

INTERNATIONAL DECISIONS

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International Court of Justice—boundary river—contemporaneous versus evolutionary treaty interpretation—right of free navigation—subsistence fishing—essential needs of riparian inhabitants

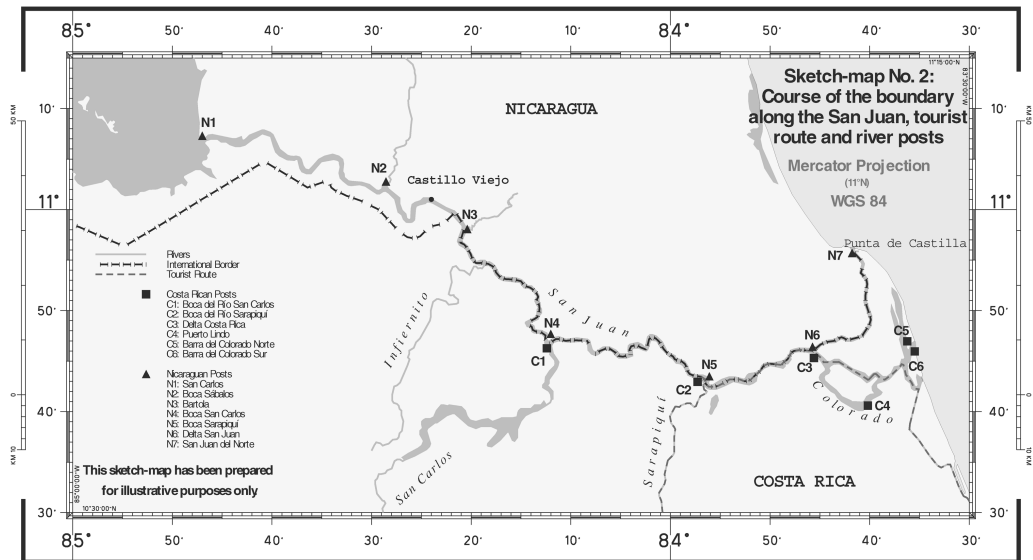
DISPUTE REGARDING NAVIGATIONAL AND RELATED RIGHTS (Costa Rica v. Nicaragua). At <<http://www.icj-cij.org>>.

International Court of Justice, July 13, 2009

On July 13, 2009, the International Court of Justice delivered its judgment in the case between Costa Rica and Nicaragua concerning navigational and related rights on the lower course of Nicaragua's San Juan river¹—that portion of the river subject to the terms of Article VI of the April 15, 1858, Treaty of Limits, or Jerez-Cañas Treaty (1858 Treaty), which creates certain Costa Rican navigational rights on parts of the San Juan (see map prepared by ICJ). Costa Rica initiated this case on September 29, 2005, with an application requesting the Court “to adjudge and declare that Nicaragua is in breach of its international obligations . . . in denying to Costa Rica the free exercise of its rights of navigation and associated rights on the San Juan River” (para. 12, quoting application). Costa Rica sought to found jurisdiction on the parties' declarations under Article 36(2) of the Court's Statute, the 2002 Tovar-Caldera Agreement, and Article XXXI of the Pact of Bogotá (para. 1). Nicaragua did not contest the Court's jurisdiction.

In a lengthy *dispositif* (para. 156), the Court found “that Costa Rica has the right of free navigation on the San Juan river for the purposes of commerce,” including the transport of passengers and tourists; that those persons need not obtain a Nicaraguan visa or purchase a tourist card; that “the inhabitants of the Costa Rican bank of the . . . river have the right to navigate between the riparian communities for the purposes of the essential needs of everyday life which require expeditious transportation”; and “that Costa Rica has the right of navigation . . . with official vessels used solely . . . to provide essential services for [those] inhabitants.” Costa Rica's navigational rights do not cover either “vessels carrying out police functions” or “navigation . . . for the purposes of the exchange of personnel of the [Costa Rican] police border posts . . . [or] of the re-supply of these posts, with official equipment, including service arms and ammunition.” As for Nicaragua's right to regulate Costa Rican navigation on this portion of its river, the Court found that “Nicaragua has the right to require Costa Rican vessels . . . to stop at the first and last Nicaraguan post on their route . . . ; . . . to require persons . . .

