

Fordham International Law Journal

Volume 16, Issue 3

1992

Article 8

The Effectiveness of Voluntary Jurisdiction in the ICJ: El Salvador v. Honduras, A Case in Point

Maura A. Bleichert*

*

Copyright ©1992 by the authors. *Fordham International Law Journal* is produced by The Berkeley Electronic Press (bepress). <http://ir.lawnet.fordham.edu/ilj>

The Effectiveness of Voluntary Jurisdiction in the ICJ: El Salvador v. Honduras, A Case in Point

Maura A. Bleichert

Abstract

This Comment discusses the positive aspects of consensual jurisdiction of the International Court of Justice by exploring the case that Honduras and El Salvador Voluntarily brought before a Chamber of the International Court of Justice. Part I discusses the history of the ICJ as well as the history of the dispute between Honduras and El Salvador. Part II examines the ICJ's reasoning and conclusions in the El Salvador v. Honduras case. Part III argues that this case demonstrates the advantages of a court that offers greater flexibility without sacrificing its integrity and dedication to the development of international law. This Comment concludes that states should take advantage of the increasingly accessible World Court that has demonstrated its ability to deal with complex international disputes, territorial or otherwise.

COMMENTS

THE EFFECTIVENESS OF VOLUNTARY JURISDICTION IN THE ICJ: *EL SALVADOR v. HONDURAS*, A CASE IN POINT*

INTRODUCTION

The International Court of Justice (the "ICJ" or the "World Court") is the principal judicial organ of the United Nations.¹ Despite its increasing caseload² and its growing sphere of influence,³ many commentators disregard its achievements merely because the ICJ does not command absolute compulsory jurisdiction.⁴ Lack of compulsory jurisdiction

* This Comment received the 1993 Orlando Conseils Award at Fordham University School of Law.

1. SHABTAI ROSENNE, *THE WORLD COURT: WHAT IT IS AND HOW IT WORKS* 23 (4th ed. 1989).

2. Fred L. Morrison, *The Future of International Adjudication*, 75 MINN. L. REV. 827, 827 (1991); see Keith Highet, *The Peace Palace Heats Up: The World Court in Business Again?*, 85 AM. J. INT'L L. 646, 647 (1991) (stating that International Court of Justice [hereinafter ICJ] is busier than ever and handling extraordinary variety of cases).

3. Highet, *supra* note 2, at 652. Bahrain, Chad, Finland, and Qatar have emerged as new participants before the ICJ. *Id.* The expanding docket of the World Court presently includes cases from the South Pacific, the Middle East, Africa, and Latin America. *Id.* at 653.

4. See Statute of the International Court of Justice, June 26, 1945, art. 36, 59 Stat., pt. 2, 1055, 1060, 3 Bevans 1179, 1186 [hereinafter ICJ Statute] (declaring that states are permitted, but not required, to accept ICJ's compulsory jurisdiction); see also Hisashi Owada, *What Future for the International Court of Justice?*, 65 AM. SOC. INT'L L. PROC. 268, 272 (1971) (setting forth problem of decreasing number of acceptances to ICJ's compulsory jurisdiction); ROSENNE, *supra* note 1, at 90 (stating that Commission of Jurists, who prepared draft of ICJ Statute, proposed system of true compulsory jurisdiction). The Commission of Jurists originally proposed the following compulsory jurisdiction provision:

Between States which are Members of the League of the Nations, the Court shall have jurisdiction (and this without any special convention giving it jurisdiction) to hear and determine cases of a legal nature, concerning:

- a) the interpretation of a treaty;
- b) any question of international law;
- c) the existence of any fact which, if established, would constitute a breach of an international obligation;
- d) the nature or extent of reparation to be made for the breach of an international obligation;
- e) the interpretation of a sentence passed by the Court.

NAGENDRA SINGH, *THE ROLE AND RECORD OF THE INTERNATIONAL COURT OF JUSTICE* 18 (1989) (citing Draft Statute, Proceedings of the Advisory Commission of Jurists art. 34, at 729).

has been equated with a complete lack of power that, in turn, renders the ICJ's decisions ineffective.⁵ The World Court's productivity, however, cannot be measured without considering the purpose of the World Court.⁶ The words "[p]acis tutela apud iudicem" are inscribed on the front of the Peace Palace at the Hague, the seat of the ICJ; they may be translated as "the fostering of peace is the task of the judge."⁷ Although compulsory jurisdiction would give the World Court the authority to decide more disputes, an increase in the ICJ's jurisdiction can not be equated with an increase in the total number of peaceful resolutions.⁸

The ICJ also has been criticized for catering to the parties appearing before it, instead of functioning as a neutral judicial body.⁹ Although the ICJ may consider the parties' proposals for dispute resolution, the World Court operates according to the Statute of the International Court of Justice¹⁰ annexed to the U.N. Charter and the Rules¹¹ of the Court.¹² The ICJ's

5. See Monroe Leigh & Stephen D. Ramsey, *Confidence in the Court: It Need Not Be a "Hollow Chamber,"* in *THE INTERNATIONAL COURT OF JUSTICE AT A CROSSROADS* 106-08 (Lori F. Damrosch ed., 1987) (discussing development of attitudes toward ICJ).

6. SINGH, *supra* note 4, at 216 (explaining that ICJ's record should be evaluated in relation to its purpose).

7. *Id.* at 1.

8. See Leo Gross, *Compulsory Jurisdiction Under the Optional Clause: History and Practice*, in *THE INTERNATIONAL COURT OF JUSTICE AT A CROSSROADS*, *supra* note 5, at 19, 45-46 (explaining that ICJ has not solved underlying dispute in all cases in which it has claimed jurisdiction).

9. See, e.g., Shigeru Oda, *Further Thoughts on the Chambers Procedure of the International Court of Justice*, 82 AM. J. INT'L L. 556 (1988) (discussing criticism of Article 26(1) of ICJ Statute by some who claim it allows parties to dictate composition of ad hoc Chambers).

10. ICJ Statute, *supra* note 4, 59 Stat., pt. 2, 1055, 3 Bevans 1179; see U.N. CHARTER art. 92 (stating that ICJ shall function according to Statute annexed to U.N. Charter).

11. ACTS AND DOCUMENTS CONCERNING THE ORGANIZATION OF THE COURT, No. 5, 92-161 (1989). Article 30(1) of the ICJ Statute states that "[t]he Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure." ICJ Statute, *supra* note 4, art. 30(1), 59 Stat., pt. 2, at 1058, 3 Bevans at 1184; see *Application of Statute and the Rules*, 1977-1978 I.C.J. Y.B. 111-19 (setting forth amendments to ICJ Rules); see also Eduardo Jiménez de Aréchaga, *The Amendments to the Rules of Procedure of the International Court of Justice*, 67 AM. J. INT'L L. 1, 1 (1973) (discussing changes to ICJ Rules); Leo Gross, *Review of the Role of the International Court of Justice*, 66 AM. J. INT'L L. 479, 479 (1972) (explaining need for revision of ICJ Rules to increase ICJ's docket).

12. See *Border and Transborder Armed Actions (Nicar. v. Hond.)*, 1988 I.C.J. 69, 91, ¶ 52 (Dec. 20) (stating that ICJ does not consider itself competent to consider questions not governed by legal principles).

decision in *Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras: Nicaragua intervening)* (“*El Salvador v. Honduras*”)¹³ refutes many of the myths presently held about the International Court of Justice and confirms its potential to resolve territorial disputes.¹⁴

This Comment discusses the positive aspects of consensual jurisdiction of the International Court of Justice by exploring the case that Honduras and El Salvador voluntarily brought before a Chamber of the International Court of Justice. Part I discusses the history of the ICJ as well as the history of the dispute between Honduras and El Salvador. Part II examines the ICJ’s reasoning and conclusions in the *El Salvador v. Honduras* case. Part III argues that this case demonstrates the advantages of a court that offers greater flexibility without sacrificing its integrity and dedication to the development of international law. This Comment concludes that states should take advantage of the increasingly accessible World Court that has demonstrated its ability to deal with complex international disputes, territorial or otherwise.

I. THE JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE AND THE DEVELOPMENT OF THE HONDURAS/EL SALVADOR DISPUTE

When the boundary dispute between Honduras and El Salvador first emerged after the two Central American countries gained their independence from the Spanish Empire in 1821, no formal international judicial system existed.¹⁵ The fighting between El Salvador and Honduras continued for over a century, briefly erupting into a war in 1969.¹⁶ Today, however, peaceful international dispute resolution in the ICJ is an

13. 1992 I.C.J. 351 (Sept. 11) [hereinafter *El Salvador v. Honduras*].

14. See Morrison, *supra* note 2, at 836 (discussing some of common challenges to use of ICJ as dispute resolving body).

15. See SINGH, *supra* note 4, at 8 (discussing creation of Permanent Court of International Justice in 1921).

16. ROBERT L. BUTTERWORTH & MARGARET E. SCRANTON, *MANAGING INTERSTATE CONFLICT, 1945-74: DATA WITH SYNOPSSES* 439 (1976); see generally Vincent Cable, “*The Football War*” and the Central American Common Market, in *LATIN AMERICA AND THE UNITED STATES IN THE 1970s* 195-208 (Richard B. Gray ed., 1971); Miguel S. Wionczek, *The Rise and Decline of Latin American Economic Integration*, in *CONTEMPORARY INTER-AMERICAN RELATIONS* 506-21 (Yale H. Ferguson ed., 1972).

option available to states.¹⁷

A. *The Role of the International Court of Justice*

The International Court of Justice is the judicial body established by the United Nations to settle international disputes.¹⁸ U.N. member states may submit to the compulsory jurisdiction of the ICJ or may bring disputes before the ICJ voluntarily.¹⁹ In addition, states may request a smaller Chamber of the World Court to deal with a particular dispute.²⁰

1. History of the International Court of Justice

Prior to the twentieth century, many perceived war as the primary method of international dispute resolution.²¹ Two Hague Conferences in 1899 and 1907²² led to the establishment of a Permanent Court of Arbitration, which consisted of a series of part-time arbitral tribunals.²³ In 1921, the League of

17. See ICJ Statute, *supra* note 4, art. 36, 59 Stat., pt. 2, at 1060, 3 Bevens at 1186-87 (discussing ICJ's jurisdiction to decide international legal disputes).

18. See U.N. CHARTER art. 92 (stating that "[t]he International Court of Justice shall be the principal judicial organ of the United Nations").

19. See ICJ Statute, *supra* note 4, arts. 34-38, 59 Stat., pt. 2, at 1059-60, 3 Bevens at 1186-87 (setting forth rules concerning ICJ's competence to consider cases voluntarily brought before ICJ as well as those for which parties have submitted to ICJ's compulsory jurisdiction as detailed in Article 36(2)).

20. See ICJ Statute, *supra* note 4, art. 26, 59 Stat., pt. 2, at 1058, 3 Bevens at 1184 (setting forth necessary procedures for ICJ to establish smaller panels of judges to decide cases). States may choose to bring their case before the full court of 15 ICJ judges (17 if both parties appoint ad hoc judges) or a smaller ICJ Chamber including at least three judges. ELIHU LAUTERPACHT, ASPECTS OF THE ADMINISTRATION OF INTERNATIONAL JUSTICE 82-83 (Hersch Lauterpacht Memorial Lectures No. IX, 1991).

21. Morrison, *supra* note 2, at 828.

22. Convention for the Pacific Settlement of International Disputes, July 29, 1899, 32 Stat., pt. 2, 1779, 1 Bevens 230; Convention for the Pacific Settlement of International Disputes, Oct. 18, 1907, 36 Stat. 2199, 1 Bevens 577. The 1899 Convention led to the development of a permanent system by completing a list of potential members for an international arbitral tribunal. SINGH, *supra* note 4, at 7. The fact that states were members to the conventions did not oblige them to submit their disputes to arbitration. *Id.*

23. See SINGH, *supra* note 4, at 7 (discussing establishment of Permanent Court of Arbitration). The Permanent Court of Arbitration consisted of a panel of up to four jurists appointed by each country that was a party to the 1899 Convention for the Pacific Settlement of International Disputes. *Id.* As the arbitral procedure gained popularity, arbitral courts developed outside of Europe as well. *Id.* For example, the Central American Court of Justice operated as an arbitral court from 1908-1918. *Id.*; see ROSENNE, *supra* note 1, at 8 (discussing formation and procedures of Permanent Court of Arbitration). The Permanent Court of Arbitration was composed of ad hoc

Nations established the Permanent Court of International Justice to provide a full-time judicial system to address international disputes.²⁴ The Permanent Court of International Justice was dissolved when its remaining members resigned in 1946.²⁵ The United Nations, successor to the League of Nations, proceeded to establish the International Court of Justice as the principal judicial organ of the United Nations.²⁶

The ICJ is governed by the Statute of the Court ("ICJ Statute"), which is annexed to the U.N. Charter and to which all members of the United Nations are parties.²⁷ The full bench of the World Court consists of fifteen judges who sit in the Peace Palace, in the Hague, the Netherlands.²⁸ The judges are elected by the U.N. General Assembly and the Security Council for staggered terms of nine years each.²⁹

2. Voluntary Versus Compulsory Jurisdiction

The primary function of the International Court of Justice is to decide disputes between nations in order to maintain international peace and security.³⁰ The ICJ, however, can decide only those cases in which the parties have consented to its ju-

panels of arbitrators convened to resolve particular disputes. *Morrison, supra* note 2, at 828 n.7. The Permanent Court of International Justice, in contrast, which was intended to provide uniform decision-making, was composed of a single standing body of judges who heard all cases. *Id.*

24. *Morrison, supra* note 2, at 828.

25. SHABTAI ROSENNE, *DOCUMENTS ON THE INTERNATIONAL COURT OF JUSTICE* 491-93 (2d ed. 1979).

26. *See supra* note 18 (reproducing language of Article 92 of U.N. Charter). The ICJ Statute essentially reproduced the Statute of the Permanent Court of International Justice with one significant variation. SINGH, *supra* note 4, at 11-12. The ICJ is the principal judicial organ of the United Nations. *Id.* The Permanent Court of International Justice, on the other hand, was not an organ or part of the League of Nations. *Id.*

27. U.N. CHARTER art. 93. Article 93 of the U.N. Charter states that

1. [a]ll Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice.

2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Id.; *see supra* note 18 (reproducing the language of Article 92 of U.N. Charter).

28. ICJ Statute, *supra* note 4, art. 3, 59 Stat., pt. 2, at 1055, 3 Bevens at 1179.

29. *Id.* arts. 4, 13, 59 Stat., pt. 2, at 1055, 1056-57, 3 Bevens at 1179, 1181-82.

30. SINGH, *supra* note 4, at 11.

risdiction.³¹ Parties may confer jurisdiction upon the ICJ either by a specific agreement between two or more states or by a single state's unilateral acceptance.³² Article 36(1) of the ICJ Statute describes three circumstances in which parties may voluntarily agree to bring their disputes before the ICJ.³³ First, states may consent, in the form of a treaty or special agreement, to bring a particular dispute before the ICJ.³⁴ Second, the parties may draft a compromissory clause in a treaty stating that the parties consent to bring any disputes concerning that particular treaty before the ICJ.³⁵ Third, states may be parties to a general treaty that declares that disputes that arise between them should be referred to the ICJ.³⁶

In addition, a state may consent to the ICJ's compulsory jurisdiction by making a unilateral declaration to accept the jurisdiction of the World Court for all international legal disputes that fall into one of the categories defined in Article 36(2) of the ICJ Statute.³⁷ Ironically, this clause, which con-

31. *Id.* at 12.

