dropped to \$849 million in 2013 (Bureaus of Economic and Business Affairs, 2013; U.S. Department of State 2015). HKND's CEO, Wang Jing, explicitly mentioned routing the canal away from Nicaragua's border with Costa Rica in order to avoid an ongoing international dispute as a strategy to manage some of the risk involved in the project (Associated Press 2013). Meanwhile, HKND representatives announced in July 2014 that the 173-mile route would run from the mouth of the Brito River, continue south of Rivas, cross Lake Nicaragua, and enter the Caribbean at Bluefields Bay (Westcott 2014; Knowler 2014). Further refinements indicate that the canal would resume near San Miguelito on the eastern side of Lake Nicaragua and exit into the Caribbean at Punta Gorda (BBC News 2014b). While initial reports for the start date for construction ranged from December 2014 or early 2015, actual construction has been limited to small-scale excavation and improvement of roads that would access the canal (BBC News 2014; South China Morning Post 2018).

Facing criticism for not having experience in large-scale infrastructure projects, the Chinese entrepreneur has claimed in the past to not own a mobile phone despite his success in the telecom industry. In one interview, Wang Jing countered that "You may not believe it, but I am 41 years old and I have never owned a mobile phone. I do not have one on me now. But I run a telecoms company. In fact, I had no experience of telecoms until I started here in 2009. I am the man who sets the direction" (Moore 2013).

Wang's other endeavors, for their part, also include some highly visible investments yielding limited results. In December 2013 during Ukrainian President Viktor Yanukovich's visit to China, Wang Jing announced a \$10 billion proposal by his subsidiary company Beijing Interoceanic Canal Investment Management Company to reconstruct the port at Sevastopol, though progress stalled after Russia's annexation of Crimea (Hornby 2013; Clover and Olearchuk 2017). His bid to expand into satellite communications by acquiring the Israeli firm Space Communication evaporated shortly after Space Com's Amos 6 satellite was destroyed in the explosion of the SpaceX rocket in 2016 (Schmidt and Mak 2016; Falling Star 2017).

Environmental impact from any potential canal is also an area of significant concern. Jorge Huete-Pérez and others have noted that there has been little transparency and perhaps even a conflict of interest in the conduct of feasibility studies and assessments of the potential

environmental impact (Johnson 2014). At least one civil engineer further believes that it may be necessary to dam the San Juan River as it flows out of Lake Nicaragua in order to maintain water levels sufficient to operate a canal (Miller 2014). Reflecting the degree of potential damage to various eco-systems along the projected canal route, Huete-Pérez has begun work on a DNA registry of flora and fauna that will be potentially impacted by a canal (Huete-Pérez 2014).



Figure Two: Opposition to the increased Chinese presence has ranged from ridicule, as in this photo taken outside of the Nicaragua-China Cultural Institute in Managua, to violent protest. Photo taken by the author.

Though Wang Jing maintains that his project is not driven by or associated with the Chinese government, other observers are skeptical. Diego Vargas Montealegre, president of the Nicaraguan-American Chamber of Commerce, joined a delegation of Nicaraguan business and political leaders who visited HKND's offices in China. He observed that "There is a relationship either with the government or with the military. That was obvious" (Johnson 2014). One reporter for the *Financial Times* noted that Wang's office chair was placed in front of a "larger than life" painting of Chairman

Mao Zedong, while “the floor-to-ceiling red board next to the entrance of his company Xinwei Telecom carries the Chinese Communist party’s oath in shiny golden characters” (Hille and Rathbone 2014). In previous telecom ventures, Wang Jing has also benefitted from a nearly \$2 billion line of credit from China’s Central Development Bank for international expansion (Moore 2013). Should the Chinese government be involved in any way, their support may stem from the long-held belief that the Panama Canal Authority isn’t sufficiently independent of U.S. influence (Ellis 2009).

In addition to criticism of the lack of political debate and the potential for environmental damage, fear of the expropriation of property under Ley 840 has contributed to an explosion of protests against the possibility of a canal. Since 2013, Nicaragua has seen at least 64 marches with more than 400,000 protesters (Ellis 2016). From Rivas to the Caribbean coast, protesters have marched against the prospect of HKND or the Nicaraguan government exerting eminent domain and paying compensation for land well below market value (Department of State 2015; Amnesty condemns ‘campaign of harassment’ 2017). On a larger scale, Miskitu, Rama, and Rama Kriol peoples have filed challenges with the Nicaraguan Supreme Court and the Inter-American Commission on Human Rights over the potential use of land within their territories (Ryser, 2018). These protests now also have the potential to merge with other movements, as some high-profile protesters involved in anti-canal demonstrations have also been targeted in the violent suppression of protests against Nicaragua’s now abandoned changes in Social Security contributions (Vásquez Larios 2018).

3. Canal History

Looking over the broader history of efforts towards a canal in Nicaragua, commercial interest in a transoceanic canal led to the granting of development concessions shortly following independence (Colección Republicana, Bolaños 1825). In a similar manner, Nicaragua’s strategic location has also long made it the subject of foreign intervention (Walker 2003:2). Within a decade of withdrawing from the United Provinces of Central America, Nicaragua became involved in a territorial dispute with Great Britain. In January of 1848, British colonists seized the Caribbean port of San Juan del Norte and expelled all Nicaraguan government officials. One year later, the British forced Nicaragua to officially recognize this seizure of territory, by ceding authority over the Miskito Indians to the British as well as control of the Mosquito Coast, an area of strategic value both for its access to the Caribbean and as a key entry and exit point for any canal proposal.

