

# **HISTORY AND DEVELOPMENT: A CONDOMINIUM IN THE GULF OF FONSECA**

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## LIST OF ACRONYMS

AECID	Spanish Agency for Cooperation and Development
ANDAH	National Aquaculture Association of Honduras
APRODIB	Association for the Development of the Bay Islands
BICA	Bay Islands Conservation Association
CAC	Corte Centroamericana de Justicia
CCAD	Central American Commission on Environment and Development
CEASDES	Center for Environmental and Social Studies for Sustainable Development
CELAC	Community of Latin American and Caribbean States
COALIANZA	Commission for Promotion of Public-Private Partnerships
COCATRAL	Coffee and Agriculture Cooperative
CODEFFAGOLF	Committee for the Defense and Development of the Flora and Fauna in the Gulf of Fonseca
DANIDA	Danish Cooperation Agency
GEF	Global Environmental Facility
IADB	Inter American Development Bank
IATRA	Inter American Treaty of Reciprocal Assistance
ICF	Institute for Forest Conservation
ICJ	International Court of Justice
ICRW	International Center for Research on Women
ICTSI	International Container Terminal Services
ITLOS	International Tribunal on the Law of the Sea
LOS	Law of the Sea
MACCIH	Mission to Support the Fight Against Corruption and Impunity in Honduras
MINUGUA	United Nations Mission for the Verification of Human Rights in Guatemala
MOU	Memorandum of Understanding
NATO	North Atlantic Treaty Organization
OAPN	Autonomous Organism of National Parks
OAS	Organization of American States
ONUCA	United Nation Observer Group in Central America
ONUSAL	United Nations Observer Mission in El Salvador
OPC	Central Ports Operator
OSPESCA	Central American Organization of the Fisheries and Aquaculture Sectors
PAIGH	Pan American Institute of Geography and History
PMH	Seaports of Honduras
RENARM	Regional Environmental and Natural Resource Management Project
SACS	Southern Association of Colleges and Schools
SERNA	Ministry of Resources and National Environment

SICA	Central American Integration System
TNC	The Nature Conservancy
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Commission on Trade and Development
UNEP	United Nations Environmental Program
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
US	United States
USAID	United States Agency for International Development
WWF	World Wildlife Fund
WWTP	Waste Water Treatment Plant
ZEDES	Zone for Employment and Economic Development

## **ABSTRACT**

This research examines the history of the Gulf of Fonseca: a condominium between El Salvador, Honduras and Nicaragua, their decades of boundary disputes post colonial times.

The research focuses on key issues and doctrines from the judicial settlements, the implementation and compliance or none thereof of the judicial decisions.

This research reflects on the evolution of the actions of the development and management plans in the Gulf of Fonseca, its effects on the current situation and programs that are actively managing the Gulf. What possible solutions can be developed to govern the Gulf of Fonseca?

The research finally proposes within the Regional Plan Alliance for Prosperity and the Honduran 20/20 development plan a possible solution for development and joint-governance in the Gulf of Fonseca.

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## INTRODUCTION

Central America has had a long history of boundary disputes, some that have been easily resolved and others that have lasted over a hundred years. One of the most notable ones is the area of the Gulf of Fonseca, which is geographically shared by El Salvador, Honduras and Nicaragua. The first part of this research will look at the historic development of the border disputes in the region and the different dispute settlement mechanisms that have been implemented.

Honduras was a colony of Spain and gained independence in 1821. After the independence of these Spanish Colonies they decided to form the Central American Federation, which existed between 1823 and 1840. When the Federation dissolved in 1840, the countries went back to the inheritance from their colonial borders.

The 1900s in the Central American region were filled with more strife as the United States and European States competed in establishing more profitable trade routes and exploitation of resources in the region. It was this situation coupled with weak border patrols and military dictators that increased the border conflicts. In 1906, armed groups from El Salvador and Honduras invaded Guatemala. The United States and Mexico, both having interests in Guatemala, tried to dissuade the foreign forces. In 1907 Nicaraguan forces invaded Honduras. In the ensuing battle, Honduran forces were defeated and Nicaragua set up a triumvirate as a provisional Honduran government. This marked the beginning of what is known as the Central American War. The General Treaty of Peace and Amity was signed in 1907 ending this war. The General Peace Treaty created the Central American Court of Justice to decide on future disputes in the region. This Court only lasted for ten years.

In the second part of this study we will look at specific judicial settlements regarding the Gulf of Fonseca. The Central American countries have used different mechanisms to settle their boundary disputes; Judicial settlements by the International Court of Justice or the Central American Court of Justice and alternate means of settlement; arbitration,

negotiation and conciliation. It is important to explore the different dispute settlement mechanisms used for disputes in the Gulf of Fonseca and their effects.

In 1980, in Lima, Peru, the first real breakthrough on the border dispute with El Salvador came to fruition. The General Peace Treaty stated that the two parties agreed to submit the boundary dispute to the International Court of Justice if they failed to reach a border agreement after five years of negotiations. By 1985 the two countries had not reached an agreement. In 1986 both countries, urged by the Organization of American States OAS, through the signing of the Esquipulas Special Agreement in Guatemala, agreed to take their dispute to the International Court of Justice. In this boundary dispute between El Salvador and Honduras, Nicaragua intervened to protect its rights in the Gulf of Fonseca.

The case reached the International Court of Justice, which handed down a ruling on September 11, 1992. The Chamber determined the frontier lines in the areas or sections not described in Article 16 of the General Peace Treaty of 30 of October 1980 and the legal situation of the islands and maritime spaces; Isla del Tigre was determined to be of the sovereign territory of Honduras and Meanguera and Meanguerita were determined to be of the sovereign territory of El Salvador. The International Court of Justice's ruling assured Honduras free passage to the Pacific Ocean. The court ruled, that the Gulf of Fonseca is a condominium, with control being shared by El Salvador, Honduras, and Nicaragua.

In September 10, 2002 filed by El Salvador before the International Court of Justice Application for Revision of the Judgment of September 11, 1992 in the case concerning land, island and maritime frontier dispute El Salvador-Honduras (intervening Nicaragua) pursuant to Article 61 of the Statute. The Chamber found the Application inadmissible.

The relations with Nicaragua have also been strained marked by border disputes, civil war and the Cold War. In 1906 the King of Spain was asked to arbitrate a dispute over the alignment of the eastern section of the land boundary. Nicaragua rejected this decision. In 1960 the International Court of Justice was asked to determine whether the 1906 award was binding. Specific allegations of the unsuitability and irregular designation of the

Spanish Monarch as an Arbitrator were argued by Nicaragua as the basis for bringing the case to the International Court of Justice. The Court decided that the award was binding. In 1986 Nicaragua took Honduras to the International Court of Justice over alleged cross-border activities by armed bands from Honduras. In 1992 Nicaragua informed the International Court of Justice they did not want to go on with the proceedings. The International Court of Justice removed the case.

In April 18, 2006 the work by the Commission of both El Salvador and Honduras experts finalized the Land Boundary Delimitation. In 2007 the Presidents of Nicaragua, El Salvador and Honduras met and decided to create a Tri-national Commission to finish the implementation of the International Court of Justice's decision. This declaration was reaffirmed in 2009 in the Central American Ministerial Meetings. The progress of the maritime boundary is currently stalled.

The most recent meeting between the Presidents of Guatemala, El Salvador and Honduras was just in November 2016 to discuss a joint customs system and labor market as well as a Security Strategy in the Central American region.

I will also look closely at the issues that arose post judicial settlements and the implications of non-compliance and defiance. Over the years all three countries have accused each other of non-compliance or outright defiance. On the accusations of noncompliance the Central American states have affirmed acceptance of the Court's judgment and comply with their obligations. Even with accusations of defiance, the countries accepted the Court's decision and work with international organizations to ensure satisfactory compliance.

The third part of this research will focus on the situation in the Gulf and the programs in this specific region. Two of these three countries, (El Salvador and Honduras) are part of what is known as the Northern Triangle countries. The Northern Triangle countries, which also include Guatemala, can be described as having unique common characteristics. This region has been affected by skyrocketing violence related to "maras" or gangs, organized crime and drug trafficking. Other major characteristics are that the

population affected is young, about 50% of the total population in the region is under 30 years of age. This youth has little education and little to none economic opportunities as scant trainings and very low percentage of jobs are available. The three countries in this region are amongst the most violent in the world. This phenomenon has increased migration into the United States and Canada seeking safety and economic opportunities. Almost 10 percent of the thirty million that make up the region have left since 2009.

The causes that led to this are remnants from Central American civil wars, which started approximately in the 1960's and 70's and ran well into the 1990's. Honduras though having no civil war of its own felt the backlashes from the nearby conflicts. The situation in Honduras was critical as a large influx of refugees from Nicaragua and El Salvador flooded its borders.

Organized crime grew after the civil wars ended and spread throughout the region. The "Maras" or gangs phenomenon grew after the 1990's after large-scale deportations of illegal immigrants with criminal records from the United States. The Central American countries governments' did not have the capacity or resources to accommodate the deported population. There were no reinsertion, rehabilitation or even training programs. These young men returned to their countries with little education and no practical skills for the job market. They turned to a life of crime.

The last part of this research will focus on the strategy and possible development solutions. In 2014, the governments of El Salvador, Honduras and Guatemala with the aid of the Inter-American Development Bank (IADB) developed a five year joint strategy; the Alliance for Prosperity Plan for the Northern Triangle. The Plan has short and medium term goals to stimulate productive sector to create economic opportunities, develop opportunities for the people, improve public safety and access to legal system and strengthen institutions to increase people's trust in the State.

The Plan of the Alliance for Prosperity is a roadmap to be implemented in critical areas of these three countries. One of these areas is the Gulf of Fonseca. The Gulf is characterized by shallow waters and has 1,100 Km<sup>2</sup> of mangroves, which were declared a RAMSAR site

in 1999 as a part of the Mesoamerican Biological Corridor. The Gulf of Fonseca also contains ten Protected Natural Areas. A Strategic Environmental Management Plan with mitigation measures should be considered within the Strategy.

The population in the Gulf of Fonseca is estimated to be more than 750,000 people spread through three countries; El Salvador, Honduras and Nicaragua. Most of this population meets their basic needs and services directly from the Gulf. There is an uneven coverage of basic services and a high percentage of rural homes. Most of them rely on subsistence farming, artisanal fishing and small-scale artisanal mining. There is limited access to government aid or programs as little to no infrastructure is present in the region. One of the most critical challenges is the absence of an integrated legal regime.

The Gulf of Fonseca as stated in the Award of the International Court of Justice of 1992 is a condominium shared by El Salvador, Honduras and Nicaragua. The solution will promote a coordinated and peaceful collaboration to ensure the sustainability and development of the population in the Gulf.

## **PART ONE**

### **Historic overview Honduras, El Salvador, Nicaragua and their disputes over the Gulf of Fonseca**



## **CHAPTER 1. A Brief History: Honduras, El Salvador and Nicaragua.**

### **1. 1 Honduras and El Salvador.**

The border disputes between El Salvador and Honduras started right after the Central American Federation dissolved in 1840. The first formal border dispute started around 1853-1854 when The Honduras Interoceanic Railway Company started measuring activities in what were considered Salvadoran Islands; Meanguera and Meanguerita through a concession granted by the then Honduran President, Jose Trinidad Cabañas, to develop the interoceanic railway project. In 1854 the Salvadoran government emitted a formal protest against the Honduran government's actions accusing the President of selling the islands of El Tigre and Zacate Grande to citizens of foreign States thereby threatening their own security. This action was promoted with the goodwill and support of the United States government who was very interested in establishing an interoceanic trail, to that effect the "Colindres -Clay Treaty" was signed in 1864<sup>1</sup>. The interoceanic trail was never accomplished, as funds were insufficient.

For the next 100 years, Honduras and El Salvador tried fifteen different times to resolve their land boundary delimitations through peaceful agreements but with no favorable outcome.

In 1969 the conflict escalated and became what is known as "The Soccer War" or the "100 Hour War". It was named the "Soccer War" because stadium riots started during El-Salvador-Honduras World Cup playoffs. Two matches were played; one in the Honduran capital and one in the Salvadoran capital. Both countries accused each other's soccer fans of psychological tactics, preventing opposing teams from sleeping the night before the games and therefore losing the matches. Different incidents served as catalysts to inflame the already strained tempers of the Honduran and Salvadoran populations. During the

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<sup>1</sup> Treaty of Friendship, Commerce and Navigation between the United States of America and the Republic of Honduras. (Art. XIV) Bevans, Charles Irving. *Treaties and other international agreements of the United States of America 1776-1949*, Vol. 8, Washington, Department of State Publication, 1971, pgs. 885-886.

first match, El Salvador's team lost 1-0, a girl from El Salvador, Amelia Bolaños, killed herself upon hearing the news. During one of the matches the Honduran flag, was burned by soccer fans from El Salvador.<sup>2</sup>

There were many different causes for the abrupt conflict. Honduras did not have the capacity to deal with the large number of Salvadoran migrants. The Honduran government threatened to deport approximately 300,000 Salvadoran migrants. Honduras's deportation tactics turned violent. El Salvador closed its borders to prevent the migrants' return. El Salvador had a high inequality of land ownership and overpopulation and did not want the migrants back. The migrants were from the lowest socioeconomic rung and they could put a huge strain on resources. El Salvador refused any attempt at diplomacy and initiated the war with a surprise attack on Honduras.<sup>3</sup> El Salvador had an advantage of 4 to 1 in ground forces but Honduras had air force advantage.

El Salvador filed a complaint against Honduras in the Inter-American Commission for Human Rights and severed diplomatic relations. After four days of fighting the war was ended by the intervention of the Organization of American States. Both countries had to agree to a cease-fire, withdrawal of troops, assurances of respect for human rights and protections.

Guatemalan, El Salvador's and Nicaraguan civil wars started in the 1960's and 70's and ran well into the 1990's. Honduras though having no civil war of its own felt the backlashes from the nearby conflicts. First, because of the high influx of refugees from Nicaragua and El Salvador and later as it became a training base for US military backed anti-sandinistas known as "contras". This situation aggravated the border conflicts.

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<sup>2</sup> Morello, Danielle. *Soccer War*. ICE Case Studies, case #35. June 1997.

<sup>3</sup> Newton, Chris reviewed by Johann Belser. "Nationalism, Overpopulation and Land in Central America: What caused the Soccer War." Columbia University, Journal of Politics and Society. June 10, 2014.

From 1976 to 1980 Honduras and El Salvador went to mediation procedure with international counsels, unfortunately it failed. In 1980, in Lima, Peru, the first real breakthrough on the border dispute with El Salvador came about. The General Peace Treaty stated that the two parties agreed to submit the boundary dispute to the International Court of Justice, located in The Hague, if they failed to reach a border agreement after five years of negotiations.<sup>4</sup>

A mixed commission was charged to determine the disputed territories known as the “bolsones” and they are: Goascorán, Dolores, Nahuaterique, La Virtud and Salazapa, Sumpul and Tepangusin.<sup>5</sup> By 1985 the two countries had not reached an agreement. In 1986 due to the Esquipulas Special Agreement signed in Guatemala, both countries urged by the Organization of American States OAS decided to take the case to the International Court of Justice.<sup>6</sup> In this boundary case between El Salvador and Honduras, Nicaragua intervened to protect its rights in the Gulf of Fonseca.

The case reached the International Court of Justice, which handed down a ruling on September 11, 1992. The Chamber determined the frontier lines in the areas or sections not described in Article 16 of the General Peace Treaty of 30 of October 1980 and the legal situation of the islands and maritime spaces.