32. ICJ Statute, *supra* note 4, art. 36, 59 Stat., pt. 2, at 1060, 3 Bevens at 1186.

33. *Id.* art. 36(1), 59 Stat., pt. 2, at 1060, 3 Bevens at 1186. Article 36(1) of the ICJ Statute states that "[t]he jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force." *Id.*; see Robert E. Lutz II, *Perspectives on the World Court, the United States, and International Dispute Resolution in a Changing World*, 25 INT'L LAW. 675, 684 (1991) (discussing ways in which parties voluntarily bring disputes before ICJ).

34. See *supra* note 33 and accompanying text (reproducing language of Article 36(1) of ICJ Statute); see also Lutz, *supra* note 33, at 684 n.43 (stating that this type of jurisdiction is also known as ad hoc jurisdiction by special agreement).

35. See *supra* note 33 and accompanying text (reproducing language of Article 36(1) of ICJ Statute); see also Lutz, *supra* note 33, at 684 n.44 (discussing submission to voluntary jurisdiction by compromissory clause); see generally Jonathan I. Charney, *Compromissory Clauses and the Jurisdiction of the International Court of Justice*, 81 AM. J. INT'L L. 855 (1987) (discussing ICJ jurisdiction based on compromissory clauses).

36. See *supra* note 33 and accompanying text (reproducing language of Article 36(1) of ICJ Statute); see also Lutz, *supra* note 33, at 684 n.45 (stating that General Act for Pacific Settlement of International Disputes of 1928, as revised in 1949, and General Act of Geneva of 1928 are examples of treaties by which parties agreed to submit disputes to ICJ).

37. ICJ Statute, *supra* note 4, art. 36(2), 59 Stat., pt. 2, at 1060, 3 Bevens at 1186-87. According to Article 36(2) of the ICJ Statute,

[t]he states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

a. the interpretation of a treaty;

cerns compulsory jurisdiction, usually is referred to as the "optional clause" because the World Court only has such authority when a state voluntarily accepts the ICJ's compulsory jurisdiction.³⁸ Even after a state accepts such jurisdiction, nothing prevents a revocation of such consent in the future.³⁹ Since 1971, France, the United States, and the Republic of China have revoked their acceptances of the optional clause and Turkey allowed its acceptance of May 23, 1967 to lapse on May 23, 1972.⁴⁰

The World Court possesses compulsory jurisdiction only over disputes between states that have made equivalent declarations of acceptance of the ICJ's compulsory jurisdiction.⁴¹ Since the ICJ Statute permits individual states to make conditional declarations,⁴² the ICJ may even lack jurisdiction between two states that have both submitted to the ICJ's compulsory jurisdiction but have not accepted the same obligations in their declarations to the World Court.⁴³ Interpreting the "same obligation" requirement of Article 36(2) of the ICJ Statute literally,⁴⁴ the ICJ has ruled that it does not have jurisdiction where the reservations of one or more of the states explic-

b. any question of international law;

c. the existence of any fact which, if established, would constitute a breach of international obligation;

d. the nature or extent of the reparation to be made for the breach of an international obligation.

Id.

38. SINGH, *supra* note 4, at 12.

39. *See, e.g.*, U.S. Terminates Acceptance of ICJ Compulsory Jurisdiction, DEP'T ST. BULL., Jan. 1986, at 67 (stating terms of United States' withdrawal of acceptance of ICJ's compulsory jurisdiction).

40. Gary L. Scott & Craig L. Carr, *The ICJ and Compulsory Jurisdiction: The Case for Closing the Clause*, 81 AM. J. INT'L L. 57, 58 n.9 (1987).

41. *See supra* note 37 and accompanying text (reproducing language of Article 36(2) of ICJ Statute).

42. ICJ Statute, *supra* note 4, art. 36(3), 59 Stat., pt. 2, at 1060, 3 Bevans 1186-87. The ICJ Statute provides that declarations accepting compulsory jurisdiction "may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time." *Id.*

43. Scott & Carr, *supra* note 40, at 62; *see, e.g.*, *Interhandel (Switz. v. U.S.)*, 1959 I.C.J. 6, 29 (Mar. 21) (upholding preliminary objection by United States because Switzerland had not exhausted local remedies available to it in United States).

44. *See* SINGH, *supra* note 4, at 20 (discussing meaning of words "same obligation" in Article 36(2) of ICJ Statute). The interpretation of "same obligation" was first addressed by the Permanent Court of Justice in the *Electricity Company of Sofia and Bulgaria* case, 1939 P.C.I.J. (ser. A/B) No. 77, at 81 (Apr. 4). *See id.*

itly or implicitly exclude the case from the ICJ's jurisdiction.⁴⁵ If the declarations of two states are not identical, the World Court has jurisdiction only to the extent that the declarations coincide.⁴⁶ As a result, the few states that do consent to compulsory jurisdiction have attached so many reservations and exclusions to their acceptances that the potential effectiveness of the optional clause is minimal.⁴⁷

Furthermore, even when the ICJ determines that it has compulsory jurisdiction over the dispute, the party contesting the ICJ's authority does not always comply with the judgment of the World Court.⁴⁸ For example, in the *Temple of Preah Vihear (Cambodia v. Thailand)*⁴⁹ case, the ICJ rejected Thailand's preliminary objection to the World Court's jurisdiction under the optional clause, and accepted jurisdiction over the boundary dispute between Cambodia and Thailand.⁵⁰ Each state claimed sovereignty over a small area of frontier territory in which the ruins of the ancient Temple of Preah were located.⁵¹ In June 1962, the ICJ ruled that the Temple was located in

45. See, e.g., *Certain Norwegian Loans (Fr. v. Nor.)*, 1957 I.C.J. 9 (July 6). When France, which had copied the broad Connally Reservation from the United States, brought proceedings against Norway, the ICJ concluded that it was without jurisdiction to decide the dispute because of the disparity in the declarations of the two nations. *Id.* at 23-24; see SINGH, *supra* note 4, at 21. When "two unilateral declarations are involved, such jurisdiction is conferred upon the Court only to the extent to which the Declarations coincide in conferring it." *Certain Norwegian Loans*, 1957 I.C.J. at 23.

46. ROSENNE, *supra* note 1, at 89.

47. See *Declarations Recognizing as Compulsory the Jurisdiction of the Court, 1986-1987* I.C.J. Y.B. 71-72 (stating that India, for example, has 11 separate reservations, one of which is subdivided into five subsections); see also SINGH, *supra* note 4, at 19 (discussing increasing number of reservations which states attach to their acceptance of ICJ's compulsory jurisdiction). The Connally Reservation, which was proposed by a U.S. Senator, excluded "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America." *Optional Clause Concerning the Court's Compulsory Jurisdiction, 1946-1947* I.C.J. Y.B. 218.

48. See Scott & Carr, *supra* note 40, at 67 (addressing states' defiance of ICJ's judgments).

49. *Temple of Preah Vihear (Cambodia v. Thail.)*, 1962 I.C.J. 6 (June 15).

50. *Id.* at 8.

51. *Id.* at 10-12. Cambodia relied on a 1907 map that showed the Temple to be part of French Indochina, now Cambodia. *Id.* at 20-21. Thailand, formerly Siam, argued that the map had not been drawn in accordance with a 1904 Siamese-French Treaty. *Id.* at 22. The World Court held that the map had been produced by the French at the Siamese request and that the Siamese had never protested the alleged error and therefore had acquiesced to the map as drawn. *Id.* at 32-36.

Cambodia and ordered Thailand to withdraw its troops and restore any objects removed from the Temple.⁵²

Thailand, however, has refused to comply with the ICJ's judgment and the volatile conditions continue in the disputed area.⁵³ When a party, such as Thailand, fails to follow the judgment of the World Court, the other party may request the aid of the U.N. Security Council under Article 94 of the U.N. Charter.⁵⁴ Although the Security Council has the power to make recommendations or to give effect to a judgment of the World Court,⁵⁵ such power is rarely used and its use has been vetoed in the past.⁵⁶

3. Use of Chambers in the World Court

In addition to conferring jurisdiction upon the World Court, a state may request that the case be heard by a smaller panel of judges known as a Chamber. The ICJ provides three methods for the formation of a Chamber.⁵⁷ First, the ICJ, at the request of the parties, must set up a Chamber of five judges with two substitutes to deal with the speedy disposition of cases by summary procedure.⁵⁸ Second, special Chambers

52. *Id.* at 36-37.

53. BUTTERWORTH, *supra* note 16, at 172; *see* Owada, *supra* note 4, at 274 (stating that ICJ's decision in *Temple of Preah Vihear* resulted in political crisis in Thailand).

54. U.N. CHARTER art. 94. Article 94 of U.N. Charter states that

1. [e]ach Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.
2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Id.

55. *Id.*

56. *See* Richard B. Bilder, *The Brendan Brown Lecture: The United States and the World Court in the Post-"Cold War" Era*, CATH. U. L. REV. 251, 255 (stating that United States vetoed Security Council resolution); *see also* United Nations Security Council: Excerpts From Verbatim Records Discussing I.C.J. Judgment in *Nicaragua v. United States*, July 29-31, 1986, reprinted in 25 I.L.M. 1337 (1986) (discussing United States' veto of Security Council resolution calling upon it to comply with ICJ decision).

57. ICJ Statute, *supra* note 4, art. 26, 59 Stat., pt. 2, at 1058, 3 Bevens at 1184; *see* ROSENNE, *supra* note 1, at 71 (discussing three types of Chambers available in ICJ); *see also* SINGH, *supra* note 4, at 106-07 (addressing development of ICJ Chambers jurisdiction).

58. ICJ Statute, *supra* note 4, art. 29, 59 Stat., pt. 2, at 1058, 3 Bevens at 1184. Article 29 of the ICJ Statute states that

[w]ith a view to the speedy despatch of business, the Court shall form annu-

may be developed to address particular categories of cases.⁵⁹ States, however, traditionally have not resorted to either of these two types of ICJ Chambers.⁶⁰ The third and most popular type of Chamber, the ad hoc Chamber, originated with an amendment to the Statute of the Permanent Court of International Court of Justice in 1945 prior to the statute's adoption by the ICJ.⁶¹ This amendment authorized the World Court to form a Chamber at any time to deal with a particular case.⁶² The ICJ determines the composition of the panel, subject to the parties' approval.⁶³ If the Chamber selected by the ICJ

ally a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

Id. The Chamber of Summary Procedure which the Court must set up each year consists of the President, the Vice President ex officio, and three other judges together with two substitutes. ROSENNE, *supra* note 1, at 71. The purpose of this Chamber is to form a small court capable of handling the speedy disposition of cases.

Id.

59. ICJ Statute, *supra* 4, art. 26(1), 59 Stat., pt. 2, at 1058, 3 Bevans at 1184. Article 26(1) of the ICJ Statute declares that

[t]he Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labor cases and cases relating to transit and communications.

Id.

60. ROSENNE, *supra* note 1, at 72; see SINGH, *supra* note 4, at 107 (discussing minimal use of each of first two types of ICJ Chambers).

61. ROSENNE, *supra* note 1, at 72. The Washington Committee of Jurists, who revised the Statute of the Permanent Court of International Justice before it was adopted as the ICJ Statute, created a more general provision concerning the formation of Chambers and permitted more active participation by parties in such formation. See John C. Guilds III, "If It Quacks Like a Duck:" *Comparing the ICJ Chambers to International Arbitration for a Mechanism of Enforcement*, 16 MD. J. INT'L L. & TRADE 43, 45 (1992) (discussing historical development of ICJ's Chambers procedure).

62. ICJ Statute, *supra* note 4, art. 26(2), 59 Stat., pt. 2, at 1058, 3 Bevans at 1184. The new provision concerning ad hoc Chambers, which was proposed by the United States and added to the ICJ Statute in Article 26(2), states that "[t]he Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties." *Id.*; see Stephen M. Schwebel, *Ad Hoc Chambers of the International Court of Justice*, 81 AM. J. INT'L L. 831, 832-35 (1987) (discussing Washington Committee of Jurists' changes to P.C.I.J. Chamber provisions before enacting ICJ Statute).

63. See *supra* note 62 and accompanying text (reproducing language of Article 26(2) of ICJ Statute); see also Schwebel, *supra* note 62, at 834 (stating that Article 26(2) of ICJ Statute gives parties a voice in the composition of Chamber); Andreas Zimmermann, *Ad Hoc Chambers of the International Court of Justice*, 8 DICK. J. INT'L L. 1, 17 (1989) (discussing impact of parties' views on composition of Chamber).

does not include judges of the parties' nationalities, each party may choose a judge according to the ICJ's guidelines.⁶⁴

Although the Chamber procedure allows parties to participate in the formation of the panel, the process is not equivalent to the formation of an arbitral tribunal.⁶⁵ Since the Chamber is a branch of the World Court, Article 27 of the ICJ Statute declares that a judgment of the Chamber has the same binding force as a judgment of a full panel of the ICJ.⁶⁶ As a result, the Chamber must operate according to the established procedures required by the ICJ Statute and Rules.⁶⁷

B. *Territorial Dispute Between Honduras and El Salvador*

The *El Salvador v. Honduras* case reached the ICJ after a century of feuding and many unsuccessful attempts at peace between El Salvador and Honduras.⁶⁸ In 1980, the parties entered into the General Treaty of Peace ("General Treaty").⁶⁹ Article 31 of the General Treaty required the parties to submit the territorial dispute to the International Court of Justice if the states could not come to a peaceful resolution within five years.⁷⁰ After several more years of hostile border conditions,

64. ICJ Statute, *supra* note 4, art. 31(2)-(3), 59 Stat., pt. 2, at 1058-59, 3 Bevens at 1185. Article 31 of the ICJ Statute states in pertinent part that

2. [i]f the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.

Id.

65. Schwebel, *supra* note 62, at 854.

66. ICJ Statute, *supra* note 4, art. 27, 59 Stat., pt. 2, at 1058, 3 Bevens at 1184. Article 27 of the ICJ Statute states that "[a] judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court." *Id.*; see SINGH, *supra* note 4, at 116 (discussing binding force of judgment of ICJ Chamber).

67. Schwebel, *supra* note 62, at 854.

68. *El Salvador v. Honduras*, 1992 I.C.J. 351, 381-86, ¶¶ 33-39 (Sept. 11) (explaining parties' specific attempts at settlement and eventual agreement which brought case to ICJ).

69. *Id.* at 383, ¶ 36.

70. *Id.* at 384, ¶ 37. Article 31 of the General Treaty of Peace states that [i]f, upon the expiry of the period of five years laid down in Article 19 of this Treaty, total agreement has not been reached on frontier disputes concerning the areas subject to controversy or concerning the legal situation in the

the parties brought the case before the ICJ.⁷¹

1. History of the Dispute

The boundary dispute between Honduras and El Salvador has persisted since the middle of the nineteenth century.⁷² These two independent states were created after the collapse of the Spanish Empire in Central America.⁷³ From the time that Central America declared its independence on September 15, 1821 until 1839, Honduras and El Salvador joined with Nicaragua, Costa Rica, and Guatemala to form the Federal Republic of Central America.⁷⁴ After the break-up of that Republic in 1839, Honduras, El Salvador, and the other Central American territories became separate states.⁷⁵

The territorial differences between Honduras and El Salvador first surfaced in 1854 when the U.S. Consul made a proposal to Honduras to purchase the island of El Tigre.⁷⁶ In response to this proposal, El Salvador issued the Diplomatic Note of October 12, 1854, which objected to the sale of the important island of El Tigre to foreigners.⁷⁷ Although the

islands or maritime areas, or if the agreements provided for in Articles 27 and 28 of this Treaty have not been achieved, the Parties agree that, within the following six months, they shall proceed to negotiate and sign a special agreement to submit jointly any existing controversy or controversies to the decision of the International Court of Justice.