Like the British, North Americans also appreciated Nicaragua’s

geographical significance for a transoceanic canal. This interest grew with the California Gold Rush of 1848. To counter British regional interests, the Nicaraguan Government granted exclusive rights to a transit route across Nicaragua to the U.S. in exchange for American protection from other foreign powers (U.S. State Department 1993:13). In turn, transportation magnate Cornelius Vanderbilt was granted a twelve-year exclusive contract to build a canal in Nicaragua. Since this action threatened British aspirations and economic interests, the British acted to block activities on the part of Vanderbilt's Accessory Transit Company. In recognition of their mutual regional interests, the United States and Great Britain signed the Clayton-Bulwer Treaty of 1850 (Colección Republicana 1850). This agreement provided that neither the United States nor Great Britain would claim exclusive control over a canal or attempt to gain exclusive control over any part of the region (Woodward 2012:134). For his part, Vanderbilt's improvements on a two kilometer area near the Caribbean outlet of the San Juan River would represent the first physical step towards creating a canal.

Early engineering surveys coincided with efforts to resolve territorial disputes tied to independence. Costa Rica's boundary with Nicaragua was largely defined by the Cañas-Jerez Treaty of 1858, which clarified earlier agreements between the two nations for development of a canal (Colección Republicana 1847; Colección Republicana 1858). Though this treaty recognized Nicaraguan sovereignty over the canal, Article 6 indicated that Costa Rica possessed "perpetual rights of free navigation over a large part of the river and the right to moor vessels at any part of its banks where navigation was common, without payment of any charges." Article 8 further provided that Nicaragua could not proceed with a canal "without first hearing the opinion of the Costa Rican Government respecting the disadvantages that may result to the two countries, ...and in the event that the enterprise should cause no injury to the natural rights of Costa Rica, that opinion shall be advisory" (Encyclopedia of Public International Law 1981:65). Arbitration entrusted to the Cleveland Administration in 1888 further clarified that Costa Rica's maritime rights

are deemed to be injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbours injurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of said river or any of its branches at any point where Costa Rica is entitled to navigate the same. (Encyclopedia of Public International Law 1981: 66)

In essence, despite survey after survey recognizing the San Juan River as a critical component for any potential interoceanic canal

through the region, Costa Rica effectively held veto power over any canal project that utilized the San Juan River.

Subsequent engineering surveys continued to refine the feasibility of a canal and its projected path. Colonel Orville Childs surveyed the area from Lake Nicaragua to Brito on the Pacific Coast between 1850 and 1852 (DuVal 1940:46-49; Broadhead 2012:112). A portion of this route stands even through HKND's present canal plans. Ancieto García Menocal, a U.S. Navy Engineer who followed up on Childs' work, credited Childs, who he described as a "conscientious and able engineer," with proposing a path that would follow the San Juan River to its delta, at which point an outlet would be at Greytown. Menocal further credited Childs with a survey that "was the first on the Isthmus for a ship canal conforming to the requirements of engineering, and its accuracy has been fully confirmed by subsequent explorations" (Menocal 1890:4-5). Revising Childs' surveys, Menocal ultimately proposed a route 181.26 miles in length. His route included 21 locks along the canal, with 4 dams to be placed along the San Juan River. In total, Menocal expected that engineers would need to excavate 61.74 miles, would be able to use the San Juan River for "slack-water" navigation for 63.02 miles, and would be able to navigate through 56.5 miles of lakes, including Lake Nicaragua (Menocal 1890:6; Colección Republicana 1888; Colección Republicana 1889).

In April of 1893, shortly after the conclusion of Menocal's final survey, President José Santos Zelaya staged a successful revolt and became president of Nicaragua. Within a year, Zelaya expelled the British consul from Bluefields and deployed troops to the region (Walker 1991:16; Diederich 1981:7). While Great Britain and the United States had recognized Nicaragua as their preferred site for a transoceanic canal, a period of volcanic activity in that nation convinced the U.S. Senate to approve negotiations for a canal through Panama. Underscoring the extent to which the canal issue served as a flashpoint in relations between the nations of the Americas, a breakdown in negotiations over the U.S. lease of the projected canal zone led President Theodore Roosevelt to side with Manuel Amador's bid for independence from Colombia. Angered by the U.S. selection of Panama as the site for the canal, Zelaya offered concessions to Germany, Great Britain and Japan in 1904 for an interoceanic canal through Nicaragua (Walker 2003:18; Schoonover 1991:130-148).

As a consequence of deteriorating relations with the United States, a coalition of Liberals and Conservatives staged a revolt against Zelaya in 1909. Among the casualties of this revolt were two American mercenaries who had fought on the side of the anti-Zelaya forces and were later executed by Zelaya's Government. In response, the United States



Figure Three: Nicaragua Canal Company Dredging Operations, San Juan del Norte, 1893; Library of Congress.

landed 400 marines in Nicaragua (U.S. State Department 1914:456). As a result of these combined pressures, Zelaya resigned in December, 1909.

Despite Zelaya's resignation, political instability continued. In 1912, the United States refused to recognize the appointment of General Luis Mena as successor to President Adolfo Diaz. Mena rebelled against the Nicaraguan Government, and was joined by General Benjamin Zeledon. In response, Diaz requested American intervention and 4,000 marines landed at the ports of Corinto and Bluefields in August of 1912 (U.S. State Department 1919:1032). American intervention guaranteed Diaz' reelection in 1913.