- On the first request the Decision divided the land boundary in several sectors until they reach the ocean. The sectors were six;
- On the second request the International Court of Justice determined three islands were the subjects of dispute: Isla del Tigre was determined to be of the sovereign

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<sup>4</sup> Tratado General de Paz entre la República de El Salvador y Honduras. (translated from Spanish) 30 de Octubre, 1980.

<sup>5</sup> “*Boundary Disputes in Latin America since the End of the Cold War.*” Pgs. 3-7. Edited by Jorge I. Dominguez, Harvard University And Manuel Orozco. Inter -American Dialogue. 2004.

<sup>6</sup> Special Agreement between the Republic of El Salvador and the Republic of Honduras for Submission to the Decision of the International Court of Justice of a dispute between the two states. Esquipulas, Guatemala May 24, 1980.

territory of Honduras. Meanguera and Meanguerita were determined to be of the sovereign territory of El Salvador.<sup>7</sup>

The International Court of Justice's ruling assured Honduras free passage to the Pacific Ocean. The court ruled that the Gulf of Fonseca is a condominium, with control being shared by El Salvador, Honduras, and Nicaragua as shown in the map below.

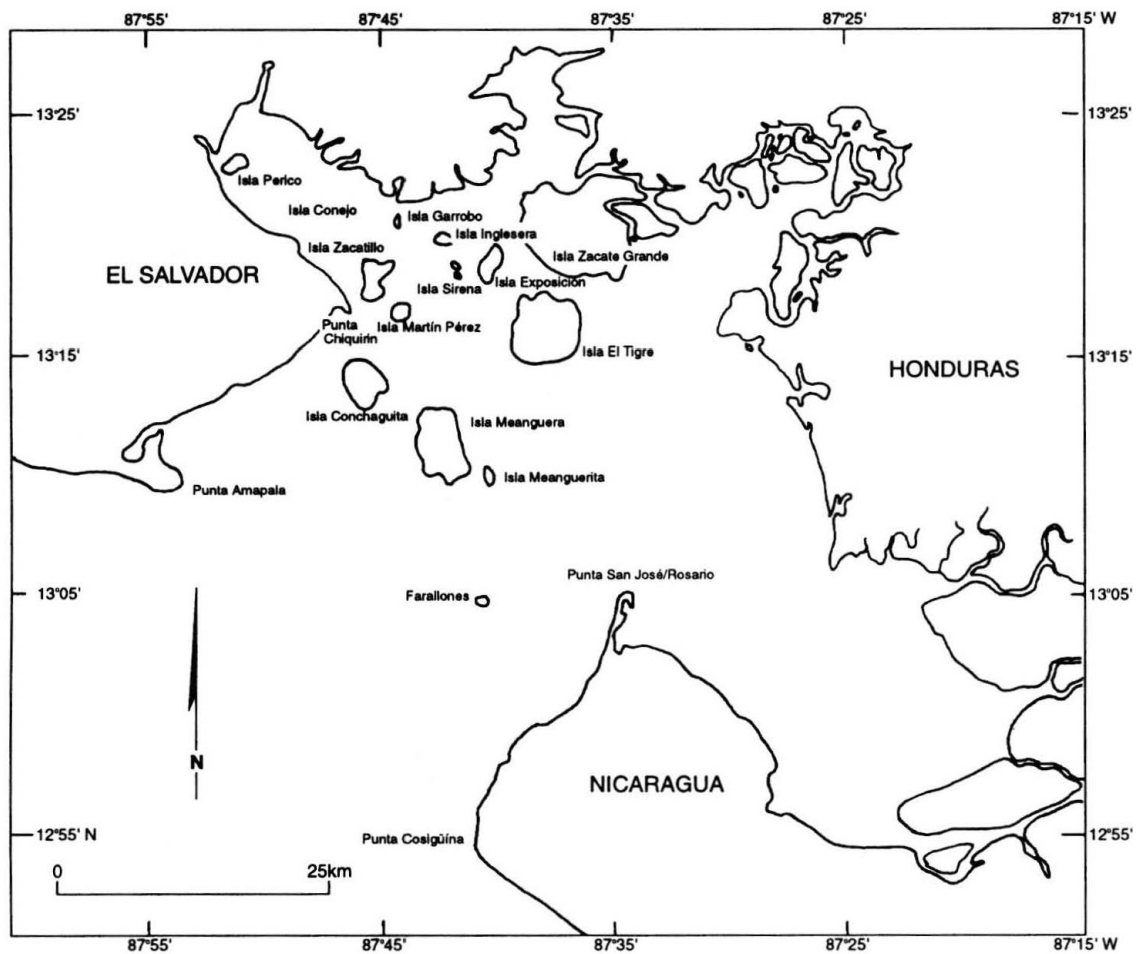


Figure 1. Gulf of Fonseca

Yearbook 1992-1993. International Court of Justice at The Hague, Netherlands

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<sup>7</sup> International Court of Justice. Case Concerning the Land, Island and Maritime Frontier Dispute between El Salvador and Honduras (Nicaragua intervening) 1992.

A commission was established to determine the citizenship of the inhabitants of the area following the decision. In 1996 a Ministerial Agreement for implementing the delimitation was signed in Tegucigalpa between Honduras and El Salvador.

In March of the year 2000 Honduras made a deposit of the list of geographical coordinates of points for the drawings of straight base lines, as a result of an Executive Decree. In June of 2000, El Salvador delivered an Executive Decree rejecting the base lines and sent it to the UN. Guatemala also sent a reservation. Honduras sent a letter to the Ministry of Foreign Affairs of El Salvador and copied the Security Council addressing the accusation of military movements and purchase of military equipment. In 1998 Hurricane Mitch caused devastating damages in Honduras and the military was enlisted to repair bridges and roads and bring food to isolated areas. The purchase was to restore materials lost due to flooding caused by the hurricane<sup>8</sup>.

In January of 2002 the Chargé d'Affaires ad interim of the Permanent Mission of Honduras to the United Nations Addressed to the President of the Security Council, a letter stating that El Salvador was refusing to comply with the 1992 Award by the ICJ. Furthermore it asked the Security Council to intervene.<sup>9</sup>

Another Letter was sent in March of 2002 from the Chargé d'Affaires ad interim of the Permanent Mission of Honduras to the United Nations Addressed to the President of the UNSC, regarding El Salvador signing the Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment of the Northeast Pacific with certain reservations which Honduras felt violated the 1992 Award by the ICJ.<sup>10</sup>

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<sup>8</sup> UN Doc. S/2000/1142 (1 Dec. 2000)

<sup>9</sup> UN Doc. S/2002/108 (23 Jan. 2002)

<sup>10</sup> UN Doc. S/2002/251 (11 March 2002)

In March of 2002 a Memorandum of Understanding was signed in Managua between El Salvador's Nicaragua's and Honduras naval forces to develop a Joint Naval Security Strategy in the Gulf of Fonseca.

On September of 2002 the Chargé d'Affaires ad interim of the Permanent Mission of El Salvador to the United Nations sent a letter Addressed to the President of the Security Council stating their intention to pursue their right to Revision of a decision by ICJ.<sup>11</sup>

In September 10, 2002 El Salvador filed before the International Court of Justice Application for Revision of the Judgment of September 11, 1992 in the case concerning land, island and maritime frontier dispute El Salvador-Honduras (intervening Nicaragua). The Chamber found the Application inadmissible on the basis of the facts El Salvador presented. Under Article 61, several conditions had to be established for admissibility.<sup>12</sup>

In April 18, 2006 the work by the Commission of both El Salvador and Honduras experts finalized the Land Boundary Delimitation. In 2007 the Presidents of Nicaragua, El Salvador and Honduras met and decided to create a Tri-national Commission to finish the implementation of the International Court of Justice's decision. A declaration was reaffirmed in 2009 in the Central American Ministerial Meetings.

In 2012 and 2013 the Foreign Ministers of Honduras, El Salvador and Nicaragua met and declared the Gulf of Fonseca a zone of peace, sustainable development and security. The Ministers also agreed that on the following Regional Presidential Summit their heads of state would further discuss the Gulf of Fonseca governance strategy. Nicaragua sent the UNSC the signed declaration in 2013.

On March 2014, Honduras requested the United Nations Security Council to appoint and send a high-level United Nations representative to ascertain in situ the situation in the Gulf of Fonseca, specifically regarding Isla Conejo. El Salvador claimed that Isla Conejo

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<sup>11</sup> UN Doc. S/2002/1102 (2 Oct. 2002)

<sup>12</sup> International Court of Justice. Application for Revision of the Judgment of 11 September 1992 in the Case Concerning the Land, Island and Maritime Frontier Dispute between El Salvador and Honduras Pgs. 6, 90 (Nicaragua intervening) 10 September 2002

was under their sovereignty and this was not mentioned in the 1992 Award and the Application for revision in 2002. Honduras has always claimed this island, as a sandbar to the mainland at low tide connects it. Honduras refutes El Salvador's claim to the island and refers to the 1992 Award stating that on the subject of islands the Court decided that only three islands were in dispute and made no mention of Isla Conejo and the Application for revision of this decision had also been denied.

The most recent meeting between the Presidents of Guatemala, El Salvador and Honduras was just in November 2016 to discuss a joint customs system and labor market as well as a Security Strategy in the Central American region.

## **1.2 Honduras and Nicaragua**

The history between Honduras and Nicaragua has not been any easier. Right after the dissolution of the Central American Federation in 1840, Nicaragua was sunk by subsequent civil wars fought between the Demócratas (Liberals) and the Legitimistas (Conservatives) political parties each of which held a major city. The Demócratas party ruled in Leon. The Legitimistas ruled the city of Granada.

The 1800s and beginning of the 1900s were a boom for Central America fueled by the searches for riches derived from resources by the European States and the United States. Many men came to these countries to make their fortunes. One of them was William Walker a native of Nashville, US. Walker's interest in Nicaragua stemmed from the fact that Nicaragua was one of the key trade routes for steamships. He arrived in 1855 in Nicaragua to help the Demócratas overthrow the Legitimistas in Granada and assume

government control.<sup>13</sup> With Walker's help the Demócratas overtook Granada and a provisional government was established with Patricio Rivas acting as President.

Walker had his closest Nicaraguan allies executed for treason and alienated the provisional president Rivas who fled to Honduras. Walker's strength relied on the help of US forces sent to protect the steamship's route.<sup>14</sup> In his short time as President, Walker declared English the official language, legalized slavery and burned the city of Granada to the ground, earning the hatred of the Nicaraguan people.<sup>15</sup>

The rest of the Central American countries feared William Walker would in turn invade them. Costa Rican forces invaded from the South and joint forces by Honduras, Guatemala and EL Salvador invaded from the North. General Florencio Xatruch led the Honduran forces. In the early months of 1857 Walker surrendered and left the country. Walker came back a few months later to stage another invasion and was forced to surrender by the US navy. Walker invaded again in 1860 landing in Trujillo, Honduras where he was promptly captured and put before a firing squad.

For the next years no compromise was reached between Honduras and Nicaragua and minor border problems continued to arise. In 1894 Honduras and Nicaragua signed the Bonilla-Galvez Treaty.<sup>16</sup> Both countries agreed to appoint a Mixed Boundary Commission to work on the boundary delimitation. The Treaty would last for ten years and any controversy points were to be submitted to the decision of the Government of Spain.

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<sup>13</sup> Acuña Ortega, Víctor Hugo. *Memorias Comparadas: Las Versiones de la Guerra Contra los Filibusteros en Nicaragua, Costa Rica Y Estados Unidos (siglos XIX-XXI)* (Translated from Spanish) pgs. 154-156 August 2006.

<sup>14</sup> Cruz Jr., Arturo J. "Nicaragua's Conservative Republic 1858-93." Pgs. 44-45. 2002

<sup>15</sup> Stiles, T. J. *"The Filibuster King: The Strange Career of William Walker, the Most Dangerous International Criminal of the Nineteenth Century"* History Now. The Journal of the Gilder Lehrman Institute 2009-2016. <https://www.gilderlehrman.org/history-by-era/jackson-lincoln/essays/filibuster-king-strange-career-william-walker-most-dangerous-i>

<sup>16</sup> International Court of Justice, Case concerning the Arbitral Award made by the King of Spain on 23 of December 1906 (Honduras vs. Nicaragua) Judgment of 18 November, 1960. Bonilla-Galvez Treaty of 1894. Pgs. 107-108.



The Mixed Boundary Commission worked until 1901 and could not reach a compromise. In 1905 a Commission was appointed by Spain to inquire into the question of the boundaries. In 1906 the King of Spain was to arbitrate the dispute over the alignment of the eastern section of the land boundary. On December 26, 1906 based on the proposed solution by the Commission, His Excellency Alphonse XIII King of Spain acting as Arbitrator concluded the Award of the Boundary Case between Honduras and Nicaragua. Nicaragua rejected this decision in 1912 stating that three arbiters were to be named not just one according to the Bonilla-Galvez Treaty.

The Mocoacán War, only known as such in the region, initiated in 1957 after Honduras in 1956 created a new state called Gracias a Dios. Nicaragua objected to the new Honduran state's boundaries. Nicaragua declared war claiming Honduran troops had occupied Mocoacán, which was located on the border. Urged by escalating media news Nicaraguans took the Honduran embassy in Managua and Honduran students in the city of Leon were taken as prisoners.<sup>17</sup> Honduras invoked the Inter-American Pact for Reciprocal Assistance (Rio Pact) in 1957. An exchange of diplomatic prisoners was arranged. The Peace Committee, organ of the OAS, conducted an inquiry on the situation. Urged by the Organization of American States (OAS) both countries signed in Washington an agreement to take the dispute to the ICJ and decide on the 1906 boundary delimitation award.

In 1960 the International Court of Justice was asked to determine on the 1906 Award. Honduras asked the Court to declare that Nicaragua was under an obligation to give effect to the Award and Nicaragua asked the Court to declare that the decision given by the King of Spain did not possess the character of a binding arbitral award. The Court decided that the Award was binding and that Nicaragua was under obligation to give effect to it.<sup>18</sup>

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<sup>17</sup> Rojas Caron, Leon. " *La Guerra de Mocoacán*" (Translated from Spanish). Journal of the Academia Hondureña de Geografía e Historia. No.81 December 1987.

<sup>18</sup> *Id.* At 12 the Judgment.

The next years were troubled times in the Central American region as it became the stage for Cold War opposing forces through proxy states. The causes that led to this are remnants from Guatemalan, El Salvador 's and Nicaraguan civil wars, which started approximately in the 1960's and 70's and ran well into the 1990's. Honduras though having no civil war of its own felt the backlashes from the nearby conflicts. The situation in Honduras was critical as a large influx of refugees from Nicaragua and El Salvador flooded its borders. A large group of former military and paramilitary from the recently deposed Nicaraguan government had sought refuge in Honduras.

The US was afraid the Socialist ideas from the Sandinista government would spread throughout the Latin American countries. The conflict with Nicaragua increased as Honduras was used as a base to train anti-sandinistas using the former military and paramilitary that had fled Nicaragua. These forces were known as the contra revolutionaries or "contras".<sup>19</sup> In this conflict the Iran-Contra Affair was born and it was accomplished by the sale of arms to Iran to fund the contras as part of the Reagan Doctrine.<sup>20</sup> An economic embargo was also placed on Nicaragua as part of this Doctrine. During the next couple of years many incursions from the contras were made along the Nicaraguan border.