Id.

71. *Id.* at 385, ¶ 38.

72. Gustavo Palencia, *World Court lays down disputed Salvador-Honduras border*, Reuters, Sept. 12, 1992, available in LEXIS, Nexis Library, REUTER File.

73. *El Salvador v. Honduras*, 1992 I.C.J. at 380-81, ¶ 29.

74. *Id.*

75. *Id.*

76. *Id.* at 381, ¶ 30.

77. *Id.* at 568, ¶ 352. The English translation of the opening paragraphs of the Note of Protest issued by the Government of El Salvador, dated October 12, 1854, states that

[t]he Government of Salvador has learnt [sic] with surprise that the President of Honduras has accepted the sale of Tigre island, after having sold Sacate Grande island to nationals of a country which is not only foreign but also threatens the nationality of all these countries and might absorb the Spanish race throughout the new world.

This Government has likewise been assured by our officials in the Department of San Miguel that the President-General has received the denunciation previously formulated regarding the island of Meanguera and other islands which are the recognized and undisputed property of Salvador.

Id.

Note did not question the authority of Honduras to sell El Tigre, El Salvador declared that Honduras had no right to sell Meanguera and Meanguerita, because they were indisputably the property of El Salvador.⁷⁸ Honduras did not respond to the Note, and did not engage in any further negotiations with the United States.⁷⁹ The land boundary disputes began seven years later in 1861 when the El Salvadoran Minister for Foreign Relations addressed a Note to the Government of Honduras proposing that negotiations between the border states be undertaken to define the boundaries in the villages of Perquin and Arambala, in El Salvador, and Jucuata, in Honduras.⁸⁰

The parties first manifested their differences concerning the legal status of the Gulf of Fonseca (the "Gulf") in 1884 when the members of a boundary convention, the Cruz-Letona Convention of 1884, attempted to delimit the waters of the Gulf between Honduras and El Salvador.⁸¹ Although Honduras failed to ratify the Cruz-Letona Convention, the negotiation process gave each party an opportunity to set forth their claims.⁸² By 1900, Honduras and Nicaragua concluded a partial delimitation of the waters of the Gulf.⁸³ Additionally, in 1916, El Salvador initiated proceedings against Nicaragua in the Central American Court of Justice that addressed the question of the status of the Gulf waters.⁸⁴

After several unsuccessful attempts at direct negotiations from 1861 until 1880, Honduras and El Salvador consented to submit the dispute to the arbitration of the President of Nicaragua, General Joaquin Zavala, who withdrew as arbitrator when he ceased to hold the Presidency.⁸⁵ Several subsequent efforts at arbitration included the Cruz-Letona Convention of

78. *Id.*

79. *Id.* at 381, ¶ 30.

80. *Id.* ¶ 31.

81. *Id.* ¶ 32.

82. *Id.*

83. *Id.*

84. *Id.*; see *The Republic of El Salvador v. The Republic of Nicaragua*, (Central American Court of Justice, Mar. 9, 1917) [hereinafter *El Salvador v. Nicaragua*], translated in 11 AM. J. INT'L L. 674 (1917) (addressing international legal status of Gulf of Fonseca and consequences of that status on coastal states).

85. *El Salvador v. Honduras*, 1992 I.C.J. at 382, ¶ 33. The first attempt at direct negotiation commenced with the El Mono Conference in July 1861, followed by the Montana de Naguaterique negotiations of 1869 and finally the conferences held in the village of Saco (today Concepcion de Oriente in El Salvador) in 1880. *Id.*

1884,⁸⁶ negotiations at La Unión and Guanacastillo in November 1888,⁸⁷ the Zelaya-Galindo Convention in 1889,⁸⁸ a convention at the Hacienda Dolores in 1897,⁸⁹ as well as negotiations in San José de Costa Rica in 1906 and in Tegucigalpa in 1918.⁹⁰ The "Third Convention of El Amatillo" of 1962 was the last attempt to settle the boundary before armed conflict occurred.⁹¹

Beginning in the 1930s, due to the overpopulated conditions in El Salvador, Salvadoran workers entered Honduras in pursuit of economic opportunities.⁹² This migration produced minimal tension between the governments until 1969.⁹³ In that year, Honduras began a land reform program that redistributed land in areas where the Salvadoran squatters had settled.⁹⁴

In response to alleged oppression and expulsion of Salvadorans, El Salvador declared a state of emergency, organized its military reserves, and called upon the Organization of American States (the "OAS") to investigate the situation.⁹⁵ Similarly, Honduras alleged Salvadoran violations of human rights of Hondurans residing in El Salvador and requested the

86. *Id.* The delegate of Honduras, Francisco Cruz, and that of El Salvador, Lisandro Letona, convened in March and April and signed the Cruz-Letona Convention at San Miguel in the Republic of El Salvador, on April 10, 1884. *Id.* The Honduran Congress, however, rejected the boundary convention because it claimed that the commission had exceeded its powers by extending the boundary line into the Gulf of Fonseca. *Id.*; see *El Salvador v. Nicaragua*, 11 AM. J. INT'L L. at 710 (referring to Cruz-Letona boundary convention).

87. *El Salvador v. Honduras*, 1992 I.C.J. at 382, ¶ 34. The negotiations which took place at La Unión and Guanacastillo in November 1888 resulted in the agreement on the Goascorán river as the recognized frontier. *Id.*

88. *Id.* The Zelaya-Galindo Convention, an arbitration convention, was concluded in 1889, but the arbitration was never carried out. *Id.*

89. *Id.* New negotiations at the Convention at the Hacienda Dolores on November 13, 1897 led to another convention which was never ratified. *Id.*

90. *Id.* Both of these conventions failed due to lack of joint ratification by Honduras and El Salvador. *Id.*

91. *Id.* The "Third Convention of El Amatillo" of 1962, which provided for a Commission of Enquiry and the establishment of a Boundary Commission, also failed. *Id.*

92. BUTTERWORTH, *supra* note 16, at 439.

93. *Id.*

94. *Id.*

95. *Id.*; see LAWRENCE J. LEBLANC, *THE OAS AND THE PROMOTION AND PROTECTION OF HUMAN RIGHTS* 164 (1977) (stating that El Salvador had submitted complaints to Inter-American Commission on Human Rights alleging that Hondurans had violated human rights of Salvadorans residing in Honduras).

Secretary General of the OAS to organize a formal investigation to determine the facts and to verify that Salvadorans had not been persecuted by Hondurans.⁹⁶ Hostilities escalated and El Salvador charged that its recent victories over Honduras in the World Cup Soccer playoffs on June 15 and 27 of 1969 had incited Hondurans to attack and murder Salvadorans.⁹⁷ After the games, the two countries ceased all consular and diplomatic relations.⁹⁸ The rioting and border clashes continued for two weeks and finally erupted into the "Soccer War" on July 14, 1969.⁹⁹

In addition to invading Honduras and occupying a frontier town, Salvadorans struck Honduran air bases and islands in the Gulf of Fonseca.¹⁰⁰ In retaliation, Hondurans launched land and air attacks.¹⁰¹ During the four-day "Soccer War," 2000 people died.¹⁰² The armed conflict subsided when the OAS intervened and successfully negotiated a cease-fire followed by a complete troop withdrawal.¹⁰³ The formal state of war, however, continued for over ten years.¹⁰⁴ Since the casualties from the Soccer War were primarily Hondurans, the Salvadorans claimed victory.¹⁰⁵ The forced return of 130,000 Salvadoran migrant workers by Honduras to El Salvador, however, created a desperate situation in El Salvador and aided in the incitement of a ten-year Salvadoran civil war.¹⁰⁶

96. LEBLANC, *supra* note 95, at 164.

97. BUTTERWORTH, *supra* note 16, at 439. Although nationals in both countries used the outcome of the soccer match as a justification for violence, the border disputes and migration problems had actually incited the war. LEBLANC, *supra* note 95, at 164.

98. *El Salvador v. Honduras*, 1992 I.C.J. 351, 382, ¶ 35 (Sept. 11).

99. BUTTERWORTH, *supra* note 16, at 439.

100. *A Win in the World Court*, N.Y. TIMES, Oct. 6, 1992, at A22.

101. *Id.*

102. *Id.*; LEBLANC, *supra* note 95, at 167.

103. BUTTERWORTH, *supra* note 16, at 439. Although the OAS called for a withdrawal of troops within 96 hours of the cease-fire, El Salvador refused to comply on the grounds that Honduras had not provided adequate guarantees for the safety of Salvadoran nationals. *Id.* The actual withdrawal of troops did not occur until July 30, 1969 when the parties accepted an OAS negotiated settlement and agreed to withdraw all troops and secure the safety of nationals. *Id.* at 440. Continued negotiations conducted by the OAS throughout 1969-70 resulted in the establishment of a demilitarized zone along the contested border. *Id.* Guatemala, Nicaragua, and Costa Rica consented to supply patrols and monitor the zone. *Id.*

104. *El Salvador v. Honduras*, 1992 I.C.J. 351, 382-83, ¶ 35 (Sept. 11).

105. *A Win in the World Court*, *supra* note 100, at A22.

106. *Id.*

In June 1972, delegates of Honduras and El Salvador met in Antigua, Guatemala and agreed on a major portion of their land boundary.¹⁰⁷ These efforts, however, did not end the hostilities between the nations. Prior to the Soccer War, Honduras and El Salvador had both accepted the ICJ's compulsory jurisdiction.¹⁰⁸ On November 24, 1973, however, El Salvador changed its declaration by making reservations that implicitly excluded the dispute with Honduras from the ICJ's jurisdiction.¹⁰⁹ Honduras eventually followed suit.¹¹⁰

2. The General Treaty of Peace

The Convention for the Adoption of a Mediation Procedure Between the Republics of El Salvador and Honduras concluded on October 6, 1976 and named the former President of the ICJ, José Luis Bustamante y Rivero, as mediator.¹¹¹ The mediation process began on January 18, 1978 and resulted in a General Treaty of Peace that both parties signed on October 30, 1980.¹¹² Article 16 of the General Treaty commemorated the agreement of the parties to delimit the boundaries in the undisputed areas and declared that a Joint Frontier Commission should delimit the frontier in the six unsettled areas as well as determine the legal status of the islands and the maritime spaces.¹¹³ In addition, Article 31 of the General Treaty required the parties to negotiate and draft a Special Agree-

107. *El Salvador v. Honduras*, 1992 I.C.J. at 383, ¶ 36.

108. *Optional Clause Concerning the Court's Compulsory Jurisdiction*, 1946-1947 I.C.J. Y.B. 210. El Salvador accepted the ICJ's compulsory jurisdiction prior to January 28, 1921. *Id.* Honduras accepted the World Court's compulsory jurisdiction on February 2, 1948. *Acceptance of the Compulsory Jurisdiction of the Court*, 1947-1948 I.C.J. Y.B. 135.

109. *Declarations Recognizing as Compulsory the Jurisdiction of the Court*, 1973-1974 I.C.J. Y.B. 49, 56-58. On November 26, 1973 El Salvador modified its acceptance of ICJ's compulsory jurisdiction to remove the dispute with Honduras from ICJ's jurisdiction. *El Salvador v. Honduras*, 1992 I.C.J. at 383, ¶ 36.

110. *Declarations Recognizing as Compulsory the Jurisdiction of the Court*, 1986-1987 I.C.J. Y.B. 59, 70. Honduras modified its declaration on June 6, 1986. *El Salvador v. Honduras*, 1992 I.C.J. at 383, ¶ 36.

111. *El Salvador v. Honduras*, 1992 I.C.J. at 383, ¶ 36.

112. *Id.* El Salvador ratified the General Treaty of Peace on November 12, 1980 and Honduras ratified the General Treaty of Peace on December 8, 1980. *Id.*

113. *Id.* at 383, ¶ 37. According to Article 16 of the 1980 General Treaty of Peace, the following six disputed areas were not resolved by the 1980 General Treaty.

1. The section of the land frontier lying between the point known as El Trifinio,

ment to submit any unresolved controversy to the ICJ if total agreement was not reached within five years.¹¹⁴

Since the Commission was unable to reach a satisfactory settlement,¹¹⁵ Honduras and El Salvador complied with the terms of the General Treaty and invoked the voluntary jurisdiction of the World Court by submitting their case to the International Court of Justice by a Special Agreement of May 24, 1986.¹¹⁶ According to Article 35 of the General Treaty, the express submission of the frontier dispute to the voluntary jurisdiction of the World Court prevailed over any reservations to compulsory jurisdiction made by the states in their declara-

at the summit of the Cerro Montecristo, and the summit of the Cerro Zapotal. *El Salvador v. Honduras*, 1992 I.C.J. at 365.

2. The section of the land frontier lying between the Cayaganca rock and the confluence of the Chiquita or Oscura stream with the Sumpul river. *Id.* at 365-66.

3. The section of the land frontier lying between the Pacacio boundary marker and the boundary marker known as Poza del Cajón. *Id.* at 366.

4. The section of the land frontier lying between the source of the La Orilla stream and the boundary marker known as the Malpaso de Similatón. *Id.* at 366-67.

5. The section of the land frontier lying between the point where the river Torola is joined by the Manzupucagua stream and the ford known as Paso de Unire. *Id.* at 367.

6. The section of the land frontier lying between Los Amates and the Gulf of Fonseca. *Id.*

114. *See supra* note 70 and accompanying text (reproducing language of Article 31 of 1980 General Treaty of Peace).

115. *El Salvador v. Honduras*, 1992 I.C.J. at 383, ¶ 37. The Joint Frontier Commission, which was established on May 1, 1980, held 43 meetings from 1980 until 1985. *Id.* The Commission, however, was unable to demarcate the land boundaries in the controversial sectors or determine the legal situations of the islands and the maritime space. *Id.*

116. *Id.* at 385, ¶ 38. Article 32 of the General Treaty of Peace addressed the procedural issues related to the parties' formal submission of their dispute to the ICJ. *Id.* at 384, ¶ 37. Article 32 of the General Treaty of Peace states that

[t]he Special Agreement referred to in the preceding Article shall include:

(a) the submission of the Parties to the jurisdiction of the International Court of Justice so that it may settle the controversy or controversies referred to in the preceding Article;

(b) the time-limits for the presentation of documents and the number of such documents;

(c) the determination of any other question of a procedural nature that may be pertinent.

Both Governments shall agree upon the date for the joint notification of the Special Agreement to the International Court of Justice but, in the absence of such an agreement, any one of them may proceed with the notification, after having previously informed the other Party by the diplomatic channel.