During Diaz' tenure as president, the United States moved to ensure that no foreign power could be granted the right to build a canal through Nicaragua. Under the terms of the Knox-Castillo Treaty of 1911, Nicaragua received protectorate status from the United States government. The United States cemented its exclusive right to build a transoceanic canal through Nicaragua and also the right to protect its interests as well as to arbitrate any dispute involving the government of Nicaragua (U.S. State Department 1922:966). Though Nicaragua's government

approved this treaty, the United States Senate refused ratification. Renewed negotiations led to the Bryan-Chamorro Treaty of 1914, which gave the United States the right to construct an inter-oceanic canal in Nicaragua, a ninety-nine-year lease of the Corn Islands, and a naval base in the Gulf of Fonseca (U.S. State Department 1925:850). Underscoring potential U.S. interest in a second canal, it's important to note that the Bryan-Chamorro Treaty was signed in Washington one week before the opening of the Panama Canal, though not ratified by the U.S. Senate until nearly two years later.

Just as American leaders continued to negotiate for the rights to a second canal through Nicaragua out of security and commercial considerations, other tangible manifestations of active U.S. interests, such as engineering surveys, continued over the course of the next few decades. Lt. Col. Daniel Sultan, who led the 1929-1931 expedition, ultimately affirmed previous studies that had recommended a canal of nearly 173 miles with three locks to permit navigation through modestly changing elevations. According to Brodhead, "Sultan proposed essentially the same route favored by earlier investigations: Brito-Rio Grande-Continental Divide-Lake Nicaragua-San Juan River-Deseado River-San Juan del Norte" (Brodhead 2012:125). Though a second canal did not move forward, interest in the feasibility of such a project would lead the U.S. Army Corps of Engineers and later the Inter-American Geodetic Survey to continue collecting data on the relevant watersheds through 1955 (Brodhead 2012).

In the 1940s, Costa Rica's government dredged the Colorado River at its confluence with the San Juan River, thereby shifting an increasing amount of the waterflow of the San Juan into Costa Rica (Brooks 2011). Though nearly seventy years would separate the two events, this act precipitated the Google Maps invasion of 2010.

U.S. possession of the rights for an interoceanic canal was ultimately terminated in 1971. In April of that year, the U.S. and Nicaragua terminated the Bryan-Chamorro Treaty (Association for Diplomatic Studies and Training 2013). While there would be no immediate success in finding foreign support for a second canal, by 1994, various private investors in Nicaragua proposed a dry canal utilizing new rail lines—an idea soon to be followed by similar ideas from several other nations (Robles 2013). In the early 21st century, President Enrique Bolaños (2002-2007) attempted to mobilize support from the National Assembly to provide governmental support for a canal, while current president Daniel Ortega (2007-present) also approached Russia, Venezuela, and Iran as potential sources for investment and expertise upon returning to the presidency (Lozano 2009:27-30; Farah 2009:12).

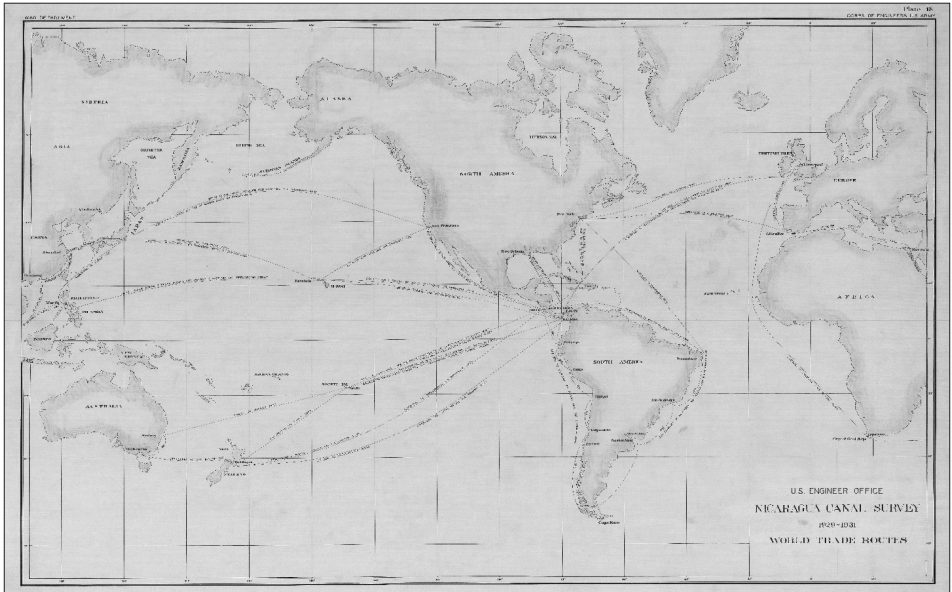


Figure Four: Nicaragua Canal Survey, World Trade Routes—U.S. National Archives. In examining the feasibility of a second interoceanic canal, Sultan’s team compared length of travel via the Panama Canal as well as through the projected route across Nicaragua. U.S Engineer Office, Nicaragua Canal Survey, 1929-1931. “World Trade Routes.” National Archives at College Park, College Park, MD.

