

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

CERTAINES ACTIVITÉS MENÉES
PAR LE NICARAGUA
DANS LA RÉGION FRONTALIÈRE

(COSTA RICA c. NICARAGUA)

INDEMNISATION DUE PAR LA RÉPUBLIQUE DU NICARAGUA
À LA RÉPUBLIQUE DU COSTA RICA

ARRÊT DU 2 FÉVRIER 2018

2018

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CERTAIN ACTIVITIES CARRIED OUT
BY NICARAGUA
IN THE BORDER AREA

(COSTA RICA v. NICARAGUA)

COMPENSATION OWED BY THE REPUBLIC OF NICARAGUA
TO THE REPUBLIC OF COSTA RICA

JUDGMENT OF 2 FEBRUARY 2018

Mode officiel de citation:

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30. The obligation to make full reparation for the damage caused by a wrongful act has been recognized by the Court in other cases (see for example, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 691, para. 161; *Avena and Other Mexican Nationals (Mexico v. United States of America), Judgment, I.C.J. Reports 2004 (I)*, p. 59, para. 119; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 80, para. 150).

31. The Court has held that compensation may be an appropriate form of reparation, particularly in those cases where restitution is materially impossible or unduly burdensome (*Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010 (I)*, pp. 103-104, para. 273). Compensation should not, however, have a punitive or exemplary character.

32. In the present case, the Court has been asked to determine compensation for the damage caused by Nicaragua's unlawful activities, in accordance with its Judgment of 16 December 2015 (see paragraph 27 above). In order to award compensation, the Court will ascertain whether, and to what extent, each of the various heads of damage claimed by the Applicant can be established and whether they are the consequence of wrongful conduct by the Respondent, by determining "whether there is a sufficiently direct and certain causal nexus between the wrongful act . . . and the injury suffered by the Applicant". Finally, the Court will determine the amount of compensation due (*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 332, para. 14).

33. The Court recalls that, "as a general rule, it is for the party which alleges a particular fact in support of its claims to prove the existence of that fact". Nevertheless, the Court has recognized that this general rule may be applied flexibly in certain circumstances, where, for example, the respondent may be in a better position to establish certain facts (*ibid.*, p. 332, para. 15, referring to the Judgment on the merits of 30 November 2010, *I.C.J. Reports 2010 (II)*, pp. 660-661, paras. 54-56).

34. In cases of alleged environmental damage, particular issues may arise with respect to the existence of damage and causation. The damage may be due to several concurrent causes, or the state of science regarding the causal link between the wrongful act and the damage may be uncertain. These are difficulties that must be addressed as and when they arise in light of the facts of the case at hand and the evidence presented to the Court. Ultimately, it is for the Court to decide whether there is a sufficient causal nexus between the wrongful act and the injury suffered.

35. In respect of the valuation of damage, the Court recalls that the absence of adequate evidence as to the extent of material damage will not, in all situations, preclude an award of compensation for that damage. For example, in the *Ahmadou Sadio Diallo* case, the Court determined the