Id.

tions according to the provisions of Article 36(2) of the ICJ Statute.¹¹⁷ In addition, Article 36 of the General Treaty stated that the parties must agree to execute the decision of the ICJ in its entirety and in complete good faith.¹¹⁸

II. LAND, ISLAND AND MARITIME FRONTIER DISPUTE (EL SALVADOR V. HONDURAS; NICARAGUA INTERVENING)

The *El Salvador v. Honduras* case, decided by an ad hoc Chamber of the ICJ, has been described as containing at least four times the amount of material contained in a normal ICJ case.¹¹⁹ Although voluminous, the case is divided into three general sections.¹²⁰ First, the Chamber addressed the boundary dispute between El Salvador and Honduras in the six contested areas.¹²¹ Second, the Chamber determined the ownership of islands in the Gulf of Fonseca.¹²² In the third part of the case, the Chamber addressed the legal status of the maritime spaces within and outside of the Gulf of Fonseca respectively.¹²³ The Chamber addressed each of these sections independently and tabulated separate votes to determine its judg-

117. *Id.* at 384-85, ¶ 37. Article 35 of the General Treaty of Peace states that the parties' express submission of the dispute to the ICJ's jurisdiction "deprives of any effect, as far as relations between the Parties are concerned," any reservations to their acceptance of the ICJ's compulsory jurisdiction. *Id.*

118. *Id.* at 385, ¶ 39. Article 36 of the General Treaty of Peace states in pertinent part that

[t]he Parties agree to execute in its entirety and in complete good faith the decision of the International Court of Justice, empowering the Joint Frontier Commission to initiate, within six months from the date of the Court's decision, the demarcation of the frontier laid down in that decision. For the demarcation in question the norms laid down in this respect in this Treaty shall be applied.

Id.

119. See Highet, *supra* note 2, at 648 (discussing length and complexity of *El Salvador v. Honduras* case).

120. *El Salvador v. Honduras*, 1992 I.C.J. at 380, ¶ 27; see Highet, *supra* note 2, at 648 (discussing large size of *El Salvador v. Honduras* case and dividing case into four rather than three parts by separating maritime spaces within and outside the Gulf of Fonseca into two independent sections of case).

121. *El Salvador v. Honduras*, 1992 I.C.J. at 380, ¶ 27; Highet, *supra* note 2, at 648.

122. *El Salvador v. Honduras*, 1992 I.C.J. at 380, ¶ 27; Highet, *supra* note 2, at 648.

123. *El Salvador v. Honduras*, 1992 I.C.J. at 380, ¶ 27.

ment in each of these areas.¹²⁴

A. Procedural History

The parties notified the Registrar of the International Court of Justice on December 11, 1986 of the Special Agreement to submit the dispute to a Chamber of the World Court.¹²⁵ The ICJ formed an ad hoc Chamber to deal with this case by May 8, 1987.¹²⁶ On September 11, 1992 the World Court delivered its judgment in the *El Salvador v. Honduras* case.¹²⁷

The Chamber accepted Nicaragua's application to intervene solely with respect to the Gulf of Fonseca on September 13, 1990.¹²⁸ This case represents the first time that a state has been permitted to intervene under Article 62¹²⁹ of the ICJ Statute.¹³⁰ The Chamber unanimously held that Nicaragua had an interest of a legal nature that might be affected by the Chamber's judgment on the merits with respect to the legal

124. *Id.* at 610-18, ¶¶ 425-32; Highet *supra* note 2, at 648.

125. *El Salvador v. Honduras*, 1992 I.C.J. at 356.

126. Land, Island and Maritime Frontier Dispute (El Sal. v. Hond.) (Constitution of Chamber), 1987 I.C.J. 10 (May 8). The original Chamber included Judges Shigeru Oda, Sette-Camara, and Sir Robert Jennings, as well as the two ad hoc judges, Nicolas Valticos, appointed by El Salvador, and Michel Virally, chosen by Honduras. *Id.* at 12. Judge ad hoc Virally died on January 27, 1989, and Honduras appointed Santiago Torres Bernárdez to sit in his place. *El Salvador v. Honduras*, 1992 I.C.J. at 359, ¶ 8.

127. *El Salvador v. Honduras*, 1992 I.C.J. at 351.

128. *Id.* at 360, ¶ 15. Land, Island and Maritime Frontier Dispute (El Sal. v. Hond.) (Application by Nicaragua for Permission to Intervene), 1990 I.C.J. 92, 137, ¶ 105 (Sept. 13).

129. ICJ Statute, *supra* note 4, art. 62, 59 Stat., pt. 2, at 1063, 3 Bevans at 1191. Article 62 of the Statute of the International Court of Justice states that

1. [s]hould a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

2. It shall be for the Court to decide upon this request.

Id.

130. See generally Keith Highet & George Kahale III, *International Court of Justice—Application by Nicaragua to Intervene—Article 62 of the Statute of the Court—Frontier Dispute*, 85 AM. J. INT'L L. 680 (1991) (discussing decision of Chamber to allow Nicaragua to intervene as significant development in ICJ's procedural jurisprudence). Prior to the *El Salvador v. Honduras* case, the ICJ had denied states' applications to intervene in several other cases. *Id.* at 682; see, e.g., Continental Shelf (Tunis. v. Libyan Arab Jamahiriya) (Application by Malta for Permission to Intervene), 1981 I.C.J. 3 (Apr. 14); Continental Shelf (Libyan Arab Jamahiriya v. Malta) (Application by Italy for Permission to Intervene), 1984 I.C.J. 3, 18 (Mar. 21).

status of the waters of the Gulf.¹³¹

In its judgment on September 13, 1990, however, the Chamber emphasized that the parties of the case must consent in order for the intervenor to become a party.¹³² According to Article 59 of the ICJ Statute, the ICJ's judgment only binds the parties to the dispute with respect to the particular case brought before the ICJ.¹³³ After the intervening state becomes a party, it is bound by the judgment and may assert the binding force of the judgment against the other parties.¹³⁴ Since El Salvador opposed the Nicaraguan application, and neither El Salvador nor Honduras consented to recognize Nicaragua as a party to the case, the judgment is not *res judicata* for Nicaragua.¹³⁵

After establishing Nicaragua as an intervenor, the Chamber focused on the terms of the Special Agreement of May 24, 1986. According to Article 1 of the Special Agreement, the parties submitted their dispute to a Chamber composed of three members of the ICJ. The composition of the Chamber was subject to the joint consent of the parties.¹³⁶ In addition, the Special Agreement authorized each party to submit a judge *ad hoc* who may have the nationality of the nominating

131. *Land, Island and Maritime Dispute Frontier Dispute (El Sal. v. Hond.) (Application by Nicaragua for Permission to Intervene)*, 1990 I.C.J. 92, 137, ¶ 105 (Sept. 13).

132. *Id.* at 134, ¶ 99.

133. ICJ Statute, *supra* note 4, art. 59, 59 Stat., pt. 2, at 1062, 3 Bevans at 1190. Article 59 of the ICJ Statute states in pertinent part that "[t]he decision of the Court has no binding force except between the parties and in respect of that particular case." *Id.*

134. *El Salvador v. Honduras*, 1992 I.C.J. 351, 609-10, ¶ 423 (Sept. 11).

135. *Id.*

136. *Id.* at 356-57. Article 1 of the Special Agreement of May 24, 1986 addressing the "Constitution of a Chamber" states that

1. [i]n application of Article 34 of the General Treaty of Peace, signed on 30 October 1980, the Parties submit the issues mentioned in Article 2 of the present Special Agreement to a chamber of the International Court of Justice, composed of three members, with the consent of the Parties, who will express this in joint form to the President of the Court, this agreement being essential for the formation of the chamber, which will be constituted in accordance with the procedures established in the Statute of the Court and in the present Special Agreement.

2. In addition the chamber will include two Judges *ad hoc* specially nominated one by El Salvador and the other by Honduras, who may have the nationality of the Parties.

Id.

party.¹³⁷ In Article 2 of the Special Agreement, the parties outlined the subject of the litigation.¹³⁸ El Salvador and Honduras conferred jurisdiction on the Chamber to decide the boundary lines in the six disputed areas that were not addressed by the General Treaty of Peace, and to determine the legal situation of the islands and the maritime spaces.¹³⁹

In addition, the Special Agreement described the procedures for the submission of documents, registration, and notification to the ICJ.¹⁴⁰ The "applicable law" clause of Article 5 of the Special Agreement directed the Chamber to consider the rules of international law, and specifically referred to the General Treaty of Peace.¹⁴¹ Furthermore, Article 6 of the Special Agreement requested that the Special Demarcation Com-

137. Land, Island and Maritime Frontier Dispute (El Sal. v. Hond.) (Constitution of Chamber), 1987 I.C.J. 10, 12 (May 8). By its order of May 8, 1987 the World Court declared that

7. [w]hereas 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 the 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.

Id.; see Schwebel, *supra* note 62, at 847-48 (discussing composition of ad hoc Chamber in *El Salvador v. Honduras* case).

138. *El Salvador v. Honduras*, 1992 I.C.J. at 357. Article 2 of the Special Agreement states in pertinent part that

[t]he Parties request the Chamber:

1. To delimit the boundary line in the zones or sections not described in Article 16 of the General Treaty of Peace of 30 October 1980.
2. To determine the legal situation of the islands and maritime spaces.

Id.

139. See *supra* note 138 (reproducing language of Article 2 of Special Agreement of May 24, 1986); see also *supra* note 113 (listing six disputed areas that were not resolved by 1980 General Treaty of Peace).

140. *Id.* at 357-58 (reproducing Special Agreement, arts. 3, 7, and 8).

141. *Id.* Article 5 of the Special Agreement of May 24, 1986 states in pertinent part that

[i]n accordance with the provisions of the first paragraph of Article 38 of the Statute of the International Court of Justice, the Chamber, when delivering its Judgment, will take into account the rules of international law applicable between the Parties, including, where pertinent, the provisions of the General Treaty of Peace.

Id.

mission, established by the Agreement of February 11, 1986, begin the demarcation of the frontier line within three months of the date of the judgment.¹⁴²

B. *The Chamber Determined the Land Boundary in the Six Disputed Sectors*

The Chamber decided the land boundary in the six areas that the parties did not resolve in the 1980 General Treaty of Peace.¹⁴³ To determine the boundaries in these areas, the Chamber primarily relied on the principle of *uti possidetis juris*, which requires a determination of the sovereignty of the lands at the time of independence.¹⁴⁴ In its attempt to establish the owner of legal title to the lands in 1821, the Chamber considered the relevance of certain titles from the Spanish Crown as well as the role of administrative acts of control known as *efectivités*.¹⁴⁵

1. Applicability and Meaning of the *Uti Possidetis Juris* Principle

The Spanish-American legal principle *uti possidetis juris* involves a determination of territorial boundaries by an assessment of the parties' rights at the time of independence from the Spanish Crown.¹⁴⁶ Denying the possibility that the land is

142. *Id.* at 358. Article 6 of the Special Agreement states that

1. [t]he Parties will execute the judgment of the Chamber in its entirety and in complete good faith. To this end, the Special Demarcation Commission established by the Agreement of 11 February 1986 will begin the demarcation of the frontier line fixed by the Judgment not later than three months after the date of the said Judgment and will diligently continue its work until the demarcation is completed.

2. For this purpose, the procedures established in respect of this matter in the above-mentioned Agreement concerning the establishment of the Special Demarcation Commission will be applied.

Id.

143. *See supra* note 139 (defining geographic location of six sectors unresolved by 1980 General Treaty of Peace).

144. *El Salvador v. Honduras*, 1992 I.C.J. at 386, ¶ 41.

145. *Id.* at 386, ¶ 40.

146. *Frontier Dispute (Burk. Faso v. Mali)*, 1986 I.C.J. 554, 566, ¶ 23 (Dec. 22) (applying *uti possidetis juris* principle and declaring that boundary must coincide with delimitations of former French colonies existing at end of colonial period). The Chamber in *Frontier Dispute (Burk. Faso v. Mali)* stated that

[t]he essence of the principle lies in its primary aim of securing respect for the territorial boundaries at the moment when independence is achieved.

terra nullius, belonging to no one, the *uti possidetis juris* principle is essential in establishing fixed boundary lines throughout most of Central and South America.¹⁴⁷

Although *uti possidetis juris* was not mentioned specifically in either the General Treaty of Peace or the Special Agreement, both parties as well as the Chamber accepted it as the fundamental principle for the determination of the land boundary.¹⁴⁸ The Chamber acknowledged the importance of the principle but noted the difficulty of determining the precise boundaries of the colonial administrative divisions that became Honduras and El Salvador in 1821.¹⁴⁹ Although the parties each specified the provinces to which they claimed to have succeeded, neither party submitted any legislative documents indicating the actual proportions of the territories and location of the boundaries.¹⁵⁰ Instead, the parties produced only documents concerning grants of land from the Spanish Crown, known as "titles" (*titulos*) from which they claimed the Cham-

Such territorial boundaries might be no more than delimitations between different administrative divisions or colonies all subject to the same sovereign. In that case, the application of the principle of *uti possidetis* resulted in administrative boundaries being transformed into international frontiers in the full sense of the term.

Id.; see generally Monroe Leigh, *International Land Boundary Delimitation—Principle of Uti Possidetis—Distinction Between Determination of a Land Boundary and Delimitation of Continental Shelf*, 81 AM. J. INT'L L. 411 (1987) (discussing application of *uti possidetis juris* principle in *Frontier Dispute (Burk. Faso v. Mali)*).

147. *El Salvador v. Honduras*, 1992 I.C.J. at 386, ¶ 41; see, e.g., *Affaires des Frontières Colombo-Vénézuéliennes*, 1 R.I.A.A. 228 (Arbitre: Conseil fédéral suisse, Mar. 24, 1922), translated in part in *El Salvador v. Honduras*, 1992 I.C.J. at 386-387, ¶ 42 (discussing advantages of *uti possidetis juris* principle in determining unsettled boundaries between Colombia and Venezuela). The Swiss Federal Council observed that "[t]his general principle [of *uti possidetis juris*] offered the advantage of establishing an absolute rule that there was not in law in the old Spanish America any *terra nullius*." *Id.* The Chamber in the *Frontier Dispute (Burk. Faso v. Mali)* case noted that the *uti possidetis juris* principle, which played a significant role in the decolonization of Spanish America in the early nineteenth century, declared that there was no territory without a sovereign. *Frontier Dispute (Burk. Faso v. Mali)*, 1986 I.C.J. at 566, ¶ 23.

148. *El Salvador v. Honduras*, 1992 I.C.J. at 386, ¶ 40.

149. *Id.* at 380, ¶ 28. As Chief Judge Charles Evan Hughes noted in the case concerning the border between Guatemala and Honduras, the "boundaries of jurisdiction [had] not been fixed with precision by the Crown, . . . [and] there were great areas in which there had been no effort to assert any semblance of administrative authority." *Honduras Borders (Guat. v. Hond.)*, 2 R.I.A.A. 1325 (International Arbitral Tribunal, Jan. 23, 1933).

150. *El Salvador v. Honduras*, 1992 I.C.J. at 388, ¶ 44.

ber could deduce the boundaries.¹⁵¹

2. The Relevance of Certain Titles to Land from the Spanish Crown

In examining the title documents, the Chamber first analyzed the different meanings of the term "title."¹⁵² In an earlier decision, an ICJ Chamber had declared that the term "title" generally is not limited to documentary evidence, but may also include evidence that verifies the existence and source of a right to the land.¹⁵³ Therefore, the Chamber recognized that Honduras' and El Salvador's "titles" to the disputed land could be established by a Spanish Royal Decree that attributed particular areas to either of the states.¹⁵⁴ Neither party, however, possessed such a grant.¹⁵⁵ Since each party claimed the disputed territory via their succession from the Spanish Crown, the "title" to the disputed territories may be determined by reference to the ownership of the land in 1821.¹⁵⁶

Article 26 of the General Treaty states that the Frontier Commission must consider the documents issued by the Spanish Crown as well as any other evidence and arguments of a legal, historical, human, or other nature set forth by the parties and admitted under international law.¹⁵⁷ The Chamber distinguished its duty to decide the disputed boundaries from that of

151. *Id.*

152. *Id.* at 388, ¶ 45.

