

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS
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**CASE CONCERNING THE LAND, ISLAND AND
MARITIME FRONTIER DISPUTE**

(EL SALVADOR/HONDURAS)

ORDER OF 8 MAY 1987

CONSTITUTION OF CHAMBER

1987

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

**AFFAIRE DU DIFFÉREND FRONTALIER
TERRESTRE, INSULAIRE ET MARITIME**

(EL SALVADOR/HONDURAS)

ORDONNANCE DU 8 MAI 1987

CONSTITUTION DE CHAMBRE

Official citation :

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Constitution of Chamber, Order of 8 May 1987,
I.C.J. Reports 1987, p. 10.*

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8 May 1987

CASE CONCERNING THE LAND, ISLAND AND
MARITIME FRONTIER DISPUTE

(EL SALVADOR/HONDURAS)

ORDER

CONSTITUTION OF CHAMBER

Present: President NAGENDRA SINGH; *Vice-President* MBAYE; *Judges* LACHS, RUDA, ODA, AGO, SETTE-CAMARA, SCHWEBEL, Sir Robert JENNINGS, BEDJAOUI, NI, EVENSEN, TARASSOV; *Registrar* VALENCIA-OSPINA.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Article 26, paragraphs 2 and 3, Article 31 and Article 48 of the Statute of the Court, and to Articles 17, 18, 31, 35 and 44 of the Rules of Court,

Makes the following Order:

1. Whereas by a joint letter dated 11 December 1986, filed in the Registry of the Court the same day, the Ministers for Foreign Affairs of the Republic of Honduras and the Republic of El Salvador transmitted to the Registrar a certified copy of a Special Agreement in the Spanish language entitled "COMPROMISO ENTRE HONDURAS Y EL SALVADOR PARA SOMETER A

LA DECISION DE LA CORTE INTERNACIONAL DE JUSTICIA LA CONTROVERSA FRONTERIZA TERRESTRE, INSULAR Y MARITIMA EXISTENTE ENTRE LOS DOS ESTADOS, SUSCRITO EN LA CIUDAD DE ESQUIPULAS, REPUBLICA DE GUATEMALA, EL DIA 24 DE MAYO DE 1986”, and entering into force on 1 October 1986;

2. Whereas by letters dated 11 December 1986 and 19 March 1987 the Government of Honduras informed the Court of the appointment of Mr. Carlos Roberto Reina as Agent and Mr. Mario Carías as Co-Agent; and whereas the Government of El Salvador informed the Court, by a letter dated 16 February 1987, of the appointment of Mr. Francisco Roberto Lima as Agent, by a letter of 7 March 1987 of the appointment of Mr. Alfredo Martínez Moreno as Co-Agent, and by a letter of 27 March 1987 of the appointment of Mr. Abel Salazar Rodezno as Co-Agent;

3. Whereas in the said joint letter of 11 December 1986, written in English, the Special Agreement was referred to as the “Special Agreement between El Salvador and Honduras to submit the land, island and maritime frontier dispute between the two States to the International Court of Justice for a decision, signed in the City of Esquipulas, Republic of Guatemala, on 24 May 1986”; and whereas in a further joint letter in English dated 8 February 1987, the Ministers for Foreign Affairs referred to “the Special Agreement between El Salvador and Honduras, submitting to the decision of the Court the land, insular and maritime frontier controversy between both States”;

4. Whereas up to the present the Parties have not supplied the Court with an agreed translation of the Special Agreement into one of the official languages of the Court, nor has either Party submitted a translation of its own; whereas the Government of El Salvador has indicated that it had no observations to make on translations of the Special Agreement into English and French prepared by the Registry of the Court, subject to a reservation as to the translation of the title of the Special Agreement; whereas however the Government of Honduras, having also been supplied with the translations prepared by the Registry, has indicated that it accepts only the Spanish text “and its literal translations, as the ones made in French and in English in New York”, effected by the Secretariat of the United Nations, on the deposit of the Special Agreement under Article 102 of the Charter;

