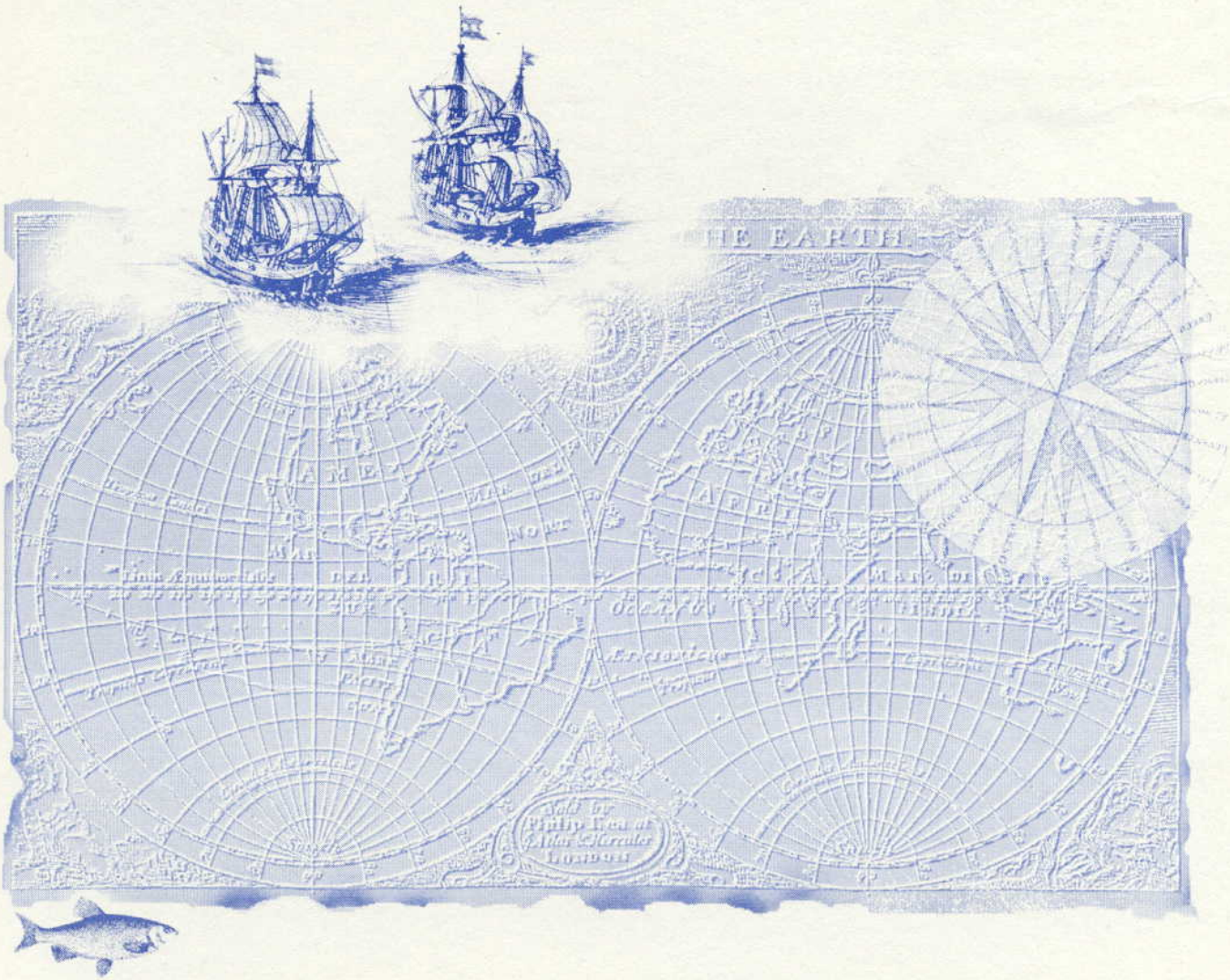
United States Department of State
Bureau of Oceans and International Environmental and Scientific Affairs

Limits in the Seas

No. 124

Straight Baseline Claim: Honduras



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LIMITS IN THE SEAS

No. 124

STRAIGHT BASELINE CLAIM:

HONDURAS

June 28, 2001

Office of Oceans Affairs
Bureau of Oceans and International
Environmental and Scientific Affairs
U.S. Department of State

INTRODUCTION

This study analyzes the maritime claims made by the Government of Honduras in Executive Decree No. PCM 007-2000 of March 21, 2000. The Decree entered into force March 29, 2000.[1] The Executive Branch was authorized to establish straight baselines by the Law on Maritime Spaces, by Decree No. 172-99 of October 30, 1999.[2] By the March 2000 Decree Honduras established a system of straight baselines around parts of its Caribbean coast from which to measure the limits of its territorial sea and other maritime zones. It has also referenced the International Court of Justice (ICJ) decision made on September 11, 1992, settling the Land, Island and Maritime Frontier Dispute between Honduras and El Salvador in claiming its portion of the Gulf of Fonseca closing line.[3]

In a subsequent Decree, Executive Decree No. PCM-017-2000, of October 7, 2000, Honduras defers the "applicability" of Decree No. PCM 007-2000 "for the reasonable period of time required for consultations on this subject."[4]

BASIS FOR THE BASELINE ANALYSIS

The United Nations Convention on the Law of the Sea (LOS Convention) reflects customary international law for the principles that underlie the proper and legal establishment of baselines. Honduras ratified the LOS Convention on October 5, 1993. The rules for drawing baselines are contained in articles 5-11 and 13-14 of the LOS Convention. Article 5 states that "except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast." Paragraph 1 of article 7 is the paramount paragraph that establishes the geographical conditions that must be met should a coastal State elect to claim straight baselines in particular locations. This paragraph states that straight baselines may be drawn only in two specific geographic situations, that is, (a) "in localities where the coastline is deeply indented and cut into", or (b), "if there is a fringe of islands along the coast in its immediate vicinity".[5]

The purpose of authorizing the use of straight baselines is to allow the coastal State, at its discretion, to enclose those waters that have, as a result of their close inter-

1 *La Gaceta,* No. 29,135 of March 29, 2000, Tegucigalpa, M.D.C., Honduras. The Department of State's English translation of the text is found at Annex 1 of this study. The United Nation's English translation appears in UN, Law of the Sea Bulletin No. 43, pages 96-99 (2000).

2 Published in *La Gaceta* No. 29,054 of December 23, 1999. English translation of the text is reproduced in Annex 2 of this study.

3 Case Concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua Intervening), I.C.J. Reports 1992, pp. 351, 616-617, ¶ 432-433.

4 *La Gaceta*, Tegucigalpa, Honduras, Saturday, October 7, 2000, No. 29,295. English translation of the text is found at Annex 3 of this study.

5 LOS Convention, article 7(1); also found in article 4(1) of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1606, T.I.A.S. No. 639, 516 U.N.T.S. 205.

relationship with the land, the character of internal waters. According to the LOS Convention, "the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters".[6] By using straight baselines, a State may also eliminate complex patterns, including enclaves, in its territorial sea, that would otherwise result from the use of normal baselines.[7]

A United Nations study stated that when determining whether "conditions apply which would permit the use of straight baselines it is necessary to focus on the spirit as well as the letter of the first paragraph of article 7" of the LOS Convention.[8] And, as a noted geographer has stated, "proper straight baselines usually have a number of segments, each composed of several legs, interspersed with sections of the low-water mark of island and mainland coasts…. The length of individual legs is short and the baseline is rarely more than 24 nautical miles from an exposed coast".[9] Article 14 of the LOS Convention acknowledges that a combination of methods is appropriate for determining the type of baselines in particular areas: "The coastal State may determine baselines in turn by any of the methods provided for in the foregoing articles to suit different conditions."

