

INTERNATIONAL COURT OF JUSTICE

SOVEREIGNTY OVER THE SAPODILLA CAYES (BELIZE v. HONDURAS)



APPLICATION FOR PERMISSION TO INTERVENE BY THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA

1 DECEMBER 2023

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1. In accordance with Article 62 of the Statute of the International Court of Justice, the Republic of Guatemala requests permission to intervene in the case concerning *Sovereignty over the Sapodilla Cayes (Belize v. Honduras)*. After some preliminary remarks (I), and in accordance with Article 81 of the Rules of Court, the present Application indicates Guatemala's interest of a legal nature that may be affected by the decision of the Court in this case (II), the object of the intervention (III), as well as any basis of jurisdiction between Guatemala and the parties to the case (IV).

I. Preliminary Remarks

2. By an application dated 16 November 2022, Belize instituted proceedings against the Republic of Honduras concerning sovereignty over the Sapodilla Cays or Cayes, a cluster of islands in the Gulf of Honduras, which Guatemala also claims.

3. In accordance with an Order of 2 February 2023, Belize submitted its Memorial on 2 May 2023, and Honduras is to file its Counter-Memorial on or before 4 December 2023.

4. By a letter dated 3 May 2023, Guatemala requested to be furnished with copies of the pleadings and documents annexed pertaining to the current

proceedings between Belize and Honduras, pursuant to Article 53(1) of the Rules of Court. The Court communicated Belize's Memorial to Guatemala on 12 May 2023.

5. In its application, Belize requested the Court to “adjudge and declare that, as between Belize and Honduras, Belize is sovereign over the Sapodilla Cayes”¹. Belize supplemented its submissions in its Memorial, in which it requested the Court:

“to adjudge and declare that, as between Belize and Honduras:

- (a) Belize is sovereign over the Sapodilla Cayes;
- (b) Honduras does not have any valid claim to the Sapodilla Cayes”².

6. Belize's Submission (a) in the *Belize v. Honduras* case overlaps with its submissions in the *Guatemala/Belize* case. In this latter case, Belize also claims sovereignty over the Sapodillas.³ Guatemala, for its part, requested the Court to adjudge and declare that the Sapodillas belong to it.

¹ *Sovereignty over the Sapodilla Cayes (Belize v. Honduras)*, Application, 16 November 2022, para. 22.

² *Sovereignty over the Sapodilla Cayes (Belize v. Honduras)*, Memorial of Belize, 2 May 2023, p. 87.

³ See *Guatemala's Territorial, Insular and Maritime Claim (Guatemala/Belize)*, Rejoinder of Belize, 7 June 2023, p. 231.

II. Guatemala's Interest of a Legal Nature That May Be Affected by the Decision of the Court

7. States may be permitted to intervene in a contentious case if they have an interest of a legal nature that may be affected by the *dispositif* or the reasoning of the Court's decision in that case⁴. In the present case, Guatemala has a clear interest of a legal nature since, as the Court is aware, it has a longstanding claim of sovereignty over the Sapodillas⁵, which is part of the subject-matter of the pending *Guatemala/Belize* case before the Court, as Belize itself noted in its Memorial in the present case⁶.

8. In its Order of 2 February 2023, the Court took note of “the relationship between the matters at issue in the present case and those before the Court in the case concerning *Guatemala's Territorial, Insular and Maritime Claim (Guatemala/Belize)*”⁷.

⁴ See *inter alia* *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2001*, pp. 596-598, paras. 47-56.

⁵ See *Land, Island and Maritime Frontier Dispute, Judgment, I.C.J. Reports 1990*, p. 119, paras. 65-66 and *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2001*, pp. 589-590, para. 38 and pp. 596-598, paras. 48-55.

⁶ See *Sovereignty over the Sapodilla Cayes (Belize v. Honduras)*, Memorial of Belize, 2 May 2023, para. 11.

⁷ *Sovereignty over the Sapodilla Cayes (Belize v. Honduras)*, Order, 2 February 2023, p. 2.

9. Guatemala's interest of a legal nature concerning the Sapodillas may be affected by the decision of the Court in the present case. The particular considerations supporting Guatemala's position include, but are not limited to, the following:

- a decision of the Court that "Belize is sovereign over the Sapodilla Cayes"⁸, as Belize requests, would inevitably affect Guatemala's legal interests and rights with respect to these islands.

So would,

- a discussion in the Court's reasoning that the United Kingdom would have had sovereignty over the Sapodillas before 1821⁹, a point which Belize also argues in the *Guatemala/Belize* case¹⁰;

- a discussion in the Court's reasoning of instruments negotiated and/or signed by Guatemala invoked by Belize¹¹.

- a discussion in the Court's reasoning of any exchanges between Guatemala and the United Kingdom or Belize with respect to the Sapodillas¹².