¹ Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicar.) (Int'l Ct. Justice July 13, 2009). The basic documents, decisions, pleadings, transcripts, press releases, and other materials for this case and others are available on the Court's Web site, <http://www.icj-cij.org>.



to carry a passport or an identity document; . . . to issue [but not to charge for] departure clearance certificates . . . ; . . . to impose timetables for navigation . . . ; . . . [and] to require Costa Rican vessels . . . to display the Nicaraguan flag.” Nicaragua was “not acting in accordance with its obligations under the 1858 Treaty when it” required persons to obtain Nicaraguan visas and purchase Nicaraguan tourist cards, and when it charged for departure clearance certificates. Finally, the Court found “that fishing by the inhabitants of the Costa Rican bank of the San Juan river for subsistence purposes from that bank is to be respected by Nicaragua as a customary right.”

The Court based its decision primarily on the 1858 Treaty,² Article II of which fixed the course of the entire land boundary between the parties. Physical demarcation of the boundary occurred between 1897 and 1900. The effect of Article II and the subsequent demarcation exercise was to place the eastern third of the boundary along the right (or Costa Rican) bank of the lower course of the San Juan River from a point three miles downstream from Nicaragua’s Castillo Viejo to the mouth of the river on the Caribbean coast at the Bay of San Juan del Norte, thus leaving the river itself in Nicaraguan territory. Article VI of the 1858 Treaty created an exception affirming for Costa Rica “a perpetual right of free navigation” for certain purposes on the lower course of the San Juan River (para. 44, quoting Court’s translation of Article VI of the 1858 Treaty). The exact contours of this exception and the limitations that it created on Nicaragua’s exercise of sovereignty were at issue in this case. The parties did not

² Provisions of the 1858 Treaty were the subject of two arbitration awards: the March 22, 1888, arbitral award made by the president of the United States and the September 30, 1916, decision of the Central American Court of Justice. The Court, however, found that neither award settled the questions at issue in this case (para. 49). It may be noted that in the instant case, Costa Rica urged the Court also to consider “the rules of general international law that are applicable . . . to navigation on ‘international rivers’” (para. 32). The Court found it unnecessary to take a position on whether “there exists, in customary international law, a régime applicable to navigation on ‘international rivers’” or “whether the San Juan falls into the category of ‘international rivers’” (para. 34). Instead, “the 1858 Treaty of Limits completely defines the rules applicable to the section of the San Juan river that is in dispute in respect of navigation” (para. 36).

dispute the location of their boundary. It should be noted that the navigational aspects of the 1858 Treaty and the decision in this case do not apply to the upper course, or nonboundary portion, of the San Juan river, both banks of which are in Nicaraguan territory.

While expressly recognizing Nicaragua's sovereignty over the San Juan River, Article VI of the 1858 Treaty also limited that sovereignty by creating conditional navigational rights for Costa Rican vessels. The Court's English translation of Article VI reads as follows:

The Republic of Nicaragua shall have exclusive *dominium* and *imperium* over the waters of the San Juan river from its origin in the lake to its mouth at the Atlantic Ocean; the Republic of Costa Rica shall however have a perpetual right of free navigation on the said waters between the mouth of the river and a point located three English miles below Castillo Viejo, [*con objetos de comercio*], whether with Nicaragua or with the interior of Costa Rica by the rivers San Carlos or Sarapiquí or any other waterway starting from the section of the bank of the San Juan established as belonging to that Republic. The vessels of both countries may land indiscriminately on either bank of the section of the river where navigation is common, without paying taxes, unless agreed by both Governments. (Para. 44)³

The bulk of the Court's judgment focused on "determin[ing] the extent of Costa Rica's right of free navigation on the San Juan river" and then on "ascertain[ing] whether, and to what extent, within the ambit of the right thus defined, Nicaragua has the power to regulate navigation by Costa Rican boats and whether the specific measures [instituted] during the period of the dispute are compatible with Costa Rica's rights" (para. 29).