Neither the LOS Convention nor the Convention on the Territorial Sea and the Contiguous Zone place a specific distance limit on the length of a straight baseline. However, several analyses have suggested limits ranging from 24 to 48 miles.[10] The position of the United States is that as a general rule baseline segments should not exceed 24 miles.[11] The following analysis supports 24 miles as the ordinary maximum baseline length.

The maximum segment length of 24 miles is supported by a close reading of the relevant articles of the LOS Convention. Article 7(1) speaks of the “immediate vicinity” of the coast. Article 7(3) states that “the sea areas lying within the line must be sufficiently closely linked to the land domain to be subject to the regime of internal

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6 LOS Convention, article 7(3).

7 J .Ashley Roach and Robert W. Smith (Roach and Smith), *United States Responses to Excessive Maritime Claims*, 2nd edition, Martinus Nijhoff Publishers, 1996, p. 60.

8 United Nations, *Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea*, 1989, p. 17.

9 Victor Prescott, *The Maritime Political Boundaries of the World*, 1985, p. 69.

10 See Roach and Smith, p. 64 (24 miles); Robert D. Hodgson and Lewis M. Alexander, "Towards an Objective Analysis of Special Circumstances: Bays, Rivers, Coastal and Oceanic Archipelagoes and Atolls," *Law of the Sea Institute Occasional Paper No. 13*, 1971, p. 8 (45 miles); Peter B. Beazley, Maritime Limits and Baselines: A Guide to their Delineation, *The Hydrographic Society Special Publication No. 2* (2nd ed., revised August 1978), p. 9 (45 miles); *Limits in the Seas No. 106*, "Developing Standard Guidelines for Evaluating Straight Baselines", August 31, 1987 (48 miles). All mileage in this study, unless otherwise noted, is nautical miles. One nautical mile equals 1, 852 meters.

11 *U.S. Department of State Dispatch Supplement*, "Law of the Sea Convention, Letters of Transmittal and Submittal and Commentary", Vol. 6, February 1995, p. 8. J. Ashley Roach and Robert W. Smith, “Straight Baselines: The Need for a Universally Applied Norm,” *Ocean Development & International Law, 31*: 47-80, 2000.

waters." In both of these descriptions, the implication is strong that the waters to be internalized would otherwise be part of the territorial sea. It is difficult to envision a situation where international waters (beyond 12 miles from the appropriate low-water line) could be somehow "sufficiently closely linked" as to be subject to conversion to internal waters.

This implication is reinforced by article 8(2) which guarantees the right of innocent passage in areas converted to internal waters by straight baselines. Innocent passage is a regime applicable to the territorial sea (with a maximum breadth of 12 miles). Preservation of innocent passage carries over pre-existing rights in waters that were territorial in nature before the application of straight baselines.

Finally, Article 10 of the LOS Convention allows a coastal State to draw a closing line between the low-water marks of the natural entrance points of a bay that meets the geographic criteria set forth in that Article. The maximum length of such closing lines may not exceed 24 miles. Given the linkage to the territorial sea and the 24-mile limitation for bay closing lines, it follows that, as a rule, no straight baseline segment should exceed 24 miles.[12]

ANALYSIS OF HONDURAS STRAIGHT BASELINES

Executive Decree No. PCM 007-2000

Pacific Ocean: In Article 1 (B) Honduras claims a segment of the Gulf of Fonseca closing line as its straight baseline from which to determine the breadth of its maritime claims in the Pacific Ocean. This claim results from the ICJ's 1992 ruling in the *Land, Island and Maritime Frontier Dispute between Honduras and El Salvador*. The interpretation and application of this decision require the agreement among El Salvador, Honduras, and Nicaragua. No further analysis of this closing line will be made in this paper.

Caribbean Sea: The following analysis of the Honduran claim made for its baselines along its Caribbean coastline was made using National Imagery and Mapping Agency (NIMA) charts.[13] The claim is illustrated on the page-sized map included in this analysis.[14] Honduras has created 16 straight baseline segments along its Caribbean coastline which range in length from 0.4 miles to 62.6 miles (see Table 1).

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12 Roach and Smith, footnote 24, pp. 64-65.

13 NIMA (formerly the Defense Mapping Agency- DMA) charts No. 28162 (29th ed. Mar. 7, 1992. 1: 150,000); No. 28140 (1st ed., Sept. 21, 1985- 1:175,000); No. 28150 (3rd. ed., Sept. 2, 1995: inset A- 1:300,000; inset B- 1:300,000).

14 On April 17, 2000, Honduras deposited with the UN Secretary-General, in accordance with article 16(2) of the LOS Convention, the list of geographical coordinates set out in Executive Decree No. PCM 007-2000, containing an illustrative map. UN, Law of the Sea Sea Information Circular No. 12, page 51, 2000.

Segment 1-2 begins at the terminus of the Honduras-Guatemala international boundary ("from the last marker of the land boundary…on the right bank of the mouth of the Motagua River ") to the northern point of Punta Caballos. This stretch of Honduran coastline is smooth with no fringing islands. A straight baseline segment is inappropriate in this area where there are neither fringing islands nor a coastline which is deeply indented and cut into. The territorial sea should be measured from the low-water mark.

Between points 2 and 3 the baseline is the low-water mark of the coastline, a stretch of approximately 13.5 miles.

Table 1
Length of Honduras
Baseline Segments

Baseline segment	Length (nautical miles)	Baseline segment	Length (nautical miles)
1-2	18.0	10-11	16.7
3-4	7.2	12-13	54.9
4-5	36.5	13-14	42.8
6-7	22.4	14-15	62.7
8-9	0.7	15-16	0.4
9-10	2.6	16-17	20.4

Baseline segment 3-4, slightly more than 7 miles in length, connects a point near Punta Ulua (just west of the Ulua River) to Punta Sal. The body of water enclosed by this line fails to meet an article 10 bay closing line requirements and the straight baseline geographic requirements are not met, as well.[15]

Claimed baseline segment 4-5 connects the mainland coast at Punta Sal to the western end of Isla de Utila, more than 36 miles to the northeast. There are no intervening islands between Punta Sal and this island and the mainland coastline is quite smooth and is not "deeply indented or cut into". The waters enclosed by this line segment would not be considered "sufficiently closely linked to the land domain to be subject to the regime of internal waters." Therefore, the appropriate baseline in this area would be the low-water mark.

Between basepoints 5, at the western end of Isla de Utila, and 6, situated about 3.7 miles east along the north coast of the island, Honduras claims the low-water mark as

[15] An article 10 (LOS Convention) bay must be a "well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation."

the baseline. Baseline segment 6-7 connects the north coast of Isla de Utila to a point on the west coast of Isla de Roatan, just north of Punta Oeste.