4. Relations with Costa Rica and the Google Maps Invasion

As Nicaragua returned to the question of a canal utilizing the San Juan River, disagreements with Costa Rica over the scope of each nation’s rights intensified. In July 1998, for example, Nicaraguan and Costa Rican officials signed the Cuadra-Lizano Joint Communiqué, which permitted Costa Rican use of the San Juan River by armed police vessels to resupply posts along the river. Within a few weeks, however, Nicaragua reversed its approval for police use of the river (Tanaka 2009).

After other attempts to resolve the disagreement failed, Costa Rica filed a case with the International Court of Justice in 2005 claiming that the Nicaraguan government illegally restricted access to the San Juan River (The International Court of Justice Application Instituting Proceedings 2005). The ICJ’s decision on this case, handed down in 2009, attempted to address the ambiguity of Nicaragua’s sovereignty over the San Juan River and Costa Rica’s rights of commercial navigation. While upholding Costa Rica’s navigational rights for commercial use, the ICJ ruled that Costa Rican police units could not use the river for re-supply of police posts or the transfer of police personnel. The ICJ also did not

address the issue of dredging the San Juan River, an issue that had been raised by Nicaragua as a related issue in the case (International Court of Justice Reports of Judgements, Advisory Opinions and Orders 2009; Council on Hemispheric Affairs 2011:2).

It was in this context that Nicaragua took advantage of an error in Google Maps that placed Isla Calero within Nicaragua's boundaries. Isla Calero stands at the northern tip of Isla Portillas, at a point where the San Juan River meets the Caribbean. In the 19th century, the boundary between Nicaragua had been established by the Cañas-Jerez Treaty of 1858 and subsequent arbitration under the auspices of U.S. President Grover Cleveland. Coastal erosion over the course of the 20th century, however, resulted in the loss of portions of the landmass that had previously been demarcated as the international boundary (Political Geography Now 2018). By the late 20th and early 21st centuries, both Nicaragua and Costa Rica claimed Isla Calero.

Capitalizing on the Google Maps error, Édén Pastora led a team of engineers in dredging operations in the vicinity of Isla Calero on October 8, 2010. Pastora justified his occupation of Isla Calero, in part, by citing changes in the course of the San Juan River over the preceding 150 years (López 2010; López 2014). Twelve days later, the Costa Rican government formally complained to Nicaraguan officials that their territory had been violated. Nicaragua deployed 50 soldiers to Isla Calero to accompany the engineering team. Costa Rica responded by deploying 70 officers of the Fuerza Pública (Jacobs 2012). Google corrected the map error by early November despite protests from the Nicaragua government, noting that elements of its mapping data had been compiled using U.S. State Department sources (López 2010; Brown 2010; Govan, 2010).

Daniel Ortega, in an interview with Costa Rica's *Tico Times*, cited the 2009 ICJ decision as justification, claiming that "Nicaragua has the right to dredge the San Juan River to recover the flow of waters that existed in 1858, even if that affects the flow of water of other current recipients, such as the Colorado River..." (Geens 2010). Costa Rican authorities maintained that dredging operations would impact the volume of water flowing into the Colorado River and result in environmental damage to the region (Geens 2010).

In January 2011, the Organization of American States called for the removal of all troops from the disputed area by a margin of 22-2. Only Nicaragua and Venezuela voted against the measure (*Latin American Monitor* 2011:5). As noted in one report produced by the Council on Hemispheric Affairs, Ortega's popularity rose to nearly 45% in the months following Nicaragua's occupation of Isla Calero with Ortega benefitting from an uncommon degree of support from opposition parties, a sign of the underlying nationalism of the Google Maps Invasion (Council

on Hemispheric Relations 2011:3). In March 2011, the International Court of Justice ruled that Nicaragua and Costa Rica must evacuate Isla Calero, excepting Costa Rican personnel charged with evaluating environmental damage. The Court further ordered that current dredging could continue but that Nicaragua needed to end its plans to expand that dredging (Williams 2011).

In December 2012, Nicaragua countered with claims before the ICJ that a highway that Costa Rica had constructed parallel to the San Juan River likewise caused environmental damage (Arias 2013). By Spring 2013, the Nicaraguan government formally announced that it had abandoned plans to widen portions of the San Juan River for the canal. Ortega commented that the route would run “in the north of the South Atlantic Autonomous Region.” Decrying that the people of Costa Rica would not benefit, Pastora lamented that Costa Ricans celebrating the move would “miss out on tourism, economic development and port infrastructure” (Rogers 2013).

Costa Rica subsequently claimed that the Nicaraguan government sanctioned illegal logging near the mouth of the San Juan River. Carlos Argüello, Nicaragua’s representative to the ICJ, charged that Nicaragua had only removed cut logs from the river that Costa Rica had placed there to obstruct the flow of water (Arias 2014a). Additional disputes between the two nations also came to a head during this period. The dispute over oil exploration can be traced back to 2002, at which point the Nicaraguan government published maps of potential concessions, some of which lay in areas of the Caribbean claimed by Costa Rica. The Nicaraguan government published the maps a second time in 2013, at a time when relations with Costa Rica had worsened considerably (Reuters 2014). Nearly three years later, Costa Rica filed a case before the International Court of Justice challenging the maritime territory that Nicaragua claimed for oil exploration. In July 2013, Costa Rican authorities charged that Nicaragua had claimed oil concessions within Costa Rican territory (*The Tico Times* 2014). In December 2013, Costa Rica announced that it would file an additional claim against Nicaragua in the International Court of Justice. This new claim, which was held pending run-off elections in Costa Rica, alleged that Nicaragua has offered concessions for oil exploration in several sectors of maritime territory in both the Pacific and Caribbean that belong to Costa Rica (*The Tico Times* 2014). Along with access to the San Juan River, the expansion of maritime territory in the Caribbean has also been a key characteristic of Nicaragua’s most recent canal plans.