The Nicaraguan government sought help from the International Court of Justice and initiated proceedings against the US in 1984 for:

"[u]sing military force and intervening in its internal affairs... creating an army of mercenaries, training, paying and supplying them directing attacks against targets in Nicaragua."<sup>21</sup>

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<sup>19</sup> Peace, Roger. *"The Anti-Contra-War Campaign: Organizational Dynamics of a Decentralized Movement"* Pgs. 63-64. International Journal of Peace Studies, Volume 13, Number 1, Spring/Summer 2008.

<sup>20</sup> L. Kasler, Jordan. *"Say Uncle" Reagan Doctrine and Nicaragua*. Western Oregon University. May 28, 2010.

<sup>21</sup> International Court of Justice. Application Instituting Proceedings. 9 of April 1984. Case concerning Military and Paramilitary Activities In and Against Nicaragua. (Nicaragua vs. United states) pg.2 Statement of facts.

In 1986 Nicaragua took Honduras to the International Court of Justice over alleged cross-border activities by armed bands from Honduras.<sup>22</sup> In 1987 a meeting of the Five Central American Presidents took place in Esquipulas, Guatemala to initiate a peace and democratization process in the Region. Former Costa Rican President Oscar Arias set the Esquipulas II peace plan forth.

The five Central American countries requested aid from the United Nations to implement this Peace Process. The United Nations answering the call for aid from Central America established several Peacekeeping and Observer Missions; United Nations Observer Mission in El Salvador (ONUSAL), United Nations Mission for the Verification of Human Rights in Guatemala (MINUGUA) and United Nations Observer Group In Central America (ONUCA).

The United Nations Observer Group In Central America (ONUCA)<sup>23</sup> was established on November 7, 1989. ONUCA's undertakings were:

- (a) The cessation of aid to irregular forces and insurrectionist movements; and
- (b) The non-use of the territory of one State for attacks on other States.

The demobilization process started in 1989 and ended on July 5, 1990. The process was successful; a total of 19,614 armed and unarmed members of the Nicaraguan Resistance had been demobilized in Nicaragua and 2,759 in Honduras according to data from ONUCA on United Nations Peacekeeping missions.

In 1992 Nicaragua informed the International Court of Justice an out-of court agreement had been reached with Honduras and they did not want to proceed with the instituting proceedings concerning military and paramilitary activities. The International Court of

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<sup>22</sup> International Court of Justice. Case Concerning Border and Trans-border Armed Actions (Nicaragua vs. Honduras) Volume I. Pg. VII.

<sup>23</sup> Past Peacekeeping Operations by the United Nations.  
<http://www.un.org/en/peacekeeping/operations/past.shtml>

Justice removed the case.

Honduras ratified maritime borders with Colombia in 1999. Nicaragua filed a suit against Honduras in the ICJ over the maritime boundaries in the Caribbean Sea that same year.<sup>24</sup> The Judgment by the ICJ on the case was finalized in 2007.

In 2007 the Presidents of Nicaragua, El Salvador and Honduras met and decided to create a Tri-national Commission to finish the implementation of the International Court of Justice's decision of 1992 establishing the Gulf as a zone of peace, sustainable development and security. This declaration was reaffirmed in 2009 and 2013 in the Central American Ministerial Meetings. In 2013 Nicaragua sent a communication to the UN stating the Gulf of Fonseca was a zone of peace, sustainable development and security.

### **1.3 Judicial Settlements in the Gulf of Fonseca; Key issues.**

There have been many disputes between El Salvador, Honduras and Nicaragua. There are key aspects and issues in each of the settlements. Some of these issues and key aspects have effects on the current situation in the Gulf of Fonseca.

**1. Corte Centroamericana de Justicia:** This Court was created in Washington in 1907 and was the First International Court in history and was also the first International Human Rights Court. The Court only lasted for ten years.

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<sup>24</sup> International Court of Justice. Instituting Proceedings Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua vs. Honduras) 8 of December 1999.

## **Judicial Settlements:**

**1917: Judgment of the Corte Centroamericana de Justicia CAC on March 9, 1917 initiated by El Salvador against Nicaragua (El Salvador vs. Nicaragua)** arising from the Bryan-Chamorro Treaty signed between the United States and Nicaragua referring to the leasing of a naval base in the Gulf of Fonseca.

El Salvador considered the treaty “extremely prejudicial and stated that it violated its rights of co-ownership in the Gulf of Fonseca”. The three countries of El Salvador, Honduras and Nicaragua exercised the Co-ownership of the Gulf of Fonseca. El Salvador requested the Central American Court CAC that the Government of Nicaragua be enjoined to abstain from fulfilling the Bryan-Chamorro Treaty.

The CAC ruled:

“... That by the concession of a naval base in the Gulf of Fonseca, the Bryan-Chamorro Treaty of August fifth, nineteen hundred and fourteen, menaces the national security of El Salvador and violates her rights of co-ownership in the said Gulf... That the said treaty violates Articles II and IX of the Treaty of Peace and Amity, concluded by the Central American States at Washington on the 20, December of 1907...That the Government of Nicaragua is under the obligation to reestablish and maintain the legal status that existed prior to the Bryan-Chamorro Treaty.”<sup>25</sup>

The key aspect of this settlement was that El Salvador was accepting the rights of co-ownership of Honduras and Nicaragua and that the Court upheld this co-ownership. It is important because it establishes a legal precedent in the Gulf of Fonseca, which was later

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<sup>25</sup> El Salvador v. Nicaragua, CACJ, Judgment of 9 March 1917, 11 Am. J. Int'l L. 674 (1917) (Translated from Spanish)

used in the Judgment of the 1992 Case between Honduras and El Salvador (Nicaragua intervening).

**2. International Tribunal on the Law of the Sea:** ITLOS is an independent judicial body established by UNCLOS to adjudicate disputes arising out of the interpretation and application of the Convention on the Law of the Sea. The Central American countries could have chosen the International Tribunal on the Law of the Sea to resolve their maritime boundaries but El Salvador is not a state-party and Honduras and Nicaragua chose to resolve their disputes in the International Court of Justice though both are parties to the Convention on the Law of the Sea.

**3. International Court of Justice:** The ICJ is the principal judiciary organ of the United Nations and it was established in 1945. Its role is to settle, in accordance with international law, legal disputes submitted by States and to give advisory opinions on legal questions. Most disputes in the Central American region have been solved at the ICJ. The reason is that the Organization of American States has asked to include a settlement dispute clause in most treaties. Any dispute arising between state signatories has to be resolved by the ICJ.

**1960: International Court of Justice, Case concerning the Arbitral Award made by the King of Spain on 23 of December 1906 (Honduras vs. Nicaragua) Judgment of 18 November, 1960**

The OAS urged both states (Honduras and Nicaragua) to take the dispute over the Arbitral award of 1906 to the ICJ and make a final decision.

Honduras asked the Court:

... “[t]o adjudge and declare that Nicaragua was under an obligation to give effect to the Award”...

Nicaragua asked:

...“[t]o adjudge and declare that the decision given by the King of Spain did not possess the character of a binding arbitral award and that it was in any case incapable of execution...”

Nicaragua questioned the King of Spain as Arbiter as the Galvez-Bonilla Treaty requested three arbiters to decide on the points of controversy.

The Court decided that the Award was binding by fourteen votes to one and that Nicaragua was under obligation to give effect to it.<sup>26</sup> The key aspect of this Award was that it upheld the arbitral award by the King of Spain who had based the decision on the reports of the Joint Commission.

**1986: International Court of Justice. Case Concerning Border and Trans-border Armed Actions (Nicaragua vs. Honduras)**

In 1986 Military and paramilitary groups from Nicaragua settled along the border on the Honduran side and formed the Contra revolutionaries “contras”. Nicaragua went to the International Court of Justice claiming that Honduran forces had entered Nicaraguan territory<sup>27</sup>.

The Central American countries met in Guatemala 1987 to sign a peace treaty. The Treaty became Esquipulas II and through a plan by former President of Costa Rica Oscar Arias a peace process was outlined for the Central American region. The Central American countries requested aid from the United Nations in establishing and maintaining peace.

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<sup>26</sup> *Id. at 12 on Judgment.*

<sup>27</sup> *Id. at 18.*

The United Nations established several Peacekeeping Missions in Central America; ONUCA, ONUSAL and MINUGUA<sup>28</sup>.

In 1992 by request from Nicaragua the case was withdrawn from the International Court of Justice. One key aspect of this process was the intervention of UNSC by establishing peacekeeping and observer operations in Central America.

**1992: International Court of Justice. Land, Island and Maritime Frontier Dispute between El Salvador and Honduras. (Nicaragua intervening) September 11, 1992.**

The General Peace Treaty of 1980 stated that the two parties agreed to submit the boundary dispute to the International Court of Justice, located in The Hague, if they failed to reach a border agreement after five years of negotiations. Both countries were urged by the OAS to take the case to the International Court of Justice as stated in the Esquipulas Agreement of 1980.

The case reached the International Court of Justice, which handed down a ruling on September 11, 1992. The International Court of Justice ruling assured Honduras's free passage to the Pacific Ocean. The court ruled, that the Gulf of Fonseca is a condominium, with control being shared by El Salvador, Honduras, and Nicaragua.<sup>29</sup> This Award will be reviewed in detail in the next chapter.

**2002: International Court of Justice Application for Revision of the Judgment of September 11, 1992 in the case concerning land, island and maritime frontier dispute El Salvador-Honduras (Nicaragua intervening)**

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<sup>28</sup> Past Peacekeeping Operations by the United Nations.  
<http://www.un.org/en/peacekeeping/operations/past.shtml>

<sup>29</sup> *Id.* at 7 on *Judgment*.



The Statute of the ICJ recognizes a Party's right, within ten years from the date of a judgment, to make an application for its revision.

Under Article 61 of the Statute of the ICJ, the revision of a judgment can be opened only by:

- A) The discovery of some fact of such a nature as to be a decisive factor,
- B) A fact was, unknown to the Court, and also to the party claiming revision, not due to negligence.

The Chamber found the Application inadmissible on the basis of the facts El Salvador presented.

#### **1.4 Alternate Means of Dispute Settlement in the Gulf of Fonseca.**

##### **Arbitrations:**

**1885: Arbitration by the President of Nicaragua, General Joaquín Zavala (failed process)**

**1906: Arbitral Award by the King of Spain on 23 of December 1906 (Honduras vs. Nicaragua)** on the delimitation of the boundary between the Republics of Honduras and Nicaragua from the Atlantic to the Portillo de Teotecacinte.

In 1894 Honduras and Nicaragua signed the Bonilla-Galvez Treaty in which they agreed to submit their points of conflict to the government of Spain if no compromise could be reached within ten years. His Excellency, Alphonse VIII, King of Spain made the final decision considering the historical documents, books and titles presented by both countries and the proposed solution of the Commission. The Commission had been

appointed in 1905 by Royal decree to investigate the work of the Joint Honduras–Nicaragua Commission who had their records registered in 1902 and 1904 in Amapala.

The key aspect was that the King of Spain followed the *uti possidetis juris* doctrine in the arbitration.

### **Negotiations:**

The dispute between Honduras and El Salvador lasted over 100 years. Both countries tried fifteen different times to resolve their land boundary delimitations through peaceful agreements. There were Ministerial agreements, Regional Agreements, Presidential declarations, High-level Forums, Memorandums of Understanding and Agreements with advice from special counsels but none with a favorable outcome. Overcoming the problems between states is not easy and these agreements offered political declarations but no clear, constructive solutions.

- Negotiation process El Mono July 1861;
- Negotiation process Nahuaterique Mountain, en 1880;
- Negotiation process in Saco (Concepción de Oriente) en 1880;
- 1884 Cruz-Letona Convention, Honduras did not sign;
- Arbitration by the President of Nicaragua, General Joaquín Zavala 1885;
- 1886 Zelaya-Castellanos Convention;
- Negotiations in La Unión and Guanacastillo 1888;
- 1889 Zelaya-Galindo Convention;
- 1895 Convention;
- 1897 Convention;
- Negotiations in San José, Costa Rica, 1906;
- Negotiations in Tegucigalpa, Honduras 1918;
- Short meetings and conversations 1949, 1953, 1962 y 1969;

- Negotiations in Antigua Guatemala en 1972; and,
- General Peace Treaty of 1980 Lima, Perú.

The Treaty on Territorial Limits between the Republics of Honduras and El Salvador held in San Miguel, El Salvador on April 10, 1884 also known as the Cruz-Letona Convention was the only one that discussed the Gulf of Fonseca boundaries.

### **Regional Agreements:**

The Regional Agreements in the Americas have also played a role in the settlement of boundary disputes. The intent of the regional treaties has been to solve disputes, threats and aggression pacifically between states.

### **1947: Inter American Treaty of Reciprocal Assistance (IATRA) commonly known as The Rio Pact:**

The Rio Pact was the first treaty of its kind to be signed after World War II and served as the model for NATO. It was created to deal effectively with armed attacks and threats and any aggression against member states, to assure peace in the region through improved pacific settlement procedures.

The Rio Pact has been invoked at least 20 times since the 1950s including by Honduras and El Salvador in the 1969 “Soccer War” and in 1957 by Honduras against Nicaragua during the “Mocorón War”. Its importance gradually faded, especially after the United States refused to invoke the treaty at the request of Argentina during the 1982 Falklands War and instead backed Britain in that conflict invoking NATO. Mexico withdrew from the Treaty in 2002 citing the Falklands incident. The treaty has been denounced by Nicaragua and Bolivia in 2012, Venezuela in 2013, and Ecuador in 2014.

### **1948: American Treaty on Pacific Settlement known as the Pact of Bogota:**

The Pact of Bogota obliged the parties of a conflict to settle controversies by peaceful means and lists procedures.<sup>30</sup> The Pact of Bogota has been invoked, at least partially, 13 times before the ICJ. One was on the Case concerning Border and Trans-border Armed Actions (Nicaragua v. Honduras).

### **Regional Organizations:**

#### **Organization of American States: OAS Peace Fund**

The OAS created in 1948 in Colombia is the most important regional body in the Americas and has endeavored to promote peaceful settlement of controversies and disputes.

The OAS Peace Fund has intervened:

**1992 Honduras–El Salvador:** Both countries requested technical assistance from the OAS and the Pan American Institute of Geography and History (PAIGH) to comply with the 1992 ICJ decision on boundaries. In 2006 the common land border agreement was reached and this process concluded.

**2001 Honduras- Nicaragua:** The Fund for Peace through an OAS envoy signed an MOU with both countries to ensure peaceful relations. In 2001 two agreements were signed; the Technical Verification Agreement and the Agreement for OAS International Verification

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<sup>30</sup> OAS website. Multilateral Treaties. <http://www.oas.org/juridico/english/treaties/a-42.html>

Mission. The object was to verify military posts along the border were kept at the same number of units as in 1999.<sup>31</sup>

**Community of Latin American and Caribbean States (CELAC):** CELAC was created in 2010 in Mexico to promote the implementation of the region's own mechanisms for conflict resolution.<sup>32</sup>

## **CHAPTER 2: Case Studies: Key issues of the Judgments**

### **2.1 Nicaragua – Honduras case of 1960 before the International Court of Justice. Case concerning the Arbitral Award made by the King of Spain on 23 of December 1906 (Honduras vs. Nicaragua)**

Nicaragua through the offices of its Foreign Minister had challenged the validity and binding character of the Award, in 1912. After this incident both countries returned to their border disputes lasting approximately 60 years. Events escalated and an incident known locally as the War of Mocerón prompted the intervention of the OAS. After unsuccessful attempts at settlement by direct negotiation or mediation, the OAS urged Honduras and Nicaragua to submit to the ICJ under an agreement reached at Washington on 21 July 1957.