- a discussion in the Court's reasoning of the alleged recognition of Belize's sovereignty by third States¹³.

⁸ *Sovereignty over the Sapodilla Cayes (Belize v. Honduras)*, Memorial of Belize, 2 May 2023, p. 87, Submission (a).

⁹ See *Sovereignty over the Sapodilla Cayes (Belize v. Honduras)*, Memorial of Belize, 2 May 2023, e.g. paras. 44-73 and 132-139.

¹⁰ See *Guatemala's Territorial, Insular and Maritime Claim (Guatemala/Belize)*, Rejoinder of Belize, 7 June 2023, Appendix, paras. A5-A24.

¹¹ See *Sovereignty over the Sapodilla Cayes (Belize v. Honduras)*, Memorial of Belize, 2 May 2023, e.g. paras. 55, 90 and 101-104.

¹² See *ibid.*, e.g. paras. 54, 56-57, 63, 72, 92, 104, 119, 121 and 126.

¹³ See *ibid.*, e.g. paras. 85-92, 97-99 and 140-147.

III. The Object of the Intervention

10. The intervention for which permission is requested has the following objects:

(a) to protect the rights and interests of Guatemala over the Sapodilla Cays by all the legal means available, including that established by Article 62 of the Statute of the Court.

(b) To inform the Court of the nature and extent of Guatemala's rights, which may be affected by the Court's decision on the issue of sovereignty over the Sapodillas. Guatemala's Application also seeks to ensure that the Court's determinations do not touch upon or prejudice the legal rights and interests of the Republic of Guatemala.

IV. Any Basis of Jurisdiction between Guatemala and the Parties to the Case

11. Guatemala and Belize have concluded a special agreement by which the case concerning *Guatemala's Territorial, Insular and Maritime Claim (Guatemala/Belize)* has been submitted to the Court¹⁴. As recalled above, both parties to the *Guatemala/Belize* case claim sovereignty over the Sapodillas¹⁵.

12. On the other hand, no basis of jurisdiction exists between Guatemala and Honduras. Guatemala is not a party to the Pact of Bogotá, on the basis of which

¹⁴ Special Agreement between Guatemala and Belize to submit Guatemala's territorial, insular and maritime claim to the International Court of Justice, Washington, 8 December 2008, entry into force: 30 July 2018 by the exchange of the instruments of ratification, in accordance with Article 6, registration with the Secretariat of the United Nations: 29 August 2018, UNTS, No. 55299.

¹⁵ See para. 6 above.

Belize has instituted proceedings against Honduras. Nor has Guatemala recognised the compulsory jurisdiction of the Court. For its part, Honduras has excluded “[t]erritorial questions with regard to sovereignty over islands, shoals and keys” from the scope of its declaration under Article 36(2) of the ICJ Statute¹⁶. However, the absence of such a link with Honduras is not a bar to Guatemala’s intervention since the present application for permission to intervene is based on Article 62 of the Statute¹⁷.

Conclusions

13. For the reasons set out in this Application, Guatemala respectfully requests the Court to permit its intervention in the proceedings between Belize and Honduras for the object and purpose specified above and to participate in those proceedings in accordance with Article 85 of the Rules of Court. Guatemala reserves its right to present supplementary arguments and observations as necessary.

14. For the purposes of the present Application, the Government of the Republic of Guatemala has appointed as Agents Ambassador Mario Adolfo Búcaro Flores, and Ambassador Gladys Marithza Ruiz Sánchez, and as Co-Agents Ambassador Rafael Antonio Salazar Gálvez and Mr Lester Antonio Ortega Lemus. In fulfilment of Article 40 of Rules of Court, the address for service to which all communications shall be sent is the following: Embassy of the Republic of Guatemala in the Kingdom of The Netherlands, De Ruijterstraat 36 D, 2518 AS,

¹⁶ Declaration of Honduras recognizing the jurisdiction of the Court as compulsory pursuant Article 36(2) of the Statute of the Court, 6 June 1986, para. 2(d)(i).

¹⁷ See e.g. *Land, Island and Maritime Frontier Dispute, Judgment*, I.C.J. Reports 1990, p. 135, paras. 100-101; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Application for Permission to Intervene, Judgment*, I.C.J. Reports 2001, p. 589, para. 36 or *Territorial and Maritime Dispute (Nicaragua v. Colombia), Application by Costa Rica for Permission to Intervene*, I.C.J. Reports 2011, p. 361, para. 38.

The Hague, The Netherlands. An email address will be provided to the Registry to receive digital communications.

Lesther Antonio ORTEGA LEMUS
Chargé d’Affaires
Embassy of Guatemala in the Kingdom of The Netherlands
Co-Agent of Guatemala to the International Court of Justice
The Hague, 1 December 2023