The ICJ initially ruled in December 2013 that the Costa Rican highway had not caused environmental damage, but Nicaragua challenged that conclusion (Arias 2014b). In subsequent hearings, the ICJ generally

upheld Costa Rica's claims to Isla Calero and called upon Costa Rica and Nicaragua to settle on damages to be paid to the former. Though Costa Rica initially set damages at more than \$6 million, the ICJ reduced total damages to be paid by Nicaragua to \$378,890.59 (Costa Rica v. Nicaragua 2015; Certain Activities Carried Out by Nicaragua in the Border Area 2018; Judgment of 2 February 2018). Judge Ad Hoc Awn Al-Khasawneh was one of two dissents in the final decision recognizing Costa Rican sovereignty over Isla Calero, basing his dispute largely on the temporary nature of the coastline and potential for future shifts in the San Juan River. Quoting Shakespeare's Sonnet 64, he noted that "...I have seen the hungry ocean gain Advantage on the kingdom of the



Figure Five: Map of the current boundary resulting from the February 2018 ICJ decision. Map courtesy of Political Geography Now, <www.polgeonow.com>.

shore" (Dissenting Opinion of Judge *Ad Hoc* Al-Khasawneh 2018:3).

The early conceptions of this particular round of considerations for a canal through Nicaragua envisioned the use of significant portions of the San Juan River, and writers for the *Business Monitor International* further concluded that Nicaraguan efforts to dredge the mouth of the San Juan River were tied to preparatory efforts to build a canal with Venezuela and Iran (*The Tico Times* 2014). As relations deteriorated following Édén Pastora's Google Maps invasion of 2010 and subsequent findings by the International Court of Justice on behalf of Costa Rica and

against Nicaragua over the disputed zone, Nicaraguan officials began to consider other paths for the canal they envisioned (Jacobs 2012; *Latin American Monitor* 2011; Agence France-Presse, 2017).

5. Relations with Colombia

Nicaragua's earlier steps towards asserting control over a potential canal zone have also led to shifts in that nation's relations with Colombia. In November 2012, the International Court of Justice ruled in a key case involving Caribbean islands and maritime territory under Colombian control that had been contested by Nicaraguan leaders since the early 19th century. This ruling's origins can be traced to a complaint filed by Nicaragua in December 2001, which noted that Colombia claimed maritime territory that should have been granted to Nicaragua by virtue of its proximity to Nicaragua's continental shelf, and that the Colombian navy had interdicted Nicaraguan fishing vessels as close as 70 miles to Nicaraguan territory (*Territorial and Maritime Dispute* 2001). Carlos Argüello, Nicaragua's ambassador to the Hague, further maintained that

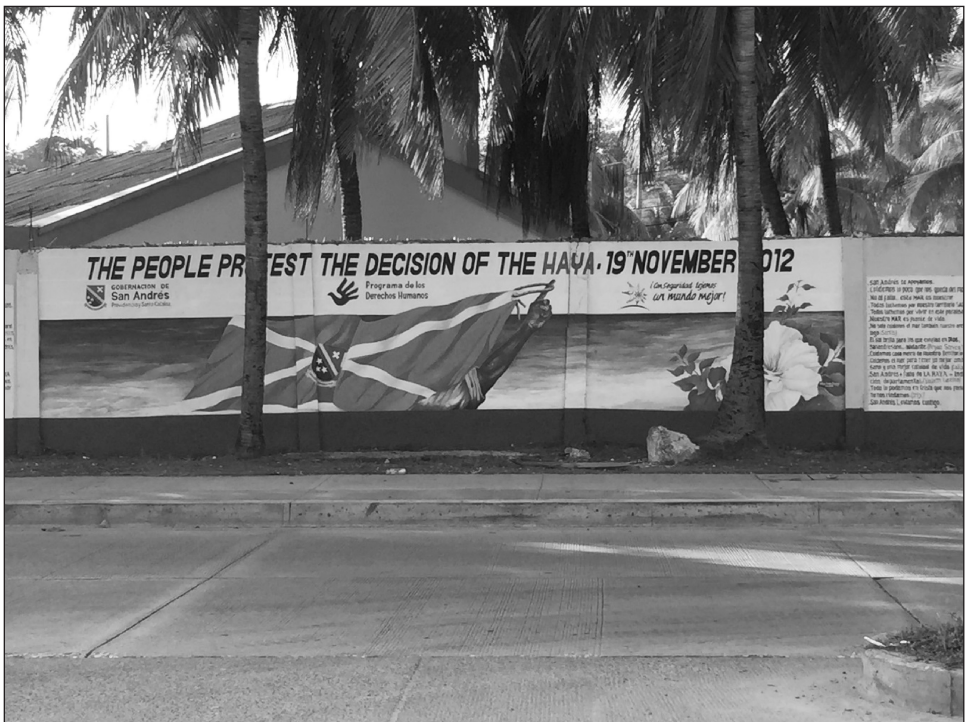


Figure Six: Mural protesting the ICJ Decision, Isla San Andrés; Photo taken by the author.