153. *Frontier Dispute (Burk. Faso v. Mali)*, 1986 I.C.J. 554, 564, ¶ 18 (Dec. 22) (referring delimitation of portion of land frontier between these two states to ad hoc Chamber). The Chamber in the *Frontier Dispute (Burk. Faso v. Mali)* case held that the term "title" is not restricted to documentary evidence. *Id.* Rather, "title" comprises "both any evidence which may establish the existence of a right, and the actual source of that right." *Id.*

154. *El Salvador v. Honduras*, 1992 I.C.J. at 388-89, ¶ 45.

155. *Id.*

156. *Id.*

157. *Id.* at 390-91, ¶ 47. Article 26 of the General Treaty of Peace of 1980 states that

[f]or the delimitation of the frontier line in areas subject to controversy, the Joint Frontier Commission shall take as a basis the documents which were issued by the Spanish Crown or by any other Spanish authority, whether secular or ecclesiastical, during the colonial period, and which indicate the jurisdictions or limits of territories or settlements. It shall also take account of other evidence and arguments of a legal, historical, human or any other kind, brought before it by the Parties and admitted under international law.

Id.

the original Joint Frontier Commission, which was charged only with the proposal of a frontier line.¹⁵⁸ Consequently, the Chamber declared that Article 26 of the General Treaty, which originally was directed at the Joint Frontier Commission, did not establish the applicable law for the dispute before the Chamber.¹⁵⁹ Rather, Article 26 concerns admissible evidence; it was designed to ensure that the Commission considered all available evidence before formulating its proposal.¹⁶⁰ Therefore, the Chamber construed the various "titles" as evidence in relation to the *uti possidetis juris* principle.¹⁶¹

In 1821, a large portion of the territory to which the two states succeeded was the subject of titles that were grants of the Spanish Crown to Indian communities and to private individuals.¹⁶² In the absence of legislative instruments formally defining the colonial boundaries then-existing, the Chamber noted that the land grants to Indian communities and to private individuals offered some evidence as to the location of the boundaries.¹⁶³ This evidence, however, was not conclusive.¹⁶⁴ The remaining lands in the provinces, which had not been the subject of grants of the Spanish Crown, were referred to as crown lands or *tierras realengas*.¹⁶⁵ The parties agreed that this land was not unattributable, but rather belonged to one of the colonial provinces, and therefore must have been inherited by either Honduras or El Salvador at the time of independence.¹⁶⁶

3. The Role of Colonial *Effectivités*

Both parties, relying on the second part of Article 26 of the General Treaty of Peace,¹⁶⁷ submitted evidence concerning acts of administrative control known as *effectivités*.¹⁶⁸ For example, El Salvador alleged Salvadoran occupation and ownership

158. *Id.* at 391-92, ¶ 48.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.* at 395, ¶ 55.

163. *Id.* at 394, ¶ 54.

164. *Id.*

165. *Id.* at 395, ¶ 55.

166. *Id.*

167. See *supra* note 157 and accompanying text (reproducing language of Article 26 of 1980 General Treaty of Peace).

168. *El Salvador v. Honduras*, 1992 I.C.J. at 395-96, ¶ 57.

of disputed areas.¹⁶⁹ Additionally, El Salvador relied on El Salvador's supply of public services and exercise of government powers in those areas to suggest that El Salvador effectively controlled the land.¹⁷⁰ Similarly, Honduras presented material concerning the settlements of Honduran nationals in all six disputed areas as well as evidence of the various judicial and other administrative functions that Hondurans have exercised in those areas.¹⁷¹ Honduras, however, asserted that the concept of effective control only referred to control exercised before independence.¹⁷² Honduras declared that the duty to respect the status quo in a disputed area prohibited El Salvador's reliance on any acts of sovereignty after 1884.¹⁷³

To establish the role of the *effectivités*, the Chamber focused on the importance of determining the boundaries according to the principle of *uti possidetis juris* and concluded that it could consider only documentary evidence of colonial *effectivités* at the time of independence.¹⁷⁴ Although the Chamber recognized the difficulty in collecting such evidence, the Chamber refused to infer the existence of evidence that had never been submitted.¹⁷⁵ The Chamber, however, held that it

169. *Id.* at 396-97, ¶ 59.

170. *Id.*

171. *Id.* at 397-98, ¶ 60. For example, Honduras submitted evidence of effective control under the following headings: criminal proceedings; police or security; appointment of Deputy Mayors; public education; payment of salaries of employees and remuneration to public officials; land concessions; transfer or sale of immovable property; registration of births; registration of deaths; and miscellaneous, including parish baptismal records. *Id.*

172. *Id.* Honduras refers to the decision in the 1933 Arbitral Award in Honduras Borders (Guat. v. Hond.), 2 R.I.A.A. 1325 (International Arbitral Tribunal, Jan. 23, 1933) to suggest that "effective control" only refers to administrative control during the period prior to independence, based on the will of the Crown of Spain, and that El Salvador's theory of administrative control is anachronistic. *Id.*

173. *Id.* Delegates of Honduras and El Salvador met in 1884 and drafted a boundary convention, the Cruz-Letona, which was never ratified by Honduras. *El Salvador v. Honduras*, 1992 I.C.J. at 382, ¶ 33.

174. *Id.* at 398, ¶ 61. When the legal title does not specifically define the territorial boundary, "[t]he *effectivités* can then play an essential role in showing how the title is interpreted in practice." Frontier Dispute (Burk. Faso v. Mali) 1986 I.C.J. 554, 586-87, ¶ 63 (Dec. 22).

175. *El Salvador v. Honduras*, 1992 I.C.J. at 399, ¶ 63. The counsel for El Salvador declared that the Government had encountered problems in its attempt to obtain evidence of its *effectivités* in certain disputed areas. *Id.* Sporadic acts of violence in those areas had interfered with some of the governmental activities normally carried on in those areas. *Id.*

would consider documentary evidence of post-independence *effectivités* only if it aided in the determination of the boundary that existed in 1821.¹⁷⁶

In addition, the Chamber declared that the critical date of 1821 for application of the *uti juris possidetis* principle was not absolute.¹⁷⁷ A later critical date could arise either from a subsequent boundary treaty or the adjudication of a particular dispute.¹⁷⁸ For example, the parts of the El Salvador boundary fixed by the General Treaty of Peace constituted the new boundary and had a critical date of 1980.¹⁷⁹ Furthermore, the Chamber declared that the date could be qualified where there was sufficient evidence to show that the parties had by acquiescence or recognition accepted a variation of the critical date.¹⁸⁰ In areas where a later critical date arose, the parties were permitted to submit evidence of *effectivités* that occurred at the time of the new critical date.¹⁸¹

4. Judgment on the Land Boundaries

By applying the *uti possidetis juris* principle, interpreting Spanish colonial land titles, and examining evidence of post-colonial *effectivités*, the Chamber delimited the land boundary in the six disputed areas.¹⁸² Addressing each of the six sectors separately, the Chamber examined past territorial boundaries, compared titles to the land, scrutinized maps, and analyzed reports.¹⁸³ In addition, the Chamber attempted to place itself in the position of the surveyors who identified the rivers, mountains, and other natural boundaries.¹⁸⁴ Although the Chamber primarily relied on the *uti possidetis juris* principle to determine the land boundaries, it took account of the suitability of certain topographical features to provide a practicable and functional boundary in each of the disputed areas.¹⁸⁵

After collecting and analyzing all of the available evidence,

176. *Id.* at 398-99, ¶ 62.

177. *Id.* at 401, ¶ 67.

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* at 351.

183. *Id.* at 623 (separate opinion of Judge Valticos).

184. *Id.* at 623-24.

185. *See id.* at 390, ¶ 46 (stating that Chamber observed local features and to-

the Chamber unanimously decided the land boundaries in five of the six disputed sectors, and by a vote of four to one, decided the placement of the boundary in the sixth sector.¹⁸⁶ The Chamber ruling gave Honduras full control of the disputed land segment at the delta of the Goascorán River and nearly full control of two other segments along the Negro-Quigara and the Szalapa Rivers.¹⁸⁷ El Salvador was awarded most of the disputed area near Guatemala, and half of the two segments along the Sumpul and Torola rivers.¹⁸⁸

C. *Legal Situation of the Islands*

After completing the land boundary delimitation, the Chamber considered the conflicting claims of El Salvador and Honduras over the legal status of the islands. El Salvador requested the Chamber to declare that it had sovereignty over all the islands within the Gulf except Zacate Grande.¹⁸⁹ Honduras, however, requested the Chamber to declare that Meanguerita and Meanguera were the only islands in dispute and that Honduras had sovereignty over both of them.¹⁹⁰ Referring to Article 2 of the Special Agreement,¹⁹¹ which requested that the Chamber determine the legal situation in the Gulf of Fonseca, the Chamber held that the parties had conferred jurisdiction upon the Chamber to decide disputes regarding all of the islands.¹⁹² The Chamber recognized, however, that it was required to make a judicial determination only concerning the islands that were in dispute.¹⁹³ According to

pography of each land sector); *Frontier Dispute Settled by Reference to Colonial Boundaries*, *TIMES* (London), October 8, 1992, available in LEXIS, Nexis Library, OMNI File.

186. *El Salvador v. Honduras*, 1992 I.C.J. at 610-18, ¶¶ 425-32.

187. *Border Dispute Settled*, *WASH. POST*, Sept. 12, 1992, at A12.

188. *Id.*

189. *El Salvador v. Honduras*, 1992 I.C.J. at 559, ¶ 334. El Salvador claimed the islands by historical title from the Spanish Crown. *Id.* According to the map printed in the *El Salvador v. Honduras* case, the islands of the Gulf of Fonseca include Meanguera, Meanguerita, El Tigre, Farallones, Zacate Grande, Perlco, Conejo, Zaccatillo, Martin Perez, Gararobo, Inglesera, Sirena, Exposicion, and Conchaguaita. *Id.* at 587.

190. *Id.* at 560, ¶ 335.

191. See *supra* note 138 and accompanying text (reproducing translation of Article 2 of Special Agreement of May 24, 1986).

192. *El Salvador v. Honduras*, 1992 I.C.J. at 554-55, ¶ 326.

193. *Id.*; see Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, 1950 I.C.J. 65, 74 (Advisory Opinion of Mar. 30) (stating that question of whether international dispute exists is matter for objective determination).

the Chamber, *prima facie* existence of a dispute over an island can be deduced when an island is the subject of specific and argued claims.¹⁹⁴ As a result, the Chamber determined that from the initial stages of the proceedings the only islands in dispute were El Tigre, Meanguera, and Meanguerita.¹⁹⁵

Next, the Chamber noted that the Federal Republic of Central America succeeded Spain in the sovereignty over the islands.¹⁹⁶ The newly independent Central American states were united in the Federal Republic of Central America in 1821.¹⁹⁷ Due to limited prospects for profitable exploitation, the islands remained sparsely inhabited for many years.¹⁹⁸ Disputes over the islands between Honduras, El Salvador, and Nicaragua did not begin until after the break-up of the Federal Republic in the middle of the nineteenth century.¹⁹⁹ At that time, the Gulf, which had previously attracted pirates and buccaneers because of its good navigation channels and the possibility of construction of safe ports, gained the attention of foreign nationals interested in claiming land in Central America.²⁰⁰

Honduras contended that the Chamber should apply the *uti possidetis juris* principle to determine the legal situation of the islands.²⁰¹ El Salvador, however, maintained that the Chamber must apply the modern law on acquisition of territory and consider the effective exercise or display of state sovereignty over the islands as well as the possession of historical titles.²⁰² The Chamber did not dispute that the determination of the sovereignty of the islands must start with the *uti possidetis juris* principle.²⁰³ The Chamber held that in legal theory, the possession of each of the islands of the Gulf already had been transferred to one of three states surrounding the Gulf as heir to the Spanish colonial possessions.²⁰⁴

194. *El Salvador v. Honduras*, 1992 I.C.J. at 555, ¶ 326.

195. *Id.* at 556, ¶ 327.

196. *Id.*

197. *Id.* at 565, ¶ 346.

198. *Id.*

199. *Id.*

200. *Id.* at 565-66, ¶ 346.

201. *Id.* at 558, ¶ 332.

202. *Id.*

203. *Id.* at 558, ¶ 333.

204. *Id.*

Acquisition of the territory, therefore, could not be determined by occupation.²⁰⁵ Sovereignty over the islands was a matter of succession of the newly independent states.²⁰⁶ The Chamber observed, however, that the legislative and administrative texts as well as colonial *effectivités* were so confusing and conflicting that it was possible that Spanish colonial law did not designate the sovereignty of particular areas.²⁰⁷ As a result, the Chamber stated that where the relevant administrative boundary in the colonial period was not well-defined, the behavior of the two states in the years following independence may serve as a guide in the boundary determination.²⁰⁸ The Chamber considered both the exercise of sovereignty by one party and evidence of the attitude of the other party.²⁰⁹

The Chamber first addressed the island of El Tigre, and reviewed the historical events on that island.²¹⁰ The Chamber noted that Honduras had remained in effective occupation of the island since 1849.²¹¹ In 1854, foreign nationals attempted to convince Honduras to sell El Tigre.²¹² In response, El Salvador issued a Diplomatic Note, which opposed such a sale but did not refute the right of Honduras to sell the island.²¹³ Although El Salvador invaded El Tigre in 1873 and temporarily occupied the port of Amapala, the Deputy Chief of the Salvadoran Army communicated to the President of Honduras that El Tigre and the port of Amapala had been restored to the government of Honduras in February of 1874.²¹⁴ The Chamber concluded that the conduct of the parties in the years following the dissolution of the Federal Republic of Central America was consistent with the assumption that El Tigre suc-

205. *Id.*

206. *Id.*

207. *Id.* at 566, ¶ 347.

208. *Id.* at 559, ¶ 333.

209. *Id.* at 579, ¶ 368.

210. *Id.* at 566, ¶ 348.

211. *Id.* at 569, ¶ 354.

212. *Id.* at 568, ¶ 352. In a report dated August 11, 1854, the Financial Controller of Honduras rejected an offer made by the U.S. Consul, Agostin Follin, to purchase El Tigre. The report was published in the *Gaceta Oficial* of Honduras on October 26, 1854. *Id.*

213. See *supra* note 77 and accompanying text (reproducing translation of El Salvador's Note of Protest of October 12, 1954).

214. *El Salvador v. Honduras*, 1992 I.C.J. at 569, ¶ 354.

ceeded to Honduras.²¹⁵ In recognition of the Central American's attachment to the *uti possidetis juris* principle, the Chamber also noted that the succession by Honduras was not refuted by any recognized colonial title.²¹⁶

Regarding Meanguera and Meanguerita, the Chamber declared that both parties treated the islands as a single insular unity.²¹⁷ Noting the proximity of Meanguerita to the larger island of Meanguera, as well as its small size and the fact that it was uninhabited, the Chamber concluded that Meanguerita was dependent on Meanguera.²¹⁸ The Chamber described the initial development of the dispute over the islands when El Salvador manifested its claim over Meanguera in a Diplomatic Note²¹⁹ and circular letter to the other countries of Central America.²²⁰ The Note and the letter were both issued on October 12, 1854 in response to the rumored intentions of Honduras to sell El Tigre to foreign nationals.²²¹ Furthermore, the Chamber received considerable documentary evidence on El Salvador's administration of Meanguera by El Salvador, without any record of Honduran protest.²²² According to the material reviewed by the Chamber, Honduras did not make any protest over Meanguera to El Salvador until January 1991.²²³

215. *Id.* at 569, ¶ 355.