The Government of Honduras stated in the Application<sup>33</sup>:

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<sup>31</sup> V. Jeifets, L. Khadorich. "OAS and the Interstate Dispute Resolution at the Beginning of the 21<sup>st</sup> Century: General Pattern and Peculiarities." World Academy of Science, Engineering and Technology. International Journal of Scial, Behavioural, Educational, Economic, Business and Industrial Engineering. Pgs. 1152 Vol:9, No. 4, 2015.

<sup>32</sup> CELAC website: <http://www.sela.org/celac/quienes-somos/que-es-la-celac/>

*"May it please the Court:*

*To communicate the present Application instituting proceedings to the Government of the Republic of Nicaragua, in accordance with Article 40, paragraph 2, of the Statute of the Court, and Article 2 of the Agreement of 21 July 1957 between the Foreign Ministers of Honduras and Nicaragua; To adjudge and declare, whether the Government of Nicaragua appears or not, after considering the contentions of the Parties:*

- 1. That failure by the Government of Nicaragua to give effect to the arbitral award made on 23 December 1906 by His Majesty the King of Spain constitutes a breach of an international obligation within the meaning of Article 36, paragraph 2 (c) of the Statute of the International Court of Justice and of general international law;*
- 2. That the Government of the Republic of Nicaragua is under an obligation to give effect to the award made on 23 December 1906 by His Majesty the King of Spain and in particular to comply with any measures for this purpose which it will be for the Court to determine;"*

The Government of Nicaragua replied:

*"May it please the Court,*

*Rejecting the submissions of Honduras,*

- 1. To adjudge and declare that, without prejudice to what is said in paragraph II, Nicaragua violated no undertaking in failing to execute the decision of King Alfonso XIII, dated 23 December 1906, its Government having pointed from the beginning to the obscurities and contradictions which made this execution impossible and having expressed readiness to submit to arbitration or mediation the disagreement between itself and the Government of Honduras concerning the validity of the said so-called arbitral decision.*
- 2. To adjudge and declare that the decision given by King Alfonso XIII is not an arbitral award made in conformity with the Gámez-Bonilla Treaty of 7 October 1894, and thereby possessed of binding force: because the above-mentioned treaty had expired at the time when the King accepted the office of sole arbitrator, a fortiori when he gave his decision described as 'arbitral'; because this 'arbitral' decision of King Alfonso XIII was given by him as sole arbitrator in flagrant breach of the provisions of the Gámez-Bonilla Treaty; because the impugned decision is vitiated by essential errors; because by this*

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<sup>33</sup> International Court of Justice, Case concerning the Arbitral Award made by the King of Spain on 23 of December 1906 (Honduras vs. Nicaragua) Application Pgs. 5-7 Judgment of 18 November, 1960

*decision the King exceeded his jurisdiction; because it is not supported by an adequate statement of reasons...*<sup>34</sup>

The Court concluded that the requirements of the Gámez-Bonilla Treaty had been complied with:

1.) The National Arbitrators Jose Dolores Gámez and Alberto Membreño had consented to the Arbitrator. The Gámez Bonilla treaty stated in Articles III And IV that there were to be three persons designated as arbiters. The two national arbitrators had chosen representatives from Mexico, the Ambassador and Charge d’Affaires, but they had left Guatemala, nonetheless they met with the Spanish Minister Pedro de Carrere y Lembeye to Central America whom they designated as Chairman of the preliminary Arbitration. The King of Spain was designated Arbitrator by common consent.

2.) There is written acceptance by both countries of the designation of the King of Spain as Arbitrator. The Presidents of Honduras and of Nicaragua, through written communications of 1904, expressed their satisfaction at the designation of the King of Spain.

3.) No objection was expressed by either government at the time of the designation. No objection was taken by Nicaragua to his jurisdiction, either on the ground of irregularity in his designation or on the ground that the Treaty had lapsed.

4.) Nicaragua had fully participated in the arbitral proceedings.

Nicaragua stated that the Treaty had lapsed before the King of Spain accepted the designation as the Treaty had been signed on October 7, 1894 and the King of Spain agreed until October 17, 1904.

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<sup>34</sup> *Id. at 12* Application Pgs. 8-10

In the Court's opinion the National Arbitrators had power to interpret and apply the articles. Upon reviewing all allegations, documents and evidence the Court upheld that the designation of the King of Spain as arbitrator was valid.

The Court reviewed all pertinent documents and concluded that the Gámez-Bonilla Treaty had been ratified until December 24, 1896 and that the Treaty had not lapsed by the date of acceptance of the designation by the King of Spain. The Court also considered that Nicaragua did not object on grounds of the lapse of the Treaty. Furthermore in the judgment of the Court, Nicaragua had recognized the Award as binding by express written communications and by its conduct.

The Court determined that the Gamez-Bonilla Treaty incorporated the principle of *uti possidetis juris*. The Court also determined that Honduras had presented convincing evidence of postcolonial effectivités demonstrating its control of the islands and nearby sea area. The Court found by fourteen votes to one, that the Award made by the King of Spain on 23 December 1906 was valid and binding and that Nicaragua was under an obligation to give effect to it.

This Judgment brought the land boundary disputes between Honduras and Nicaragua to an end. Honduras had granted oil exploration licenses in areas northward to the 15th parallel, while Nicaragua issued licenses in areas southward toward the parallel.

## **2.2. 1992 Award of the Case concerning land, island and maritime frontier dispute El Salvador-Honduras (Nicaragua intervening) before the International Court of Justice.**

In 1986 with the signing of Esquipulas Special Agreement, both El Salvador and Honduras agreed to take the case to the International Court of Justice. In this boundary case, Nicaragua intervened to protect its rights in the Gulf of Fonseca.



In 1986 through the offices of their Ministers of Affairs both Honduras and El Salvador submitted to the Registry of the Court a special Agreement and in its Article 2 it states:

*"The Parties requested from the Chamber:*

*"1. To delimit the frontier line in the areas or sections not described in Article 16 of the General Peace Treaty of 30 October 1980.*

*"2. To determine the: legal situation of the islands and maritime spaces."*

The disputed territories not described in Article 16 of the General Peace Treaty of 1980 are commonly known as the "bolsones" and they are: Goascorán, Dolores, Nahuaterique, La Virtud and Salazapa, Sumpul and Tepangusin.<sup>35</sup>

The first Judgment of the ICJ was in September of 1990 through a Chamber that was formed to determine the Application of Nicaragua to intervene in the proceedings under Article 62 of the Statute of the Court.

The Chamber determined the existence of an interest of a legal nature of Nicaragua. The final decision of the Chamber regarding the waters of the Gulf Fonseca would therefore affect Nicaragua.

On this matter the Chamber:

*"Unanimously, "1. Finds that: the Republic of Nicaragua has shown that it has an interest of a legal nature which may be affected by part of the Judgment of the Chamber on the merits in the present case, namely its decision on the legal dame of the waters of the Gulf of Fonseca, but has not shown such an interest which may be affected by any decision which the Chamber may be required to make concerning the delimitation of those waters, or any decision as to the legal situation of the maritime spaces outside the Gulf, or any decision as to the legal situation of the islands in the Gulf; "2. Decides accordingly that the Republic of Nicaragua is permitted to intervene in the case, pursuant to Article 62 of the Statute, to the extent, in the manner and for the purposes set out in the present Judgment, but not further or otherwise."*

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<sup>35</sup> *Id. at 4.*

On September 11, 1992 the Judgment of the Chamber of the Court (composed by: Judge Sette-Camara, President of the Chamber; President Sir Robert Jennings; Vice-President Oda; Judges ad hoc Valticos, Torres Bernárdez)

The Chamber as requested from the parties decided on the disputed territories:

“In the first sector by unanimous decision from tri-point Trifinio on the summit of Cerro Montecristo.... [A]nd on to Cerro Zapotal; on the second sector the decision was unanimous from Pena Coyaguanca... [d]ownstream to its confluence of Quebrada Chiquita or Oscura; the third sector Pacacio boundary marker ... [d]ownstream to Poza El Cajon; on the fourth sector the decision was four to one, the vote against was from ad-hoc Judge Valticos and it started from the source of the Orilla stream ... [t]o Malpaso de Similaton, on the Fifth sector the decision was unanimous and it started from the confluence of the River Torola and on ... [t]o the Point known as Paso de Uruce; on the sixth sector the decision was unanimous from the point on the River Goascorán known as Los Amates” the boundary follows the course of the river downstream, in the middle of the bed... [t]o the point where it emerges in the water of Bay La Union, Gulf of Fonseca, passing to the north west of Islands Ramaditas.”



Figure 2. Map submitted to the ICJ of the disputed territories between El Salvador and Honduras.

ICJ Judgment of 11 September 1992. Case concerning land, island and maritime frontier dispute El Salvador-Honduras (Nicaragua intervening)

The Chamber based its decision on the disputed territories following:

- 1) The *uti possidetis juris* doctrine: Principle of general scope in matters of decolonization logically connected with the phenomenon of obtaining independence. Awarding the independent states to follow their colonial administrative boundaries;<sup>36</sup>

To effectively determine *uti possidetis juris* the Chamber had to evaluate documents presented by both parties:

- a. Titles: Refer to grants of land by the Spanish Crown in the disputed areas; (the Court considered grants to individuals, not so grants reserved for Indian communities)

<sup>36</sup> International Court of Justice. Judgment 22 December 1986 Case Concerning the Frontier Dispute (Burkina Faso vs. Mali) (paras. 20-26)

- b. Colonial Effectivités: Documents that reflect the conduct of the administrative authorities as proof of the effective exercise of territorial jurisdiction in the region during the colonial period;<sup>37</sup> the Chamber also decided that record of surveys would be considered Colonial Effectivités;
- c. In absence of any of the previous documents the Chamber would consider the post- colonial Effectivités and Republican titles; and,
- d. The parties' conduct implying acquiescence or recognition.

2.) Equity: *infra legem*, where no other factors permitted a full legal determination.

On the second request to the Chamber, the decision of the three islands subjects of dispute: Isla del Tigre, Meanguera and Meanguerita, had to resort to post-colonial effectivités. Isla del Tigre was determined to be of the sovereign territory of Honduras. Meanguera and Meanguerita were determined to be of the sovereign territory of El Salvador.

Honduras is not locked out from rights in respect of the ocean waters outside the bay. The International Court of Justice's ruling assured Honduras free passage to the Pacific Ocean. Honduras has by far the longest coastline of the Gulf and the only Gulf coastline facing the Ocean.

The court ruled, rather, that the Gulf of Fonseca is a condominium, with control being shared by El Salvador, Honduras, and Nicaragua as shown in the map above. Each state would retain exclusive three nautical mile territorial seas immediately offshore their coasts, as shown in the picture below.

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<sup>37</sup> International Court of Justice. ILR. Reports. 2007. p. 586 para. 63.

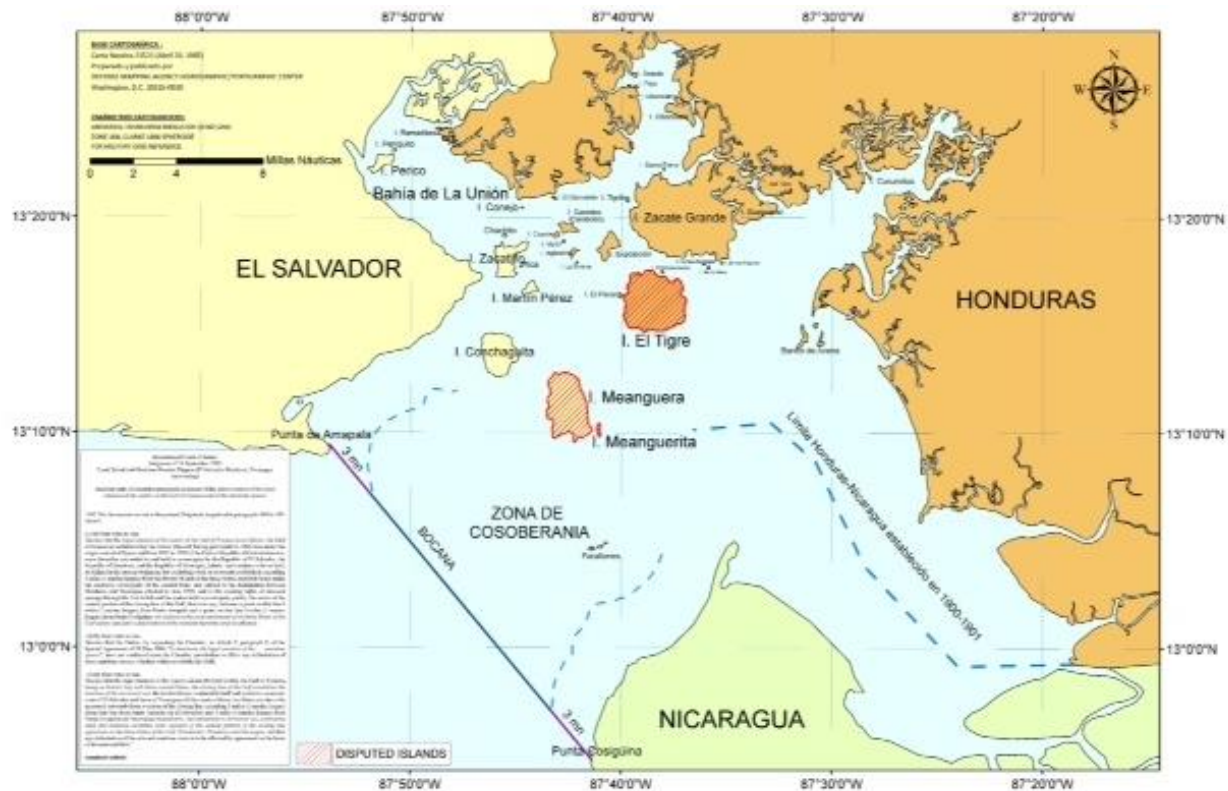


Figure 3. Map of the 1992 ICJ decision including the 3M and the Joint-Sovereignty Zone  
ICJ. Judgment September 11, 1992 Case concerning land, island and maritime frontier dispute El Salvador-  
Honduras (Nicaragua intervening)

As Judge Oda in his opinion on the Judgment of this case expressed the language used in the Judgment is not found within past or present law of the sea.<sup>38</sup> The terms; condominium attributed to the management and historic waters as referred to the Gulf of Fonseca's waters and the classification of the Gulf of Fonseca as either a historic bay or pluri-state bay. Under UNCLOS the only definition is that of "bay" in Article 10 (2).

Nonetheless, all these terms are found in international law except for Pluri State Bay:

**Condominium:** Joint sovereignty by two or more nations<sup>39</sup>.

<sup>38</sup> Id. at 7. On Judge Oda's dissenting opinion.

<sup>39</sup> Black's Law Dictionary 336 (9th ed. 2009) condominium definition.

**Historic Waters:** are usually meant waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title. Historic waters can be a bay, pool, strait or even the sea and historic waters under statute of internal waters and there is no innocent passage.<sup>40</sup>

**Historic Bay:** On the theory of historic bays, they would have to be claimed as such by the states concerned and they would have to be substantiated. The term might be irrelevant in law of the sea now as most historic bays are now considered normal bays due to the enlargement of the criterion for the closing of the bay from narrow (about 10 miles) to a wider 24 miles distance.<sup>41</sup>

**Pluri-state Bay:** there did not exist and still does not exist any such legal concept<sup>42</sup>.

The Gulf of Fonseca would today qualify geographically as a juridical bay but neither state can now call in question or replace its historic status.