Costa Rican and Colombian claims for territory in the region were efforts to assert ownership of an interoceanic canal (Caracol Radio 2014). Under the terms of the decision delivered on November 19, 2012, the ICJ recognized that Colombia maintained jurisdiction over San Andrés, Providencia, Santa Catalina, and several other surrounding islands and keys, while Nicaragua's exclusive economic zone in the western Caribbean was nearly doubled with an increase in maritime territory of more than 38,000 square miles (Rogers 2012b). Each nation's current stake in this region is tied not only to lucrative fishing areas for lobster but also to permitting for oil exploration (Kraul 2013).

Colombia's argument, which hinged not only on long-time possession of the maritime territory but on the assertion that Nicaragua did not have the ability to secure the region, was ultimately rejected by the ICJ (Rogers 2012b). Nicaragua, then, benefitted not only in having a repudiation of Colombian claims, but also in gaining control over maritime territory that would be an essential component of a potential canal zone.

Within a few days of the decision, President Juan Manuel Santos of Colombia announced that his nation would withdraw from the Pact of Bogotá, the 1948 agreement in which several Latin American nations agreed to resolve such disputes peacefully through the International Court of Justice (*The Economist* 2012; *American Treaty on Pacific Settlement* 1948). Santos' position was further bolstered by a poll in which 85% of Colombians surveyed wanted Santos to reject the decision, even at the risk of a military conflict with Nicaragua (*The Economist* 2012). One year later, as Nicaragua refused to engage in bilateral talks, pressed for the concession of the disputed islands, and claimed before the ICJ that the Colombian navy continued to patrol the waters in question, Colombia withdrew its ambassador from Nicaragua (Kraul 2013). Faced with complaints that they have blocked Nicaraguan fishing boats and confronted by an ICJ decision claiming continued jurisdiction over the dispute, Colombia filed a counter-suit alleging that Nicaragua has blocked the raizales, the mulatto natives of San Andres and Providencia, from accessing their historic fishing grounds. Evidence from both nations is due before the ICJ by November 2018, with hearing dates to be set thereafter (Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia, 2016; *El contraataque de Colombia en conflicto limítrofe con Nicaragua* 2017).

As Colombia's relations with Nicaragua worsened, the question remained: How would Nicaragua's significantly smaller armed forces enforce sovereignty over the newly granted cession? At this point, Nicaragua possessed only three ships that could stay on patrol at sea for longer than one day (Rogers 2012b). Speculation and analysis at the time centered on the contention that Nicaraguan leaders would be forced to

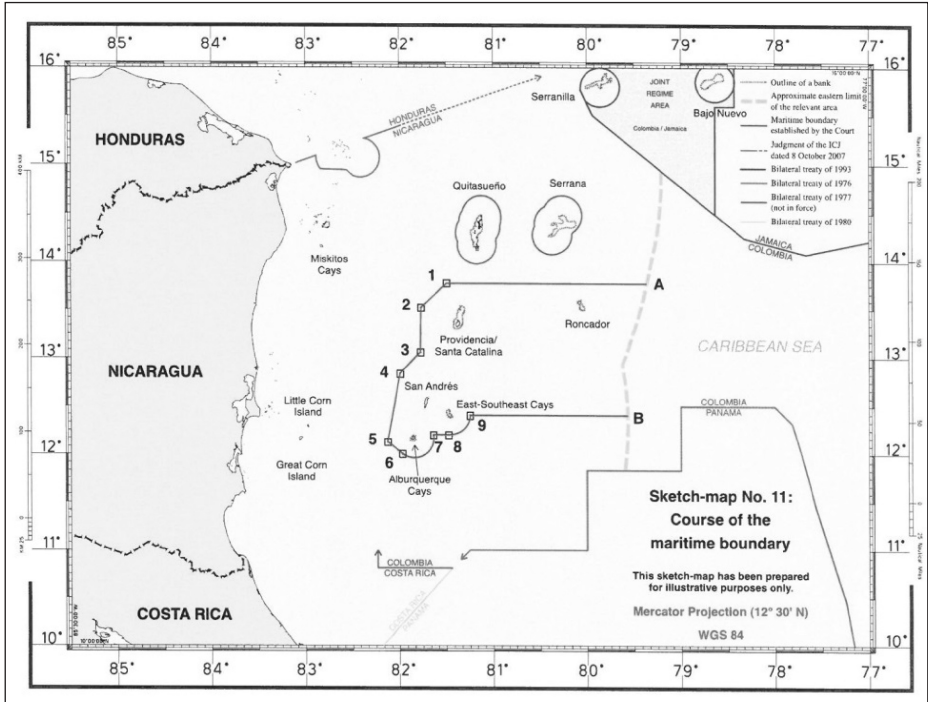


Figure Seven: Redefined boundaries as established by the November 2013 ICJ decision International Court of Justice, *Reports of Judgments, Advisory Opinions and Orders. Territorial and Maritime Dispute: Nicaragua v. Colombia, Judgment of 19 November 2012*, 184.

accept a smaller concession in exchange for Colombian recognition ultimately proved unfounded. As a result, the Ortega administration moved into a closer relationship with Russia, which included Russian support for naval patrols in the region and an agreement to purchase six patrol ships from Russia (Stratfor 2012). Interestingly, Russia's willingness to join in patrolling Nicaragua's expanded maritime territory has been as a tacit recognition of Nicaragua's claims, despite the fact that the same implication has not been applied to the United States, whose naval forces have also patrolled the region.