216. *Id.*

217. *Id.* ¶ 356.

218. *Id.*

219. *Id.* ¶ 357; see *supra* note 77 and accompanying text (reproducing language of El Salvador's Note of Protest of October 12, 1854).

220. *El Salvador v. Honduras*, 1992 I.C.J. at 568-69, ¶ 353. The English translation of the circular letter issued by El Salvador to the other Central American countries on October 12, 1854 states that

[t]he Government of Salvador has learnt [sic], from the *Gaceta Oficial*, other Honduran publications, and reports from officials of that State in the Department of San Miguel, that the Government of Honduras has decided upon the sale to foreigners of the important island of Tigre in the Gulf of Fonseca and that it is also proposing to sell the island of Meanguera and other islands which unquestionably come within the sovereignty (*domino*) of this State.

Id.

221. *Id.* at 568-69, ¶ 352-53.

222. *Id.* at 572, ¶ 359 (listing documents submitted by El Salvador as evidence of El Salvador's administration of Meanguera).

223. *Id.* at 575-76, ¶ 362. On January 23, 1991, the Foreign Minister of Honduras alleged that El Salvador violated the parties' agreement to maintain the status quo and issued a Note which stated that

1. [r]ecently, in the island of Meanguera, currently part of the dispute our

The Honduran protests were rejected by El Salvador immediately.²²⁴ Thus, the Chamber held that Honduras' protest was too late to change the presumption of Honduras' acceptance of El Salvador's sovereignty over Meanguera and Meanguerita.²²⁵ The Chamber gave sixty-nine percent of the 250 miles of disputed territory to Honduras.²²⁶ El Salvador received the remaining thirty-one percent including the islands of Meanguera and Meanguerita.²²⁷

D. *Maritime Space Within and Outside the Gulf of Fonseca*

Next, the Chamber addressed the controversy concerning the sovereignty of the waters within and outside the closing line of the Gulf.²²⁸ The Gulf of Fonseca is a relatively small bay located on the Pacific coast of Central America with an irregular coastline along the borders of Honduras, El Salvador, and Nicaragua.²²⁹ The entrance to the Gulf, which lies between Nicaragua and El Salvador, is only 19.75 miles wide.²³⁰ In order to resolve the maritime dispute, the Chamber relied on the *uti possidetis juris* principle which it had previously applied to the land.²³¹

two countries have *sub judice* before the International Court of Justice, a number of material works have been carried out, the execution of which violates Article 37 of the General Treaty of Peace, which obligates both countries to maintain the 1969 status quo[.]

2. The Salvadorian press has announced that on 10 March of this year elections will be held in El Salvador by which 262 mayors and 84 congressmen are to be elected. Amongst other places where the elections will take place appears the so-called Meanguera del Golfo. This place is located on the island of Meanguera, currently in dispute between our two countries before the International Court of Justice.

Id. The works complained of included the construction of two school classrooms and a clinic. *Id.*

224. *Id.* at 576, ¶ 363. In a Note dated January 23, 1991, the Foreign Minister of Honduras rejected the protests of Honduras. *Id.*

225. *Id.* at 577, ¶ 364.

226. *Honduras, El Salvador to Begin Defining New Border in December*, Reuter Lib. Rep., Sept. 12, 1992, available in LEXIS, Nexis Library, REUTER File.

227. *Id.*

228. *El Salvador v. Honduras*, 1992 I.C.J. at 580, ¶ 369.

229. *Id.* at 588, ¶ 383.

230. *Id.*

231. *Id.* at 589, ¶ 386.

1. Nicaraguan Intervention and the Significance of Historic Waters

The Chamber noted that Nicaragua had been authorized to intervene in the proceedings solely on the question of the legal status of the waters of the Gulf of Fonseca.²³² El Salvador asserted that the Chamber had no jurisdiction to delimit the maritime spaces.²³³ Honduras, in contrast, requested a delimitation of the waters both within and outside the Gulf.²³⁴ Furthermore, El Salvador claimed that the waters were subject to a co-ownership ("condominium") of the three states, while Honduras argued that a community of interests existed within the Gulf that required judicial delimitation.²³⁵

Applying the rules of treaty interpretation,²³⁶ the Chamber first considered the ordinary meaning of the terms of the Article 2(2) of the Special Agreement and declared that the text of the Special Agreement made no reference to a delimitation of the waters.²³⁷ As a result, the Chamber concluded that the Special Agreement revealed the parties' intention to obtain only a determination of the legal situation of the Gulf waters.²³⁸ The Chamber, however, recognized that such a delimitation could be obtained in the future with the consent of the three countries.²³⁹

The parties and the intervening state, Nicaragua, as well as most commentators, agree that the Gulf is an historic bay, and that its waters are historic waters.²⁴⁰ Historic bays are those maritime areas over which the parties have historic title.²⁴¹

232. Land, Island, and Maritime Dispute (El Sal. v. Hond.) (Application by Nicaragua for Permission to Intervene), 1990 I.C.J. 92, 137, ¶ 105 (Sept. 13).

233. *El Salvador v. Honduras*, 1992 I.C.J. at 582, ¶ 372.

234. *Id.*

235. *Id.*

236. Vienna Convention on the Law of Treaties, May 23, 1969, art. 31, 1155 U.N.T.S. 332, 340. Article 31 of the Vienna Convention on the Law of Treaties states that a treaty must be interpreted "in accordance with the ordinary meaning to be given to the terms." *Id.*

237. See *supra* note 138 (citing text of Article 2 of Special Agreement of May 24, 1986).

238. *El Salvador v. Honduras*, 1992 I.C.J. at 582-83, ¶ 373.

239. *Id.* at 585, ¶ 378.

240. *Id.* at 588, ¶ 383.

241. *Judicial Regime of Historic Waters, Including Historic Bays*, 2 Y.B. INT'L L. COMM'N 1, 25, ¶ 183 (1962). Although Honduras, El Salvador, and Nicaragua were not parties to either of the conventions, the Chamber referred to Article 4 of the

The ICJ has described historic bays as waters that are treated as internal rather than international waters solely on the basis of historic title.²⁴²

To claim historic title to particular waters, a state must meet three general requirements.²⁴³ First, the claiming state must show effective exercise of sovereignty over the waters.²⁴⁴ Second, this exercise of sovereignty must have continued over an extended period of time in order that it may be equated with the use of the waters.²⁴⁵ Third, the state must show that foreign states have tolerated its use of the waters.²⁴⁶ The Chamber noted that there is no single international law governing historic bays.²⁴⁷ Rather, particular rules exist for each of the established historic bays.²⁴⁸ As a result, the Chamber

Convention of the Territorial Sea and the Contiguous Zone of 1958 and Article 10 of the Convention on the Law of the Sea (1982) to determine if they expressed customary international law concerning bays. These articles, however, were not applicable to the Gulf of Fonseca because the provisions apply only to single-state bays that are not historic bays. *El Salvador v. Honduras*, 1992 I.C.J. at 588, ¶ 383. If the Gulf of Fonseca were a non-historic single-state bay, the articles of these conventions may have been applied as customary international law, and a closing line could have been drawn defining the waters within the Gulf as internal waters. *Id.*; see Convention on the Territorial Sea and the Contiguous Zone of April 29, 1958, art. 4, 15 U.S.T. 1606, 1608, 516 U.N.T.S. 205, 208 (1958) (describing method for drawing straight baseline in non-historic single-state bays); see also United Nations Convention on the Law of the Sea, Dec. 10, 1982, art. 10, U.N. Doc. A/CONF.62/122 (1982), reprinted in 21 I.L.M. 1261, 1272-73 (1982) (defining and describing methods of measurement for baseline of bays).

242. *Fisheries (U.K. v. Nor.)*, 1951 I.C.J. 116, 130 (Dec. 18) (upholding validity of Norwegian system of delimitation for Norwegian fisheries zone by Decree of 1935). The *Fisheries* Court defined historic bays as "waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title." *Id.*

243. See *Judicial Regime of Historic Waters, Including Historic Bays*, *supra* note 241, at 25, ¶¶ 185-86 (discussing three factors required for determination of title to historic bays).

244. *Id.*

245. *Id.*

246. *Id.*

247. *El Salvador v. Honduras*, 1992 I.C.J. 351, 588, ¶ 384 (Sept. 11).

248. *Id.* The Chamber declared that the definition of historic bays set out in the *Fisheries* case between the United Kingdom and Norway must be read in light of the observation of the *Continental Shelf (Tunis. v. Libyan Arab Jamahiriya)* case which explains that historic bays are "governed by general international law which does not provide for a single 'régime' for 'historic waters' or 'historic bays', but only for a particular régime for each of the concrete, recognized cases of 'historic waters' or 'historic bays'." *Id.*; see *Continental Shelf (Tunis. v. Libyan Arab Jamahiriya)*, 1982 I.C.J. 18, 74 (Feb. 24) (describing principles and rules of international law applicable for delimitation of continental shelf belonging to Libya and Tunisia).

noted the importance of examining the history of the Gulf of Fonseca to determine its particular regime.²⁴⁹ An analysis of the history of the Gulf, which focuses on the practices of the parties, is especially important for a multi-state bay such as the Gulf of Fonseca, since there are no general rules for multi-state historic bays, unlike the established rules for non-historic single-state bays.²⁵⁰

Spain exercised continuous sovereignty over the Gulf until the states gained their independence in 1821.²⁵¹ The rights of the three coastal states, therefore, were acquired by succession from Spain.²⁵² As a result, the Chamber applied the principle of *uti possidetis juris* to the waters of the Gulf.²⁵³ Thus, the Chamber determined it necessary to examine the legal situation of the waters at the time of independence in 1821.²⁵⁴

2. *Uti Possidetis Juris* Principle Applied to the Gulf of Fonseca

After investigating the situation of the waters of the Gulf in 1821, the Chamber determined that no evidence comparable to that available for the land boundaries existed in the case of the waters.²⁵⁵ Since neither party submitted direct evidence, the Chamber referred to a 1917 Judgment of the Central American Court of Justice that addressed the legal status of the waters of the Gulf of Fonseca in a case between El Salvador and Nicaragua.²⁵⁶ The Chamber determined that the 1917 Judgment, which examined the particular regime of the Gulf of Fonseca, must be considered as a part of the history of the

249. *El Salvador v. Honduras*, 1992 I.C.J. at 589, ¶ 384.

250. *Id.*; see Convention on the Territorial Sea and the Contiguous Zone of April 29, 1958, art. 7, 15 U.S.T. 1606, 1609, 516 U.N.T.S. 205, 210 (1958) (stating rules governing non-historic single state bays).

251. *El Salvador v. Honduras*, 1992 I.C.J. at 589, ¶ 385.

252. *Id.*

253. *Id.* ¶ 386.

254. *Id.*

255. *Id.*

256. *Id.* at 590, ¶ 389; see *El Salvador v. Nicaragua*, (Central American Court of Justice, Mar. 9, 1917), translated in 11 AM. J. INT'L L. 674, 693 (1917) (addressing international legal status of Gulf of Fonseca and consequences of that status on coastal states). The Central American Court of Justice operated as an arbitral tribunal from 1908-18. SINGH, *supra* note 4, at 7. El Salvador brought a case against Nicaragua to the Central American Court after Nicaragua entered into the Bryan-Chamorro Treaty of 1914 with the United States, which granted a concession to the United States for the construction of an interoceanic canal and for a United States naval base in the Gulf of Fonseca. *El Salvador v. Honduras*, 1992 I.C.J. at 590, ¶ 388.

Gulf.²⁵⁷ In pertinent part, the 1917 Judgment stated that the Gulf of Fonseca belonged to the three countries that surround it and that the waters that form the entrance of the Gulf intermingle.²⁵⁸

After considering the decision of the Central American Court of Justice, the consistent claims of the three states and the lack of protest from other nations, the Chamber determined that the Gulf waters are not international.²⁵⁹ Rather, the waters up to the closing line are a closed "condominium" shared by the three states, with each state given the right to an exclusive three mile maritime belt along the coast.²⁶⁰ The Chamber concluded that the states had joint sovereignty in all of the waters of the Gulf other than the three mile maritime belts which were subject to treaty or customary delimitations.²⁶¹ Consequently, the Chamber declared that Honduras possessed the same legal rights in the Gulf waters up to the bay closing line as those held by El Salvador and Nicaragua.²⁶²

In addition, the Chamber held that the closing line of the Gulf is the baseline of the territorial sea.²⁶³ Since there is a condominium of the waters of the Gulf, there is a tripartite presence of the states at the closing line and Honduras, which faces but does not border the Pacific Ocean, has full access to the ocean waters outside the bay.²⁶⁴ The Chamber stated that all three states were entitled to the territorial sea, continental shelf, and exclusive economic zone outside the closing line.²⁶⁵

257. *El Salvador v. Honduras*, 1992 I.C.J. at 601, ¶ 403.

258. See *El Salvador v. Nicaragua*, (Central American Court of Justice, March 9, 1917), translated in 11 AM. J. INT'L L. 674, 711 (1917) (stating that Gulf waters have remained undivided and in state of community since 1900).

259. See *El Salvador v. Honduras*, 1992 I.C.J. at 604-05, ¶ 412 (stating that waters are not territorial sea and should be treated as internal waters).

260. *Id.*; *Salvadorean-Honduran Dispute Settled; 'Solomonic' World Court Ruling on the Territorial Rights*, LATIN AMERICAN REGIONAL REPORTS: MEXICO AND CENTRAL AMERICA, Oct. 29, 1992, [hereinafter *Dispute Settled*], available in LEXIS, Nexis Library, NWLTRS File.

261. *El Salvador v. Honduras*, 1992 I.C.J. at 601, ¶ 404.

262. *Id.* at 606, ¶ 414.

263. *Id.* at 607, ¶ 417.

264. *Id.* ¶ 418.

265. *Id.* at 608, ¶ 420.

III. THE EL SALVADOR *V.* HONDURAS CASE
ILLUSTRATES THAT THE ICJ IS FUNCTIONING IN THE
MANNER INTENDED BY ITS CREATORS

Although the World Court has been criticized for its ineffectiveness, the *El Salvador v. Honduras* case exemplifies the active role that the ICJ is capable of assuming and the level of complexity that it is capable of handling. The three-hour reading of the judgment in this case was the culmination of 50 judicial sessions, reviews of precedent in other border disputes, and close examination of over 12,000 pages of documentation submitted by the parties.²⁶⁶ The amendments to the ICJ Statute and Rules have created a system of international justice with greater flexibility and accessibility.²⁶⁷ Although many commentators deem that the World Court's lack of compulsory jurisdiction renders it entirely inadequate and inefficient, the fact that international justice is still optional in many cases does not undermine the validity of the ICJ.²⁶⁸ The *El Salvador v. Honduras* dispute highlights the importance of an international body to which two nations may voluntarily agree to refer a dispute that they are incapable of settling through negotiation.

A. *Impact of Decision on El Salvador and Honduras*

The border friction between Honduras and El Salvador has continued for over a century.²⁶⁹ Although the parties made several attempts at mediation, neither state intended to submit the dispute to the ICJ's compulsory jurisdiction.²⁷⁰ On the contrary, both Honduras and El Salvador modified their declarations of acceptance of compulsory jurisdiction to ex-

266. *171-Year Old Border Dispute Resolved*, CHI. TRIB., Sept. 12, 1992, at C4; see Highet, *supra* note 2, at 648 (discussing length and complexity of *El Salvador v. Honduras* case).