### 2.3 Revision of the 1992 Award by the International Court of Justice

There have been three Applications for Revisions of Judgments in the history of the ICJ. El Salvador submitted Application for the Revision of the 1992 Judgment on the Case concerning land, island and maritime frontier dispute between El Salvador and Honduras (Nicaragua intervening) in 2002 pursuant to Article 61 of the Statute of the ICJ.

Under Article 61 of the Statute, these conditions are as follows:

- (a) The application should be based upon the discovery of a fact;

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<sup>40</sup> International Court of Justice (ICJ) on fishing field between the UK and Norway on 18 December 1951. Judgment on the definition of "historic waters" p. 130.

<sup>41</sup> See United Nations Conference on Law of the Sea. Doc. A/CONF.13/1 "*Historic Bays: Memorandum by the Secretariat of the United Nations*". 1958

<sup>42</sup> Id. at 7 on Judge Oda's dissenting opinion p. 745-746

- (b) The fact the discovery of which is relied on must be “of such a nature as to be a decisive factor”;
- (c) The fact should have been “unknown” to the Court and to the party claiming revision when the judgment was given;
- (d) Ignorance of this fact must not be “due to negligence”; and
- (e) The application for revision must be “made at latest within six months of the discovery of the new fact” and before ten years have elapsed from the date of the judgment.

El Salvador presented as “new facts” the avulsion of the River Goascorán and historical documents; a Carta esferica and a report of El Activo expedition.

The Chamber determined that for the evidence presented by El Salvador to be considered under Article 61 of the Statute these discoveries of some facts must be of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

If El Salvador had presented these facts in the 1992 proceedings the result could have been different. In the 1992 Proceedings before the ICJ, El Salvador had drawn the Court’s attention to the difficulties collecting evidence in certain areas owing to the interference with governmental activities due to acts of violence. El Salvador was in the middle of a civil war at this time in history. Government buildings as well as documents were destroyed or lost and others were located within areas controlled by the guerilla army.

## 2.4 Compliance, Non-compliance and Defiance

Under the United Nations Charter in Article 94(1) places the obligation of member states straightforwardly:

“[e]ach member of the United Nations undertakes to comply with the decisions of the International Court in any case to which it is a party.”

**Compliance:** acceptance of the judgment as final and reasonable performance in good faith of any binding obligation.<sup>43</sup>

**Non-compliance:** is a matter of increment and degree<sup>44</sup>.

The principal political organ for maintaining peace and security is the Security Council. UN Charter Article 94(2) provides:

“[i]f 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.”

**Defiance:** wholesale rejection of the judgment as invalid coupled with a refusal to comply. Outright defiance has been almost non-existent with few exceptions Nicaragua in 1986, more recently Colombia in 2013 and China 2016.

*Post-judgment* of the 1992 Award: Although problems in implementation were foreseen, both states announced they would accept the ICJ judgment.

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<sup>43</sup> A. Chayes and A.H. Chayes “*The New Sovereignty: Compliance with International Regulatory Agreements*” 1955. P. 17-22

<sup>44</sup> P. Llamzon, Aloysius. “*Jurisdiction and Compliance in Recent Decisions of the International Court of Justice.*” European Journal of International Law Vol. 18 No. 5 EJIL 2008 p.9 definition



1. 15,000 displaced persons living on the border. El Salvador sought dual nationality to solve the problem, however, the Honduran Constitution prohibited both dual nationality and ownership of land by non-citizens within 40 km of the boundary. The solution was an agreement from 1998 in which residents in the border areas had the right to choose their nationality and guaranteed acquired rights regardless of the choice made.
2. In 1998 the parties agreed to demarcate within a 12-month timeframe:

In November 2000, the Permanent Representative of Honduras to the United Nations submitted a copy of a Letter dated 28 Nov. 2000 to the Secretary-General of the UN addressed to El Salvador's Ministry of Foreign Affairs to the United Nations Security Council, urging El Salvador to comply with the ICJ Judgment. While, Honduras was implementing plans to respect the rights of nationality and ownership of Salvadorans living in Honduran territory, El Salvador stalled the demarcation.

As of 2002, only 120 miles of the 233-mile border was completed. Honduras alleged that unjustifiable delays had occurred and that El Salvador refused to comply with the ICJ's judgment on the joint ownership of the Gulf of Fonseca. Honduras followed up on January 2002 with a formal accusation of non-compliance under Article 94(2) of the Charter, asking from the Security Council:

“[m]ake the necessary recommendations to ensure the execution of the judgment, regarding inter alia: (a) The start of negotiations between the Parties to delimit certain maritime spaces in the Gulf of Fonseca; (b) The faithful observance of the legal regime established in the Gulf of Fonseca by the judgment of the Court; and (c) The demarcation of the land boundary delimited by the Court. 2. The designation, by the Secretary-General of the United Nations, of a highly qualified eminent international person to follow up on the Security Council's recommendations concerning the execution of the judgment who shall keep the Council informed. Should the foregoing procedures not achieve the desired effect, Honduras requests the Security Council to set a deadline of 12 months for the execution of the Court's judgment, after which the Council shall dictate the measures it deems appropriate in order to ensure that the judgment is executed.”<sup>45</sup>

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<sup>45</sup> UN Doc. No. S/2002/108.

On a letter dated 24 Sept. 2002 from the Chargé d'Affaires ad interim of the Permanent Mission of El Salvador to the United Nations Addressed to the President of the Security Council, they denied the accusations and declared their intention to request a review of the ICJ judgment. One day short of the 10-year limit under Article 61 of the Statute of the ICJ, El Salvador filed an application for revision. The Application was denied. El Salvador has no more legal avenues to pursue and has no choice but to comply.

In both Judicial Proceedings the perception is that both, the Judgment of the 1992 Case between Honduras and El Salvador and the denied Application for revision of 2002, were favorable towards Honduras.

The demarcation process restarted on October 30 2002. Most of the problems of this implementation stem from the failures to negotiate or compromise. It is a mutual non-compliance or a persistent lack of political will. The ICJ's Judgments succeeded in reducing regional political tensions, despite these problems.

Acting as deterrents to non-compliance:

1. The threat of intervention by the Security Council, of which Honduras made use by sending communications to the United Nations under Article 94 (2) of the Charter; and,
2. Loss of reputation before the International Community. A damaged reputation resulting from noncompliance can make it difficult for a deviant to enter into future agreements. (Barrett 2003)

The Security Council did not take any actions against El Salvador but the implied threat prompted the renewed demarcation process. In April 18, 2006 the work by the Commission of both El Salvador and Honduras experts finalized the Land Boundary Delimitation.

## CHAPTER 3 Programs, Situations and Solutions in the Gulf of Fonseca

### 3.1 Programs in the Gulf of Fonseca 1990s- 2010

In 1987, 47,000 hectares of mangrove forest ecosystems existed in the Honduran coastal zone. Thousands of farmers and fishermen in the Gulf of Fonseca depended directly on the resources provided by the mangrove forest ecosystem. The local population satisfied their needs for food, income, shelter and general economic well-being. It was a traditional economic activity harvesting for sustenance as it had been done for decades.

The 1990s brought an abrupt change to the Gulf of Fonseca. The Cold War ended as well as the civil wars from El Salvador and Nicaragua. Peacekeeping Operations operated in Honduras, Nicaragua and El Salvador. Refugee camps were erected near the border of Honduras and El Salvador in Colomoncagua, La Virtud. According to data by UNHCR Honduras was home to 30,000 Salvadoran refugees from 1981 to the end of the 1980s.

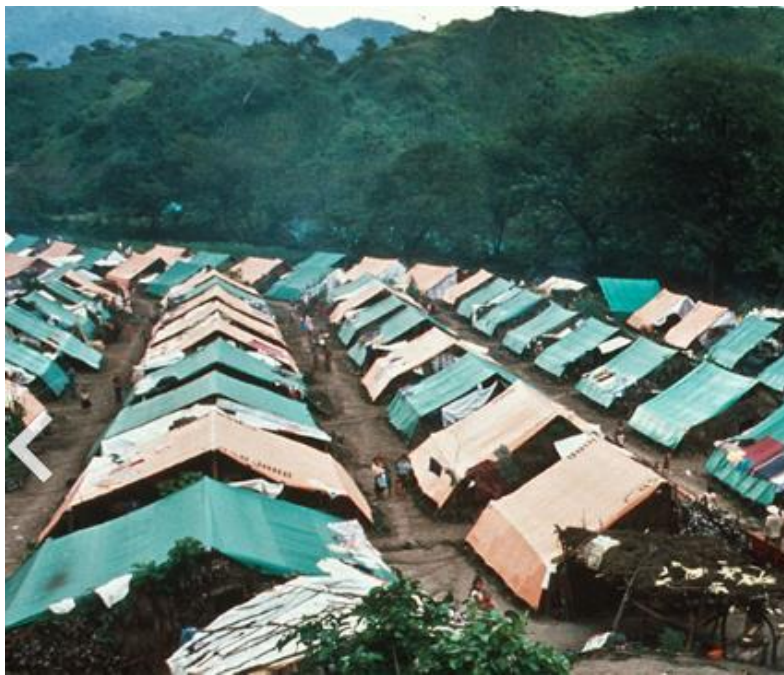


Image 3. La Virtud Refugee Camp by Giovanni Palazzo / Museo de la Palabra y la Imagen (MUPI)

After the 1980s, massive deportations from the United States to El Salvador and Honduras started occurring. The ex-combatants from the civil wars (ex-guerrilla members and ex-military) needed jobs. The Gulf of Fonseca was one of the deeply affected areas. Honduras sought the help of development agencies to create programs and opportunities to accommodate new sectors of population. International financial organizations and international aid agencies institutions such as the World Bank, Inter-American Development Bank (IADB) and U.S. AID (Agency for International Development) sought to stimulate economic development and aid food security. One of the programs encouraged strongly in Honduras was shrimp aquaculture.

The shrimp aquaculture industry in Honduras expanded rapidly since 1989 and for the next 15 years to become the country's third largest export by 2014. The area under production increased tenfold in the first five years. Currently there are nearly 15,000 hectares in operation. Investors received concessions to operate an additional 15,000 hectares for aquaculture and salt production.<sup>46</sup>

Coastal ecosystems are rich in resources but increasingly fragile. A rapid growing population with no sustainable management created an overexploitation of the resources in the Gulf. Programs started to address the effective coastal management of the Gulf's resources.

**1993 Trans-boundary collaboration in the Gulf of Fonseca;** Funding by Global Environmental Facility (GEF) <sup>47</sup> was a series of agreements signed by the Governments of El Salvador, Honduras and Nicaragua whose objectives were to:

- a) Establish and strengthen institutional arrangements for an effective and participatory management of the Gulf's ecosystems,

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<sup>46</sup> Stanley, Denise and Alduin, Carolina. Shrimp Farming and the Environment Science and Society in the Gulf of Fonseca the Changing History of Mariculture in Honduras. Report for World Bank, Network of Aquaculture Centres in Asia-Pacific, <sup>SEP</sup>World Wildlife Fund and Food and Agriculture Organization of the United Nations Consortium Program on Shrimp Farming and the Environment. 2002.

<sup>47</sup> El Salvador, Nicaragua and Honduras, Integrated Management of the Ecosystems of the Gulf of Fonseca. GEF 2007

- (b) Foster integrated planning and regulatory management of coastal and marine resources in the Gulf of Fonseca,
- (c) Establish decision-making systems for pollution and sediment monitoring, prevention, and control; and,
- (d) Support the promotion of livelihoods compatible with the sustainable use of the Gulf's resources.

The diversity of the Gulf's ecosystem supported the local individuals and groups with competing interests (shrimp aquaculture, salt production). Migration and population growth combined with rising poverty rates increased the dependency upon the common Gulf resources. This resulted in tensions among a variety of stakeholders; government, conservationists, shrimp farmers, salt producers, and local communities.

In response to these concerns about coastal resource management, in 1998 a research and advocacy activities were conducted in collaboration with the International Center for Research on Women (ICRW), the Center for Environmental and Social Studies on Sustainable Development (CEASDES) in El Salvador, and the Committee for the Defense of the Flora and Fauna of the Gulf of Fonseca (CODDEFFAGOLF)<sup>48</sup> in Honduras.

The key findings of the research were:

- 1) Harmonize stakeholders' concerns and find shared interests by creating multi sector commissions to guide policy and achieve environmentally sustainable mangrove management,
- 2) Change resource use and promote sustainable mangrove management but also alleviate poverty and reduce environmental dependence,
- 3) Create successful gender policy initiatives to promote sustainable resource,

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<sup>48</sup> A Platform for Action for the sustainable Management of Mangroves in the Gulf of Fonseca. CEASDES, ICRW, CODDEFFAGOLF. 2000

- 4) Strengthen those institutions at the national and local level as significant deficiencies in legislation and operational policies were found,
- 5) Promote national and international collaboration in the pursuit of sustainable resource management for the entire Gulf area. A regional forum should be constituted; and,
- 6) Collect data on key biological and human-environment indicators.

Tragedy struck the Central American region in 1998. In October 1998 Hurricane Mitch dropped between one and six inches of rain on the region within a six-day period. The effects of the Hurricane in the region were devastating 11,000 people died, about half of them just in Honduras, homes of 3 million people and 70 percent of the transportation infrastructure in Honduras were destroyed. The Rio Choluteca temporarily changed course, erosion and flooding released tons of sediment to downstream areas. Pesticides along with other farm chemicals were swept into the Gulf of Fonseca<sup>49</sup>.

In 1998 environmentalists; CODDEFFAGOLF and the association of shrimp farmers ANDAH came together to support legislation for southern Honduras. The goal was to provide a framework for sustainable land management in the common interest of environmental protection. In May of 1999, the Honduran government, through the Secretary of Natural Resources and Environment (SERNA), passed a Decree #5-99-E officially designating over 75,000 ha of coastal wetlands of the Gulf of Fonseca as the 1000th RAMSAR site.

The rapid and uncontrolled expansion of the shrimp aquaculture industry and the over-exploitation of the mangroves on the coastal wetlands and the lack of planning for the development of this industry caused serious consequences. The mangrove forests started disappearing.

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<sup>49</sup> ECLAC. LC/MEX/L.367 April 14 1999. Honduras: Assessment of the Damage Caused by Hurricane Mitch, 1998

Table 1. Shrimp Concessions in Honduras from 1985-2000. DIGEPESCA 2000.

	Concession Area (ha)	Production Area (ha)	Production (000 lbs., tails)	Productivity (lbs./ha)
1985	5800	780	1150	1474
1986	6800	1450	1875	1293
1987	8100	2100	3437	1637
1988	13030	2700	4750	1759
1989	16115	5500	5275	959
1990	22200	6975	7125	1022
1991	23777	7951	10350	1289
1992	24000	8622	13125	1522
1993	24500	9250	21200	2292
1994	25780	11050	17925	1622
1995	25100	13620	14575	1070
1996	26000	13620	16400	1204
1997	26558	13620	19387	1423
1998	26686	13730	22160	1614
1999	26686	14954	22500 (est.)	1505
2000	27000	16200		

The Mangrove Forest as shown over the spawn of 12 years in the photographs below.