As a sign that Russia was making its presence felt in the region, President Santos complained on November 5, 2013 that two Russian Tupolev Tu-160 bombers violated Colombian airspace on two different occasions. The bombers are alleged to have flown over Providencia and San Andrés on a flight from Maiquetia, Venezuela to Managua and back. Santos further indicated that the two bombers left Colombian airspace on their return flight to Venezuela after being challenged by

two Colombian Kfir fighters (Reuters 2013).

Additional agreements with Russia by Nicaraguan authorities have further signaled a reversal of the trend towards the demilitarization that shaped their nation from 1990 to the early 21st century. In March 2015, the Nicaraguan government approached Russia for an agreement to purchase a squadron of MiG-29 fighters, ostensibly to aid in drug interdiction operations (Rogers 2015). A few months later, Juan Ernesto Vasquez Araya, Nicaragua's ambassador to Russia, announced that his country desired to discuss the purchase of T-72 Main Battle Tanks (Guevara 2015). When recently showcasing one of the newly acquired tanks, General Julio César Aviles claimed that the fifty T-72s had been provided free of charge as part of a security pact between Russia and Nicaragua (*Washington Post* 2016).

Though far from state of the art, these assets are an order of magnitude more advanced than any military assets that the Sandinista government currently operates, and may well fuel an arms race as Nicaragua continues to challenge the power of Colombia, the strongest military power in the region (Rogers 2015). Indeed, Brigadier General Adolfo Zepeda and other Nicaraguan authorities specifically referenced ICJ recognition of expanded maritime territory for Nicaragua and the need to protect the country's borders as part of the justification for the negotiations of the MiGs (Russian Aviation 2015). Retired military officials in both Honduras and Costa Rica further expressed concern that MiG 29s would not be useful in interdicting narco-trafficking and that their purchase would threaten all of Nicaragua's neighbors and destabilize the region, thereby signaling that militarization may ultimately replace reliance on international institutions such as the ICJ (Montenegro 2015).

The expansion of Nicaragua's maritime territory also called attention to that nation's role in drug interdiction. Nicaragua remains a major transshipment point for cocaine smuggling from Colombia to the United States. According to the U.S. State Department, 86% of the cocaine smuggled into the U.S. in the first half of 2013 was carried through the Mexico-Central American Corridor (Bureau of International Narcotics and Law Enforcement Affairs 2014). This number represents a significant increase over the previous decade. For example, the Nicaraguan navy seized 2.5 metric tons of the 3 metric ton total seized by Nicaraguan authorities in 2013. In comparison, Nicaraguan authorities seized nearly 6 metric tons of cocaine in each of the several preceding years. The Bureau of International Narcotics and Law Enforcement Affairs attributed this decline in seizures in part to the reduction in U.S. counter-narcotics operations in the area and partly in difficulties Nicaragua faces in patrolling the Exclusive Economic Zone it gained from the November 2012 ICJ decision (Bureau of International Narcotics and

Law Enforcement Affairs 2014).

Nicaragua also asked Russia to provide a facility for counter-narcotics training, technical and logistical support, and weapons. As one example of early success, Nicaraguan agents seized 1.2 tons of cocaine in a series of raids in early March 2012 in Masaya, Managua, Rivas, Chinandega, and Matagalpa (Lara 2013). Underscoring the globalization of narco-trafficking, members of the gang arrested and its leader, a Mexican national named Martín Flores, were tied to Mexico's *Los Zetas* cartel while the cocaine itself was likely intended for markets in Europe and Asia.

This particular seizure also highlights the rapid expansion of Russian aid to Nicaragua. Military aid from Russia in 2011, for example, totaled \$26.5 million while the U.S. provided only \$3 million in military aid (*The Nicaragua Dispatch* 2013). Throughout 2013, Russian experts provided training to 117 Nicaraguan agents in counter-narcotic operations (Bureau of International Narcotics and Law Enforcement Affairs 2014). U.S. authorities, furthermore, have indicated that they see Russia's anti-narcotics support as collaborative. According to U.S. Assistant Secretary for the Bureau of International Narcotics and Law Enforcement "The truth is that we want collaboration, and if the collaboration comes from Russia in our hemisphere or if it's the United States in Russia's hemisphere, then I think that is positive" (Rogers 2014a).

6. Relations with the United States

As one might expect, the U.S. continues to pay careful attention to Nicaragua. According to Phyllis M. Powers, who served as U.S. ambassador from 2012-2015, "I didn't appreciate the level of interest that was focused on Nicaragua. To what extent still isn't clear to me, but there is interest and based on my conversations with folks in the State Department, it continues to be there. Part of it is narcotics, part of it is the politics of the situation, and part of it is that this region is important to the United States" (Rogers 2012a). Powers also noted that Nicaragua lost approximately \$3 million in U.S. aid after the revocation of its fiscal transparency waiver (Rogers 2012d). Separately, however, Nicaragua was approved for its property waiver just prior to the 2012 presidential election in the United States and again in July 2013. That waiver allows for access to \$1.4 billion in development loans (ProNicaragua 2013). Other examples of such aid include a \$30 million project for drinkable water and sewage treatment funded through the World Bank which has allocated \$14.3 million in loans and \$15.7 million in grants for the project (Rogers 2014b). The renewal of the property waiver was likely influenced in part by the ongoing compensation for lands seized by the

Sandinistas during the 1980s, with more than \$1.28 billion in compensation made to this point (Rogers 2012e). Nicaragua once again faced a reduction of aid in the wake of widespread allegations of corruption in the 2016 national elections, with the Obama Administration encouraging the Inter-American Development Bank to postpone \$65 million in loans the following year (Chamorro 2016; Partlow 2017). In addition, a few officials have also faced sanctions under the Global Magnitsky Act following violent crackdowns on protests against the Ortega government's proposed restructuring of Social Security (Edmondson 2018).