The extent of Costa Rica's right turned on the phrase "*con objetos de comercio*," which modified and limited Costa Rica's "perpetual right of free navigation." Nicaragua interpreted this phrase narrowly, translating it as "with articles of trade," thus giving a concrete meaning to *objetos* (that is, physical objects or goods) and limiting *comercio* to the purchase and sale of those goods or merchandise (paras. 45, 58). Costa Rica interpreted the phrase broadly, translating it as "for the purposes of commerce," thus giving an abstract meaning to *con objetos de* (that is, for the purpose of) and allowing *comercio* broad scope to include "not only the transportation of goods but also the transport of passengers, including tourists" (para. 45). The Court turned first to an analysis of *con objetos de* and then to *comercio* to define the exact extent of Costa Rica's right of free navigation.

Standing alone, *objetos* could have either the concrete or abstract meaning argued by the parties. The Court therefore examined the provision's context and, applying a literal analysis to the text of Article VI, found that only Costa Rica's abstract interpretation of *con objetos de* (as "for the purposes of") would give the sentence coherent meaning in view of the immediately following clause, "whether with Nicaragua or with the interior of Costa Rica" (para. 52). This interpretation was supported by the abstract use of the word *objetos* in Article VIII of the same Treaty (para. 54), the use (one year earlier) in the 1857 "Cañas-Martínez" Peace Treaty of the phrase "*artículos de comercio*" to indicate "articles" or "goods" of commerce (para. 55), and the use by both parties of the translation "for the purposes of commerce" in their 1887 submissions before the arbitration by U.S. President Cleveland, which considered other aspects of the 1858 Treaty (para. 56).

³ The authoritative Spanish version of Article VI is reproduced at paragraph 43.

The Court then turned to a more involved analysis of the meaning of *comercio*. Costa Rica argued that *comercio* included, at a minimum, “any activity in pursuit of commercial purposes” and that it extended to not-for-profit activities, including “movement and contact between inhabitants of the villages on the Costa Rican bank” and “navigation by Costa Rican public officials providing the local population with essential services” (para. 59). Observing that Costa Rica’s broad interpretation provided no limitation on the right of free navigation and that it would therefore render the language *con objetos de comercio* without effect, the Court did not accept Costa Rica’s interpretation.

Nicaragua argued that *comercio* was limited solely to “the purchase and sale of merchandise” (para. 58), and supported this contention, in part, with “the assertion that ‘commerce’ should be given the narrow meaning it had when the Treaty was entered into” (para. 62). The Court disagreed. While noting that it is “the parties’ common intention” at the time of concluding the Treaty that guides the interpretation of terms used in the Treaty, “there are situations in which the parties’ intent upon conclusion of the treaty was . . . to give the terms used . . . a meaning or content capable of evolving” (para. 64).⁴ According to the Court, “where the parties have used generic terms, . . . and where the treaty has been entered into for a very long period . . . , the parties must be presumed, as a general rule, to have intended those terms to have an evolving meaning” (para. 66).⁵ Here, the Court found both a generic term—*comercio*—and a perpetual legal régime, and concluded that “it is the present meaning which must be accepted for purposes of applying the Treaty” (para. 70).

Applying the present meaning of *comercio* to navigational activities on the lower course of the San Juan River, the Court found that Costa Rica’s rights under Article VI included “carrying passengers who pay a price . . . in exchange for the service” (para. 73). Although the commercial navigation contemplated in Article VI is generally carried out by private vessels, the Court allowed that official or public vessels navigating for the purposes of commerce would also be covered, the decisive factor being the purpose of the navigation.