The baseline continues eastward for about 24 miles along the low-water mark of Isla de Roatán's north coast to point 8, situated on the eastern end of the island. From here, point 8 is connected to point 9 on Isla Morat by a straight baseline segment of less than one mile. Segment 9-10 then connects Isla Morat to the central part of the north coast of Isla Barbareta; the straight baseline system continues as segment 10-11 connects this island to the north coast of Isla de Guanaja.

From point 11 the baseline continues along the northeast coast of Isla de Guanaja as the low-water mark to point 12, situated at Black Rock Point on the eastern end of the island. From this point, Honduras claims a straight baseline segment, almost 55 miles in length, that extends to the southeast and point 13 at Cabo Camarón on the mainland. This straight baseline segment clearly exceeds the provisions of the LOS Convention as neither geographic criteria is met: there are no fringing islands nor is the mainland deeply indented or cut into.

The question arises as to whether any valid straight baseline system can be drawn in the vicinity of the three main islands of Isla de Utila, Isla de Roatán, and Isla de Guanaja. The islands are within 24 miles of the mainland and less than 24 miles of each other. However, there are parts of Isla de Roatán that are greater than 24 miles from the mainland and from other islands to the south which creates a high seas pocket if the 12-mile territorial sea were drawn from the island's low-water mark. When testing for the fringing islands criterion it is found that these islands mask about 61% of the mainland in this immediate area.[16]

The issue remains whether the waters enclosed by these baselines are "sufficiently closely linked to the land domain to be subject to the regime of internal waters." The water depths are rather deep, in many areas exceeding 1400 meters, and there is a pocket of high seas that would remain if the low-water line were used. Before making a final determination on the validity of the straight baselines for this particular area, further information would be required from Honduras on how the waters incorporated by these baselines are closely linked to the land domain so as to give it the status of internal waters. If straight baselines were to be drawn along these islands, the line segments connecting the islands to the mainland would have to extend due south from the respective ends of the eastern and western islands to the mainland.

From point 13, Honduras claims 4 straight baseline segments (13-14, 14-15, 15-16, and 16-17) that incorporate the remaining Caribbean-facing coastline to the mouth of the Rio Coco and its international boundary terminus with Nicaragua. With the exception of

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16 Using NIMA chart No. 28150 (A), perpendicular lines were drawn from the western end of Isla de Utila and the eastern end of Isla de Guanaja to the general direction of the mainland coast. The general direction of the mainland in the area immediately south of the three islands is about 70 miles; the total length of the "finging islands" is approximately 43 miles. Thus, the islands mask about 61% of the mainland coast in this area which meets the U.S.-derived criterion of 50%.

segment 15-16, which is a valid river closing line, these segments exceed the provisions of the LOS Convention. The Honduran coastline along this stretch is quite smooth with no deep indentations and there are no fringing islands. And, two of the baseline segments, 13-14 and 14-15, are quite long being approximately 43 and 63 miles, respectively, in length.

It should be noted that Article 8 (2) of the LOS Convention states,

> Where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.

Article 4 of the Decree states that the baselines of the other islands under Honduran sovereignty, specifically Swan Island, Cayo Gorda, and Cayo Sur shall be the low-water mark. The baselines entered into force on the date on which they were published in *La Gaceta*: March 29, 2000.

Executive Decree No. 29,295

This Decree, which entered into force immediately upon its publication (August 28, 2000), appears to respond to concerns expressed to Honduras by neighboring States regarding the application of the straight baselines.[17] The Decree does not amend the location of any of the baselines.

In the Preamble to this Decree Honduras implies that one reason for establishing the straight baseline system was in relation to its potential boundaries with its neighbors, as it states that the baselines "are simply one factor to be taken into account in any negotiating process with neighboring States." This reflects a similar statement made by the Honduran Ministry of Foreign Affairs soon after Decree 007-2000 was published. In that statement, Honduras said that "it is necessary to establish said baselines … in order to enable Honduras to draft proposals for the negotiation of maritime boundaries

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[17] Guatemala, Nicaragua and El Salvaor each have protested these actions by Honduras. On June 2, 2000, Guatemala reserved its position as to the straight baselines since they are prejudicial to the sovereign interests of Guatemala in the Caribbean Sea. On June 20, 2000, Nicaragua protested article 3(2) of Decree 172-99 which establishes the straight baselines "in the territorial sea of Nicaragua". On April 27, 2000, El Salvador rejected the content of Executive Decree PCM 007-2000 with respect to the straight baseline in the Pacific Ocean since "it affects the sovereign territorial rights of El Salvador". UN, *Law of the Sea Information Circular No. 12*, p. 37, 2000.

with neighboring States, both in the Caribbean Sea and in the Pacific Ocean".[18] While it may be true that in the state practice of maritime boundary negotiations baselines may be a consideration given by the States in determining the course of the boundary, potential boundary negotiations should not be an influencing criterion for the establishment of straight baselines. As noted earlier in this report, the LOS Convention is clear in stating the geographical conditions which must be present (article 7 (1)) to allow a State to establish straight baselines.

In Article 1 of the Decree Honduras says that under Decree No. PCM 007-2000 (the one establishing the straight baseline points) it "does not…establish any unilateral maritime claims, or any restriction to international maritime navigation…." This assertion is questionable as the straight baselines determine the boundary between internal waters and territorial sea and the differing legal status of those waters does affect navigation rights. In addition, due to several of the excessive straight baselines claimed by Honduras in that Decree, waters that otherwise would be high seas are now being claimed as internal waters.

In Article 6 Honduras states that this Decree which establishes the straight baselines "is hereby deferred, on an exceptional basis, for the reasonable period of time required for consultations on this subject…" It is not totally clear what this assertion means, what type of consultations are envisioned, and what would be the reasonable period of time. But, more importantly, it does not address the nature of the baselines themselves in that several of the segments exceed the provisions of the LOS Convention.

Honduran Views

In 2000 the Honduran Ministry of Foreign Relations issued Document Series No. 1, "The United Nations Convention on the Law of the Sea, the Law on Maritime Spaces of Honduras, and the Establishment of Baselines by the Government of Honduras." This document acknowledges that straight baselines must be determined in accordance with the Convention and asserts that the straight baselines established by the Executive Branch were established in accordance with the Law of the Sea Convention and international law of the sea. However, the document does not explain how any of the segments meet the geographical and other requirements established by international law for straight baselines.