267. See ROSENNE, *supra* note 1, at 72 (discussing amendments to ICJ Rules which were designed to facilitate recourse to ICJ through Chamber jurisdiction).

268. See Scott & Carr, *supra* note 40, at 57-59 (discussing controversy concerning optional clause, which resulted from political compromise as well as reasons why ICJ should eliminate this clause).

269. *Honduras, El Salvador to Begin Defining New Border in December*, *supra* note 226.

270. See *El Salvador v. Honduras*, 1992 I.C.J. at 383, ¶ 36 (stating that both parties modified declarations of compulsory jurisdiction to exclude dispute prior to ICJ's decision in *El Salvador v. Honduras* case).

clude the boundary dispute.²⁷¹

This case, which was brought voluntarily before the ICJ by consent of the parties, resulted in a ruling that the presidents and top military chiefs of both nations have pledged to respect.²⁷² The Ambassadors of Honduras and El Salvador in Washington, D.C. welcomed the decision as the beginning of a new era of cooperation and integration in Central America.²⁷³ The acceptance of the decision by both parties indicates the ICJ's effectiveness when the parties consent to jurisdiction through a special agreement at the time of the actual dispute.²⁷⁴

In addition to the agreement among the political and military leaders of El Salvador and Honduras, the Frente Farabundo Marti para la Liberacion Nacional (the "FMLN"), a Salvadoran guerilla organization that signed a peace treaty with the Salvadoran government in January of 1992, has expressed its acceptance of the World Court's decision.²⁷⁵ In mid-September of 1992, FMLN leaders met with President Callejas of Honduras and told the President that they would respect the World Court ruling.²⁷⁶ Stating that their primary concern was humanitarian, the FMLN urged the Honduran government to adopt a policy of gradual takeover of the transferred territories.²⁷⁷ The FMLN also urged President Callejas

271. See *supra* text accompanying notes 109-10 (discussing Honduras' and El Salvador's reservations to compulsory jurisdiction, which implicitly excluded their dispute from ICJ's compulsory jurisdiction).

272. *Ruling Ends Rift That Started 1969 'Soccer War'*, L.A. TIMES, Sept. 12, 1992, at A8. President Alfredo Cristiani of El Salvador stated that the countries "celebrate with satisfaction that there no longer exist territorial differences between our countries; today each one knows how far his rights extend." *Id.* President Rafael L. Callejas of Honduras asserted that the two Central American countries have shown the world "that any dispute, however complex, can be resolved in a civilized and conciliatory way." *Id.*; *Honduras, El Salvador to Begin Defining New Border in December*, *supra* note 226.

273. *Ruling Ends Rift That Started 1969 'Soccer War'*, *supra* note 272, at A8.

274. Scott & Carr, *supra* note 40, at 67.

275. *Dispute Settled*, *supra* note 260. The Frente Farabundo Marti para la Liberacion Nacional [hereinafter FMLN] is now in the process of dismantling its military structure and reincorporating its members into civilian life. *Id.*

276. *Id.*; see Gustavo Palencia, *Honduras, El Salvador Border Dispute at End*, REUTER Lib. Rep., Sept. 11, 1992, available in LEXIS, Nexis Library, REUTER File (stating that FMLN leaders who signed peace pact with Salvadoran government in January of 1992 have also agreed to respect ICJ's ruling).

277. *Dispute Settled*, *supra* note 260. FMLN supporters expressed concern over the sudden changes in citizens' nationalities and recommended policies that the gov-

to postpone placing any Honduran troops in the territory and asked the government to ensure that there would be no discrimination and that human rights would be respected.²⁷⁸ Miguel Saenz, a member of the FMLN delegation, stated that President Callejas had listened to the FMLN views attentively and expressed determination to overcome the problems.²⁷⁹ Honduras' foreign minister, Mario Carias Zapata, recognized that the FMLN concerns were justified and declared that the government will take both the law as well as human concerns into consideration.²⁸⁰

Although the new boundary demarcations have caused many changes within the states, El Salvador and Honduras are working together to implement these changes peacefully. The World Court's decision in the *El Salvador v. Honduras* case has created a situation in which some of the people who were living in the disputed areas are now citizens of a different country.²⁸¹ In addition, the citizen's property rights that were established under the laws of one country will now be subject to the laws of another country.²⁸² Since many of the farmers in the contested zones do not want to become Hondurans, it has been difficult for El Salvador to accept the loss of land.²⁸³ Consequently, the Chamber emphasized the necessity for the countries to continue to work together to enforce the boundaries and to deal with any problems associated with nationality, security, and property rights of the people in the disputed areas.²⁸⁴ Thus, the Chamber applauded the joint declaration of July 31, 1986, in which the parties agreed to set up a Special

ernments grant dual nationality to affected citizens to promote a peaceful transition of territory. *New Boundaries Place FMLN Controlled Areas Inside Honduras*, Nomitex Mexican News Service, Sept. 12, 1992, available in LEXIS, Nexis Library, OMNI File.

278. *Dispute Settled*, *supra* note 260. Note, however, that the article mistakenly refers to President Cristiani instead of President Callejas. *Id.*

279. *Id.*

280. *Id.*

281. See *El Salvador v. Honduras*, 1992 I.C.J. 351, 400, ¶ 66 (September 11) (expressing Chamber's confidence that parties will take necessary steps to ensure rights of affected citizens); see Douglas G. Mine, *Ruling Changes Villagers' Nationality: They Feel Salvadoran, But Are Now Honduran*, MIAMI HERALD, Sept. 28, 1992, at 12A (discussing difficulties of citizens who currently reside in different country because of ICJ's decision).

282. *El Salvador v. Honduras*, 1992 I.C.J. at 400, ¶ 66.

283. Mine, *supra* note 281, at 12A.

284. *El Salvador v. Honduras*, 1992 I.C.J. at 400-01, ¶ 66.

Commission to deal with the human, civil, and economic problems that may confront citizens of Honduras and El Salvador as a result of the ruling.²⁸⁵ The binational commission created by the presidents of El Salvador and Honduras consists of members of the nations' foreign, interior, defense, communications, and transport ministers as well as members of the Roman Catholic Church, the private sector, and the Red Cross.²⁸⁶ The Commission will design a transition program to attend to the needs of the towns that are now on opposite sides of the border.²⁸⁷ For example, the countries are offering the option of dual nationality to anyone living in one of the previously contested areas.²⁸⁸

In addition, the decision is expected to result in a reduction in military spending, a program which has gained support in both Honduras and El Salvador.²⁸⁹ President Callejas of Honduras noted that the ICJ decision has promoted stronger relations between the two Central American countries and has aided in the development of necessary social and economic integration.²⁹⁰ In fact, the two nations have signed a free trade accord designed to foster economic integration in Central America.²⁹¹

B. *Effects of the Decision on the International Court of Justice*

The positive effects that have resulted from the Chamber's decision in the *El Salvador v. Honduras* case demonstrate the advantages of the ICJ's voluntary jurisdiction. Disputing parties who jointly bring their case before the World Court are

285. *Id.* In San Salvador, on July 31, 1986, the two parties jointly declared that there was a need to set up "a Special Commission to study and propose solutions for the human, civil, and economic problems which may affect their compatriots, once the frontier problem has been resolved." *Id.*

286. *Dispute Settled*, *supra* note 260.

287. See *Honduras, El Salvador to Begin Defining New Border in December*, *supra* note 226, (stating that Special Commission will deal with needs of those now living in different country).

288. *World Court A Winner*, MIAMI HERALD, Sept. 22, 1992, at 14A.

289. Ian Walker, *Honduras and El Salvador Plan Talks to Defuse Tension*, FIN. TIMES, Sept. 29, 1992, at 8.

290. *El Salvador Honduras Border Ruling Near*, MIAMI HERALD, Sept. 10, 1992, at 28A.

291. *Ruling Ends Rift That Started 1969 'Soccer War'*, *supra* note 272. Costa Rica and Nicaragua are also expected to join the free trade zone. *Id.*

more willing to abide by the ICJ's decision.²⁹² In addition, the use of the Chamber's jurisdiction for the fourth time in the history of the World Court indicates the willingness of parties to have their case decided by a smaller tribunal of judges.²⁹³

1. Voluntary Jurisdiction Promotes Acceptance of ICJ's Decisions

Compulsory jurisdiction grants the ICJ the authority to hear and decide a particular case.²⁹⁴ The ICJ's decision, however, does not automatically resolve the dispute.²⁹⁵ An examination of the aftermath of the *Temple of Preah Vihear* decision shows that when compulsory jurisdiction of the World Court is exerted against the will of one or more of the parties, the parties are less likely to follow the ICJ's judgment.²⁹⁶

292. Scott & Carr, *supra* note 40, at 67.

293. Thomas J. Trendl, *Maritime Delimitation and the Gulf of Maine Case: A Guide For the Future or Merely Slicing the Pie?*, 12 S. ILL. U. L.J. 599, 603 (1988). The parties in four cases have chosen to submit their dispute to an ad hoc ICJ Chamber. Maritime Boundary in the Gulf Area (Can. v. U.S.), 1982 I.C.J. 3 (Jan. 20) (concerning area in Gulf of Maine known as Georges Bank and conflicting continental shelf claims of both countries); Frontier Dispute (Burk. Faso v. Mali), 1985 I.C.J. 6 (Apr. 3) (Constitution of Chamber) (referring delimitation of portion of land frontier between these two states to ad hoc Chamber); Elettronica Sicula S.p.A. (U.S. v. Italy), 1987 I.C.J. 3 (Mar. 2) (Constitution of Chamber) (addressing constitution of Chamber in case concerning claims arising out of requisition of some American assets by Italian authorities); Land, Island, and Maritime Frontier Dispute (El Sal. v. Hond.), 1987 I.C.J. 10 (May 8).

294. See *supra* note 37 and accompanying text (reproducing language of Article 36(2) of ICJ Statute); see also Scott & Carr, *supra* note 40, at 58 (declaring that Article 36(2) of ICJ Statute gives ICJ authority to decide cases between states that have accepted ICJ's compulsory jurisdiction).

295. See Scott & Carr, *supra* note 40, at 67 (discussing probability of failure of decision to resolve dispute unless parties agree to bring case before ICJ at time of dispute); see also Gross, *supra* note 8, at 45-46 (explaining superior record of dispute resolution when there is desire for settlement by both parties).

296. See Scott & Carr, *supra* note 40, at 67 (discussing benefits of parties agreeing to bring case before ICJ at time of actual dispute). The ICJ relied on the optional clause as the basis for jurisdiction in several recent cases. See, e.g., Nuclear Tests (Austl. v. Fr.), 1974 I.C.J. 253 (Dec. 20) (contesting legality of atmospheric nuclear weapons tests by France in South Pacific Ocean); Nuclear Tests (N.Z. v. Fr.), 1974 I.C.J. 457 (same); Military and Parliamentary Activities in and Against Nicaragua (Nicar. v. U.S.), (Jurisdiction and Admissibility), 1984 I.C.J. 392 (Nov. 26) (concerning use of force in international relations, and prohibition of use of force contained in Article 2, paragraph 2, of U.N. Charter, in other multi-lateral conventions). In each of these cases, the respondents, France and the United States, refused to participate in the proceedings, defied the final judgment of the World Court, and ultimately withdrew from the compulsory jurisdiction of the ICJ. Scott & Carr, *supra* note 40, at

In contrast to the mutual acceptance of the Chamber's ruling in the *El Salvador v. Honduras* case, Thailand immediately protested the *Temple of Preah Vihear* decision and even erected barbed wire fences around the Temple to prevent its repossession by Cambodia.²⁹⁷ Thailand eventually attacked and reoccupied the Temple in 1966 and again in 1970 following the Cambodian coup.²⁹⁸ The efforts at conciliation by representatives from the United Nations have been unsuccessful and peace has not yet been restored to the area.²⁹⁹

The *Temple of Preah Vihear* case illustrates some of the problems associated with the World Court's exercise of compulsory jurisdiction when the ICJ lacks the power to enforce its judgments.³⁰⁰ When the World Court asserts compulsory jurisdiction against the will of one of the parties, the state contesting jurisdiction often refuses to participate in the proceedings and defies the ICJ judgment.³⁰¹ If states are determined to avoid the ICJ's jurisdiction, they can make it very difficult for

65. France withdrew its acceptance to compulsory jurisdiction under Article 36(2) of the ICJ Statute on January 2, 1974 one year prior to the decision in the *Nuclear Tests* case. *Declarations Recognizing as Compulsory the Jurisdiction of the Court*, 1973-1974 I.C.J. Y.B. 49. The United States withdrew its acceptance to the optional clause on October 7, 1985 ten months after its declaration of refusal to participate in the Nicaraguan case. U.S. Withdrawal from the Proceedings Initiated by Nicaragua in the ICJ, DEP'T ST. BULL., Mar. 1985, at 64; U.S. Terminates Acceptance of ICJ Compulsory Jurisdiction, DEP'T ST. BULL., Jan. 1986, at 67.

297. BUTTERWORTH, *supra* note 16, at 172. Increased concern over communist activity in Southeast Asia as well as the desire not to alienate the United States and other members of the United Nations compelled Thailand to comply with the ruling and withdraw troops from the area. *Id.* This compliance, however, was short-lived. *Id.* In response to claims of continued aggression by both states, the Secretary-General of the United Nations sent a personal representative to the border to investigate the situation. *Id.* In addition, both countries agreed to share the costs of financing a one-year mission for a special representative to assist them in solving the border dispute. *Id.* The Parties reappointed the special representative at the end of the first year, but terminated the mission in December 1964 at the end of the second year because they could not agree to his reappointment. *Id.*

298. *Id.*

299. *Id.*

300. See Scott & Carr, *supra* note 40, at 65 (discussing states' refusal to participate in preliminary hearings and defiance of ICJ's judgments).

301. Bilder, *supra* note 56, at 258. The defendants in several recent ICJ cases have refused to accept the ICJ's compulsory jurisdiction over the dispute. See, e.g., *Fisheries Jurisdiction (U.K. v. Ice.)*, 1974 I.C.J. 3 (July 25); *United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran)*, 1980 I.C.J. 3 (May 24); *Military and Parliamentary Activities in and Against Nicaragua (Nicar. v. U.S.)* 1984 I.C.J. 392 (Nov. 26).

the World Court to settle the dispute successfully.³⁰²

The increasing futility of compulsory jurisdiction, however, should not be interpreted as a failure of the World Court.³⁰³ There has been much commentary on the reasons why nations are reluctant to submit to the ICJ's compulsory jurisdiction.³⁰⁴ Primarily, political officials are skeptical about releasing control of their diplomacy for a determination by a third party, judicial or otherwise.³⁰⁵ Nations often will not adjudicate matters in which their case is weak, and those in which they deem that they cannot risk an unsatisfactory judgment.³⁰⁶

Even nations that have a strong record of compliance with the ICJ's decisions have been unwilling to submit to the ICJ's compulsory jurisdiction.³⁰⁷ Currently, only fifty states, representing less than one-third of the world's nations, have accepted compulsory jurisdiction under Article 36(2) of the ICJ Statute.³⁰⁸ The United Kingdom is the only one of the permanent members of the Security Council that is still bound by the ICJ's compulsory jurisdiction.³⁰⁹ States, however, are increasingly willing to agree voluntarily to compromissory clauses within the context of particular treaties.³¹⁰ Over 200 treaties contain such clauses and the United States is a party to over sixty percent of them.³¹¹

Many supporters of compulsory jurisdiction deem this type of jurisdiction essential in order for the World Court to command the necessary authority to function as a court of law

302. Bilder, *supra* note 56, at 258.

303. See Scott & Carr, *supra* note 40 at 57 (discussing incorporation of compulsory jurisdiction into ICJ Statute as a necessary political compromise). The optional clause was a reasonable compromise between smaller states who championed compulsory jurisdiction and larger states who rejected such jurisdiction. *Id.* at 57-58. Although the future efficacy of the optional clause is questionable, its initial adoption was one of necessity. *Id.* at 58.