The Court found two additional types of navigation, one private and one public, would be permitted to Costa Rica: first, “for the Costa Ricans living on [the Costa Rican] bank a minimal right of navigation for the purposes of continuing to live a normal life in the villages along the river” (para. 79), and second, navigation by “Costa Rican official vessels . . . used solely for the purpose of providing [the riparian] population with what it needs in order to meet the necessities of daily life” (para. 84). The Court inferred these rights not from Article VI, but “from the provisions of the Treaty as a whole, in particular from the fixing of the boundary along the river bank” (*id.*).

Having determined the contours of Costa Rica’s navigational rights in accordance with Article VI and the Treaty as a whole, the Court turned to Nicaragua’s power to regulate that

⁴ Here the Court articulated the possibility of a contemporaneous intent to create an evolutionary meaning, meshing the two interpretive approaches. Judge *ad hoc* Guillaume expanded on the Court’s past practice of *l’interprétation “contemporaine”* versus *l’interprétation “évolutive”* in his declaration (see paras. 8–16) appended to the judgment, ultimately agreeing with the Court’s interpretation of the term *comercio*, but for different reasons.

⁵ For a critique of the Court’s interpretation of the term *comercio* in this case, see Marko Milanovic, *The ICJ and Evolutionary Treaty Interpretation*, EJIL TALK! (July 14, 2009), at <http://www.ejiltalk.org/author/guestcontributor/page/3/>.

navigation.⁶ Before addressing specific Nicaraguan regulations, the Court laid out five generic characteristics of permissible Nicaraguan regulation:

- (1) it must only subject the activity to certain rules without rendering impossible or substantially impeding the exercise of the right of free navigation;
- (2) it must be consistent with the terms of the Treaty, such as the prohibition on the unilateral imposition of certain taxes in Article VI;
- (3) it must have a legitimate purpose, such as safety of navigation, crime prevention and public safety and border control;⁷
- (4) it must not be discriminatory and in matters such as timetabling must apply to Nicaraguan vessels if it applies to Costa Rican ones;
- (5) it must not be unreasonable, which means that its negative impact on the exercise of the right in question must not be manifestly excessive when measured against the protection afforded to the purpose invoked. (Para. 87)

The Court also concluded that Nicaragua was obligated to notify Costa Rica of regulations affecting Costa Rica's navigation rights. This obligation did not, however, include a duty to provide prior notice to, or to engage in consultation with, Costa Rica (para. 97).

Costa Rica challenged specific Nicaraguan regulations, which the Court divided into six categories: regulations that required Costa Rican vessels or individuals aboard those vessels to (1) stop at Nicaraguan posts and identify passengers;⁸ (2) obtain departure clearance certificates;⁹ (3) obtain Nicaraguan visas or purchase tourist cards; (4) pay fees for departure clearance certificates, visas, and tourist cards; (5) operate according to the Nicaraguan timetable for navigation;¹⁰ and (6) fly the Nicaraguan flag.¹¹ The Court considered each category of regulation primarily in light of the "reasonableness" balancing test embodied in the fifth characteristic listed above, and found that four of the six categories of Nicaraguan regulations were "in conformity with the 1858 Treaty" (para. 133) and therefore permissible. In contrast, the Court found that requiring Nicaraguan visas was "a breach of the Treaty right [of free navigation]" (para. 115), that requiring tourist cards served no legitimate purpose (para. 119), that charging fees for departure clearance certificates without providing a service to boat operators was "unlawful" (para. 123), and that charging fees for visas and tourist cards was also impermissible since Nicaragua had no power to require the underlying documents (para. 120).

As a final substantive matter, the Court considered the question of subsistence fishing in the San Juan River by inhabitants of the Costa Rican bank. The parties agreed that there was a long-standing practice of subsistence fishing by the riparian inhabitants, but disagreed whether this

⁶ All navigation outside the scope of Costa Rica's right of navigation as provided for in the 1858 Treaty is subject to Nicaragua's "complete power of regulation" (para. 85).

⁷ [Author's note: In subsequent paragraphs the Court added environmental protection to the list of legitimate purposes (see paras. 88–89).]

⁸ Considered in paragraphs 103–07, this category was found to be not unreasonable (see para. 106).

