



INTERNATIONAL COURT OF JUSTICE

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Press Release

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Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (El Salvador v. Honduras)

The Chamber rejects the Application for revision submitted by El Salvador

THE HAGUE, 18 December 2003. Today the Chamber of the International Court of Justice (ICJ) formed to deal with the case concerning the Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (El Salvador v. Honduras) delivered its decision on the admissibility of the Application submitted by El Salvador on 10 September 2002.

In its Judgment, which is final, without appeal and binding on the Parties, the Chamber finds first, by four votes to one, that “the Application submitted by the Republic of El Salvador for revision, under Article 61 of the Statute of the Court, of the Judgment given on 11 September 1992, by the Chamber of the Court formed to deal with the case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), is inadmissible”.

Reasoning of the Court

The Chamber begins by recalling that the Application for revision concerns the sixth sector of the land boundary between El Salvador and Honduras, lying between Los Amates and the Gulf of Fonseca, the course of which had been determined in 1992 by the Chamber hearing the original case. At the proceedings which resulted in the 1992 Judgment, it was the contention of Honduras that in that sector the boundary followed the present course of the river Goascorán. El Salvador, however, claimed that the boundary was defined by a previous course followed by the river, which it had abandoned as a result of avulsion, this is to say an abrupt change in the river bed. In that Judgment, revision of which is sought here, the Chamber unanimously upheld the submissions of Honduras.

The Chamber points out that, pursuant to Article 61, at this stage of the proceedings it has to examine the admissibility of the Application for revision by ascertaining that it satisfies a number of conditions. The Application should “be based upon the ‘discovery’ of a ‘fact’”; this fact must be “of such a nature as to be a decisive factor” and “should have been ‘unknown’ to the Court and to the party claiming revision when the judgment was given”; “ignorance of this fact must [moreover] not be ‘due to negligence’; and “the Application for revision must be ‘made at latest within six months of the discovery of the new fact’ and before ten years have elapsed from the date of the judgment.” The Chamber further observes that an application for revision is admissible only if each of the conditions is satisfied. If any one of them is not met, the application must be dismissed.

The Chamber then addresses the arguments submitted by El Salvador in support of its Application for revision. El Salvador claims in the first place to possess scientific, technical and

historical evidence showing the existence of a previous bed of the Goascorán, as well as the avulsion of the river in the mid-eighteenth century. According to El Salvador, these elements constitute “new facts” for purposes of Article 61. It claims, moreover, that they are decisive, since the 1992 Judgment stated that such an avulsion had not been proved and that, for this reason, the boundary should follow the course of the Goascorán as it was in 1821 and not the course prior to the avulsion.

In considering this line of argument, the Chamber first summarizes the considerations of principle on which the 1992 Judgment had based itself in order to determine the boundary. According to the Judgment, the latter was to be determined by the application of the principle of uti possidetis juris, under which the boundaries of States resulting from decolonization in Spanish America were to follow the colonial administrative boundaries. However, the 1992 Judgment went on to say that the situation resulting from uti possidetis was susceptible of modification as a result of the conduct of the Parties after independence in 1821.

The Chamber analyses the way the 1992 Judgment applied those principles to the case before it. It finds that, in that Judgment, El Salvador’s claims were rejected because of that State’s conduct after 1821, and in particular during negotiations held in 1880 and 1884. It adds that, under these circumstances, it does not matter whether or not there was an avulsion of the Goascorán. According to the Chamber, “even if avulsion were now proved . . . findings to that effect would provide no basis for calling into question the decision taken by the Chamber in 1992 on wholly different grounds. The facts asserted in this connection by El Salvador are not ‘decisive factors’ in respect of the Judgment which it seeks to have revised.”

The Chamber then comes to the second “new fact” on which El Salvador relies, that is, the discovery in the Newberry Library in Chicago of further copies of the “Carta Esférica” (a maritime chart of the Gulf of Fonseca prepared by the captain and navigators of the brigantine El Activo around 1796) and of the report of that vessel’s expedition, documents produced by Honduras in the original proceedings in versions held in the Madrid Naval Museum. According to El Salvador, “the fact that there are several versions of the ‘Carta Esférica’ and the Report of the Gulf of Fonseca from the El Activo expedition, that there are differences among them and the anachronisms they share, compromises the evidentiary value that the Chamber attached to the documents that Honduras presented, essential in the Judgment [of 1992]”. On this point, the Chamber asks itself whether the 1992 Chamber might have reached different conclusions had it also had before it the new versions of those documents produced by El Salvador. After examination, the Chamber concludes that they do not overturn the conclusions arrived at by the Chamber in 1992; on the contrary, they bear them out. The new versions of the above-mentioned documents are thus not “decisive factors” in respect of the Judgment whose revision is sought.

The Chamber finally states that, having reached the conclusion that the new facts alleged by El Salvador are not “decisive factors” in respect of the Judgment of 11 September 1992, it is not necessary for it to ascertain whether the other conditions laid down in Article 61 of the Statute are satisfied in the present case.

Composition of the Chamber

The Chamber was composed as follows: Judge Guillaume, President of the Chamber; Judges Rezek, Buergenthal; Judges ad hoc Torres Bernárdez and Paolillo; Registrar Couvreur.

Judge ad hoc Paolillo appends a dissenting opinion to the Judgment of the Chamber.

A summary of the Judgment is published in the document entitled “Summary No. 2003/3”, including a summary of the appended dissenting opinion. This Press Release, the summary and the full text of the Judgment also appear on the Court’s website under the headings “Docket” and “Decisions” (www.icj-cij.org).

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