5. Whereas for the purposes solely of determining the title to be given to the case, it is therefore appropriate to use the form of words adopted by both Parties in the joint letter of 11 December 1986, namely the “land, island and maritime frontier dispute” between the Parties, the adoption of this title being without prejudice to the proper interpretation of the provisions of the Special Agreement defining the subject of the dispute;

6. Whereas the Special Agreement, according to both existing translations into the official languages of the Court already referred to, defines in Article 2 the questions submitted for decision, and provides in Article 1

that the Parties submit those questions to a Chamber of the Court composed of three members, and further that in addition, the Chamber shall comprise two judges *ad hoc*, who may have the nationality of the Parties; and whereas the Court understands the Special Agreement as requesting the Court to form a Chamber to deal with the case in accordance with Article 26, paragraph 2, of its Statute;

7. Whereas the Parties were duly consulted, on 17 February 1987, as to the composition of the proposed Chamber of the Court in accordance with Article 26, paragraph 2, of the Statute and Article 17, paragraph 2, of the Rules of Court;

8. Whereas the Parties in the course of such consultation confirmed the indication, given in the Special Agreement, that as regards the number of judges to constitute such chamber, they approve, pursuant to Article 26 of the Statute, that number being fixed at five judges, including two judges *ad hoc* chosen by the Parties pursuant to Article 31, paragraph 3, of the Statute;

9. Whereas by a letter dated 7 March 1987 the Minister for Foreign Affairs of El Salvador notified the Court of its choice of Mr. Nicolas Valticos to sit as judge *ad hoc* in the Chamber; and whereas by a letter dated 8 April 1987, the Agent of Honduras notified the Court of its choice of Mr. Michel Virally to sit as judge *ad hoc* in the Chamber; and whereas no objection has been raised by either Party to the choice of judge *ad hoc* made by the other, and no objection to such choice appears to the Court itself;

THE COURT,
unanimously,

1. *Decides* to accede to the request of the Governments of El Salvador and Honduras to form a special Chamber of five judges to deal with the present case;

2. *Declares* that at an election held on 4 May 1987 Judges Oda, Sette-Camara and Sir Robert Jennings were elected to form, with the above-named judges *ad hoc*, a Chamber to deal with this case, and that accordingly such a Chamber is duly constituted by the present Order, with the following composition:

Judges Oda,
Sette-Camara,
Sir Robert Jennings,

Judges *ad hoc* Valticos,
Virally;

and reserves the subsequent procedure for further decision.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this eighth day of May, one thousand

nine hundred and eighty-seven, in three copies, one of which will be placed in the archives of the Court, and the others transmitted to the Government of El Salvador and to the Government of Honduras, respectively.

(Signed) NAGENDRA SINGH,
President.

(Signed) Eduardo VALENCIA-OSPINA,
Registrar.

Judge ODA makes the following declaration:

In the case of a chamber provided for in Article 26, paragraph 2, of the Statute of the Court, the consent of the two parties is essential and, as that provision clearly states, the number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties. At the same time, regarding the composition of the chamber, the views of the parties shall be ascertained by the President in accordance with Article 17, paragraph 2, of the Rules of Court. The Court, being sovereign in judicial proceedings, is free to choose any composition it likes; yet the possibility must also be borne in mind that sovereign States have the legal right to withdraw a case if they prefer a composition different from that determined by the Court. In practical terms, therefore, it is inevitable, if a chamber is to be viable, that its composition must result from a consensus between the parties and the Court. To ensure that viability, it accordingly behoves the Court to take account of the views of the parties when proceeding to the election. Nevertheless, the chamber is a component of the Court, bound by its Statute and Rules; and the process of election whereby it comes into being should be as judicially impartial as its subsequent functioning.

(Initialed) N.S.

(Initialed) E.V.O.