⁹ Considered in paragraphs 108–10, this category was found to be for legitimate purposes, with the regulations imposing no significant impediment to Costa Rica's navigational rights (see para. 109)

¹⁰ Considered in paragraphs 125–29, this category of regulation was not proven by Costa Rica to be unreasonable (see para. 128).

¹¹ Considered in paragraphs 130–32, this regulation did not impose an impediment to navigation (see para. 132).

practice created an obligation binding on Nicaragua (para. 141). The Court concluded that Nicaragua must respect, as a customary right, subsistence fishing by the inhabitants of the Costa Rican bank conducted from that bank, but not from vessels in the river (para. 144). The Court rejected all other submissions presented by the parties (see paras. 145–56).

The Court's interpretation of Article VI of the 1858 Treaty, while of central importance to the neighborly interactions of Costa Rica and Nicaragua on the lower course of the San Juan river, is not of broad import beyond the confines of this case and these parties. The two aspects of the decision not based on Article VI, however, could have broader relevance for relationships between neighboring riparian states and for individuals living in riparian border areas: (1) the Court's findings regarding minimal rights of navigation by, or on behalf of, inhabitants of the Costa Rican bank; and (2) the Court's finding regarding customary rights of subsistence fishing by those same inhabitants. It is worth noting that, on the facts of this case, these parts of the Court's decision concern only a small group of persons: approximately 450 individuals, approximately half of whom are Nicaraguan (para. 98).

The Court acknowledges that the minimal rights of navigation enjoyed both by the riparian inhabitants and by Costa Rica navigating on their behalf are "not guaranteed by Article VI of the Treaty" (para. 84). That is, they do not constitute navigation for the purposes of commerce. Not falling within the Article VI exception, it seems these rights would be excluded by the clear language of Article VI, which gives Nicaragua exclusive sovereignty over the territory constituted by the San Juan River. Nonetheless, the Court found the existence of this additional navigational exception on the basis of "the historical background to the conclusion of this Treaty" (para. 79), "the Treaty's object and purpose" (*id.*), "the geography of the area" (*id.*), and "the provisions of the Treaty as a whole, *in particular from the fixing of the boundary along the river bank*" (para. 84, emphasis added). Ostensibly the result of interpreting the specific text and context of the 1858 Treaty, this part of the decision may be applicable beyond this particular treaty relationship insofar as the same ingredients—a boundary delimited along a bank inhabited by individuals whose normal life includes transportation along the river for lack of a more expeditious option—are present elsewhere. Judge *ad hoc* Guillaume, in a noncomprehensive list, noted eight international boundary relationships that involve a boundary delimited on a river bank (Declaration, para. 6). In fact, sections of as many as twenty-five international boundaries are delimited along river banks, totaling approximately four thousand kilometers of international river bank boundary.¹² Although the Court found it unnecessary to consider whether a regime of customary international law exists for the navigation of international rivers, and if it did, what rules that regime might contain (para. 36),¹³ one wonders whether the right of riparian inhabitants to navigate for certain limited purposes might be included.¹⁴

¹² Email communications between author and coordinator of the International River Boundaries Database, John W. Donaldson, Senior Research Associate, International Boundaries Research Unit, Durham University, Durham, UK (Jan. 11 & Feb. 2, 2010).

¹³ Judge *ad hoc* Guillaume argued that no such customary international law regime exists (see Declaration, para. 3).

¹⁴ Judge *ad hoc* Guillaume characterized this minimal right of navigation as a matter of custom, not treaty, albeit custom deduced in the teeth of treaty language to the contrary: "Elle semble avoir renoncé à fonder cette solution sur une coutume *contra legem* qui au surplus n'est pas établie" (Declaration, para. 19).