Figure 4. Map of the Gulf of Fonseca mangrove forests in 1989 .Earth Institute





Figure 5. Map of the Gulf of Fonseca showing mangrove forests in 2001. Earth Institute

CODDEFAGOLF the strongest organization in the Gulf strongly denounced the shrimp aquaculture practices that were deteriorating the mangrove forests. Studies and researches found that not only the inadequate shrimp aquaculture practices affected the mangroves. The rapid population growth in a fragile coastal ecosystem affected the mangroves.<sup>50</sup> Natural disasters like Hurricane Mitch played a large role in the destruction of the ecosystem too.

Other programs were instituted that dealt with the Biological diversity found in the mangrove coastal ecosystem of the Gulf. Mangroves are a rich humid ecosystem with diverse fauna and flora. Until 1987 there were found in Honduras' coastal zone 70 species

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<sup>50</sup> Varela, J. The Human Rights Consequences Of Inequitable Trade And Development Expansion: The Abuse of Law and Community Rights in The Gulf of Fonseca. 2001



of resident and migratory birds; 50 commercial fish species; 22 mammalian and reptilian species and various mollusks and crustacean species.<sup>51</sup>

**RENARM: 1990 - 1995;** Environmental Program Biological Corridor

**PROARCA-I: 1996-2001.** a Central American environmental project executed by the World Wide Fund for Nature (WWF), The Rainforest Alliance, and The Nature Conservancy (TNC).

**PROARCA-II: 2004** with USAID Regional protection and management of the Mesoamerican Biological Corridor.<sup>52</sup>

**PROGOLFO:** funded by the Danish Development Agency (DANIDA) objectives: increase production, develop income generating activities, environmental improvement of the Gulf, and improvement of social well being through sexual education and population growth.

**PROMANGLE:** is a community-based forestry<sup>[SEP]</sup>project with external donor support operating out of<sup>[SEP]</sup>the Honduras Forestry Department within the Agriculture Ministry. They work with community volunteers to replant mangrove swamps cleared by small independent shrimp farmers operating in protected areas without permits.

**Global Environmental Facility (GEF) 2005-2006 Sustainable management of the Gulf of Fonseca:** Contributed to the health of the tri-national coastal and marine ecosystems of the Gulf of Fonseca, one of the most important tropical coastal systems and the only multi-national Gulf along the Eastern Pacific coast of Latin America.

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<sup>51</sup> Wilburn King, Matthew. Establishing Long term Coastal and Marine Programs in Latin America and the Caribbean. Pilot Studies of Ecuador and the Gulf of Fonseca. University of Rhode Island. 2004

<sup>52</sup> Program Assessment of the Regional Environmental Program PROARCAII. Final Report. USAID/G-CAP. Guatemala City, 2004.

**Integral study for the Gulf of Fonseca Honduras, Nicaragua y El Salvador (2006)  
AECID Spanish Cooperation**

**Conservation of the Biological Corridor of Mangroves by Organismo Autónomo de  
Parques Nacionales (OAPN) Spain Ministry of the Environment. (2006-2009)**

**Program Outcomes and Conclusions:**

All these programs had mixed successes in their over-all objectives. The first programs that were undertaken in the mid-80s main focus were creating economic industries. The success was immense; shrimp aquaculture became Honduras third largest export and jobs were created to accommodate a growing population. Within the next ten years the resources for both of the shrimp farms and the local fishermen became overexploited and the next generation of programs in the Gulf had to be implemented.

Sustainable development and coastal resource management became the cornerstone on which the new programs would build their foundations. Many hurdles existed to create the adequate programs. These new programs started looking at the common results and lessons learned from past programs.

**Findings:**

1. Problems in existing property and access rights,
2. Inadequate institutional capacity at the municipal level,
3. Insufficient or inadequate government policies,
4. Insufficient or inadequate implementation protocols,
5. Insufficient knowledge among community representatives and aquaculture managers on sustainable management,
6. Destructive aquaculture practices,

7. Lack of a database of civil society actors and organizations,
8. Insufficient or unreliable data,
9. The lack of coordination among the various implementing partners,

The next generation of programs had a more specific approach based on the common findings from previous programs in the Gulf:

1. Develop and implement national policies and strategies on biodiversity and on the sustainable use of coastal marine resources,
2. Targeted Municipal Capacity Building,
3. Targeted Community leaders Capacity building,
4. Municipal Financial Management Training,
5. Create and/ or strengthen the institutional base for mangrove management at the national and local levels,
6. Waste Water Treatment Plants (WWTPs) for shrimp aquaculture,
7. Identify key actors and organizations,
8. Fund research and create reliable data; and,
9. Establish a coordination system among stakeholders.

### 3.2 Current Situation in the Gulf of Fonseca

The population in the Gulf of Fonseca is estimated to be more than 750,000 people spread through three countries; El Salvador, Honduras and Nicaragua. Most of this population meets their basic needs and services directly from the Gulf. The mangrove forests provide food from wildlife: fish, crustaceans, mollusks, reptiles, and from plant life: fruits and nuts. They also provide skins, medicines, timber, charcoal and fuel wood as well as environmental services. Mangrove wood commands a high-market value and is used to make furniture and also for construction purposes. Most of the Gulf population relies on subsistence farming, artisanal fishing and small-scale artisanal mining. There are more than 6,300 artisan fishermen in the region (OSPESCA, 2012), a growing population, and weak economic environment, artisanal fishing is one of the most important socioeconomic activities for coastal communities.

Length of coastline: 820 km

Length of Pacific coastline (Gulf of Fonseca): 50km (Escobar, 2001)

Table 2. Population density and distribution in the Gulf of Fonseca

Municipality	Population	Area (km <sup>2</sup> )	Population Density (persons/km <sup>2</sup> )	Municipality	Population	Area (km <sup>2</sup> )	Population Density (persons/km <sup>2</sup> )
<b>Honduras (2006)</b>				<b>Nicaragua (2001-2005)</b>			
San Lorenzo	31,662	234.6	135	Chinandega	121,793	686.61	177
Nacaome	50,580	528	95.8	El Viejo	76,775	1279.41	60
Amapala	10,538	80.7	130.6	Somotillo	29,030	724.71	40
Choluteca	134,452	1069.1	125.8	Puerto Morazán	13,328	517.34	25
Marcovia	42,671	428.3	88.5	Villanueva	25,660	779.88	33
El Triunfo	36,705	301.5	121.7	<b>El Salvador (2005)</b>			
Namasigue	25,606	200.9	127.5	La Unión	36,903	144.38 <sup>2</sup>	255
Alianza	7,707	215.0	35.8	Conchagua	42,229	209.09	202
Goascorán	13,673	200.5	68.2	Meanguera	7,738	16.68	463
				San Alejo	22,793	251.64	77
				Pasaquina	23,814	295.28	80

Source: UNDP (2006), UNDP (2005). PROGOLFO, 1998.

**Mangrove forests:** are comprised of a variety of species of trees that have adapted to a salty environment. Mangroves can reach heights of more than 15 meters. They have leaf coverage the entire year and help against global warming. The mangroves also provide environmental services such as barrier protection, drainage and filtration, stabilizing the coastline and the surrounding agricultural lands and furnishing them with natural windbreaks, fresh water and conduits. Mangrove forests have the most productive and bio diverse wetlands on earth but they are also amongst the most threatened habitats in the world.

**Mesoamerican Reef:** The gulf hosts 900 kilometers of the Mesoamerican Reef, the second largest coral reef system in the world. A large ecosystem of estuaries, barrier beaches, marine lagoons, sea grass beds, barrier reefs, and cays characterize the region. Coastal wetlands made up of mangrove forests, lagoons and estuaries contain a wide array of biological resources.

**Marine Protected Areas in the Gulf of Fonseca (RAMSAR site):** Decree 5-99-E  
January 20, 1999

Biosphere Reserve Rio Platano (Marino), Parque Nacional Turtle Harbor, Manglar Golfo de Fonseca, Reserva Vida Silvestre RSV Punta Codenga, El Jicarito, San Bernardo, Los Delgaditos, La Berbería, Guapinol, Teonostal, Alemania, Bahía de Chismuyo, Laguna de Montecristi, Punta Ratón, Isla de San Lorenzo; and, National Marine Park Archipiélago Golfo de Fonseca.

## **Current Programs and Plans in the Gulf of Fonseca:**

### **1989 CCAD Central American Commission on Environment and Development:**

Agreement signed by the Presidents of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua to establish a regional regime of cooperation in order to achieve the optimal use of natural resources, the control of pollution and restoration of an ecological equilibrium in Central America.

**2002 (Antigua Convention):** Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment of the North-East Pacific.

**2002 Plan of Action:** for the Protection and Sustainable Development of the Marine and Coastal Areas of the North-East Pacific to provide a regional cooperative framework.

**2009 (PROCORREDOR):** Sustainable Management of Natural Resources and Basins of the Mesoamerican Biological Corridor in the Honduran Atlantic: with European Union funds, which provided technical and financial support to Coastal Marine Protected Areas in the Caribbean and the Pacific.

**2011 PROPARQUE:** USAID-funded. Actions in the coastal marine protected areas of Honduras.

## **Under the United Nations Environmental Program UNEP's framework :**

**Since 2010 the Honduran Instituto de Conservacion Forestal (ICF):** previously known as COHDEFOR, is in charge of the execution of the Integrated Management of Coastal Zones and Management Sustainable Management of the Mangroves of Honduras promoting the integrated management of the coastal areas. Currently it works with the financial support of the German Development Bank KfW.

(ECOSYSTEMS) The Integrated Management of Ecosystems and Natural Resources in Honduras project with wild life habitats.

**2010-2015 USAID Regional Program for the Management of Aquatic Resources and Economic Alternatives:** The Program fostered improved management of coastal and marine resources and the conservation of four transboundary sites (two tri-national and two binational) with high levels of biodiversity in the Central American region. The Gulf of Fonseca is one of the tri-national sites as shown in the figure below.

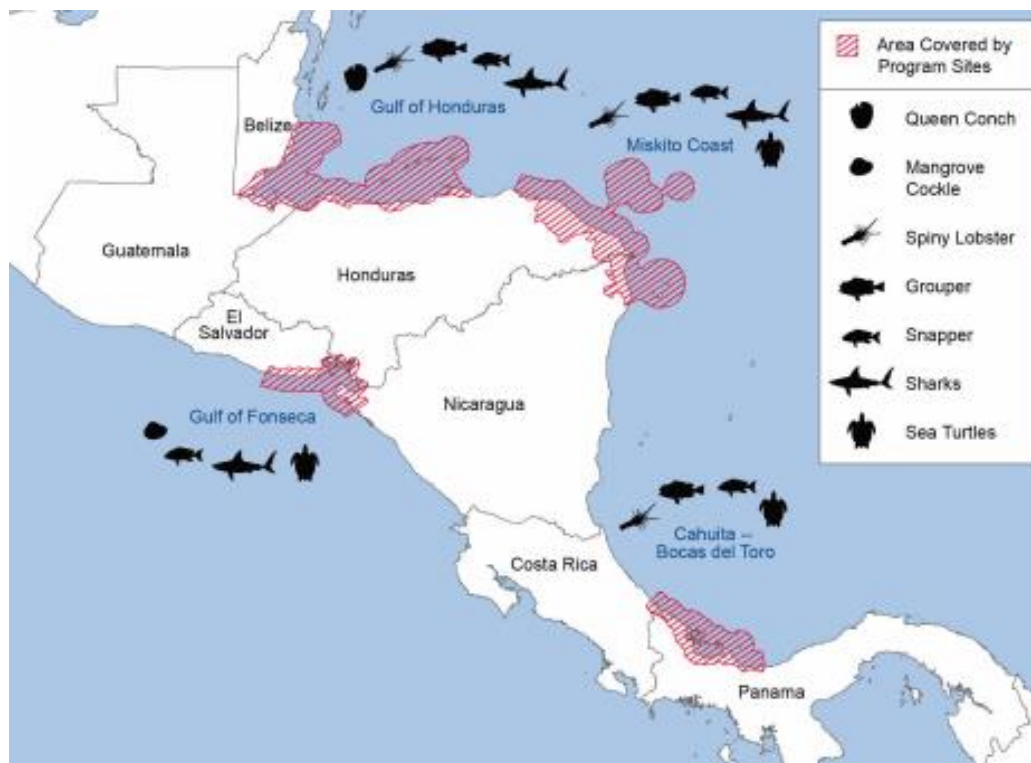


Figure 6: Sites for the Regional Program for the Management of Aquatic Resources and Economic Alternatives. (USAID 2015)

**Territorial Water Governance In the Gulf of Fonseca: Swiss Cooperation Strategy for Central America 2013-2017 (PRAC)** The region of the Gulf of Fonseca has serious problems of water governance, deterioration of natural resources and inequity. The water governance in the Gulf of Fonseca region needs significant change in order to overcome

its dysfunctional system and ensure a sustainable supply of water. This program promotes coordinated management of five watersheds by the various public and private water users, addressing conflicts peacefully in a fragile context. It also supports is technical, legal and institutional solutions that have an effect at the national level.

### **3.3 A Port as a Possible Solution for Development**

The history of Seaports and their influence on creating wealth to the regions evolved from sea trade. Transport infrastructure is viewed as an important determinant of regional growth and development. Ports are viewed as one of the most important infrastructure amenities since they create jobs, prosperity and provide transportation possibilities for other goods<sup>53</sup>.

The impact of ports in a city economy can be measured through the direct effects: actual employment and gross value related to the activities carried out in the port area and the the indirect: employment connected with the services to the port area, including those activities which would not take place in the city without the presence of the port (Van Den Bossche, 1997)

In the Americas the anticipated opening of the newly expanded Panama Canal is driving port development. Ports on the eastern seaboard and in the Caribbean have tended to remain smaller than their peers on the Pacific coast because of the limitation on vessel size. The Panama Canal expansion will increase the size of the container ship<sup>54</sup>. As maritime traffic is expected to increase following the imminent completion of the expansion it is important to improve connections between ports and inland areas. The

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<sup>53</sup> Breidenbach, Phillip, Mitze, Timo. *The Long Shadow of Port Infrastructure in Germany- Cause or Consequence of Regional Prosperity*. July 2013.

<sup>54</sup> Review of Maritime Transport. Report by UNCTAD Secretariat New York and Geneva 2013.



aim is to shorten the supply chain and delivering service through better logistics and linkages (roads, railroads) in a more efficient transportation pipeline.

Countries in Central America have started investing in transportation infrastructure:

1. Nicaragua: develop the option of the dry canal and construction of a transoceanic Canal,
2. Honduras is currently investing US \$10 billion in building an interoceanic rail line comprising ten railways spanning 600km between the country's Pacific and Atlantic coasts, with a view to increase freight-handling capacity between two deep-water ports which will be able to accommodate bigger vessels upon completion in 2030. Honduras has also invested in the expansion and modernization of the Port of Cortes and studying the feasibility of developing a Port in Isla del Tigre in the Gulf of Fonseca,
3. Guatemala has also embarked on a similar project to construct an interoceanic corridor that will include two freight rail lines alongside a 372-km long highway, connecting two planned ports: San Luis on the Pacific coast and San Jorge on the Atlantic coast,
4. Costa Rica is presently in the process of developing a major trans-shipment port in the area of Moin, to be later followed by a dry canal housing a high-capacity container railway connecting the port to others on the country's Pacific and Atlantic coasts, and,
5. El Salvador: sub-branch of the Honduran corridor in El Salvador, connecting the port of La Union<sup>55</sup>.

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<sup>55</sup> Erhal Abdenur, Adriana. Working Paper. China in Latin America: Investments in Port Infrastructure. May 2013.