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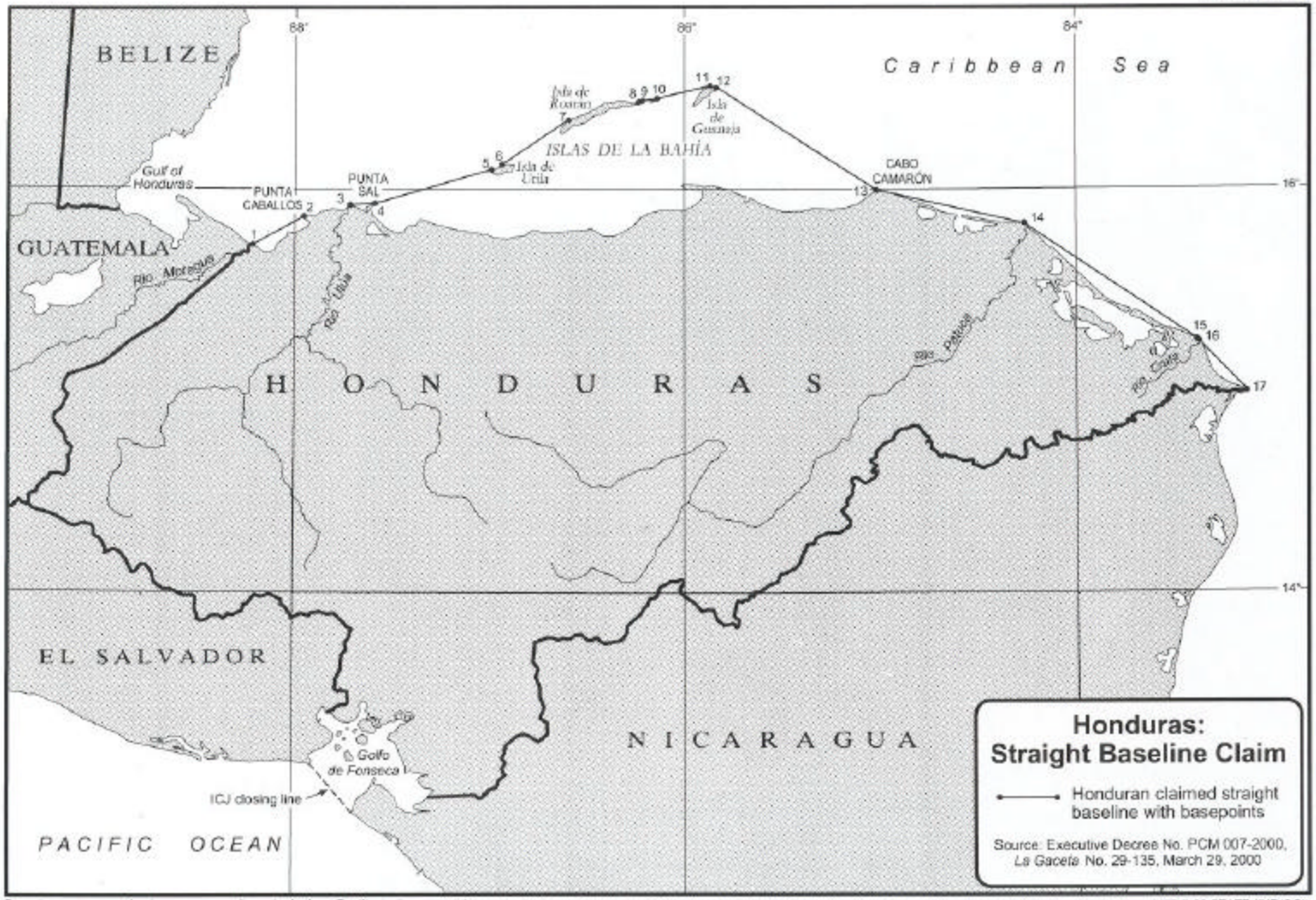
18 The Honduran Ministry of Foreign Affairs, Document Series No. 1, "The United Nations Convention on the Law of the Sea, the Law on Maritime Spaces of Honduras, and the Establishment of Baselines by the Government of Honduras", issued shortly after publication of Executive Decree No. PCM 007-2000. (para. I.1) The document continues: "The baselines established by one State are not binding on any other, since each determines them in accordance with the criteria it deems most suitable pursuant to the United Nations Convention [on the Law of the Sea] and the historical and legal rights favorable to its interests. In the course of negotiations, baselines may or may not have relevance to or impact on the delimitation deriving from the agreements reached by the States." (para I.4) An English translation of this document appears as Annex 4 of this study.

Unclassified



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ANNEX 1

Executive Branch[19]
Executive Decree No. PCM 007-2000
The President of the Republic, in the Council of Ministers,

Whereas:

The National Congress issued the Law on Maritime Spaces of Honduras by means of Legislative Decree No. 172-99 of October 30, 1999; published in *La Gaceta* No. 29,054, of December 23, 1999, and said Law authorizes the Executive Branch to establish straight baselines, as appropriate;

It is necessary to establish such baselines for the purpose of determining the maritime spaces of Honduras in accordance with the United Nations Convention on the Law of the Sea of December 10, 1982, and in accordance with the Law on Maritime Spaces of Honduras, in order to enable Honduras to establish maritime boundaries with neighboring States, both in the Caribbean Sea and in the Pacific Ocean;

Therefore:

By virtue of the powers vested in him by Article 245(1), (2), and (11), and Article 252 of the Constitution of Honduras, and Article 11, Article 17, and Article 22(9), (10), ([?]16), and (117) of the General Government Services Act and Article 16(1) of the Law on Maritime Spaces of Honduras,

Hereby decrees:

Article 1. The straight baselines in the Caribbean Sea and in the Pacific Ocean which shall be used to delimit the territorial sea, contiguous zone, exclusive economic zone, and continental shelf shall be established as follows:

The straight baselines for the delimitation of the maritime spaces to which Article 3 of the Law on Maritime Spaces of Honduras refers shall be as follows:

(A) On the Atlantic Coasts of the Caribbean Sea: From the last marker of the land boundary between Honduras and Guatemala on the right bank of the mouth of the Motagua River, known as Station 233, with coordinates based on the Ocotepeque Datum, Point 1, 15° 43’ 28.80” north latitude, 88° 13’ 24.59” west longitude, to Point 2, the northern part of Punta Caballos, with the following coordinates: 15° 51’ 50” north latitude, 87° 85’ 55” west longitude.

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[19] Source: *La Gaceta*, the Official Gazette of the Republic of Honduras, No. 29,135 of Wednesday, March 29, 2000, Year 124. Tegucigalpa, M.D.C., Honduras. Translated into English by the U.S. Department of State. Original Spanish text contains names and titles of other members of the Council of Ministers of Honduras.

From Point 3, with the following coordinates 15° 55’ 25” north latitude, 87° 43’ 25” west longitude, located west of the mouth of the Ulua River, to Point 4, the northern part of Punta Sul, with the following coordinates: 15° 55’ 50” north latitude, 87° 32’ 55” west longitude.

From Point 4 to the lighthouse ruins located on the western end of Utila Island, Point 5, with the following coordinates: 16° 05’ 23” north latitude, 86° 59’ 22” west longitude.

From Point 6, located at Blackish Point, with the following coordinates: 16° 07’ 18” north latitude, 86° 56’ 05” west longitude, on Utila Island, to Point 7, on the eastern part of Roatan Island known as Half Moon, with the following coordinates: 16° 18’ 19” north latitude, 86° 35’ 45” west longitude.

From Point 8, the eastern part of Roatan Island, known as Red Cliff, with the following coordinates: 16° 25’ 48” north latitude, 86° 11’ 52” west longitude, to Point 9 on Morat Island, with the following coordinates: 16° 26’ 07” north latitude, 86° 11’ 14” west longitude.

From Point 9 to Point 10 on Barbareta Island, known as Trunk Turtle Beach, with the following coordinates: 16° 26’ 48” north latitude, 86° 08’ 40” west longitude.

From Point 10, to Point 11 o Guanaja Island, known as Black Point, with the following coordinates: 16° 30’ 51” north latitude, 85° 51’ 48” west longitude.