With respect to subsistence fishing—the other aspect of the decision with possible relevance beyond the lower San Juan River and the only issue in the case unrelated to navigation—Costa Rica requested the Court to rule that Nicaragua had violated “the obligation to permit riparians of the Costa Rican bank to fish in the River for subsistence purposes” (para. 14). In the operative paragraph the Court found “that fishing by the inhabitants of the Costa Rican bank of the San Juan river for subsistence purposes from that bank is to be respected by Nicaragua as a customary right” (para. 156). In so finding, the Court found a duty opposable to Nicaragua, but it remains unclear who holds the corresponding right¹⁵ and, more importantly for riparian states and individuals elsewhere, how the obligation arose and became binding on Nicaragua.

Language found in the judgment indicates that the Costa Rican state is the titleholder of the right of subsistence fishing.¹⁶ Notwithstanding that language, it is reasonable to conclude on the basis of the language of the operative paragraph, other language in the decision,¹⁷ the context in which the issue was raised by Costa Rica (see para. 140; Sep. Op., Sepúlveda-Amor, J., para. 23), the history and nature of the relevant practice,¹⁸ and the nature of the right itself that the individual riparian inhabitants, not the Costa Rican state, are the actual, beneficial owners. Under this reasoning the “customary right” is not a sovereign right but, instead, a traditional, privately held, usufructuary right to capture the fish in the lower course of the San Juan River, a right held by some or all of the approximately 450 individuals, regardless of nationality, living along the Costa Rican bank of the San Juan River, and a right with which, in any event, Nicaragua may not interfere except in order to regulate that fishing “for proper purposes” (para. 141).¹⁹ Moreover, the right should not be conceived of as one arising from a rule of customary international law, but instead as an acquired or vested right held by individuals by virtue of their long-standing use of the resource.²⁰ Here, the relevant rule of customary international law does not create the fishing right but is, instead, a rule operating in the background of the Court’s

¹⁵ The Court spoke to this issue in its consideration of Nicaragua’s visa requirement:

Under Article VI of the Treaty the titleholder of the right of free navigation is Costa Rica. Owners and operators of Costa Rican vessels benefit from that right when navigating on the San Juan river for commercial purposes. Passengers on vessels exercising Costa Rica’s right of free navigation also benefit from that right, even if such passengers are not Costa Rican nationals. (Para. 114)

¹⁶ “The Court accordingly concludes that *Costa Rica* has a customary right” (para. 141, emphasis added).

¹⁷ “Accordingly, the Court concludes that fishing by the inhabitants of the Costa Rican bank of the San Juan river for subsistence purposes from that bank is to be respected by Nicaragua as a customary right” (para. 144).

¹⁸ Costa Rica does not appear to have made any claim of state practice, and it is difficult to conceive of the practice of subsistence fishing by a small number of individuals in a remote border area as being anything other than private in nature and without the imprimatur of government.

¹⁹ Elsewhere, this kind of right has been called a “traditional right.” See, e.g., *Gov’t of Sudan v. Sudan Peoples’ Liberation Movement/Army* (“Abyei Arbitration”), paras. 748–66 (Arb. Trib. July 22, 2009) (reported by Coalter G. Lathrop at 104 AJIL 66 (2010)); *Eritrea v. Yemen, Second Stage, Maritime Delimitation*, 22 R.I.A.A. 335, para.108 (Perm. Ct. Arb. Dec. 17, 1999), reprinted in 40 ILM 983 (reported by W. Michael Reisman at 94 AJIL 721 (2000)).

²⁰ In his separate opinion (para. 20), Judge Sepúlveda-Amor criticized the Court’s reasoning in respect of subsistence fishing for deviating from its “previous findings on the recognition of rules of customary international law.” Although the word “customary” is used in the decision, there is no indication that the Court sought to find a rule of customary international law in the global sense: the Court did not purport to have found universal state practice, much less *opinio juris*, to support such a rule, and did not indicate that the effect of any such rule would extend beyond the parties to this case. Sepúlveda-Amor provided an alternative legal theory to support the Court’s finding here: “namely the principle of acquired or vested rights” (Sep. Op., para. 28). This alternative basis for the Court’s finding on subsistence fishing is much more persuasive than, and in no apparent conflict with, the Court’s own reasoning.

decision—namely, a customary international law rule that the traditional rights of local populations must be respected by the sovereign in whose territory those rights are exercised.²¹

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International criminal law—genocide—mens rea—standard of proof—superior responsibility

PROSECUTOR v. OMAR HASSAN AHMED AL BASHIR. Case No. ICC-02/05-01/09-73. Judgment on the Appeal of the Prosecutor Against the “Decision on the Prosecution’s Application for a Warrant of Arrest Against Omar Hassan Ahmed Al Bashir.” At <http://www.icc-cpi.int/iccdocs/doc/doc817795.pdf>.