Honduras has a few ports: Puerto de San Lorenzo It is located on the southern coast of the country (Pacific Ocean) located in the Gulf of Fonseca, Puerto de La Ceiba, Puerto de Tela, Puerto Castilla located in the Bay of Trujillo all small ports located in the Atlantic coast of Honduras mostly the traditional kind:

**Traditional types of Ports:**

1. Sea Ports: is a harbor or town that is able to receive boats and ships and load and unload cargo. They can be of two kinds:
  - Cruise home ports are embarkation/disembarkation points for cruise ships where they will also take on supplies for voyages; and,
  - Cargo ports are ports that handle a wide range of goods such as Petrochemicals, dry goods, minerals, cars and grains.
2. Inland Ports: Smaller bodies of water such as lakes or rivers,
3. Warm Water Ports: ports do not freeze in the winter and operate year-round,
4. Fishing ports: are normally commercial centers for the harboring of fishing vessels and landing of catches

The traditional roles of ports has changed in order to link specialized activities and services. In a bid to stay competitive in the Central American region Honduras is making huge investments in infrastructures and looking to build projects to modernize in-country transportation systems, as well as create the conditions to foster foreign investment. This process started a few years ago with policies and legal framework.

Public-private partnerships (PPPs) in port development projects have become the norm in the last 25 years. In 2010 Honduran Congress created by Decree (COALIANZA) Public Private Partnership Promotion Agency to be in charge of implementing the public-private alliances and contracts to develop major projects with multiples stakeholders.

Since 2010 COALIANZA has worked on the expansion and modernization project of Puerto Cortes.

## **Puerto Cortes**

The National Port of Cortes is Located in the Atlantic Ocean. It is the only deep -water port in Central America. It is the main port of the country and is the busiest port between Hondurans and other Central American countries. The port's geographical position made it the Center for Transportation and Trade of Honduras. Currently part of the port facilities are under a concession to the Philippine company ICTSI (International Container Terminal Services Inc.) in a partnership with Operadora Portuaria Central (OPC), which is operated by Seaports of Honduras (PMH).

The new Bulk Terminal of Puerto Cortes is a joint effort between several national and international companies. The total investment is about 52 million dollars: with funds obtained between private investors, loans from national banks and the investment from an international operator. The construction and remodeling of the Bulk Terminal will be expanded to reach 415 meters and will streamline operations, accelerate loading and unloading times, reduce costs and invigorate port activity. According to projections, it will increase from three Thousand metric tons that were operated in 2013 to about 12 thousand metric tons when the project is completed. Currently, the waiting time in the bay of a ship extends up to 10 days, but once the new berth is completed it will be reduced to three days or less.<sup>56</sup>

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<sup>56</sup> See Empresa Nacional Portuaria. Proyetco de Expansion y Modernizacion de Puerto Cortes. 2013

## Port of Roatan in Coxen Hole

Roatán, a small island off the northern coast of Honduras is located along the southern reaches of the Meso-american Reef. Roatán has become a major destination for tourists. The number of people visiting the island each year has risen from about 900 in 1970 to 100,000 in 2000. By 2010, more than 1 million people were visiting each year.<sup>57</sup> Much of the growth has been fueled by the cruise ship industry, which has more than quadrupled the number of ships arriving at Roatán ports since 2000. (Coral Reef Alliance, 2010).

New cruise ship terminals in Coxen Hole operated by Royal Caribbean Cruises and Mahogany Bay operated by the Carnival Corporation. Roatan has become a major cruise destination; the number of cruise ships has quadrupled between 1999 and 2010. Expansion of the airport was also necessary to accommodate an increased number and size of airplanes that can access the island.

The size of the local population also has increased to meet the work force that the tourist industry demands. In the most recent census by the Honduran government (2014), the population of the island was 109,000 people—four times the number reported in 2001<sup>58</sup>.

On Roatan, two joint public and private initiatives contributed to the planning of the island's development:

1. Bay Island Commission, founded in 1993 (Decree 83-93) as a non-profit organization, jointly administered by the government through the Ministry of Tourism and the private sector. Its purpose; to encourage environmentally sustainable development projects,

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<sup>57</sup> Dorian, S. & Wessenberger, S. (2014, April 10) Sustainable dive tourism: Social and environmental impacts—The case of Roatan, Honduras. *TOURISM MANAGEMENT PERSPECTIVES*, 10, 19-26.

<sup>58</sup> *Bay Islands Voice* (2014, May 7) Roatán Population Tops 100,000. Accessed February 19, 2016.

2. Bay Islands Environmental Management Project (Programa de Manejo Ambiental de Islas de la Bahia), started in 1994:

It was the collaboration with UNDP, IADB, the Honduran government and two environmental NGOs of the Bay Islands, the Asociacion-pro Desarrollo de las Islas de la Bahia (APRODIB) and the Bay Islands Conservation Association (BICA). Through this program the Honduran government by (Decree 75-2010) designated 12 nautical miles zone around each of the Bay Islands as the Bay Islands National Marine Park<sup>59</sup>, which were integrated into the national system of protected areas of Honduras.

Honduras is part of the Mesoamerican Barrier Reef System; the second largest coral barrier in the world; financed by the World Bank and the Global Environment Facility and the Healthy Barrier Reefs Initiative.

### **3.4 Condominium: a Joint-Regime**

The Gulf of Fonseca is not the first condominium to exist in law but it is the first one created by a decision from the International Court of Justice. Different types of condominiums or joint sovereignty have been in existence:

#### **Examples of historical condominiums:**

1. New Hebrides: Colonial Condominium. The New Hebrides was a chain of islands located in the Pacific Ocean now known as Vanuatu. The United Kingdom and France established a condominium to administer the New Hebrides by signing a

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<sup>59</sup> Instituto Nacional de Conservacion Forestal, Areas Protegidas y Vida Silvestre, ICF Areas Marinas y Costeras del Sistema Nacional de Areas Protegidas de Honduras. 2011

Convention on October of 1906. The islands were governed as a condominium for seventy-four years.

How did it work? Each government had sovereignty over its own nationals, while the two states governed the indigenous population jointly. Essential government services were paid from local revenues and joint contributions. A Joint Court ran the criminal and civil justice systems. The Court consisted of one British judge, one French judge, and a neutral third member.<sup>60</sup>

The term condominium was primarily used for administrative purposes in areas where cooperation was needed.<sup>61</sup>

2. Dutch-Prussian Frontier Stream. In 1816, Prussia and the Netherlands signed an agreement for ownership of frontier waterways. According to the agreement, all waterways running between the two countries were to be governed jointly with equal rights to use and appropriate resources.

Could one of the contracting States take unilateral actions that would affect the course of a jointly owned stream? The Supreme Administrative Court for Germany ruled that the States had created a condominium-type arrangement. Both States exercised joint jurisdiction over frontier waterways. The jurisdiction of each State was limited by the jurisdiction of the other state.<sup>62</sup>

3. Moresnet: Frontier Condominium. Due to ambiguities in the provisions of an 1816 border treaty between the Netherlands and Prussia, Moresnet, a region that lies just a few kilometers from the spot where the borders of Germany, Belgium, and

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<sup>60</sup> Joel. H. Samuels. *Condominium Arrangements in International Practice: Reviving an Abandoned Concept of Boundary Dispute Resolution*, 29 MICH. J.Int'l. L. 727 (2008)

<sup>61</sup> Farran, Sue (2013). Vanuatu: Lands in a Sea of Islands. Doctoral thesis. Northumbria University. <http://nrl.northumbria.ac.uk/15613/>

<sup>62</sup> Supreme Administrative Court of Germany. Dutch Prussian Condominium 1816 Case. November 24, 1932.

the Netherlands meet, was held in condominium from 1816 until 1919, the year Belgium was granted full sovereignty over the territory<sup>63</sup>.

### **Examples of condominiums:**

1. Pheasant Island known as Conference Island in the River Bidassoa between France and Spain. The island is a condominium established by the Treaty of the Pyrenees in 1659, under joint sovereignty of Spain and France, and is administered by Irun (in Gipuzkoa, Spain) and Hendaye (in the Pyrénées-Atlantiques, France), which control the island for alternating periods of six months. In the more than three and a half centuries since the treaty, the island has passed back and forth over 700 times between both countries.<sup>64</sup>
2. The part of the Paraná River between the Salto Grande de Sete Quedas and the mouth of the Iguassu River is shared in condominium by Brazil and Paraguay. Treaty Between the Federative Republic of Brazil and the Republic of Paraguay Concerning the Hydroelectric Utilization of the Water Resources of the Parana River Owned in Condominium by the Two Countries, From and Including the Salto Grande de Sete Quedas or Salto del Guaira, to the Mouth of the Iguassu River (1973)<sup>65</sup>

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<sup>63</sup> Id. At 60 p.740

<sup>64</sup> Byers, Michael. International Law and the Arctic. Cambridge Studies in International and Comparative Law. 2013. P15

<sup>65</sup> Treaty Between the Federative Republic of Brazil and the Republic of Paraguay Concerning the Hydroelectric Utilization of the Water Resources of the Parana River Owned in Condominium. (1973)  
<http://www.internationalwaterlaw.org/documents/regionaldocs/parana2.html>

3. **Joint Regime Area between Jamaica and Colombia established in 1993:** This Treaty established a Joint Regime Area, the Parties may carry out the following activities:

- (a) Exploration and exploitation of the natural resources, whether living or non-living, of the waters superjacent to the seabed and the seabed and its subsoil, and other activities for the economic exploitation and exploration of the Joint Regime Area;
- (b) The establishment and use of artificial islands, installations and structures;
- (c) Marine scientific research;
- (d) The protection and preservation of the marine environment;
- (e) The conservation of living resources;
- (f) Such measures as are authorized by this Treaty, or as the Parties may otherwise agree for ensuring compliance with and enforcement of the regime established by this Treaty.

**Other Joint- Sovereignty Territorial Arrangements:**

1. ***A de facto condominium in Antarctica through the Antarctic Treaty;*** Its major effect, apart from the demilitarization of Antarctica, is to suspend, although not to eliminate, territorial claims during the life of the treaty.

Article IV(2) declares that:

“[n]o acts or activities taking place while the present treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or



create any rights of sovereignty in Antarctica. No new claim or enlargement of an existing claim to territorial sovereignty in Antarctica shall be asserted while the present treaty is in force.”

Since the treaty does not provide for termination, an ongoing regime has been created which, because of its inclusion of all interested parties, appears to have established an international regime binding on all.<sup>66</sup>

2. Austria, Germany and Switzerland, hold a tripartite condominium over main part of Lake Constance: No international treaty establishes where the borders of Switzerland, Germany, and Austria in or around Lake Constance lie. The Upper Lake Constance is under in Europe a unique legal regime. The national boundaries between littoral States have never been defined. The water area from the shoreline to 25 m water depth is considered national territory of the littoral States. The major part of the Upper Lake is considered a condominium. In the smaller Lower Lake the frontiers are clearly defined between Switzerland and Germany.
3. Is Brcko District: It is a self-governing District, not a condominium, under the sovereignty of Bosnia and Herzegovina. Entities could not agree on which side should govern Brcko. So the Dayton peace agreements established an International Tribunal to resolve the territorial dispute. The entities could still not agree, so the Tribunal decided to create a separate District with its own governing institutions.<sup>67</sup>

**Transportation corridors:** have a rich historical background and could provide a way to mediate disputes that involve past territorial conflicts, and as a result of which a state has

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<sup>66</sup> See Handbook of the Antarctic Treaty System. US Department of State.

<sup>67</sup> Brcko Supervisor Declarations. Brcko Office of the High Commissioner. <http://www.ohr.int/?p=48496>

lost contiguity with portions of its own territory or to other valuable resources, such as access to the sea. Corridor arrangements can be combined with other elements, such as port and warehouse facilities, or special export-import zones, to make them even more effective.

Upon reviewing the previous condominiums we can determine that they can end for several reasons:

1. The area under the condominium governance becomes a self determining state, e.g New Hebrides/Vanuatu,
2. The Treaty is for a determined period of time,
3. One of the states gives up its rights to the other,
4. By a decision of a Court or Tribunal,
5. A new Treaty, e.g Moresnet awarded to Belgium in Treaty of Versailles.

All condominiums are not created equal and they have different governance strategies;

1. Alternate rule for 6 months each e.g Pheasant Island,
2. Both exercise joint jurisdiction; one state is limited by the other, e.g Dutch Prussian Frontier Stream, Joint Regime Area of Jamaica and Colombia
3. They both exercise sovereignty over their own Nationals and act as a condominium over administrative decisions. New Hebrides/Vanuatu,
4. Joint Commissions and stakeholders make the decisions e.g. Lake Constance, the Antarctic.

The success of condominiums depends upon the cooperation of the states. They are all unique and one model does not fit all.

## **CHAPTER 4 A Strategic Process**

### **4.1 Plan Alliance for Prosperity in the Northern Triangle**

In recent years the countries of the Northern Triangle -El Salvador, Guatemala and Honduras have confronted a constant and growing flow of emigration. Nearly 9% of the population has decided to leave, resulting in a major loss of human capital. The migration stems from the lack of economic and job opportunities in our countries, growing violence, and the departure of those who want to reunite with relatives living abroad. Responding to the recent immigration crisis that resulted in the dramatic increase in emigration of unaccompanied minors to the United States in 2014.

Improve the quality of life of our citizens, increase in opportunities to keep them from leaving. The low and not-very-inclusive economic growth has not generated enough jobs to keep pace with the growing population. Low investment levels, coupled with high costs of electricity and logistics and problems with Internet connectivity are just some of the pressing development challenges that affect competitiveness and prospects for boosting the growth of our economies. There is a limited supply and quality of services in education, healthcare, nutrition and child development, putting our children at risk. Future generations remain trapped in cycles of poverty or become involved in criminal activities.

#### **Economic challenges:**

1. Low tax revenues have seriously limited the financial and management capability,
2. Public expenditure has to be more efficient currently it has limited impact,
3. The growing burden of government debt,
4. Improve the financial management of the public sector by improving budgetary procedures and how the budget is executed,
5. Our tax system must be modernized so as to bring in more revenue,

6. Financial management must be modernized introducing new tools for financing and debt management; and,
7. Reduce Wasteful spending.

This will enable us to guarantee economic sustainability, have more resources for investment. This complex situation that we confront requires short- and medium-term responses and measures that attack the structural causes of the problem. Concentrate our efforts on creating economic and social conditions that will help increase employment and improve life prospects, especially for our young people.

The countries of the Northern Triangle, have agreed on the guidelines of a plan of the Alliance for the prosperity of the Northern Triangle that will direct the priority measures to develop conditions that will allow people to keep living in these countries.

**The strategic actions of the Plan aim to:**

- A. Stimulate the productive sector to create economic opportunities
- B. Develop opportunities for our people
- C. Improve public safety and enhancing access to the legal system
- D. Strengthen institutions to increase people's trust in the State.

**ZEDES Targeted Economic areas for investment**

Stronger growth in the economies requires attracting private investment, promoting certain sectors with development potential and concentrating activities in strategic geographical areas. Undertake measures to reduce energy costs, make essential investments to improve infrastructure and logistics, and facilitate trade in a more integrated fashion.

These investments and measures must be concentrated in areas and regions that can become future centers that drive development. Labor supply and demand from businesses must be more tightly linked.

### **Vocational trainings and reinforced education system**

More effective vocational training, greater access to and better quality secondary education, and more investment in children are the educational goals.