From Point 12, Black Rock Point, on Guanaja Island, with the following coordinates 16° 29’ 53” north latitude, 85° 48’ 55” west longitude, to Point 13, the Camaron Triangulation Station, on Cabo Camaron, with the following coordinates: 15° 59’ 09” north latitude, 85° 01’ 32” west longitude.

From Point 13 to Point 14 at Punta Patuca, west of the mouth of the Patuca River, with the following coordinates: 15° 48’ 58” north latitude, 84° 18’ 20” west longitude.

From Point 14 to Point 15, on the left bank of the mouth of the Cruta River, with the following coordinates: 15° 15’ 15” north latitude to 83° 23’ 28” west longitude.

From the Point on the left bank to another point on the right bank of the mouth of the Cruta River, Point 16, with the following coordinates: 15° 14’ 59” north latitude, 83° 23’ 07” west longitude.

From the Point on the right bank of the Cruta River to Point 17, the termination of the land boundary between Honduras and Nicaragua at the mouth of the Coco (Wanks) or Segovia River on Cape Gracias a Dios, with the following coordinates: 14° 59.8’ north latitude, 83° 08.9’ west longitude.

(B) In the Pacific Ocean, the straight baseline is the proportional segment

corresponding to Honduras on the baseline common to the three Gulf of Fonseca coastal States, which in turn is part of the closing line or “mouth line’ of the Gulf, between Punta Amapala in El Salvador and Punta Cosiguina in Nicaragua, all in accordance with the terms of the judgement rendered by the International Court of Justice on September 11, 1992, settling the Land, Island and Maritime Frontier Dispute between the Republics of Honduras and El Salvador.

The territorial sea and other Honduran maritime spaces shall be measured from the line segment corresponding to Honduras.

Article 2. The above-mentioned lines appear on the General Map of Honduras, scale 1:1,000,000, which is attached hereto and which shall be duly published pursuant to the norms of international law currently in force.

Article 3. For those segments of continental coastline for which the drawing of straight baselines was not considered, the baseline shall be the low-water line.

Article 4. On the islands under Honduran sovereignty in the Caribbean Sea, such as Swan Island, Cayo Gorda, and Cayo Sur, the baselines of the corresponding maritime spaces shall be the low-water line along the coast, from which the maritime spaces will be measured.

Article 5. With the exception of Station 233, all coordinates of the end points of straight baselines are based on the North American 1927 Datum.

Article 6. For purposes of compliance with Article 16(1) of the Law on Maritime Spaces of Honduras, the Ministry of Foreign Relations is instructed to inform the National Congress of the text of this Decree.

Article 7. In accordance with Article 16(2) of the United Nations Convention on the Law of the Sea, one copy of the map and the list of geographic coordinates indicating the baselines established in this Decree shall be deposited with the U.N. Secretary General.

Article 8. This Decree shall enter into force as of the date of its publication in *La Gaceta.*

Done at the Presidential Palace, Tegucigalpa, Municipality of the Central District, on this 21st day of March in the year 2000.

To be reported and published.

Carlos R. Flores
President of Honduras

ANNEX 2

Decree 172-99[20]

The National Congress:

Whereas,

On October 5, 1993, Honduras ratified the United Nations Convention on the Law of the Sea, an instrument that contains the basic principles for guaranteeing the right of States to maritime space;

The 1982 Constitution of the Republic of Honduras enshrines the principles of sovereignty and jurisdiction over the airspace and the subsoil of its continental and island territory, territorial sea, contiguous zone, exclusive economic zone, and continental shelf, delimiting the national territory;

Honduras is a country surrounded by two oceans, and, for this reason, it is necessary to approve laws that regulate the maritime spaces and harmonize legal, political, economic, and environmental matters, with priority being given to the conservation and exploitation of the natural resources of the marine environment, in view of its importance from an economic and environmental standpoint;

Therefore,

Hereby Decrees:

The following:

Law on the Maritime Spaces of Honduras

Article 1 Internal Waters

(1) All waters located within the baseline from which the territorial sea is measured, and those of ports, bays, inlets, and coves shall be considered internal waters:

(2) The sovereignty of the State extends to the water column, the seabed, subsoil, and air column over the internal waters; and

(3) When the establishment of a straight baseline, in accordance with the method set forth in Article 3, has the effect of enclosing as internal waters waters that had not previously been considered as such, a right of innocent passage to international maritime navigation shall exist in those waters.

Article 2 The Territorial Sea

[20] La Gaceta, Republic of Honduras, M.D.C., December 23, 1999. Translated into English by the U.S. Department of State.

The sovereignty of the State of Honduras extends beyond its territory and internal waters to the territorial sea adjacent to its coasts, that is, the belt of sea between the baseline from which all Honduran maritime spaces are measured and an external line whose points are located twelve nautical miles from those corresponding to the baseline.

Article 3 Internal Delimitation of the Territorial Sea and the Remaining Honduran Maritime Spaces

(1) The normal baseline for measuring the breadth of the Honduras territorial sea and the remaining marine spaces is the low-water line along the coast;

(2) The foregoing notwithstanding, in cases where the configuration of the coast is irregular, with pronounced openings and indentations or where there is a fringe of islands along the coast situated in its immediate vicinity, the straight baselines that join the appropriate points may be used, provided that the drawing thereof does not depart to any appreciable extent from the general direction of the coast. In drawing these lines, consideration shall be given to the principles set forth in the 1982 United Nations Convention on the Law of the Sea; and

(3) The baselines shall be shown on charts drawn to scale or lists of geographical co-ordinates of points, and the geodetic datum shall be specifically indicated on each. Honduras shall give due publicity to such charts or lists, pursuant to international law.

In the case of the Gulf of Fonseca, the baseline shall be the straight line that joins Punta Amapala and Punto Consiguina, as defined in the September 11, 1992 ruling of the International Court of Justice.

Article 4 The Legal System of the Territorial Sea

Pursuant to international law, Honduras shall exercise sovereignty over its territorial sea, which is understood to mean the water column, its sea-bed, subsoil, and natural resources, and its suprajacent air space.

Therefore, unless a more liberal system has been agreed upon by means of a Convention, vessels of other States shall enjoy the right of innocent passage in the manner regulated by the 1982 Law of the Sea Convention.

Article 5 Contiguous Zone

(1) In the zone contiguous to its territorial sea, Honduras may exercise the control necessary to:

(a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; and

(b) punish infringement of the above laws and regulations committed within its territory or territorial sea.

(2) The contiguous zone shall extend up to 24 nautical miles from the baseline from which the breadth of the territorial sea is measured. In other words, this area extends from the outer limit of the territorial sea, located 12 miles from the baseline, to a distance of 24 miles therefrom.

Article 6 Exclusive Economic Zone

Honduras hereby establishes an exclusive economic zone along its coasts, extending from the outer limit of the territorial sea up to 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

Article 7 Exclusive Economic Zone Regime

(1) In its exclusive economic zone, Honduras shall exercise sovereign rights for purposes of exploring and exploiting, conserving and managing all natural resources, whether living or non-living, of the water column, the sea-bed and its subsoil, and with regard to other possible economic uses of this part of the marine environment;

(2) Fishing and the extraction of any other marine resource by foreign vessels are expressly prohibited, unless an international treaty stipulates otherwise or Honduras provides its express consent thereto; and

(3) In addition to the foregoing, Honduras has jurisdiction to:

(a) Establish and use artificial islands, facilities, and structures for the exploration and exploitation of the resources of the marine sea-bed and subsoil;

(b) Conduct scientific research in the marine environment;

(c) Protect and preserve the marine environment from pollution; and

(d) Punish infringements of Honduran laws and regulations in the foregoing areas, primarily related to fishing and the extraction of any other natural resource, marine scientific research, and preventing and combating pollution.

