

Case concerning the land, island and maritime frontier dispute (El Salvador, Honduras; Nicaragua intervening), International Court of Justice, 11 September 1992

THE HAGUE, 11 September (ICJ) -- The Chamber constituted by the International Court of Justice to deal with the land, island and maritime frontier dispute between El Salvador and Honduras, today delivered its Judgment. Nicaragua was an intervenor in the case.

The Chamber decided on the land boundary between Honduras and El Salvador in six disputed sectors, the legal situation of three islands in the Gulf of Fonseca and the maritime spaces within that gulf.

The Chamber based its determination in the land question on principle, generally accepted in Spanish America, that international boundaries should follow former colonial administrative boundaries. The Chamber was authorized to take into account, where pertinent, a provision of the 1980 Peace Treaty that a basis for delimitation is to be found in documents issued by Spanish authorities during the colonial period indicating jurisdictions or territorial limits, as well as other types of evidence.

With regard to the land boundary, the Chamber notes that while the Parties have indicated to which colonial administrative divisions they claim to have succeeded, they have not been able to produce legislative or similar material indicating the limits of such divisions. They have submitted titles concerning land grants by the Spanish Crown, in particular grants of commons to Indian communities, from which, they allege, the provincial boundaries can be deduced.

El Salvador maintains that if a formal grant of commons to a community in one province extended to land situated in another, the administrative control of the former province was the basis for determining the current boundary. The Chamber, faced with such a situation in three of the disputed sectors, has been able to resolve the issue without determining this particular question of Spanish colonial law.

The Chamber recognizes that grants to private individuals may afford evidence as to the location of boundaries, and will consider the evidence of such grants on its merits, but without treating them as necessarily conclusive.

The Chamber notes the agreement of the parties that land not attributed by the Spanish Crown became part of one or the other State depending on its location, and that land grants made after the independence of the two States may provide evidence of the position in 1821.

Land frontier

Proceeding from west to east, the Chamber deals successively with each of the six disputed sectors of the land boundary:

In the first sector, the Chamber considers a claim by El Salvador based on a land grant by colonial authorities to a community in a province that on independence became part of El Salvador. Honduras contends that when the title was granted, the lands concerned were stated to be in a Honduran province, and that the lands on independence thus became part of Honduras.

The Chamber upholds El Salvador's claim on the basis that Honduras's conduct from 1821 to 1972 may be regarded as acquiescence. It has then to determine the location of the boundary of the granted land.

Turning to a disputed area outside the grant, claimed by Honduras on the basis that it was Crown land situated in a province that became Honduran and by El Salvador on the basis of effective control, the Chamber adopts a topographically suitable boundary line that had been accepted by El Salvador in the 1930s.

In the second sector, the Chamber upholds a claim by Honduras that a 1742 title shows that the "mountain of Cayaguanca", which a community in a province that became Honduran was allowed to cultivate, is now part of Honduras. The location and extent of that mountain was not specified; according to Honduras, it extended over the whole of the disputed area. The Chamber examines the Parties' conflicting interpretations of an 1833 Salvadorian title, and on that basis determines the course of the relevant portion of the boundary line. The Chamber fixes the remainder of the boundary according to other evidence, including an interpretation of the 1742 title.

In the third sector, the Chamber deals with claims based on various colonial and post-colonial titles, including interlocking ones, as well as claims made particularly by El Salvador based on other arguments. Unable to reconcile all of the eighteenth century data, the Chamber reconstructs the boundary on the basis of identifiable reference points.

In the fourth sector, the principal issue is whether the boundary follows the river Negro-Quiagara, as argued by Honduras, or a line farther north, as El Salvador contends. The disagreement centres on a land grant, straddling the river, to an Indian community in a province that became Salvadorian and a dispute with a community in a province that became Honduran. The Chamber upholds Honduras's contention that El Salvador admitted in 1861 that the river was the boundary.

In other parts of this sector, the Chamber determines the boundary on the basis of an interpretation of the various colonial titles produced by each party and a Salvadorian claim relating to the concept of Crown land. The Chamber has to determine the end-point of an agreed sector of the boundary.

In the fifth sector, El Salvador claims that the boundary follows the northern limit of lands covered in a 1760 title, while Honduras claims that the northern part of those lands had belonged, prior to 1734, to a village in Comayagua Province, now a part of Honduras. The Chamber does not accept Honduras's claim, and further rejects that Party's contention that El Salvador had, by its conduct between 1821 and 1897, accepted the river Torola as the boundary.

The Chamber determines the boundary on the basis of an interpretation of the 1760 title different from those of the Parties. In the east, the Chamber sets the line at the river Unire, as claimed by El Salvador, and between the 1760 lands and the starting point of the sector, at the Torola river.

In the sixth sector, the essential question is whether the colonial boundary was formed by the present river Goasoran, or, as claimed by El Salvador, by a former course of that river. The Chamber does not accept the claim that the riverbed changed its location since the independence of the two States in 1821. The main basis for this finding is a map of the Gulf of Fonseca during the period 1794-1796, and the conduct of the Parties in the negotiations of 1880 and 1884.

Gulf islands

Concerning the status of the islands in the Gulf, El Salvador has asked the Chamber to declare that country's sovereignty over all of them except Zacata Grande and the Farallones. According to Honduras, only Meanguera and Meanguerita islands are in dispute, and Honduras claims sovereignty over them. The Chamber states that a judicial determination is required only for the islands in dispute, which it finds to be El Tigre, Meanguera and Meanguerita; it rejects Honduras's claim that there is no real dispute as to El Tigre.

In view of the fragmentary and ambiguous nature of the material offered in evidence by the Parties, the Chamber deems it unnecessary to analyse all the arguments in detail. Noting that in theory each island appertained to one of the Gulf States by succession from Spain, which precluded acquisition by occupation, the Chamber observes that effective possession by one of the States could throw light on the present legal situation.

Since Honduras has occupied El Tigre since 1849, the Chamber concludes that the Parties' conduct accorded with the assumption that El Tigre belongs to that country, even though Honduras has not requested such a finding.

It finds that Meanguerita, a very small uninhabited island, is a "dependency" of nearby Meanguera. Noting that El Salvador has intensified its presence in Meanguera since it claimed the island in 1854, the Chamber rules that Honduras's 1991 protest is too late to affect the presumption of its acquiescence to the island's legal status. The Chamber finds that Meanguera and Meanguerita belong to El Salvador.

Maritime boundary

As for the maritime frontier, El Salvador claims that the spaces within the Gulf of Fonseca are subject to a condominium of the three coastal States and that delimitation would be inappropriate. Honduras argues that within the Gulf there is a community of interests necessitating a judicial delimitation.

Applying the normal rules of treaty interpretation, the Chamber finds that it has no jurisdiction to effect a delimitation, whether inside or outside the Gulf. After examining the history of the Gulf, the Chamber notes that El Salvador, Honduras and

Nicaragua continue to claim the Gulf as an historic bay with the character of a closed sea. It finds that the Gulf waters, other than the three-mile maritime belt, are historic waters and subject to a joint sovereignty of the three coastal States. It notes that there has been no attempt to divide the waters according to colonial title and decides that a joint succession of the three States seems to be logical.

The Chamber finds that Honduras has legal rights in the Gulf waters up to the bay closing line. Outside the Gulf, the Chamber observes that new concepts of law -- particularly regarding the continental shelf and the exclusive economic zone -- are now involved, and finds that, excluding a strip at each end of the Gulf corresponding to the maritime belts of El Salvador and Nicaragua, the three States are entitled to territorial sea, continental shelf and exclusive economic zone, but may proceed to a division by mutual agreement.