### **Security and Access to Justice**

Improving public safety and access to justice are essential for our people to live together in peace and for promoting private investment. Rampant violence and insecurity are a major problem. Prevent violence, make schools safe, and protect at-risk youths. Strengthen government institutions and the justice system so as to attack the roots of the problems of violence and lack of safety that we endure. Measures to ensure the human rights of minors help people who have returned to reintegrate into society, and dismantle human trafficking rings are priorities.

All of these measures will complement the efforts that we make to fight drug trafficking and organized crime. Successful implementation of the Plan requires handling of our resources in a way that is transparent and coordinated.

### **Funding**

1. Teaming up with the private sector to promote investments; and,
2. Team with the international community development partners, other countries; and,
3. Team up with civil society and donors.

## **Is it viable terms of financing and execution?**

Achieving the goals we have set out in the Plan is ambitious but possible. It is backed up by commitment and political will. The starting point for implementing the Plan will be projects and activities with a territorial focus. There will be a regional coordination with a flexible execution scheme that channels domestic and external resources. Financial scheme with a well-defined program that establishes and puts into practice tools for monitoring and evaluation.

The Plan for the Alliance for Prosperity is ambitious and focuses on what needs to be done in order to realize future economic growth, more even income distribution, security and governance. Among the key areas of collaborative effort that have been identified are the creation of government audit mechanisms to counter corruption, energy diversification and integration, primary, secondary and vocational education efforts, promotion of private investment and a single window for foreign investors, anti-money-laundering mechanism and others.

The Inter-American Development bank will monitor and advise the countries. The US, the European Union, the Inter-American Development Bank, and World Bank are in agreement with the goals and will tailor their financial assistance to support programs to achieve them. The real challenge will fall with the individual countries that must pass legislation to facilitate the changes and then implement those laws.

## **Progress Made**

1. Regional infrastructure upgrade, including 1,500 km of new and upgraded logistics corridors, 2,500 km of improved rural roads, and significant investments: Puerto Cortes Expansion,
2. Modernization of custom controls,

3. Establishment of 15 Peace and Coexistence Observatories to analyze local crime statistics;
4. Forty-six Outreach Centers have opened, with support from the U.S. Government, to provide spaces for recreation, training, and entrepreneurship assistance benefited over 25,000 youth,
5. Police sector reform,
6. Creation of the MACCIH Mission to Support and Fight Against Corruption and Impunity in Honduras.

Regional dialogues between the Ministers of Foreign Affairs and the Presidents are being held every year.

#### **4.2 Honduras 20-20 Plan**

Program launched by the President of the Republic, Juan Orlando Hernández called National Program of Economic Development Honduras 20/20, will consolidate economic development of Honduras, generating more than 600,000 jobs with support from private enterprise.

The consulting firm McKinsey has been hired to develop the program. The objective is to obtain investments for 13 billion dollars in four sectors that are the main engine of the economy: tourism, textiles, manufacturing and business support services for the next 5 years. Creating programs of employment generation and attraction of new investments with the purpose to generate higher income allowing economic growth for the country.

In this sense, we need to create the conditions that allow an environment of legal security, competitiveness and productivity, facilitating the establishment of new development opportunities in specific areas and with certain growth expectations by the

demands of regional and international supply and demand. The Economic Cabinet, in coordination with the Transformation Unit, will align macroeconomic policies with the achievement of the objectives established in the priority sectors, including the General Revenue and Expenditure Budget of the Republic.

The initiative integrates all sectors representative of Honduran society and for its implementation is basic the commitment and support of all the political forces of the country. The participation of workers, academics, political parties, the three branches of government, local governments, the media, churches and civil society organizations is vital.

### **Agriculture:**

The objective of the Honduras 2020 Plan for Agroindustry is to focus on improving rural income and develop commercial agriculture. Initiatives were selected by the highest Potential:

1. Develop commercial value chains,
2. Increase the effectiveness of small farmers
3. Address crosscutting barriers in Policies
4. Start reversing deforestation.

**1. Develop strings of commercial value chains** with dedicated support. Investments must target crops with potential impact: cocoa, coffee, palm, Dairy and meat products.

**2. Increase the Effectiveness of the Reach of small farmers.** Models of best practices

**3. Tactical changes in policies to quickly remove specific barriers,** Streamline export Rationalize taxes / Fees on raw materials and equipment and Increase incentives for productive investments.



**4. Start reversing the deforestation** To encourage the sustainable management of forests, reforest areas Beetle Mountain pine, protect against fire and change of land use and design new enforcement protection to promote Forestry strategies that are sustainable

### **Establish clear and simple national priorities**

1. Reorganize the management of donors,
2. Ensure that donor programs follow coherent strategies,
3. Increase the credibility of the Government; and,
4. Establish sound systems to improve execution and follow-up transparently.

### **Business**

Honduras is the fastest growing Business Services Platform driven young bilingual talent in Central America. Our Proposition in Business Services is:

- 1.- Very competitive labor costs,
- 2.- Infrastructure,
- 3.- Young and bilingual work force; and,
- 4.- Strategic geographical location.

### **Tourism**

Proposal of value based on 5 pillars:

1. Caribbean is a favorite destination,
2. Access to the second largest Barrier Reef in the World,
3. Paradise Landscapes in the Bay Islands,
4. One of the main Mayan cities,
5. Privileged location with access to key Tourist Markets; and,

6. Young and Bilingual Work Force.

## **Textile Industry**

1. Leader of the American continent in textile exports,
2. Increase in textile exports: from being # 7 to # 5 in the US,
3. Increase in textile exports: from being # 65 to # 25 in Europe,
4. Become a textile hub: world-class talent in sustainable textile development,
5. Textile production is one of the main exports and generators of employment in the country.

Value proposition based on:

1. We are leaders in Textiles,
2. Fast Delivery Time Provides,
3. Competitive Production Cost Globally,
4. Environmental and Socially Responsible Business Model

Some progress has already been made with the Honduran Green Power Corporation Biomass Plant Project and the Empire Electronics Plant Project.

## **Housing:**

Creation of more than 50,000 dignified housing in sustainable communities through improved policies, access to financing and holistic plans for urbanization and public services. Plans are currently underway for the construction of more than 20,000 dwellings. Convivienda will support buyers and developers of housing through 4 programs:

1. Better Life Bono Program, provides housing for families with greater needs,
2. ABC program benefits families with incomes of up to 4 minimum wages,
3. Maquila Sector Bond Program aims to support workers in the Maquiladora Sector,

4. Financial Support to the Developer Program offering seed capital to Projects certified by CONVIVIENDA,
5. Strategic projects are presented for the industrial housing sector: these residential Projects currently include Technological City, Project Villa San Juan , Chestnut Residential Project, Villa Green Valley Project and Residential Project Casas del Campo.

#### **4.3 Port in Isla del Tigre, Gulf of Fonseca**

Honduras' desire for a port in the Pacific Ocean; resulted in the decree of October 17, 1833, ordering the establishment of a port on Tiger Island. The area is 80.7 km<sup>2</sup>. In 1869, the Municipality of Amapala, in the Valle Department, was officially established. The project was to create a port and an interoceanic rail connecting Port of Isla del Tigre in the Pacific and Puerto Cortes in the Atlantic. Honduras had an American firm E. G. Squier interested in the project. In 1853 they conducted a preliminary report, nowadays known as the feasibility study. The project was very ambitious for those times and did not raise enough funds; eventually the project failed to develop and was abandoned.

**Interoceanic Rail and Mega-Port in Isla del Tigre Today:** Honduras has revisited this idea as one of the Projects that can be developed under the Honduras 20/20 Plan. The main Project is the Interoceanic Rail, the complimentary projects are the Mega- Port of Isla de Tigre and Panacea City a logistics center to provide multiple value added services.

The project consists of connecting Puerto Castilla on the Caribbean Sea in the east coast with Amapala on Tiger Island in the Gulf of Fonseca, which Honduras shares in the Pacific with El Salvador and Nicaragua by means of 10 railroad lines. Honduras' advantage in the global environment is its geographical position as the center of Central America and the western hemisphere. It has two strategic ports, one in the north, Puerto Castilla,

which has 41.5 meters of natural depth and one in the Pacific, Amapala, which is 32.5 meters deep. These port depths would allow the entry of up to 300,000-ton cargo ships.

The journey from the Inter-Oceanic Railway Line Network starts at the Mega-Port on Tiger Island leaving the left side of the island through the historical center of Old Amapala. It then goes through a Railway Bridge linking the island to the mainland and passes by mangroves and keeps to the left side of the Acropolis, the Metropolis and the Solid Waste Plant until reaching the Main Rail Terminal Collection Center in the Panacea City. After unloading and loading containers it is redistributed onto the other connecting railway lines or other land transportation to their final destination:

1. Port Castilla, Honduras east coast 370 kilometers,
2. Port Corinto, Nicaragua west coast 137 kilometers
3. Port La Union, El Salvador west coast 80 kilometers

**Panacea Metropolis.** As a logistical complement, it will contain:

1. A warehouse with capacity for up to 240,000 containers,
2. A refinery in Puerto Castilla,
3. A pipeline,
4. A dockyard; and,
5. Installation of a fiber-optic infrastructure.

The Port Terminal is a Mega Port for shipping and disembarkation. It will have the capacity to dock six of the largest container ships in the world at the same time. It will have administration Offices, circulation areas, Storage for 60,000 containers, Collection, Parking for loading, staff and visitors, a Port Management Office, Landscaped Areas, de-consolidation and consolidation areas, a Labeling and Packaging Center, a Naval Safety Office, Office of Health and Customs, Maintenance Loading and Unloading area, Engineering, separation of Merchandise, Rail Freight, Logistics Port Tap, Tap Terminal,

Port revision by Gamma Rays, Fire Station, Banking Terminals, Shipping Companies Offices, Internal Security Cameras and Video System, Heliport, Fuel Supply, Water System, Sewer System, and a Waste Management Center.

A Vehicular Bridge over the canal between the Gulf of Fonseca's Tiger Island and Zacate Big Island (Coyolito) would span about 2.50 km. This bridge is to beautify Panacea City with style and modernity and to serve as a vehicular link between the island and the mainland. This bridge would be designed to hold six roads for vehicles, pedestrian circulation, cycle ways, gazebos, and green areas.

## **Why Invest in Honduras?**

### **1. Strategic Location**

- Honduras is located in the geographic heart of America. [L] [SEP]
- A mere two hours away from the United States by air, and 48 to 72 hours by sea. [L] [SEP]
- This places Honduras very near to North American production centers and the biggest market in the world. [L] [SEP]
- Honduras serves as a distribution platform of Central America with logistics costs among the lowest in the region. [L] [SEP]

### **2. Dynamic and Qualified Workforce [L] [SEP]**

- A workforce 3.4 million strong, made up of more than 2.2 million young people between the ages of 18 and 35. [L] [SEP]
- Labor costs among the lowest in the region. [L] [SEP]
- Availability of qualified bilingual professionals, graduates from 50 college campuses and more than 728 bilingual schools, many of them certified by the U.S. Southern Association of Colleges and Schools (SACS). [L] [SEP]
- Availability of young technicians trained in local institutions, such as El Zamorano; and, [L] [SEP]

- Multiple employee training programs. [SEP]

## Funding:

Currently 662 institutions in the world are open to making new infrastructure investments, 56 percent of which are actively seeking new opportunities, according to data by UNCTAD 2013. Two different companies are currently conducting feasibility studies to bring this project to life.

**Table 4. International funding in transport sector**

	<b>Total lending*</b> (Billions of US dollars)	<b>Infrastructure lending</b> (Billions of US dollars)	<b>Transport Sector lending***</b> (Billions of US dollars)	<b>Transportation sector share</b> (Percentage)
European Investment Bank	57.6 (€44.8 billion)		13 (€10.1 billion)	23
Asian Development Bank	21.6		5	25
International Bank for Reconstruction and Development /International Development Association	35.3		4.4	13
International Finance Corporation	15.5	1.5		
Inter-American Development Bank	11.4		1.7	15
European Bank for Reconstruction and Development	7.7 (€6 billion)		1.6 (€1.3 billion)	21
African Development Bank	8.8 (UA 5.7 billion)	2.4** (UA 1.57 billion)	1.5 (UA 1 billion)	17

Source: Compiled by UNCTAD from various annual reports 2011–2012.

## **Conclusion**

Upon an in-depth study of the situation in the Gulf of Fonseca from colonial times to modern day it is quite clear that there are no easy solutions. The Gulf of Fonseca was at the intersection of a one hundred years dispute between El Salvador and Honduras. Negotiations, agreements, good offices, conciliations all failed. Why did they all fail? The not-so-simple explanation is that all these dispute settlements were not addressing the root causes. The dispute was never just about a boundary.

The Judicial Settlements addressed the land boundary issue but left unanswered the social issues and the maritime governance of the Gulf of Fonseca. The situation of the Gulf's ecosystem is fragile; an increasing population fighting for the now dwindling common resources.

The Solution has to address both the social issues and the maritime governance of the Gulf of Fonseca for major effectiveness. The Judicial Settlements by the International Court of Justice set the foundation for this solution. The ICJ ruled that the Gulf of Fonseca would be a condominium, between El Salvador, Honduras and Nicaragua. The other part of the solution has to address the social problems in the Gulf of Fonseca.

The Gulf of Fonseca must become a zone of peace, sustainable development and security. Actions that denote strong political willingness to uphold the ICJ decision must be taken by EL Salvador, Nicaragua and Honduras. A Treaty for the Joint Regime of the Gulf of Fonseca must be implemented. The Treaty will determine explicitly what the states commit to:

1. Exploration and exploitation of the natural resources,
2. Other activities for the economic exploitation and exploration,
3. The protection and preservation of the marine environment,
4. Measures for ensuring compliance; and
5. Enforcement of the regime established by this Treaty.

Under the Honduras 20/20 plan the conditions that allow an environment of legal security, competitiveness and productivity are being created. The Opportunity is being created by the demands of regional and international supply and demand. A Port Facility in Isla del Tigre would facilitate the establishment of new development opportunities in the Gulf of Fonseca. A port facility would create jobs and improve the quality of life of the citizens of the Gulf.

The pitfalls of previous programs can be avoided. Establish a multistakeholder Gulf Commission (The communities, the local Government, the companies, the fishermen, women, ANDAH) to foster conversations, to promote ownership and create solutions. Cooperation among stakeholders is the key to building a peaceful, sustainable, and secure Gulf of Fonseca.



## ANNEX 1

### HONDURAN LAWS:

1. General Environment Law Decree 181-2007 and Decree 47-2010
2. Equal Opportunities for Women Law Decree No. 34-2000
3. Municipal Career Law
4. State Contract Law
5. Sustainable tourism Law
6. Millennium Development Account Law
7. Property Law
8. Mining Law
9. Municipalities law
10. Land Governance Law
11. COALIANZA Law
12. Food and Nutrition Security Law
13. Law Transparency and Access to Public Information Law
14. Renewable Energy Projects Law
15. Administrative Simplification Process Law 2012
16. Special Regime for Zones for Employment and Economic Development (ZEDES)
17. Manual for the Instituto Nacional de Conservacion Forestal Areas Protegidas y Vida Silvestre ICF
18. Technological Development and Innovation Law
19. Cooperatives Law

20. Non Governmental Organizations Law
21. CONVIVIENDA Law
22. General Employment Law
23. Municipal Boundaries Law
24. Law for Protected Areas
25. E-Commerce Law
26. Law Against Financing terrorism
27. Social Welfare Law
28. Transport Law
29. Fiscal Responsibility Law
30. Alliance for the Northern Triangle

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