International Criminal Court, February 3, 2010.

In March 2009, a pretrial chamber of the International Criminal Court (ICC) issued a warrant for the arrest of Sudanese President Omar Hassan Ahmed Al Bashir to stand trial in the ICC for crimes against humanity (murder, extermination, rape, torture, and forcible transfer) and war crimes (intentionally directing attacks against the civilian population or individual civilians, and pillage).¹ The pretrial chamber, in a 2-1 decision, declined to include the crime of genocide in the arrest warrant because the prosecutor had not submitted sufficient evidence concerning genocidal intent on the part of the accused; in particular, the existence of such intent was not the only reasonable conclusion that could be drawn from the evidence and other information submitted. In a separate and partly dissenting opinion, Judge Anita Učka argued that at the arrest warrant stage, the inference of mens rea was not required to be the only reasonable conclusion that could be drawn from the facts presented; instead, all that is required was that the evidence provide reasonable grounds to believe that the crimes were committed with genocidal intent.

The prosecutor appealed the pretrial chamber’s decision to exclude genocide from the charges to be brought against Al Bashir.² In a judgment of February 3, 2010, the appeals chamber upheld the appeal, finding that the pretrial chamber had erroneously applied the prescribed standard of proof in deciding not to authorize an arrest warrant for genocide (paras. 33–39).³ At that stage, the appeals chamber asserted (adopting basically the same analysis as Judge Učka’s partial dissent), the question is not whether a person’s having acted with genocidal

²¹ See Sep. Op., Sepúlveda-Amor, J., paras 28–30 (quoting *Certain German Interests in Polish Upper Silesia* (1926); *Land, Island and Maritime Frontier Dispute* (1992); and *Land and Maritime Boundary Between Cameroon and Nigeria* (2002)); see also *Gov’t of Sudan v. Sudan Peoples’ Liberation Movement/Army* (“Abyei Arbitration”), para. 753 (“The jurisprudence of international courts and tribunals as well as international treaty practice lend additional support to the principle that, in the absence of an explicit prohibition to the contrary, the transfer of sovereignty in the context of boundary delimitation should not be construed to extinguish traditional rights to the use of land (or maritime resources).”).

¹ Prosecutor v. Al Bashir, Case No. ICC-02/05-01/09-3, Decision on the Prosecutor’s Application for a Warrant of Arrest Against Omar Hassan Ahmed Al Bashir (Mar. 4, 2009). Materials on ICC situations, including that in Darfur, Sudan, are available at <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/>.

² See Prosecutor v. Al Bashir, Case No. ICC-02/05-01/09-12, Prosecution’s Application for Leave to Appeal the “Decision on the Prosecutor’s Application for a Warrant of Arrest Against Omar Hassan Ahmed Al Bashir” Dated 4 March 2009 (Mar. 13, 2009); Prosecutor v. Al Bashir, Case No. ICC-02/05-01/09-21, Prosecution’s Application for Leave to Appeal the “Decision on the Prosecutor’s Application for Leave to Appeal the “Decision on the Prosecutor’s Application for a Warrant of Arrest Against Omar Hassan Ahmed Al Bashir” (June 24, 2009).

³ Prosecutor v. Al Bashir, Case No. ICC-02/05-01/09-73, Judgment on the Appeal of the Prosecutor Against the “Decision on the Prosecution’s Application for a Warrant of Arrest Against Omar Hassan Ahmed Al Bashir” (Feb. 3, 2010).