Article 8 The Fishing Regime and Exercise of Other Freedoms in the Exclusive Economic Zone

(1) In the Honduras economic zone, fishing shall be reserved to Hondurans and, upon conclusion of an international agreement with the respective Governments, to the nationals of those countries whose fishing vessels have habitually engaged in this activity;

(2) In the exercise of the right of free passage within this zone, foreign fishing vessels shall comply with Honduran provisions aimed at preventing said vessels from engaging in fishing activities, including those related to the stowage of fishing gear; and

(3) The establishment of this zone shall not affect the remaining rights of passage, overflight, and the laying of submarine cables or pipelines, as well as the legitimate rights of vessels of third States, pursuant to the 1982 Convention on the Law of the Sea.

Article 9 The Continental Shelf

The Honduran continental comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea to a distance of 200 nautical miles from the baselines or up to the outer edge of its continental margin

Article 10 Resources of the Continental Shelf

Natural resources of the Honduran continental shelf shall mean the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical constant physical contact with the sea-bed or the subsoil.

Article 11 The Continental Shelf Regime

(1) Honduras exercises sovereign rights for the purpose of exploration and exploitation of the natural resources of the continental shelf, which shall be closed to any foreigner without the express consent of the Republic;

(2) Honduras has jurisdiction to establish and install artificial islands, and to set up installations and structures for the exploration and exploitation of resources, for uses pertaining thereto, and to prevent infraction of its laws and regulations pertaining thereto; and

(3) The sovereignty and jurisdiction of Honduras expressed above shall not affect the rights and freedoms of other States, especially those pertaining to the laying of submarine cables and pipelines, in the manner set forth in the 1982 United Nations Convention on the Law of the Sea.

Article 12 Delimitation of the Territorial Sea, the Exclusive Economic Zone, and the Continental Shelf between States with Opposite or Adjacent Coasts

(1) The delimitation of the foregoing maritime areas between Honduras and its neighboring States shall be undertaken by means of an agreement between them based on international law.

(2) Under such agreements, an equitable solution shall be reached. To this end, with a view to applying the principle of equity, consideration shall be given not only to equidistance, but also to proportionality as a concrete manifestation of equity, as well as other pertinent special circumstances, such as the existence of islands, and

(3) In the specific situation of the Gulf of Fonseca, Honduras shall adhere to the provisions stipulated, in accordance with international law, in the September 11, 1992 ruling of the International Court of Justice, with respect to the delimitation of the respective maritime spaces with its neighboring countries, with which it has historical ties and friendly relations.

Article 13 Regional Maritime Cooperation

In those maritime areas where Honduras has shared interests with its neighboring countries in the areas of protection of the environment and ecosystem, or the sustainable production of specific types of species or resources, or shared use for scientific, tourism, or economic development purposes, the provisions of this Law may be amended by means of an international agreement among the countries involved, with a view to achieving more effective protection or rational use of the environment.

Article 14

In semi-enclosed seas where Honduras has coasts, it shall be the policy of the Republic to establish the proper mechanism for cooperation with the other coastal States, in order to:

(1) Coordinate activities with a view to the orderly and effective conservation and exploitation of the living resources of the sea;

(2) Ensure the best possible protection and preservation of the marine environment from pollution caused by users; and

(3) Coordinate national policies on scientific research.

Article 15 Anti-Pollution Efforts

The Republic of Honduras shall take all measures necessary within its maritime spaces that are compatible with international law in order to prevent, reduce, and control pollution of the marine environment derived from any source, using, for this purpose, the most viable resources at its disposal, both internal and those derived from international cooperation within the framework of an agreement.

In this context, the Executive Branch shall oversee, in particular, the protection of the Honduran marine environment, in order to contribute to the protection of the interests of the international community as a whole.

Article 16 Provision Vesting the Executive Branch with Regulatory Authority

With respect to this Law, the Executive Branch has the authority to take the following action, by means of decrees:

(1) Establish the straight baselines along the coast of the Republic that may be appropriate. Once the straight baselines along the coasts of the Republic have been defined, the Foreign Ministry shall so inform the National Congress in a private special session;

(2) Issue special regulations pertaining to the contiguous zone, especially in the area of sanctions;

(3) Establish administrative sanctions with respect to fisheries; and

(4) Adopt regulatory measures in the areas of scientific research and the prevention of pollution of the marine environment, as well as measures imposing administrative sanctions on violators.

Article 17 Final Repeal Provision

All laws and regulations of the Republic that are not in keeping with the provisions of this Law (specifically the Decree of April 12, 1960 and the Decree of 1980) are hereby repealed.

Article 18

This Decree shall enter into force on the date of its publication in the Official Gazette [*Diario Oficial La Gaceta].*

Done in the city of Tegucigalpa, Central District Municipality, in the Assembly Hall of the National Congress, October 30, 1999.

Rafael Pineda Ponce

President

Jose Alfonso Hernandez Cordova

Secretary

Jose Angel Saavedra Posadas

Secretary

To the Executive Branch

To be implemented

Tegucigalpa, M.D.C., November 12, 1999

Carlos Roberto Flores Facusse

President of the Republic

The Minister of Foreign Affairs

Roberto Flores Bermudez

ANNEX 3

The Executive Branch
Executive Decree No. PCM-017-2000[21]
The President of the Republic, in a Session of the Council of Ministers:

Whereas:

Historically, in the delimitation of its boundaries with neighboring countries, Honduras has always acted in accordance with the standards of international law, scrupulously respecting and complying with treaties, arbitral awards, and legal decisions, and rejecting procedures supported by any force other than that of the law. As a result, Honduras has repudiated and will continue to repudiate any unilateral, coercive procedure; Executive Decree No. PCM-007-2000 of March 21, 2000, issued in accordance with Article 7 of the United Nations Convention on the Law of the Sea, established the straight baselines of the Republic in the Caribbean Sea and the Pacific Ocean, as an internal norm identifying the baselines from which its own maritime spaces are delimited;

The Law of the Sea Convention, to which Honduras and six of its neighbors bordering on the Caribbean Sea are Parties, entered into force on November 16, 1994, and is now the fundamental norm applicable to this subject;

The pertinent part of Article 12(1) and (2) of the Law on the Maritime Spaces of Honduras stipulates that the maritime spaces of Honduras "with its neighboring countries shall be delimited by agreements between them on the basis of international law," and that such agreements must arrive at "an equitable solution." Consequently, the straight baselines established in the Honduran law are simply one factor to be taken into account in any negotiating process with neighboring States;

The above notwithstanding, the issuance of the above-mentioned Executive Decree establishing the straight baselines of the Republic has caused concern and misunderstandings on the part of some neighboring governments, in terms of the meaning and scope of said baselines;

Now, therefore,

In exercise of the powers vested in the President under Articles 245(1), (2), and (11) and 252 of the Constitution of the Republic; Articles 11, 17, 22(9), (10), (116), and

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21 *La Gaceta*, Tegucigalpa, Honduras, Saturday, October 7, 2000, No. 29,295; translation into English by the United States Department of State.