Regarding the construction of a canal specifically, the proposal has met with limited resistance in the United States to the prospect of a broader role for China in the region. According to Walter Bastian, U.S. Deputy Assistant Secretary of Commerce, the United States would be supportive of the project if private U.S. investors expressed an interest (Associated Press 2013). Outside of the U.S. government, policy institutes and think tanks have also only expressed limited reservations. In one policy paper, for example, the Heritage Foundation limited its recommendations to U.S. policy makers to the continued resolution of expropriated property gains and greater governmental transparency and democratization, and transparency in governmental grants, lending, contracting, and bidding to support the project (Zuckerman 2013).

As demonstrations over the canal grew, however, the Ortega government became increasingly sensitive to journalistic and academic inquiry into the subject. More than a dozen journalists and human rights activists had been expelled from Nicaragua, allegedly for researching the Grand Canal, in late 2015 and early 2016 (Nicaragua Expels U.S. Analyst 2016). The most high-profile expulsion was that of Professor Evan Ellis of the U.S. Army War College Strategic Studies Institute, who was expelled in June 2016 less than 24 hours after entering the country. Despite Ellis's efforts to coordinate his intent and plans with various officials including Nicaragua's ambassador to the United States, Ortega defended the action as necessary since the interviews and research Ellis intended to conduct were "the purview of the Nicaraguan government" (Ellis 2016; Washington protests after Nicaragua expels US diplomats 2016). Reflecting on the environment in Nicaragua, Ellis concluded that work on a canal would only move forward with the active investment of the PRC, but that the PRC would be unlikely to invest in the present environment. He noted that

[g]enerally, investors only make such large, long-term, low rate-of-return investments when they have near absolute confidence in the stability and transparency of the government, in which due process of law protects them and their investment from arbitrary actions by the host government. If the host government can arbitrarily expel an academic

legitimately admitted into the country for asking questions about a commercial project with no type of due process whatsoever, investors can feel no security in investing billions of dollars for an infrastructure project that the government can easily expropriate. (Ellis 2016)

7. Relations with the People's Republic of China

The question of Chinese foreign direct investment in the Grand Canal has likely also been rendered moot by other developments. In June 2017 Panama became the first Latin American nation to sign an economic development agreement with China tied to the expanded Belt and Road Initiative. Under this agreement, Margarita Island, situated near the Caribbean entrance to the Panama Canal, will be developed as the world's thirteenth largest container port (Global Construction Review 2017; Dalby 2017). Nearly simultaneously, Panama also withdrew its recognition of Taiwan and formally extended recognition to the People's Republic of China (Horton and Myers 2017).

These moves have fueled speculation that the idea of the Grand Canal will once again recede. Amid increased Chinese investment in Panama, the Ortega government has made no move to improve relations with the PRC. Despite Panama's shift, Nicaragua has continued to officially recognize Taiwan. As recently as March 2018 the two nations have renewed their commitment to military exchanges and military cooperation, while the Taiwanese naval "Friendship Flotilla" anchored in Nicaragua the following month (President Tsai eyes enhanced ROC-Nicaragua relations 2018; Taiwan warships drop anchor in Nicaragua 2018). Curiously, while there remains no direct evidence of ties between HKND and the PRC, Wang Jing shuttered the Hong Kong office of his company only a few days later (Nicaragua Canal Project Dealt New Blow 2018).

8. Whither from Here?

As a step towards fulfilling its centuries-long dream of becoming the site of an interoceanic canal, the Ortega government attempted to expand its claim to the San Juan River region while also pressing a claim to the San Andrés Archipelago. These efforts have produced mixed results. While the ICJ greatly expanded Nicaragua's maritime territory in the Caribbean, it also reversed Nicaragua's attempts to hold Isla Calero. These claims, in turn, led to worsening relations with both Colombia and Costa Rica. Furthermore, as a direct result of its gains at Colombia's expense, Nicaragua cemented closer relations with Russia including agreements for naval patrols and arms sales.

It was in this mix that the Chinese entrepreneur Wang Jing secured the passage of Ley 840 and a potentially lucrative concession for canal rights. In the face of a reversal of his economic fortunes, concerns about environmental damage, anger over the possibility of the use of eminent domain, and increased Chinese investment in Panama, Wang Jing's vision for a canal across Nicaragua seems unlikely to reach fruition. The chain of events that created the climate for this project, however, has already contributed to significant shifts throughout the region. At the same time, these ends themselves reflect an inversion of earlier attempts to create such a canal. While the international stage of the 19th and early 20th centuries permitted various foreign actors to define Nicaragua, recent events reflect a changing situation in which Nicaragua has redefined relations with its most immediate neighbors and with key global powers. These results will continue to be felt whether or not HKND constructs an interoceanic canal.

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