304. See, e.g., WILLIAM C. OLSON, *THE THEORY AND PRACTICE OF INTERNATIONAL RELATIONS* 92 (7th ed. 1987) (discussing reasons for nations' negative attitude toward ICJ compulsory jurisdiction).

305. *Id.*

306. *Id.*

307. *Id.*

308. Bilder, *supra* note 56, at 258.

309. *Id.*; see Gross, *supra* note 8, at 34 (stating that United Kingdom was only remaining permanent member of Security Council accepting ICJ's compulsory jurisdiction).

310. Bilder, *supra* note 56, at 258.

311. *Id.*

in the international arena.³¹² People who criticize the ICJ's current procedures, however, must consider the peculiarity of the international legal system, which operates without the benefit of a single authoritative legislature.³¹³ New rules continually emerge from customary law as well as various treaties and agreements among nations.³¹⁴

The legal system in the international sphere is still developing. In addition, the international political system is very different from national political systems.³¹⁵ Therefore, the ICJ should not be compared to the established national judicial systems, which have been evolving for centuries.³¹⁶ In their early stages, these courts required a greater degree of acceptance by the parties.³¹⁷ As states continue to bring their disputes before the ICJ, the World Court will have the opportunity to indicate its ability to deal with complex international issues and consequently increase the faith of the sovereign states in the integrity of the ICJ.³¹⁸

Simply by being available, however, the World Court may help avoid international disputes, or at least, induce the settlement of such disputes.³¹⁹ The likelihood of being brought

312. Scott & Carr, *supra* note 40, at 59; see Bilder, *supra* note 56, at 262 (stating that Great Britain and other critics contend that ICJ jurisdiction based primarily on consensual rather than compulsory jurisdiction might reduce role of international law); see also Anthony D'Amato, *Modifying U.S. Acceptance of the Compulsory Jurisdiction of the World Court*, 79 AM. J. INT'L L. 385 (arguing that U.S. acceptance of compulsory jurisdiction with several proposed modifications will serve the national and international interest).

313. Morrison, *supra*, note 2, at 840.

314. See *supra* note 37 and accompanying text (reproducing language of Article 36(2) of ICJ Statute which identifies types of legal disputes over which ICJ has jurisdiction).

315. Bilder, *supra* note 56, at 258.

316. Scott & Carr, *supra* note 40, at 71; see Morrison, *supra* note 2, at 840 (discussing rapidly changing environment of international law).

317. See Scott & Carr, *supra* note 40, at 71 (declaring that authority of legal orders rests on their acceptance by those within the system's jurisdiction); see also Hans Kelsen, *GENERAL THEORY OF LAW AND STATE* 113-23 (1961) (discussing legal positivism and the validity of legal norms); H.L.A. HART, *THE CONCEPT OF LAW* 107-15 (1961) (exploring definition of legal system according to general recognition of its rules).

318. See Scott & Carr, *supra* note 40, at 71 (discussing necessity for general acceptance of international law for evolution of international legal system); see also Owada, *supra* note 4, at 271 (stating that ICJ is in a transitional phase and that divergence of views among members of international legal system will stabilize over time).

319. OLSON, *supra* note 304, at 92.

before the World Court continues to function as a deterrent to a violation of international law, even if a nation does not fear enforcement of the ICJ's judgment by the Security Council.³²⁰ Noncompliance with the judgment of the World Court may cause nations to view the contesting state in a negative light.³²¹

Problems of jurisdiction and compliance, however, are rare when states agree to bring the case before the ICJ at the time of the dispute.³²² The *El Salvador v. Honduras* case exhibits the ability of the World Court to function as a dispute settlement mechanism when the parties approach the ICJ in the consensual mode.³²³ In the case of territorial disputes, as well as other forms of international conflicts, peaceful and effective compliance with the ICJ's judgment requires a joint effort by the states.³²⁴

Although the representatives of both nations accept the judgment of the World Court in a border dispute, violence may continue if the people in those areas do not respect the ruling.³²⁵ In the *Honduras v. El Salvador* case, the land boundaries demarcated by the ICJ have impacted the citizens in both countries.³²⁶ As a result, the presidents of Honduras and El Salvador, who have pledged to honor the ruling, are working to address the citizens' needs by implementing programs to resolve the existing human, civil, and economic problems.³²⁷

2. ICJ Chamber Jurisdiction Opens the World Court to More Parties

In addition to demonstrating the merits of deciding disputes that are brought voluntarily before the ICJ, the *El Salvador v. Honduras* case reflects the utility of Chamber jurisdiction

320. *Id.*

321. *Id.*

322. Scott & Carr, *supra* note 40, at 67.

323. *Id.* Two of the successfully resolved cases recently brought before the ICJ by Libya involved special agreements. *Id.* at 67. Each of these cases was based on a special agreement between the parties to submit the dispute to the ICJ. Continental Shelf (Tunis. v. Libyan Arab Jamahiriya), 1982 I.C.J. 18 (Feb. 24); Continental Shelf (Libyan Arab Jamahiriya v. Malta), 1983 I.C.J. 3 (Apr. 26).

324. See Scott & Carr, *supra* note 40, at 67 (discussing importance of joint consent of parties when submitting case to ICJ).

325. *El Salvador v. Honduras*, 1992 I.C.J. 351, 400-01, ¶ 66 (Sept. 11).

326. See Mine, *supra* note 281 (discussing problems associated with citizens now living in different countries).

327. See *Dispute Settled*, *supra* note 260.

in international law.³²⁸ The growing concern among the states regarding the inactivity of the World Court resulted in amendments to the ICJ's Chamber jurisdiction.³²⁹ In the present case, Honduras and El Salvador specifically limited their acceptance of the ICJ's jurisdiction by requiring that the parties approve the composition of the Chamber.³³⁰

As a member of the Chamber in the *El Salvador v. Honduras* case, Judge Shigeru Oda recognized the importance of considering the preferences of the parties when choosing the composition of the Chamber.³³¹ Although the ICJ is free to choose any composition, the states have the legal right to withdraw if they do not agree with the composition selected by the ICJ.³³² As a result, Judge Oda emphasized the necessity of weighing the views of the parties in the Chamber's election process.³³³

328. See SINGH, *supra* note 4, at 112-16 (discussing use of Chamber in *El Salvador v. Honduras* case and concluding that Chamber jurisdiction is additional advantage to ICJ's operations which has not hindered quantity or quality of output).

329. Schwebel, *supra* note 62, at 836-38. Judge Jessup, expressing his approval of the ad hoc Chambers procedure in a speech to the Hague Academy of International Law in commemoration of the 25th Anniversary of the United Nations, stated that

[i]t has been suggested elsewhere that if the difficulty of resort to the International Court of Justice lies in a State's preference for a tribunal in whose composition it will have a say, this result can be achieved by the use of 'a Chamber for dealing with a particular case', as is authorized by Article 26(2) of the Statute. Under Article 31 of the Statute, the provisions about national judges are applicable to such a Chamber so that the Chamber could be composed of a judge of the nationality of each one of the parties, with a third judge elected by the Court very much as the President of the Court now often is authorized to appoint presiding arbitrators.

Philip C. Jessup, *To Form a More Perfect United Nations*, in 129 *RECUEIL DES COURS D'ACADÉMIE DE DROIT INTERNATIONAL, COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW* 21 (1970-1).

330. See *supra* note 136 and accompanying text (reproducing language of Article 1 of Special Agreement of May 24, 1986); see also Andreas Zimmermann, *Ad Hoc Chambers of the International Court of Justice*, 8 *DICK. J. INT'L L.* 1, 17 (1989) (discussing probability that parties would have resorted to dispute settlement by arbitral tribunal if Chambers were not composed in accordance with wishes of parties).

331. *Land, Island, and Maritime Frontier Dispute (El Salvador v. Honduras)*, 1987 *I.C.J.* 10, 13 (May 8) (separate declaration of Judge Oda).

332. See ICJ Statute, *supra* note 4, art. 26, 59 Stat., pt. 2, at 1055, 3 *Bevans* at 1184. Article 26 (2) of the ICJ Statute states that "[t]he number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties." *Id.*

333. *Land, Island, and Maritime Frontier Dispute (El Salvador v. Honduras)*, 1987 *I.C.J.* at 13 (May 8) (separate declaration of Judge Oda). Judge Oda declared that it is inevitable, if a chamber is to be viable, that its composition must result

The use of ad hoc Chambers opens the World Court to parties who would not ordinarily bring their dispute before the ICJ's full bench.³³⁴ Since the Chamber procedure involves the cooperation of both parties at every stage of the process, dispute resolution by a Chamber minimizes the problem of non-appearance by the respondent.³³⁵ Furthermore, the option of bringing a case before a Chamber that follows the ICJ Statute and Rules opens the World Court to more parties without altering the quality of its decisions.³³⁶

Although the use of a Chamber is not universally supported, the impact of Chamber jurisdiction has been significant in shaping international law.³³⁷ Since the Chamber's judgment has the same binding force as a judgment of the full bench, each decision of a Chamber aids in the development of the legal philosophy of the World Court.³³⁸ The voluntary use of the Chamber to resolve a land dispute that has continued since the break-up of the Spanish empire indicates the ability of an ICJ Chamber to handle complex international disputes.³³⁹

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.

Id.

334. Robert H. Brauer, Note, *International Conflict Resolution: The ICJ Chambers and the Gulf of Maine Dispute*, 23 VA. J. INT'L L. 463, 483 (1983).

335. SINGH, *supra* note 4, at 113-14.

336. *See id.* at 116 (stating that Chamber jurisdiction has not been coupled with a decline in quality of ICJ's decisions); *see also* L.H. Legault, *A Line for All Uses: The Gulf of Maine Boundary Revisited*, 40 INT'L J. 461, 477 (1985) (stating that parties in *Gulf of Maine* case were fortunate to have option of Chamber jurisdiction which afforded flexibility of ad hoc tribunal and authority of ICJ); Schwebel, *supra* note 62, at 854 (stating that Chamber must act according to ICJ Statute and Rules).

337. *See* SINGH, *supra* note 4, at 113 (stating existence of variety of views concerning appropriateness of ICJ Chambers); *see also* Schwebel, *supra* note 62, at 854 (discussing Chambers as practical and productive option to dispute resolution before full bench of ICJ).

338. ICJ Statute, *supra* note 4, art. 27, 59 Stat., pt. 2, at 1058, 3 Bevens at 1184. Article 27 of the Statute of the Court states that a "judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court." *Id.*; SINGH, *supra* note 6, at 113.

339. *See* SINGH, *supra* note 4, at 115 (explaining that ICJ Chambers have been used in several lengthy and significant cases).

C. Use of International Legal Principles to Settle Boundary Disputes

The *El Salvador v. Honduras* decision, which ended one of the most complex controversies among the Latin American states, reveals the competency of the ICJ to settle territorial disputes between nations according to established principles of international law.³⁴⁰ The World Court functioned as an impartial institution that depoliticized the issue and allowed the parties to focus on the legal aspects of the dispute.³⁴¹ Recognizing that war is not a viable method of dispute resolution, the presidents of these nations resolved their differences in the World Court and set a valuable example for other nations.³⁴²

Furthermore, the recent collapse of the Soviet Union has emphasized the idea that borders are not always permanent.³⁴³ Approximately two-thirds of all of the cases brought before the ICJ since 1984 involve complex issues of territorial and maritime disputes.³⁴⁴ The decision in the *El Salvador v. Honduras* case demonstrates the World Court's potential to resolve the multitude of disagreements presently confronting new states as well as border conflicts among existing states peacefully.³⁴⁵

340. See *A Win in the World Court*, *supra* note 100, at A22 (stating ICJ's potential for settling the multitude of disputes in Europe and Asia); see also *Border Dispute Settled*, WASH. POST, Sept. 12, 1992, at A12 (describing *El Salvador v. Honduras* dispute as the "most complicated case ever handled by the court").

341. See Bilder, *supra* note 56, at 259 (discussing potential of ICJ to depoliticize disputes).

342. See *Ruling Ends Rift that Started 1969 'Soccer War'*, *supra* note 272, at A8 (quoting President Callejas statement that the two Central American countries have shown the world "that any dispute, however complex, can be resolved in a civilized and conciliatory way"); *A Win in the World Court*, *supra* note 100, at A22 (stating that El Salvador and Honduras set worthy example)

343. See Caryle Murphy, *Shifting Sand: Rethinking the Changed 'Middle East'*, WASH. POST, Sept. 6, 1992, at C1 (addressing lack of permanency of territorial boundaries).

344. See Bilder, *supra* note 56, at 260. In the past two decades the ICJ has been described as a specialized tribunal because more than half of its work consists of the delimitation of land and maritime boundary disputes. *Morrison*, *supra* note 2, at 831; see, e.g., *Continental Shelf (Tunis. v. Libyan Arab Jamahiriya)*, 1982 I.C.J. 18 (Feb. 24); *Continental Shelf (Libyan Arab Jamahiriya v. Malta)*, 1985 I.C.J. 13 (June 3); *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can. v. U.S.)*, 1984 I.C.J. 246 (Oct. 12).

345. See *A Win in the World Court*, *supra* note 100, at A22 (stating ICJ's potential to resolve disputes between new states in Europe and Asia); see also Sergei Karaganov, *Presentiment of Imperialism*, MOSCOW NEWS, Oct. 28, 1992, available in LEXIS, Nexis Library, OMNI File (discussing need to take immediate action to resolve border conflicts among new Russian states); Bilder, *supra* note 56 at 263 (discussing development of heightened appreciation of importance of international law and its institu-

As the ICJ continues to expand its sphere of influence and increase its docket of contentious cases, it is becoming the international tribunal that its creators envisioned.³⁴⁶

CONCLUSION

The International Court of Justice, although still evolving, has demonstrated its ability to resolve complex international disputes peacefully when parties consent to bring their dispute before the ICJ at the time of the actual dispute. The revisions of the ICJ Statute and Rules of the Court have attracted many new countries. Furthermore, the ICJ's increasing caseload presents the World Court with many more opportunities to resolve contentious cases successfully and to command recognition as the primary judicial body in the international legal sphere. States should follow the example set by Honduras and El Salvador and avail themselves of the benefits of adjudication in the ICJ by agreeing to submit their border and other types of international disputes to the jurisdiction of the World Court.

*Maura A. Bleichert**

tions); Jonathan G. Clarke, *Getting Realpolitik About Bosnia: Sometimes, Smaller Nationalities Must Compromise With Powerful Ones*, WASH. POST, Oct. 11, 1992, at C4 (discussing necessity of nations to reconcile differences with neighboring states); Murphy, *supra* note 343, at C1 (discussing border disputes in the Middle East).

346. See Hight, *supra* note 2, at 654 (stating ICJ's recent advances which have positioned it to become great international judicial institution intended by its framers).

* J.D. Candidate, 1994, Fordham University.