(117) of the General Law on Public Administration; and Article 16(1) of the Law on the Maritime Spaces of Honduras,

Hereby Decrees:

Article 1. The State of Honduras does not, under Decree No. PCM-007-2000, establish any unilateral maritime claims, or any restriction to international maritime navigation, and [said decree] shall be interpreted in accordance with international law.

Article 2. With regard to Central American integration, the Law on the Maritime Spaces of Honduras is a framework law; it is flexible and was issued for the purpose of ensuring regional maritime cooperation and good neighborliness. Article 13 thereof states that: "In those maritime areas where Honduras has common interests with its neighbors in terms of protecting the environment and the ecosystem; the sustainable production of specific species or resources; or the shared use of such areas for scientific purposes or for purposes relating to tourism or economic development, the provisions of said Law may be amended by international agreement between the countries involved, in order to achieve greater protection or rational use of the environment."

Article 3. The Republic of Honduras, together with the other State Parties to the United Nations Convention on the Law of the Sea, are inspired "by the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea, and aware of the historic significance of this Convention as an important contribution to the maintenance of peace, justice, and progress for all the peoples of the world (from the Preamble to the Convention).

Article 4. When the outer or lateral boundary of Honduran maritime spaces is to be delimited with a neighboring State, in accordance with Article 12 of the Law on the Maritime Spaces of Honduras, said boundary shall be delimited by means of an agreement concluded on the basis of international law, as set forth in Article 38 of the Statute of the International Court of Justice, in such a way that an equitable solution is reached.

Article 5. In the Gulf of Fonseca, the straight baseline referred to in Article 3(3) of the Law on the Maritime Spaces of Honduras, and in Article 1(B) of Executive Decree No. PCM-007-2000, shall be drawn as shown on the attached map [Note: not attached to this study].

Article 6. With a view to fulfilling the great objectives of peace, regional integration, mutual understanding, and cooperation in achieving the full development and progress of the Central American peoples, and within the framework of international law, the applicability of Decree No. PCM-007-2000 is hereby deferred, on an exceptional basis, for the reasonable period of time required for consultations on this subject, to the benefit of Central American integration and in order for legitimate concerns, duly supported by international law, to be taken into consideration. This temporary and exceptional

deferment shall not apply with respect to legal situations involving those maritime spaces that have been decided upon by the International Court of Justice and to which Honduras was a party, or to maritime disputes submitted to the Court and to which Honduras is a party.

Article 7. This Decree shall be implemented immediately and is to be published in *La Gaceta*, the Official Gazette. Given at the Presidential Residence, Tegucigalpa, Central District, on August 28, 2000.

To be reported and published.

Carlos R. Flores F.
President of the Republic

Enrique Flores Valeriano
Minister of Government and Justice

José Ramón Calix Figueroa
Minister of Education

Plutarco Castellanos
Minister of Health

Gautama Fonseca Zuñiga
Minister of Security

Gustavo Adolfo Alfaroz
Minister of the Presidency

Roberto Flores Bermúdez
Minister of Foreign Relations

Edgardo Dumas Rodríguez
Minister of National Defense

Gabriela Nuñez de Reyes
Minister of Finance

Dario Humberto Hernández
Acting Minister of Industry and Trade

Tomas R. Lozano Reyes
Minister of Public Works, Transportation, and Housing

Rosa America Miranda de Galo
Minister of Labor and Social Security

Miguel Angel Bonilla Reyes
Acting Minister of Agriculture and Livestock

Silvia Xiomara Gómez de Caballero
Minister of Natural Resources and the Environment

Hermán Allan Padgett
Minister of Culture, Arts, and Sports

Ana del Socorro Abarca Ucles
Minister of Tourism

Anibal Delgado Fiallos
Executive Director of the National Agrarian Institute

Moises Starkman Pinel
Executive Director of the Honduran Social Investment Fund

Arturo Corrales Álvarez
Technical Secretary and Head of International Cooperation Affairs

Annex 4

Ministry of Foreign Affairs
Of the Republic of Honduras

Document Series No. 1
The United Nations Convention on the Law of the Sea,
The Law on Maritime Spaces of Honduras, and
The Establishment of Baselines by the Government of Honduras[22]

1. Introduction

The Law on Maritime Spaces conforms fully to the rules and principles of the United Nations Convention on the Law of the Sea.

According to Article 3 of said Convention, every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with the Convention.

The Convention also provides that coastal States may determine baselines by a combination of any of the methods provided for in the Convention, and recognizes normal baselines and straight baselines. As a first step, then, Honduras had to define the baselines from which the breadth of the territorial sea would be measured.

The Law on Maritime Spaces of Honduras provides that for the internal delimitation of the territorial sea and the remaining Honduran maritime spaces, the normal baseline for measuring the breadth of the Honduran territorial sea and the remaining maritime spaces is the low-water line along the coast.

However, in cases where the configuration of the coast is irregular, or where there is a fringe of islands along the coast situated in its immediate vicinity, the straight baselines that join the appropriate points may be used, provided that the drawing thereof does not depart to any appreciable extent from the general direction of the coast. In drawing these lines, consideration shall be given to the principles set forth in the 1982 United Nations Convention on the Law of the Sea. Thus, the Law on Maritime Spaces of Honduras, in addition to determining the criteria that would be used pursuant to the United Nations Convention on the Law of the Sea, authorized the Executive Branch to establish the appropriate straight baselines along the coasts of Honduras.

By virtue of that authority, and whereas it is necessary to establish said baselines in order to determine the maritime spaces of Honduras in accordance with the United Nations Convention on the Law of the Sea and in accordance with the Law on Maritime Spaces of Honduras, and in order to enable Honduras to draft proposals for the

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22 English translation by the U.S. Department of State.

negotiation of maritime boundaries with neighboring States, both in the Caribbean Sea and in the Pacific Ocean, the Executive Branch, by means of Executive Decree No. PCM 007-2000 of March 21, 2000, decreed what the straight baselines shall consist of in both seas, which shall be used to delimit the territorial sea, contiguous zone, exclusive economic zone, and continental shelf.

2. The Law of the Sea

International law of the sea has undergone significant changes since the entry into force of the United Nations Convention on the Law of the Sea, signed at Montego Bay, Jamaica, on December 10, 1982. The drafting and signing of the United Nations Convention on the Law of the Sea gave rise to a series of new resources for the delimitation of maritime areas, improving and modernizing many concepts that had been established in the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone, as well as the results of the Conference on the Law of the Sea held in Geneva in 1960.

Honduras ratified the United Nations Convention on the Law of the Sea on October 5, 1993, recognizing it as an instrument embodying essential principles to guarantee the rights of States to maritime spaces. Upon becoming bound by the Convention, the Government of Honduras, in accordance with its tradition of respect for international law, must comply with all provisions contained therein.

Honduras is a bicoastal country whose waters in the Caribbean Sea adjoin eight States: Guatemala, Belize, Mexico, Cuba, Grand Cayman, Jamaica, Colombia, and Nicaragua. Its waters in the Pacific Ocean, adjoin El Salvador and Nicaragua.

The United Nations Convention on the Law of the Sea requires States to delimit their maritime boundaries by the peaceful means established in the United Nations Charter and under international law, and to settle their disputes using those same rules and principles. The Convention establishes that the sovereignty of a coastal State extends beyond its territory and its internal waters.

3. National Laws

Furthermore, the Honduran Constitution shares the principles of sovereign jurisdiction over airspace, over the subsoil of its continental and insular territories, and over its territorial sea, contiguous zone, exclusive economic zone, and continental shelf, which delimit its national territory. To that end, it is necessary to have a law on maritime spaces which, in accordance with the terms of the United Nations Convention on the Law of the Sea, and of domestic law, makes it possible to determine the internal delimitation of the territorial sea and other maritime spaces of Honduras.

As a logical consequence of the above, the Congress of Honduras approved Decree No. 172-99 establishing the Law on Maritime Spaces of Honduras, which entered into effect in November 1999.

4. Delimitation Processes

It is a common international practice to initiate maritime delimitation negotiations starting with the baselines each State has established. The baselines established by one State are not binding on any other, since each determines them in accordance with the criteria it deems most suitable pursuant to the United Nations Convention and the historical and legal rights favorable to its interests.

In the course of negotiations, baselines may or may not have relevance to or impact on the delimitation deriving from the agreements reached by the States. If it happens that through negotiations, States fail to reach an agreement on maritime boundaries, the United Nations Charter establishes other peaceful means for settling their disputes, including: investigation, mediation, conciliation, arbitration, court settlements, etc.

5. The Baselines of Honduras

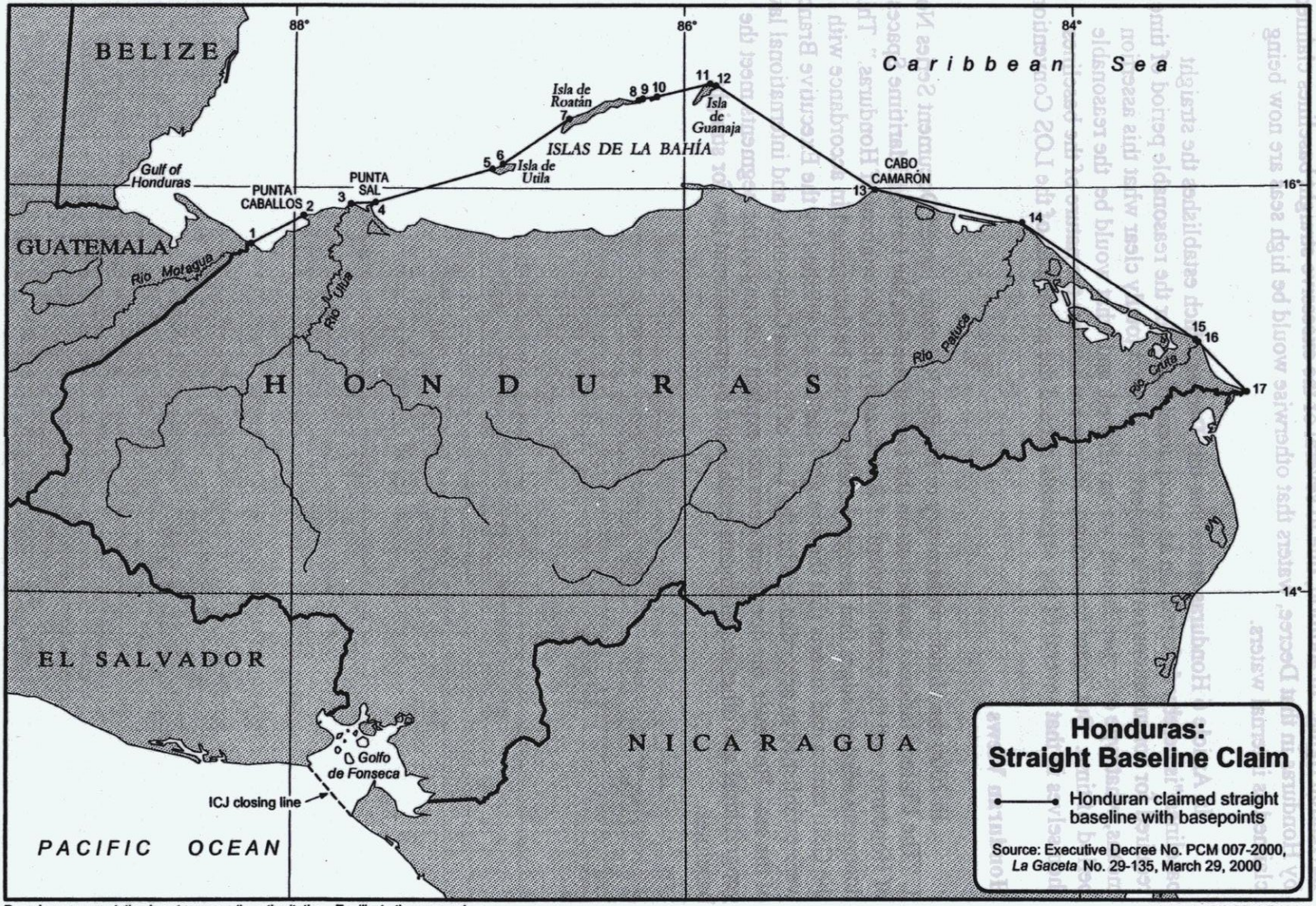
Decree No. PCM 007-2000 identified 17 points for the establishment of straight baselines on the Caribbean coasts, from Point No. 1 at the last marker of the land boundary between Honduras and Guatemala on the right bank of the mouth of the Motagua River, known as Station 233, continuing on through the rest of the points, and ending at Point No. 17, the termination of the land boundary between Honduras and Nicaragua at the mouth of the Coco (Wanks) or Segovia River on Cape Gracias a Dios.

The criterion followed for determining Point No. 1 and Point No. 17 was to use the land boundaries that had been agreed upon with both neighboring countries, in strict compliance with international law. The intermediate points were likewise established in accordance with the United Nations Convention on the Law of the Sea and international law of the sea.

On the islands under Honduran sovereignty in the Caribbean Sea, such as Swan Island, Cayo Gorda, and Cayo Sur, the baselines of the corresponding maritime spaces shall be the low-water line (normal baseline) along the coast from which the maritime spaces will be measured. Likewise, in those segments of continental coastal line in the Caribbean Sea in which the drawing of straight baselines was not provided for, the baseline shall be the low-water line (normal baseline).

In the Pacific Ocean, the straight baseline is the proportional segment corresponding to Honduras on the baseline common to the three Gulf of Fonseca coastal States, which in turn is part of the closing line, or "mouth line" of the Gulf, between Punta Amapala and Punta Cosiguina in Nicaragua, all in accordance with terms of the judgment rendered by the International Court of Justice on September 11, 1992, settling the Land, Island and Maritime Frontier Dispute between the Republics of Honduras and El Salvador.

As can be clearly seen, the Government of Honduras is fully applying the terms of the United Nations Convention on the Law of the Sea and international law in the establishment of its maritime boundaries and spaces. Honduras is fulfilling its international commitments by establishing baselines as a key step in initiating maritime delimitation processes with its neighbors in the Caribbean Sea and Pacific Ocean, to which end it shall use all peaceful means provided for under international law.



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